

LEGAL STUDY 2023

FCI

Facilitating Open Account – Receivables Finance

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INTRODUCTION

Since 2013, EUF (European Federation for the Factoring and Commercial Finance industry) has been conducting its unique comparative legal study for the factoring and commercial finance industry to cover 27 countries of Europe and six benchmark countries.

This year, FCI decided to expand the Legal Study to its covered around 90 countries, and questionnaires were sent to non-covered countries by EUF to complete the Legal Study for the whole world. As a result, data collected from 58 countries in addition to 33 countries of EUF's Legal Study.

The combined Legal Study of FCI covering 91 countries is the most extensive and comprehensive trade finance Legal Study that has ever been made.

Readers should consult EUF's Legal Study for countries covered by EUF.

No doubt, this study was very time consuming as it required extensive work to answer detailed legal questions on receivable finance in our member countries. FCI thanks once again to all participating and answering members for their invaluable contribution to this unique study that could enlighten the future of the receivable finance industry.

METHOD

Two different sets of questionnaires with maximum 17 sections have been prepared for members that have two-factor edifactoring.com volume and others.

Questions are with YES/NO answers wherever possible for comparability and easy follow-up. Room was provided for explanations wherever necessary.

Two members, wherever possible, have been chosen depending on their two-factor factoring volume from each country for convenience. Members had sufficient time to complete the answers with the help of their service providers.

The comparable answers are given in a table for each section to show the situation in each country to enable readers to compare easily. Questions on the top of the table are in abbreviated form so that every answer can be compared.

Some questions have the answer YN. This means one member answered YES and the other answered NO for the same question even after having double checked with the members. As FCI cannot know the correct answer better than local members, both answers are shown. For countries with only one answering member the answers are considered correct. In the case of one member answered as NA (Not Applicable) and the other answered as NO, NA was preferred.

The answer sheets are provided in the Study for each country as appendix as they were received, without the names due to GDPR reasons, so that the readers can see the explanations and references whenever they want to go deeper in their research.

We have gone through the pdf answers with handwriting and converted them to word format by typing again. In some cases, original official documents were consulted for correctness.

No doubt there were some questions not answered for different reasons. In any case for each question a pie chart has been prepared to see the percentages of Yes and No answers. This will show the general situation for each case. The pie charts are illustrated after the relevant questions in every section.

Enjoy.

Yüce UYANIK

Member of The Legal Committee of FCI

COUNTRIES COVERED

33 Countries Already Covered in EUF's Legal Study

Austria	Greece	Portugal
Belgium	Hungary	Romania
Bulgaria	Ireland	Russia
Croatia	Italy	Slovakia
Cyprus	Latvia	Slovenia
Czech Republic	Lithuania	Spain
Denmark	Luxembourg	Sweden
Estonia	Malta	Switzerland
Finland	Netherlands	Turkey
France	Norway	United Kingdom
Germany	Poland	United States

58 FCI Covered Countries Answered This Legal Study[1]

Argentina	Colombia	Kenya	Senegal
Armenia	Congo, Republic of the	Korea	Serbia
Australia	Costa Rica	Kosovo	Singapore
Azerbaijan	Cote d'Ivoire	Lebanon	South Africa
Bangladesh	Dominican Republic	Mauritius	Sri Lanka
Belarus	Egypt	Mexico	Taiwan
Bolivia	Georgia	Moldova	Thailand
Bosnia and Herzegovina	Guatemala	Mongolia	Tunisia
Botswana	Honduras	Montenegro	Uganda
Brazil	Hong Kong	Morocco	Ukraine
Burkina Faso	India	Nigeria	United Arab Emirates
Cameroon	Indonesia	North Macedonia	Vietnam
Canada	Israel	Oman	Zimbabwe
Chile	Japan	Peru	
China	Jordan	Saudi Arabia	

2 FCI Covered Countries Did Not Answer the Questionnaire

Malaysia	Uruguay

[1] Montenegro was inserted referring to their Law on Factoring.

QUESTIONAIRE GUIDE

The questionnaire consists of 17 Sections.

1- Local Regulations
2- Factoring Supplier Risk Mitigation
3- Transfer Of Receivables
4- Electronic Communication, Invoicing And Signatures
5- Taxation
6- Third Party Rights
7- Prohibition Against Assignments
8- International Transactions
9- Payment
10- Insolvency Of Suppliers Or Debtors
11- Disputes
12- Late Payments
13- International Conventions
14- Receivables From Public Administrations
15- Force Majeure
16- International Two-Factor Transactions
17- Any Other Subjects

Every section has various number of questions depending on the subject and details. Therefore, every question has a unique number. After a question there may be an explanation required. Such parts are not numbered but anytime there is an explanation needed after the answer, it is shown by an asterisk (*) as explained in the next paragraph. This way it has been possible to list all the questions and answers from different countries on a single table to enable readers to compare the answers.

Due to difficulties in the illustration of all the answers on one page, the lists of answers are organised and specially marked. Since some sections consist of 3-5 questions but some others of 20-25, larger sections were divided into parts whereas smaller ones were combined within a single table. For example, there are nine lists for Section 1, but there is only one for Section 2.

In addition to the lists for comparison, pie charts have been prepared for each “Yes/No” questions to illustrate the general percentage of the answers for statistical convenience beside the bar graphs for other numerical questions.

To enable readers to go deeper in the information about a specific country, the questionnaires received from the countries are made available as appendix in an alphabetic order of country names.

Abbreviations:

- *Y/*N: There is explanation (or reference to) if Y/N
- Ya/Na: Sub-question (a) if the previous answer is Y/N
- YN: Subsequent question If the answer to the main question is YES and to the sub-question is NO.
- NA: Not Applicable
- D: Depends on the situation
- List X-Y-Z: Answers of Section X, Part Y for Country List Z

Examples:

- **1-2*Y**: YES/NO question number 1-2 that requires an explanation if the answer is YES.
- **1-14-Yb*Y:** This is the sub-question b of question 14 of the first section if the answer is YES. If the answer to this sub-question is YES, there should be a reference or explanation on the answer sheet of the country.
- **List 1-**2-3: List of answers of 3rd part of countries, for second part of questions for Section 1.

QUESTIONAIRE

Section 1- Local Regulations

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

1-1: Is there a special Law/ regulation to govern factoring operations in your country?
YES … NO…

If YES, please give the date, number, if any, and title of the Law or Regulation.

1-2-1: Are banks allowed to do factoring in your country?
YES … NO…

1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?
YES … NO…

(In some jurisdictions factoring operations can only be conducted by the banks. In some others NBFIs are allowed to act as factors.)

1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?
YES … NO…

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO…

If YES,

a) Is approval of managers by the governing body required?

YES … NO…

b) Is approval of the shareholders by the governing body required?

YES … NO…

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES … NO…

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES … NO…

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES … NO…

b) Recourse Factoring

YES … NO…

c) Undisclosed Factoring

YES … NO…

d) Pre-shipment Financing

YES … NO…

e) Factoring based on order approval

YES … NO…

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES … NO…

g) Two-Factor International Factoring such as with FCI

YES … NO…

h) Reverse Factoring

YES … NO…

i) Islamic International Factoring

YES … NO…

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

YES … NO…

k) POM (Purchase Order Management)

YES … NO…

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES … NO…

If YES, please provide the date, title and number of the law/regulation

---

b) Anti-Money Laundering

YES … NO…

If YES, please provide the date, title and number of the regulation

---

c) Minimum Capital Requirement

YES … NO…

If YES, please provide the date, title and number of the regulation

---

d) Data Protection

YES … NO…

If YES, please provide the date, title and number of the regulation

---

e) GAAP/IAS/IFRS Accounting Principles

YES … NO…

f) Obligation to publicly disclose yearly financial reports

YES … NO…

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES … NO…

h) Reserve Requirements against liquidity risk

YES … NO…

Question 1-8: Are there any local factoring associations?

YES … NO…

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO…

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES … NO…

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO…

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO…

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO…

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES … NO…

If YES,

a) What are those reports?

---

b) Are they to be audited?

YES … NO…

---

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES … NO…

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES … NO…

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO…

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO…

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO…

If YES, please provide the name, date and number

Section 2 – Factoring Supplier Risk Mitigation

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES … NO…

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES … NO…

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO…

If YES, please explain

Section 3 - Transfer of Receivables

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES … NO…

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

YES … NO…

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES … NO…

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO…

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

YES … NO…

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO…

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO…

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO…

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO…

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO…

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO…

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO…

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO…

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … NO…

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES … NO…

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES … NO…

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES … NO…

b) Non-recourse factoring?

YES … NO…

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO…

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO…

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO…

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO…

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES … NO…

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO…

Question 3-21: Is assignment of part of a receivable possible?

YES … NO…

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES … NO…

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES … NO…

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO…

If YES, are they also allowed to split a particular receivable between factors?

YES … NO…

Section 4 - Electronic Communication, Invoicing and Signatures

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES … NO…

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES … NO…

Question 4-3: Is signature required on an invoice for validity?

YES … NO…

Question 4-4: Is e-invoicing applicable in your country?

YES … NO…

If YES, is e-invoicing obligatory for some situations?

YES … NO…

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO…

Section 5 - Taxation

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES … NO…

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO…

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO…

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO…

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO…

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO…

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO…

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO…

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO…

If YES, please explain

Section 6 - Third Party Rights

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO…

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO…

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO…

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO…

If YES,

a) what are they and how is the procedure?

b) Is there any difference in the application depending on the type of factoring?

YES … NO…

If YES, please explain.

Section 7 - Prohibition Against Assignments

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES … NO…

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO…

If YES, please explain the procedure.

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO…

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO…

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO…

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO…

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO…

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO…

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO…

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO…

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES … NO…

If NO, please explain

_____

_____

Section 8 - International Transactions

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES … NO…

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES … NO…

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES … NO…

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO…

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES … NO…

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO…

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO…

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO…

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO…

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO…

If YES, please explain

Section 9 - Payment

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO…

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES … NO…

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO…

Section 10: Insolvency of Suppliers or Debtors

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO…

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO…

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO…

If NO, is it an equal right with the others?

YES … NO…

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days
d) 91-180 days
e) More than 180 days

Section 11 - Disputes

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?
a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?
a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES … NO…

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES … NO…

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES … NO…

Section 12- Late Payments

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES … NO…

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO…

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES … NO…

If YES,

a) Under which circumstances?

---

b) Can the factor issue an invoice for such interest to the debtor?

YES … NO…

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO…

If YES, please explain referring to the regulation

Section 13 - International Conventions

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO…

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO…

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO…

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO…

Section 14 - Receivables from Public Administrations

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO…

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES … NO…

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES … NO…

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO…

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO…

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO…

If YES, please list the differences.

Section 15 - Force Majeure

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES … NO…

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES … NO…

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

Section 16 – International Two-Factor Transactions

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES … NO…

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES … NO…

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES … NO…

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES … NO…

Section 17 - Any Other Subjects

Are there any other subjects that you think are important in conducting factoring operations with your country?

YES … NO…

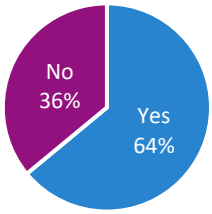
If YES, please explain.

QUANTITIVE ANSWERS

Section 1- Local Regulations

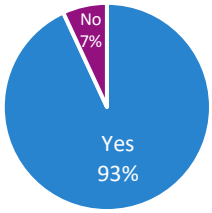
This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

1-1: Is there a special Law/ regulation to govern factoring operations in your country?

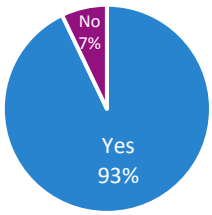


If YES, please give the date, number, if any, and title of the Law or Regulation.

1-2-1: Are banks allowed to do factoring in your country?

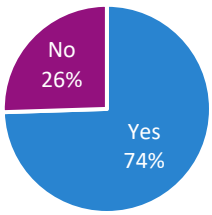


1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?



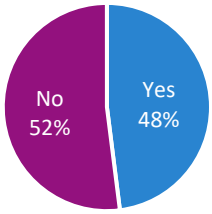
(In some jurisdictions factoring operations can only be conducted by the banks. In some others NBFIs are allowed to act as factors.)

1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?



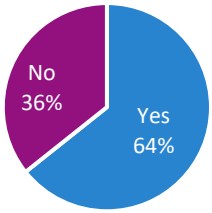
If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

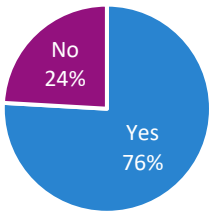


If YES,

a) Is approval of managers by the governing body required?

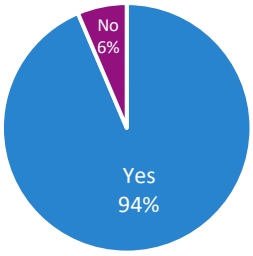


b) Is approval of the shareholders by the governing body required?



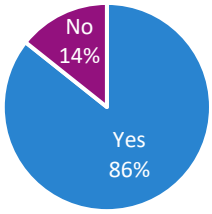
c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?



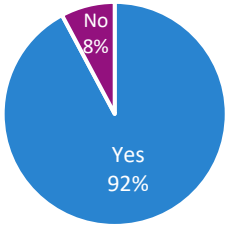
If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

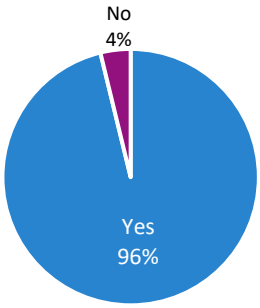


Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

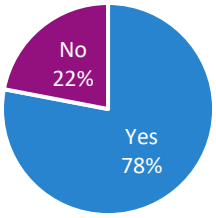
a) Non-recourse Factoring



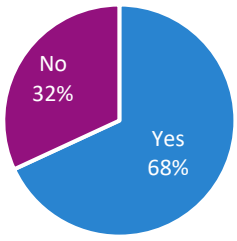
b) Recourse Factoring



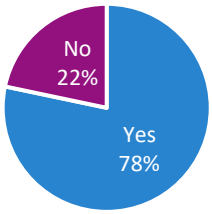
c) Undisclosed Factoring



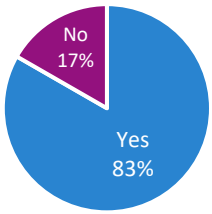
d) Pre-shipment Financing



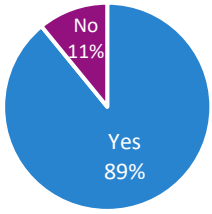
e) Factoring based on order approval



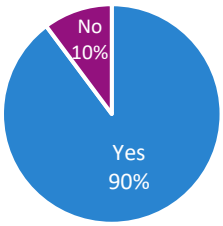
f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)



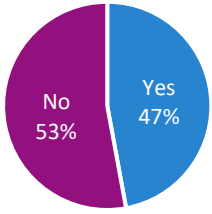
g) Two-Factor International Factoring such as with FCI



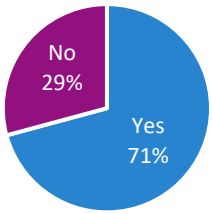
h) Reverse Factoring



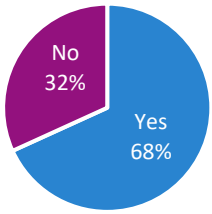
i) Islamic International Factoring



j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)



k) POM (Purchase Order Management)



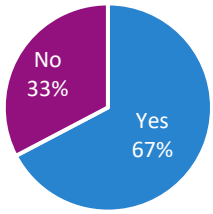
List 1-1

Country	Questions	1-1*Y	1-2-1	1-2-2	1-3*Y	1-4-1*Y	1-4-1-Ya	1-4-1-Yb	1-4-2*N	1-5	1-6-a	1-6-b	1-6-c	1-6-d	1-6-e	1-6-f	1-6-g	1-6-h	1-6-i	1-6-j	1-6-k
Argentina	x	Y	Y	Y	N	N			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N		
Armenia	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Australia	x	N	Y	Y	N	N			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N		
Austria		PLEASE REFER TO EUF'S LEGAL STUDY																			
Azerbaijan	x	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N		
Bangladesh	x	Y	Y	Y	Y				Y	Y	Y	N	N	N	N	N	Y	N	N		
Belarus	x	Y	Y	Y	Y	Y	YN	YN	Y	YN	Y	Y	Y	Y	YN	Y	Y	Y	N	Y	N
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY																			
Bolivia	x	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N	Y	Y	Y	N	N	N
Bosnia and Herzegovina	x	Y	Y	Y	Y	YN	Y	Y	Y	Y	Y	Y	Y	YN	YN	N	YN	YN	N		
Botswana	x	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y		Y	Y		
Brazil	x	N	Y	YN	YN	N	N	N	YN	YN	Y	Y	Y	YN	YN	Y	Y	Y	YN	Y	YN
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY																			
Burkina Faso	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y		Y	Y	Y	Y	Y	Y	Y	Y
Cameroon	x	Y	Y	N	Y					Y		Y	Y	N	Y	Y	Y	Y	Y		
Canada	x	Y	Y	Y	Y	N			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	
Chile	x	N	Y	Y	N	N			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y
China	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	YN	YN	Y	Y	Y	N	YN	Y
Colombia	x	Y	Y	Y	Y	N			Y	Y	Y	Y	Y	N	N	N	N	Y	N		
Congo, Republic of the	x	Y	Y	Y	Y	N			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Costa Rica	x	Y	Y	Y	N	N			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Cote d'Ivoire	x	Y	Y	N	Y					N	Y	Y	Y	N	Y	Y	Y	Y	Y		
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY																			
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY																			
Dominican Republic	x	N	Y	Y	N	N				Y	Y	Y	Y	Y	Y			Y	N		
Egypt	x	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY																			
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
France		PLEASE REFER TO EUF'S LEGAL STUDY																			
Georgia	x	N	Y	N	YN	NA			NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	N		
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
Greece		PLEASE REFER TO EUF'S LEGAL STUDY																			
Guatemala	x	Y	Y	Y	N	N	N	N	Y	Y	Y	Y	N	Y	Y	N	Y	Y	N		
Honduras	x	N	Y	Y	N				NA		NA	NA	NA	NA	NA	NA	NA	NA	NA		
Hong Kong	x	N	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
India	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y	Y
Indonesia	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY																			
Israel	x	Y	Y	Y	Y	Y				Y									N		

Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
Japan	x	N	Y	Y	Y	N			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Jordan	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
Kenya	x	Y	Y	Y	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Korea	x	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	N					N		
Kosovo	x	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N		
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
Lebanon	x	Y	Y	Y	N	N			Y	D	Y	Y	Y	N	N	Y	Y	Y	Y		
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY																			
Malta		PLEASE REFER TO EUF'S LEGAL STUDY																			
Mauritius	x	N	N	Y	Y	N			Y	Y	Y	Y	Y	N	N	Y	Y	Y	N		
Mexico	x	Y	Y	Y	Y	N			Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y
Moldova	x	N	Y	Y		N			Y	Y	Y	Y					Y	Y			
Mongolia	x	Y	N	Y	Y	Y	Y	Y	N	Y	N	N	N	N	N	N	N	N	N		
Morocco	x	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N	N	N	N	Y	N	N	N
Montenegro	x	Y	Y	Y	Y	Y		Y	Y	N	Y	Y	Y		Y	Y	Y	Y	Y		
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY																			
Nigeria	x	N	Y	Y	Y	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
North Macedonia	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
Oman	x	N	N	Y	N	N															
Peru	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N
Poland		PLEASE REFER TO EUF'S LEGAL STUDY																			
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY																			
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
Saudi Arabia	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Senegal	x	Y	Y	N	Y	N				N	Y	Y	Y	N	Y	Y	Y		Y		
Serbia	x	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	N	N	Y	Y	Y	Y	N	N	N
Singapore	x	N	Y	Y	Y	N			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY																			
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
South Africa	x	N	Y	Y	N	N			Y	Y	Y	Y	Y	Y	Y	Y		Y	Y		
Spain		PLEASE REFER TO EUF'S LEGAL STUDY																			
Sri Lanka	x	N	Y	Y	Y	N			N	Y	Y	Y	N	N	N	N	N	N	N	N	N
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY																			
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY																			
Taiwan	x	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y
Thailand	x	Y	Y		Y																
Tunisia	x	N	Y	Y	Y	Y	N	N	Y	N	Y	Y	Y	N	N	Y	Y	Y	N	Y	N
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY																			
Uganda	x	N	Y	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Ukraine	x	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
United Arab Emirates	x	Y	Y	Y	N	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY																			
United States		PLEASE REFER TO EUF'S LEGAL STUDY																			
Vietnam	x	Y	Y	Y	Y	N			Y		N	Y	Y	Y	Y	Y	Y	Y	N	N	Y
Zimbabwe	x	N	Y	Y	N	N	N	N	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N		
YES		37	54	52	41	24	18	22	44	42	47	50	39	32	36	40	41	44	24	17	15
NO		21	4	4	14	26	10	7	3	7	4	2	11	15	10	8	5	5	27	7	7
Total No of Answers		58	58	56	55	50	28	29	47	49	51	52	50	47	46	48	46	49	51	24	22

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules



If YES, please provide the date, title and number of the law/regulation

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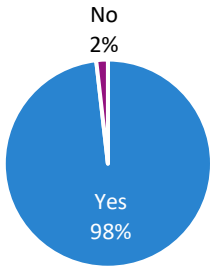
b) Anti-Money Laundering



If YES, please provide the date, title and number of the regulation

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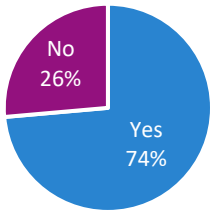
c) Minimum Capital Requirement



If YES, please provide the date, title and number of the regulation

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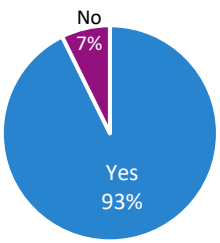
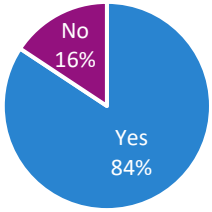
d) Data Protection



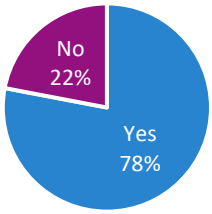
If YES, please provide the date, title and number of the regulation

---

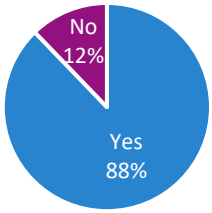
e) GAAP/IAS/IFRS Accounting Principles



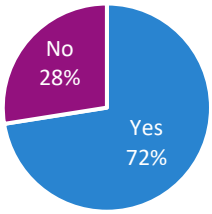
f) Obligation to publicly disclose yearly financial reports



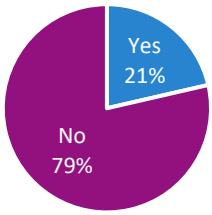
g) Risk Management that covers monitoring of operation, internal control and risk assessment.



h) Reserve Requirements against liquidity risk



Question 1-8: Are there any local factoring associations?

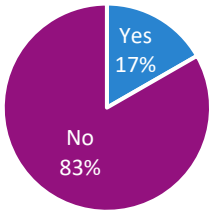


If YES,

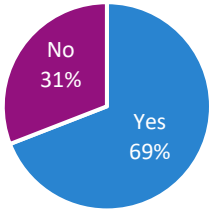
a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

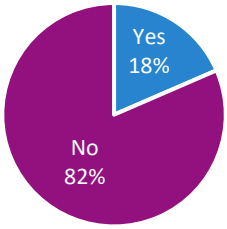


Question 1-9: Is there a legal definition of factoring / factoring contract?

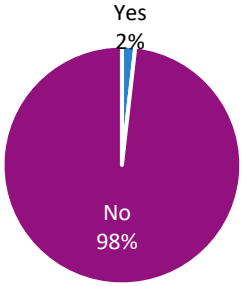


If YES, please provide the definition.

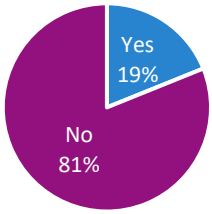
Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?



Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

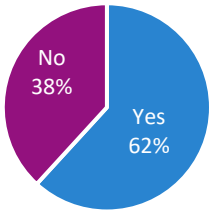


Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?



If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

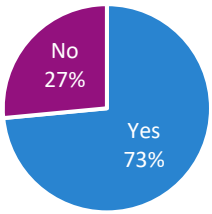


If YES,

a) What are those reports?

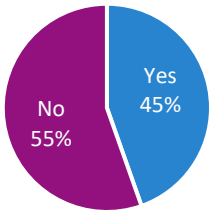
---

b) Are they to be audited?



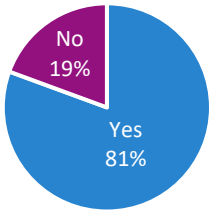
c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

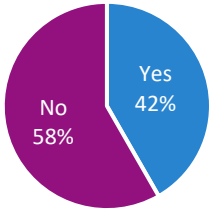


If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

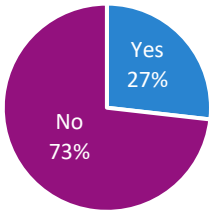


b) Are there also some restrictions in terms of goods and/services involved?



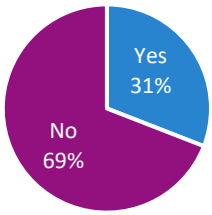
If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?



If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?



If YES, please provide the name, date and number

List 1-2

Country	Questions	1-7-	1-7-	1-7-	1-7-	1-7-e	1-7-f	1-7-g	1-7-h	1-8*Y	1-8-	1-9*Y	1-10	1-11	1-12 *Y	1-13 *Y	1-13 -	1-14	1-14	1-14 -	1-15 *Y	1-16 *Y

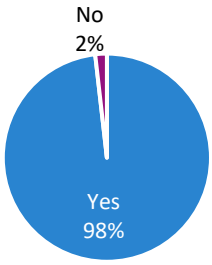
		a* Y	b* Y	c* Y	d* Y						Y b						Y b		- Ya	Y b* Y		
Argentina	x	N	Y	Y	Y	Y	Y	Y	Y	N		Y	N	N	N	Y	Y	N			N	Y
Armenia	x	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	Y	N	N	N	N	N	N	N	N	N
Australia	x	N	Y	N	N	Y	N	N	N	N			N	N	N	N	N	N			N	N
Austria		PLEASE REFER TO EUF'S LEGAL STUDY																				
Azerbaijan	x	Y	Y	Y	Y	Y	Y	Y	Y	N		Y	N	N	N	Y		N			N	N
Bangladesh	x	N	Y	Y	Y	Y	Y	Y	Y	N			N	N	Y	N		Y	Y	N	Y	N
Belarus	x	YN	Y	Y	Y	YN	YN	Y	Y	N	N	Y	N	N	N	Y	Y	YN	Y	Y	N	YN
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY																				
Bolivia	x	N	Y	Y	Y		Y	Y	Y	N		Y	N	N	N	Y	Y	N		N	Y	Y
Bosnia and Herzegovina	x	YN	Y	Y	Y	Y	Y	Y	Y	N		Y	N	N	N	Y	YN	Y	Y	Y	Y	YN
Botswana	x	Y	Y	N	Y	Y	Y	Y	N	N		N	N	N		Y	N	N	Y	N	Y	N
Brazil	x	Y	Y	N	Y	Y	N	YN	N	Y	N	Y	N	N	N	YN	YN	Y	Y	N	N	N
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY																				
Burkina Faso	x	N	Y	Y	Y	Y	Y	Y	Y	N		Y	N	N	Y	Y	N	Y	Y	Y	N	Y
Cameroon	x	Y	Y	Y	Y	N	Y	Y	Y	N		Y	N	N	Y	Y	Y	Y	Y	Y	N	Y
Canada	x	Y	Y	N	Y	Y		Y	Y	N		N	N	N		Y		Y	N	N	Y	N
Chile	x	Y	Y	N	N	N	N	N	N	Y	N	N	N	N	N	N		N			N	N
China	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	YN	YN	N	Y	YN	Y	YN	YN	N	N
Colombia	x	Y	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	N			Y	N
Congo, Republic of the	x	Y	Y	Y	Y	Y				N		Y	Y	N	N	Y	Y	Y	Y	Y	N	Y
Costa Rica	x	N	Y	N	Y	Y	N	N	N	Y	Y	Y	N	N	N	N	N	N	Y	N	N	N
Cote d'Ivoire	x	Y	Y	Y	Y	N	Y	Y	Y	N			N	N	Y	Y	Y	Y	Y	Y	N	Y
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY																				
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY																				
Dominican Republic	x	N	N	N	N	N	N	N	N	N		N	N	N		N		N			N	N
Egypt	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	N	N
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY																				
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
France		PLEASE REFER TO EUF'S LEGAL STUDY																				
Georgia	x	YN	YN	N	YN	YN	YN	YN	N	N		Y	YN	N	N	Y	YN	N			N	N
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
Greece		PLEASE REFER TO EUF'S LEGAL STUDY																				
Guatemala	x	N	Y	Y	N	N	N	N	N	N		Y	N	N	N	N	Y	N			N	Y
Honduras	x	N	Y	Y	Y	Y	Y	Y	Y	N		N	N	N	N	N		Y	Y	Y	N	N
Hong Kong	x	Y	Y	YN	Y	Y	N	YN	YN	N		N	N	N	N	N		N			N	N
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
India	x	Y	Y	Y	Y	Y	Y	Y	N	Y	N	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y
Indonesia	x	N	Y		Y		N	Y	Y	N		Y	N	N	Y	Y		Y	Y	N	Y	Y
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY																				
Israel	x	Y	Y			Y	Y			N	N	Y			N	Y	Y	Y	Y	Y		Y
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
Japan	x	Y	Y	N	Y	Y	N	Y	N	N		N	N	N	N	N		N		N	N	N
Jordan	x	Y	Y	Y	Y	Y	Y	Y	Y	N		Y	N	N	N	N		Y	Y	N	Y	N
Kenya	x	Y	Y	N	Y	Y	N	Y	N	N	N	N	N	N	N	N		N			N	N
Korea	x	Y	Y	Y	Y					N		Y	N	N	N	N		N			N	Y
Kosovo	x	Y	Y	Y	Y	Y	Y	Y	Y	N		Y	N	N	N	Y	Y	Y	Y	Y	N	N
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
Lebanon	x	N	Y	Y	Y	Y	Y	Y	Y	N		N	N	N	N	Y	Y	Y	Y	Y	Y	N
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY																				
Malta		PLEASE REFER TO EUF'S LEGAL STUDY																				
Mauritius	x	Y	Y	Y	Y	Y	Y	Y	N	N		N	N	N	N	Y	Y	N			N	N
Mexico	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	N	N	N		N			N	N
Moldova	x	Y	Y	Y	Y	Y	Y	N	N	N		Y						Y	Y	N	N	N
Mongolia	x	Y	Y	Y	Y	Y	Y	Y	Y	N		Y	N	N	N	N	N	N	N	N	N	N
Morocco	x	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y			Y	Y
Montenegro	x			Y	Y							Y	N	N	N	Y	Y	N			Y	
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY																				
Nigeria	x	Y	Y	Y	Y	Y	Y	Y	Y	N		Y	N	N	N	N	N	N	N	N	N	N
North Macedonia	x	Y	Y	Y	Y	Y	Y	Y	Y	N		Y	N	N	N	Y	Y	N		N	N	N
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
Oman	x	Y	Y	Y	Y	Y	Y	Y	Y	N		N	N	N	N							N
Peru	x	Y	Y	Y	Y	Y	Y	Y	Y	N		Y	N	N	N	Y	Y	N			Y	Y
Poland		PLEASE REFER TO EUF'S LEGAL STUDY																				
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY																				
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
Saudi Arabia	x	Y	Y	Y	Y	Y	Y	Y	Y	N		Y	N	N	Y	Y	Y	N	N	N	N	Y

Senegal	x	Y	Y	Y	Y	N	Y	Y	Y	N		Y	N	N	Y	Y	Y	Y	Y	Y	N	Y
Serbia	x	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	N	N	Y	N	N	N
Singapore	x	Y	Y	N	Y	Y	Y	Y	Y	N		N	N	N	N	N		N		N	N	N
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY																				
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
South Africa	x	Y	Y	Y	Y	Y	Y	Y	Y	N		Y	N	Y		N		N			N	N
Spain		PLEASE REFER TO EUF'S LEGAL STUDY																				
Sri Lanka	x		Y		Y	Y	Y	Y	Y	N		N	N	N	N	N		N			Y	N
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY																				
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY																				
Taiwan	x	Y	Y	Y	Y	Y	Y	Y		N	N	N	N	N	N	Y	N	Y	Y	Y	N	Y
Thailand	x	Y	Y	N	Y	Y	Y	Y	Y	Y	N	Y	N	N	N	N		N			N	N
Tunisia	x	N	Y	Y	Y	Y		Y	N	N		Y	Y	N	N	Y	Y	Y	YN	N	N	N
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY																				
Uganda	x	N	Y	Y	Y	Y	Y		Y	N		N	N	N	Y	Y	Y	N			N	N
Ukraine	x	N	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	N	N	N		Y	Y	Y	N	N
United Arab Emirates	x	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Y	N	N	Y	Y	Y	Y	N	N	N	Y
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY																				
United States		PLEASE REFER TO EUF'S LEGAL STUDY																				
Vietnam	x	Y	Y	N	Y	N	Y	Y	Y	N		Y	Y	N	N	Y	Y	Y	Y	Y	Y	N
Zimbabwe	x	N	Y	Y	Y	Y	N	Y	Y	N	N	N	N	N	N	Y	Y	N	Y	N	N	N
YES		**35**	**54**	**39**	**51**	**43**	**39**	**43**	**37**	**12**	**3**	**38**	**10**	**1**	**10**	**34**	**25**	**25**	**25**	**15**	**15**	**17**
NO		**17**	**1**	**14**	**4**	**8**	**11**	**6**	**14**	**44**	**15**	**17**	**44**	**54**	**43**	**21**	**9**	**31**	**6**	**21**	**41**	**38**
Total No of Answers		**52**	**55**	**53**	**55**	**51**	**50**	**49**	**51**	**56**	**18**	**55**	**54**	**55**	**53**	**55**	**34**	**56**	**31**	**36**	**56**	**55**

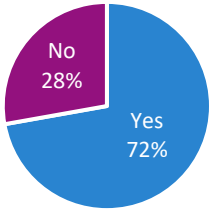
Section 2 – Factoring Supplier Risk Mitigation

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

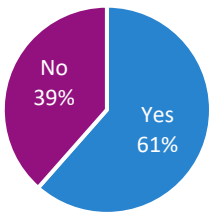


Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?



If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?



If YES, please explain

List 2

Country	Questions	2-1	2-2*Y	2-3*Y
Argentina	x	Y	Y	Y
Armenia	x	Y	N	N
Australia	x	Y	Y	Y
Austria		PLEASE REFER TO EUF'S LEGAL STUDY		
Azerbaijan	x	Y	N	N
Bangladesh	x	Y	Y	Y
Belarus	x	Y	Y	YN
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY		
Bolivia	x	Y	Y	N
Bosnia and Herzegovina	x	Y	Y	YN
Botswana	x	Y	Y	Y

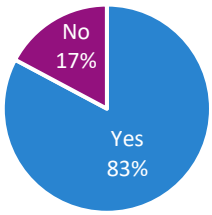
Brazil	x	Y	Y	Y
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY		
Burkina Faso	x	Y	Y	Y
Cameroon	x	Y	Y	N
Canada	x	Y	Y	Y
Chile	x	Y	Y	Y
China	x	Y	Y	Y
Colombia	x	Y	N	Y
Congo, Republic of the	x	Y	Y	Y
Costa Rica	x	Y	Y	N
Cote d'Ivoire	x	Y	Y	N
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY		
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY		
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY		
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY		
Dominican Republic	x	Y	N	N
Egypt	x	Y	Y	N
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY		
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY		
France		PLEASE REFER TO EUF'S LEGAL STUDY		
Georgia	x	Y	N	Y
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY		
Greece		PLEASE REFER TO EUF'S LEGAL STUDY		
Guatemala	x	Y	N	Y
Honduras	x	Y	Y	N
Hong Kong	x	Y	Y	Y
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY		
India	x	Y	Y	Y
Indonesia	x	Y	N	Y
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY		
Israel	x	Y	Y	Y
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY		
Japan	x	Y	N	Y
Jordan	x	Y	Y	Y
Kenya	x	Y	Y	Y
Korea	x	Y	N	N
Kosovo	x	Y	Y	N
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY		
Lebanon	x	Y	N	N
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY		
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY		
Malta		PLEASE REFER TO EUF'S LEGAL STUDY		
Mauritius	x	Y	N	Y
Mexico	x	N	Y	N
Moldova	x	Y		
Mongolia	x	Y	N	N
Morocco	x	Y		Y
Montenegro	x			
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY		
Nigeria	x	Y	Y	Y
North Macedonia	x	Y	Y	N
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY		
Oman	x	Y	Y	
Peru	x	Y	Y	Y
Poland		PLEASE REFER TO EUF'S LEGAL STUDY		
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY		
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY		
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY		
Saudi Arabia	x	Y	Y	Y
Senegal	x	Y	Y	N
Serbia	x	Y	Y	N
Singapore	x	Y	Y	N
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY		
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY		
South Africa	x	Y	N	Y
Spain		PLEASE REFER TO EUF'S LEGAL STUDY		
Sri Lanka	x	Y		
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY		
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY		
Taiwan	x	Y	N	Y
Thailand	x	Y	Y	N
Tunisia	x	Y	Y	Y
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY		
Uganda	x	Y	Y	Y
Ukraine	x	Y	Y	Y

United Arab Emirates	x	Y	Y	Y
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY		
United States		PLEASE REFER TO EUF'S LEGAL STUDY		
Vietnam	x	Y	N	N
Zimbabwe	x	Y	Y	Y
YES		**56**	**39**	**32**
NO		**1**	**15**	**20**
Total No of Answers		**57**	**54**	**52**

Section 3 - Transfer of Receivables

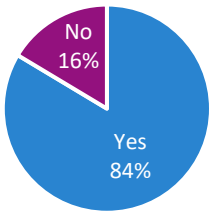
This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

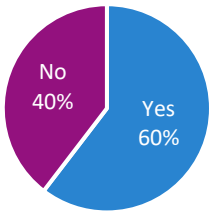


If YES, please provide the date, title and number.

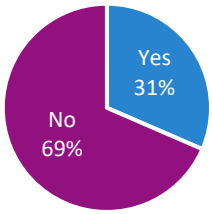
Question 3-2: Is factoring based on assignment in your country?



Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

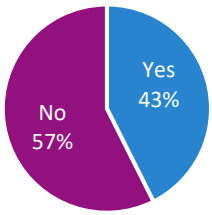


Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as “assignment” in following questions) that is used in your factoring operations to transfer the receivables?

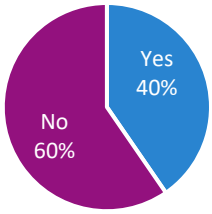


If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

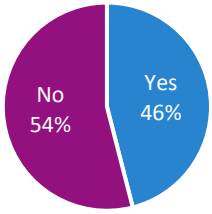


Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

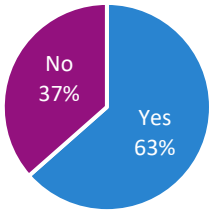


If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

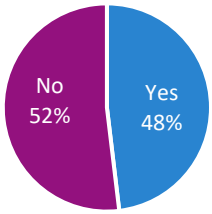
Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?



Question 3-6: Is notice to the debtor-necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

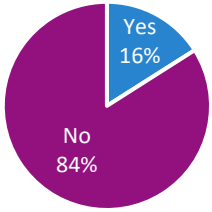


Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)



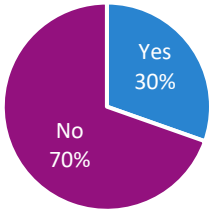
If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?



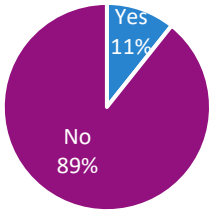
If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

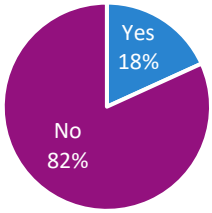


If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

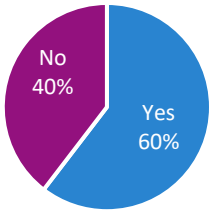


Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?



If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?



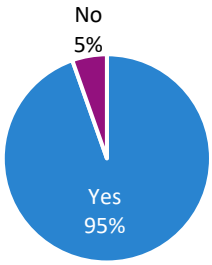
If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

List 3-1-1

Country	Questions	3-1*Y	3-2	3-3	3-4*Y	3-5-1	3-5-2*Y	3-5-3	3-6	3-7*Y	3-8*Y	3-9*Y	3-10	3-11	3-12*Y
Argentina	x	Y	Y	Y	N	N	N	N	N	Y	N	N	N	Y	Y
Armenia	x	Y	Y	N	N	N	N	N	Y	N	N	N	N	N	N
Australia	x	N	Y	N	N	Y	Y	Y	N	N	N	N	N	N	Y
Austria		PLEASE REFER TO EUF'S LEGAL STUDY													
Azerbaijan	x	Y	Y	N	N	N	N	N	Y	N	N	N	N	N	N
Bangladesh	x	Y	Y	Y	N	N	N	N		N		N	N	N	N
Belarus	x	Y	Y	Y	N	N	N	N	YN	YN	N	N	N	N	N
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY													
Bolivia	x	N	Y	N	N	Y	N	Y	Y	N	N	Y	N	N	N
Bosnia and Herzegovina	x	Y		Y	N	N	YN	N	YN	YN	N	N	N	N	YN
Botswana	x	N	Y	Y	Y	N	N	Y	Y	Y	N	Y	N	N	Y
Brazil	x	Y	Y	YN	YN	Y	Y	YN	Y	Y	YN	N	N	N	Y
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY													
Burkina Faso	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	N	Y
Cameroon	x	Y	N	Y	N	Y	Y	N	N	N	N	N	N	N	N
Canada	x	Y	Y	N	N	N	Y	N	N	Y	Y	N	N	N	Y
Chile	x	Y	Y	Y	Y	N	Y	N	Y	Y	Y	N	N	N	Y
China	x	Y	Y	YN	YN	N	YN	Y	Y	YN	YN	N	N	N	YN
Colombia	x	Y	Y	N	Y	Y	Y	Y	N	N	N	N	N	N	Y
Congo, Republic of the	x	Y	Y	Y	N	Y	N	Y	Y	Y	N	N	N	Y	Y

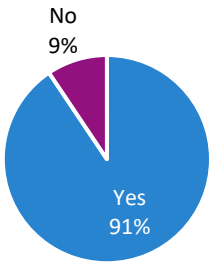
Costa Rica	x	N	N	N	N	Y	N	Y	Y	Y	N	Y	N	N	Y
Cote d'Ivoire	x	Y	N	Y	N	Y	Y	N	N	N	N	N	N	N	N
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY													
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY													
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY													
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY													
Dominican Republic	x	N	Y	Y	Y	N	N	N	Y	Y	N	N	Y	N	N
Egypt	x	Y	Y	Y	N	N	Y	Y	Y	Y	N	N	N	N	Y
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY													
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY													
France		PLEASE REFER TO EUF'S LEGAL STUDY													
Georgia	x	Y	Y	YN	N	N	N	N	YN	N	YN	N	N	YN	N
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY													
Greece		PLEASE REFER TO EUF'S LEGAL STUDY													
Guatemala	x	Y	Y	Y	N	Y	N	Y	Y	Y	N	Y	Y	N	N
Honduras	x	Y	Y	Y	N	N	N	Y	Y	N	N	Y	Y	N	N
Hong Kong	x	Y	Y	N	N	N	N	YN	YN	YN	N	N	N	N	Y
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY													
India	x	Y	Y	Y	N	Y	Y	N	Y	Y	N	N	N	N	Y
Indonesia	x	Y	N	N	Y			DEP	N	N	DEP	N	N	N	DEP
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY													
Israel	x	Y													
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY													
Japan	x	Y	Y	Y	N	Y	N	N	Y	N	N	Y	Y	N	N
Jordan	x	Y	N	Y	N	N	N	N	Y	Y	N	Y	Y	Y	Y
Kenya	x	Y	Y	Y	N	Y	Y	DEP	Y	N	Y	Y	N	N	Y
Korea	x	Y	Y	Y	N	N	N	Y	Y	Y		Y	N	Y	Y
Kosovo	x	N	Y	N	Y		Y	Y	N	Y	N	N	N	N	Y
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY													
Lebanon	x	Y	Y	N	N	N	N	N	N	Y	N	N	Y	Y	Y
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY													
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY													
Malta		PLEASE REFER TO EUF'S LEGAL STUDY													
Mauritius	x	N	N	Y	N	N	N	N	Y	N	N	N	N	N	Y
Mexico	x	Y	Y	N	N	Y	Y	Y	N	Y	N	Y	N	Y	Y
Moldova	x	Y	Y	N	N	N	N	Y	N	N	N	N	N	Y	N
Mongolia	x	Y	Y	N	N	N	N	N	N	N	N	Y	N	N	N
Morocco	x	Y	N	Y	Y	Y		Y	N	Y			N		N
Montenegro	x	Y	Y			N	N		N	N	N	N	N	N	Y
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY													
Nigeria	x	Y	Y	N	Y	N	N	Y	N	N	N	N	N	N	N
North Macedonia	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	Y	Y
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY													
Oman	x	Y		Y	N				Y	Y	N	Y	N	N	Y
Peru	x	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y	N	N	Y
Poland		PLEASE REFER TO EUF'S LEGAL STUDY													
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY													
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY													
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY													
Saudi Arabia	x	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N		N	Y
Senegal	x	Y	N	Y	N	Y	Y	N	N	N	N	N	N	N	N
Serbia	x	Y	Y	Y	N	N	N	N	Y	N	N	N	N	N	Y
Singapore	x	Y	Y	N	Y	N	N	N	Y	Y	N	N	N	N	Y
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY													
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY													
South Africa	x	N	N	N	Y	N	N	N	N	N	Y	N	N	N	N
Spain		PLEASE REFER TO EUF'S LEGAL STUDY													
Sri Lanka	x	N	Y	N	N	N	N	N	N	N	N	N	N	N	
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY													
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY													
Taiwan	x	Y	Y	N	N	N	N	N	Y	N	Y	N	N	Y	N
Thailand	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y
Tunisia	x	Y	Y	Y	Y	N	N	N	Y	YN	Y	N	N	N	Y
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY													
Uganda	x	Y	Y	N	N	N	N	Y	Y	N	N	Y	N	N	Y
Ukraine	x	N	Y	Y	N	N	N	N	Y	N	N	Y	N	N	Y
United Arab Emirates	x	Y	Y	Y	Y	Y	Y		Y	Y	N	N	N	N	Y
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY													
United States		PLEASE REFER TO EUF'S LEGAL STUDY													
Vietnam	x	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N	N
Zimbabwe	x	Y	Y	N	Y	Y	Y	N	Y	N	N	N	N	N	N
YES		48	46	32	17	23	21	23	33	25	8	17	6	10	32
NO		10	9	21	37	31	31	27	19	27	42	39	50	45	21
Total No of Answers		58	55	53	54	54	52	50	52	52	50	56	56	55	53

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?



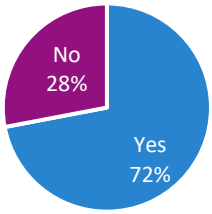
If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

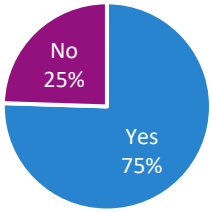


Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

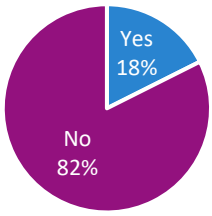
a) Recourse Factoring?



b) Non-recourse factoring?

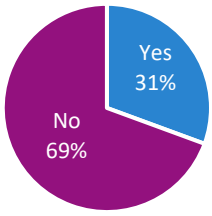


Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?



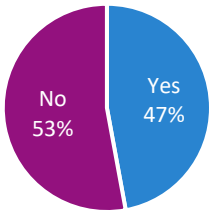
If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

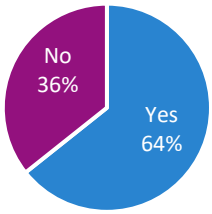


If YES, please provide the reference of the relevant regulation.

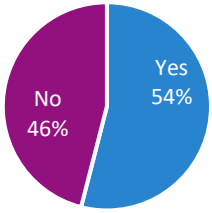
Question 3-18: Is retention/reservation of title by the supplier possible in your country?



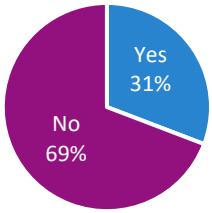
If YES, is extended retention (effective in subsequent sales) of title also possible?



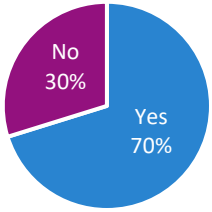
Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?



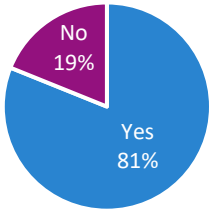
Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?



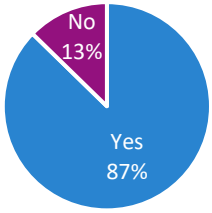
Question 3-21: Is assignment of part of a receivable possible?



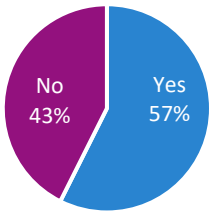
Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?



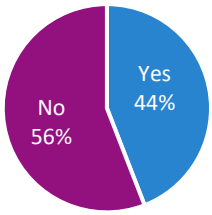
Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?



If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?



If YES, are they also allowed to split a particular receivable between factors?



List 3-2

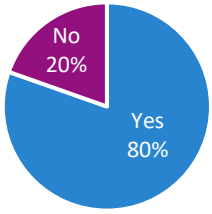
Country	Questions	3-13* N	3-14	3-15-a	3-15-b	3-16*Y	3-17*Y	3-18	3-18-Y	3-19	3-20	3-21	3-22	3-23	3-23-Y	3-23-YY
Argentina	x	Y	Y	N	N	N	N	Y	N	N	Y	Y	Y	Y	N	
Armenia	x	Y	Y	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y
Australia	x	Y	Y	Y	Y	N		Y	N	Y	Y	N	Y	N		
Austria		PLEASE REFER TO EUF'S LEGAL STUDY														
Azerbaijan	x	N	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
Bangladesh	x	Y	Y	Y	Y		N	N		N	N	Y		Y	N	
Belarus	x	Y	YN	YN	YN	N	YN	N		YN	YN	Y	Y	Y	Y	Y
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY														
Bolivia	x	Y	Y	Y	Y	N	N	N		N	N	N	N	N	N	N
Bosnia and Herzegovina	x	Y	Y	Y	Y	N	N	N	N	YN	YN	Y	YN	YN	Y	
Botswana	x	Y	Y	Y	Y	N	Y			Y	N	Y	N	Y	N	
Brazil	x	Y	Y	Y	Y	N	N	Y	Y	Y	YN	Y	Y	Y	Y	YN
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY														
Burkina Faso	x	Y	Y	Y	Y	N	Y	Y	Y	N	N	N	Y	Y	N	
Cameroon	x	Y	Y	Y	Y	N	N	Y	Y	Y	N	Y	Y	N		
Canada	x	Y	Y	N	Y	N	N	Y		Y	Y	Y	Y	Y	Y	Y
Chile	x	Y	Y	Y	N	N	N	N		N	N	Y	Y	Y	Y	N
China	x	Y	YN	YN	YN	N	YN	Y	Y	YN	YN	Y	Y	Y	Y	YN
Colombia	x	Y	Y	Y	Y	Y	N	Y	N	Y	N	Y	Y	Y	Y	Y
Congo, Republic of the	x	Y	Y	Y	Y	N	Y	N		Y	N	N	Y	Y	N	
Costa Rica	x	Y	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Cote d'Ivoire	x	Y	Y	Y	Y	N	N	Y	Y	Y	N	Y	Y	N		
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY														
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY														
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY														
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY														
Dominican Republic	x	Y	Y	N	N	N	N	N		N	N	N	N	Y	Y	N
Egypt	x	Y	Y	N	Y	N	N	N		N	N	Y	Y	Y	Y	Y
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY														
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY														
France		PLEASE REFER TO EUF'S LEGAL STUDY														
Georgia	x	Y	Y	YN	YN	N	N	N	N	YN	N	Y	YN	Y	YN	N
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY														
Greece		PLEASE REFER TO EUF'S LEGAL STUDY														
Guatemala	x	Y	Y	Y	Y	Y	Y	N	N	N	N	Y	Y	Y	Y	N
Honduras	x	N	Y	Y	NA	NA	NA	N		N	N	Y	N	Y	Y	N
Hong Kong	x	Y	Y	N	N	N	N	YN		YN	N	Y	YN	Y	YN	N
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY														
India	x	Y	Y	Y	Y	N	N	Y	Y		N	N	Y	Y	Y	N
Indonesia	x	Y	Y	DEP	DEP	N	N	N		N	N	Y	N	Y	N	N
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY														
Israel	x	PLEASE REFER TO EUF'S LEGAL STUDY														
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY														
Japan	x	Y	Y	Y	Y	N	N	N		N	N	Y	Y	Y	N	
Jordan	x	N	N	N	N	N	N	Y	N	Y	Y	Y	Y	Y	Y	Y

Kenya	x	Y	Y	N	N	N	Y	N		N	N	Y	Y	Y	N	N
Korea	x	Y	Y	N	Y	Y	N	N		N	N	Y	Y	Y	Y	Y
Kosovo	x	Y	Y	Y	Y	N	Y	N		Y	N	N	Y	Y	N	N
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY														
Lebanon	x	Y	Y	Y	Y		Y	N		Y	Y	N	Y	N		
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY														
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY														
Malta		PLEASE REFER TO EUF'S LEGAL STUDY														
Mauritius	x	Y	Y	N	N	N	N	Y	Y	N	N	N	Y	Y	N	
Mexico	x	Y	Y	Y	Y	Y	Y	N		Y	N	N	Y	Y	N	
Moldova	x	Y	Y					N		N	N	Y	Y	Y	N	
Mongolia	x	Y	Y	Y	Y	N	N	N		N	N	N	Y	Y	Y	N
Morocco	x	Y	Y	Y	Y	N	N	Y	N	N	N	N	N			
Montenegro	x	Y								Y	Y	Y	Y	Y		
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY														
Nigeria	x	Y	Y	Y	N	N	N	N		Y	N	N	Y	Y	N	N
North Macedonia	x	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY														
Oman	x											Y	Y	Y	N	
Peru	x	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Poland		PLEASE REFER TO EUF'S LEGAL STUDY														
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY														
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY														
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY														
Saudi Arabia	x	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	N	
Senegal	x	Y	Y	Y	Y	N	N	Y	Y	Y	N	Y	Y	N		
Serbia	x	Y	N	Y	Y	N	N	Y	N	Y	N	Y	Y	Y	N	N
Singapore	x	Y	Y	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY														
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY														
South Africa	x	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	N	Y	Y	Y
Spain		PLEASE REFER TO EUF'S LEGAL STUDY														
Sri Lanka	x	Y	Y	Y	Y	Y	Y	N		N	N	Y	N	Y	N	N
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY														
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY														
Taiwan	x	Y	Y	N	Y	N	N	N		N	N	N	Y	Y	Y	Y
Thailand	x	Y	Y	Y	Y	N	N	N		N	N	N	Y	Y	N	
Tunisia	x	Y	Y	Y	Y	N	Y	YN	Y	N	N	Y	Y	Y	YN	YN
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY														
Uganda	x	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Ukraine	x	Y	Y	N	N	N	N	N		N	N	N	Y	Y	Y	N
United Arab Emirates	x	Y	N	N	Y	Y	Y			Y	Y	Y	N	Y	Y	Y
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY														
United States		PLEASE REFER TO EUF'S LEGAL STUDY														
Vietnam	x	Y	Y	Y	N	N	NA	N		N	Y	Y	Y	Y	Y	Y
Zimbabwe	x	Y	Y	Y	Y	N	N	Y	N	Y	N	Y	N	N	N	N
YES		53	48	36	37	9	15	24	18	27	16	40	43	48	27	15
NO		3	5	14	12	42	34	27	10	23	36	17	10	7	20	19
Total No of Answers		56	53	50	49	51	49	51	28	50	52	57	53	55	47	34

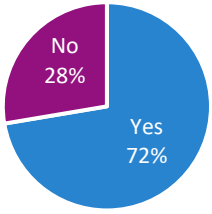
Section 4 - Electronic Communication, Invoicing and Signatures

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

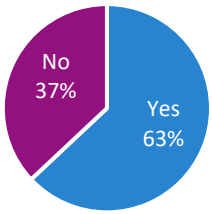
Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?



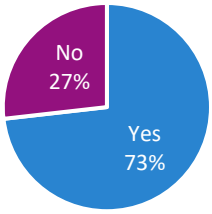
Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?



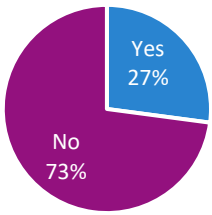
Question 4-3: Is signature required on an invoice for validity?



Question 4-4: Is e-invoicing applicable in your country?

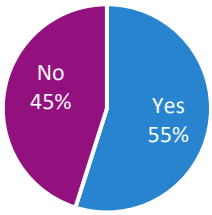


If YES, is e-invoicing obligatory for some situations?



If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?



List 4

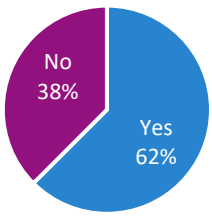
Country	Questions	4-1	4-2	4-3	4-4	4-4Y*Y	4-5
Argentina	x	Y	Y	N	Y	Y	Y
Armenia	x	Y	Y	Y	Y	N	Y
Australia	x	Y	Y	N	Y	N	
Austria		PLEASE REFER TO EUF'S LEGAL STUDY					
Azerbaijan	x	Y	N	Y	Y	N	N
Bangladesh	x	Y	Y	Y	N		N
Belarus	x	Y	Y	YN	Y	N	Y
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY					
Bolivia	x	Y	N	Y	N		N
Bosnia and Herzegovina	x	YN	N	YN	YN	N	N
Botswana	x	Y	Y	Y	N		Y
Brazil	x	Y	Y	Y	Y	Y	Y
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY					
Burkina Faso	x	N	N	Y	N		N
Cameroon	x	N	N	N	N	N	N
Canada	x	Y	Y	N	Y	N	Y
Chile	x	Y	Y	N	Y	Y	Y
China	x	Y	Y	YN	Y	Y	Y
Colombia	x	Y	Y	Y	Y	Y	Y
Congo, Republic of the	x	N	N	Y	N		N
Costa Rica	x	Y	Y	Y	Y	Y	Y
Cote d'Ivoire	x	N	N	N	N	N	N
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY					
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY					
Dominican Republic	x	Y	Y	Y	Y	N	Y
Egypt	x	Y	Y	Y	Y	N	Y
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY					
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY					
France		PLEASE REFER TO EUF'S LEGAL STUDY					
Georgia	x	Y	YN	N	Y	N	YN
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Greece		PLEASE REFER TO EUF'S LEGAL STUDY					
Guatemala	x	Y	Y	Y	Y	Y	N
Honduras	x	Y	Y	Y	Y	N	Y
Hong Kong	x	Y	Y	N	Y	N	Y
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY					
India	x	Y	Y	N	Y	N	Y
Indonesia	x	Y	Y	Y	Y	N	Y
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY					
Israel	x	Y		N	Y	N	Y
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Japan	x	Y	Y	Y	Y	N	N
Jordan	x	N	N	N	Y	Y	N
Kenya	x	Y	Y	Y	Y	N	Y
Korea	x	Y	Y	N	Y	N	Y
Kosovo	x	N	N	Y	N	N	N
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Lebanon	x	N	N	Y	N		N
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY					
Malta		PLEASE REFER TO EUF'S LEGAL STUDY					
Mauritius	x	Y	Y	N	Y	N	
Mexico	x	Y	Y	N	Y	Y	Y
Moldova	x	Y	Y	Y	Y	Y	
Mongolia	x	Y	N	Y	N		N
Morocco	x	N	N	Y	Y	N	

Montenegro	x						
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY					
Nigeria	x	Y	Y	Y	Y	Y	N
North Macedonia	x	Y	Y	Y	Y	N	Y
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Oman	x	Y	Y	Y	Y	N	Y
Peru	x	Y	Y	N	Y	Y	Y
Poland		PLEASE REFER TO EUF'S LEGAL STUDY					
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY					
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Saudi Arabia	x	Y	Y	Y	Y	Y	Y
Senegal	x	N	N	N	N	N	N
Serbia	x	Y	Y	Y	N		N
Singapore	x	Y	N	N	Y	N	Y
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY					
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY					
South Africa	x	Y	Y	N	Y	N	N
Spain		PLEASE REFER TO EUF'S LEGAL STUDY					
Sri Lanka	x	Y	Y	N	N	N	N
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY					
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY					
Taiwan	x	N	N	Y	Y	N	N
Thailand	x	Y	Y	Y	Y	N	N
Tunisia	x	N	N	N	N		N
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY					
Uganda	x	Y	Y	Y	Y	N	Y
Ukraine	x	Y	Y	Y	Y	N	N
United Arab Emirates	x	Y	Y	Y	N	N	Y
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY					
United States		PLEASE REFER TO EUF'S LEGAL STUDY					
Vietnam	x	Y	Y	Y	Y	N	Y
Zimbabwe	x	Y	Y	Y	Y	N	
YES		45	39	34	41	13	28
NO		11	16	20	15	35	23
Total No of Answers		56	55	54	56	48	51

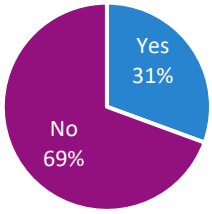
Section 5 – Taxation

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?



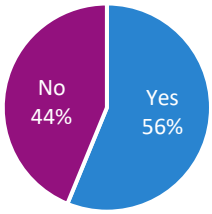
If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?



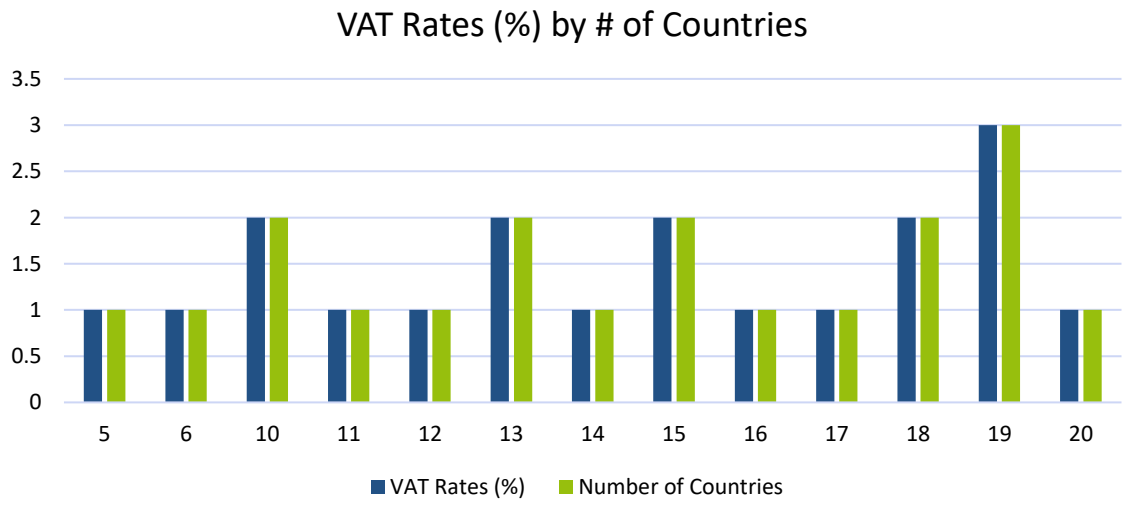
1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

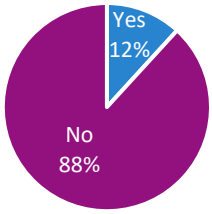


a) If YES, what is the rate of tax?



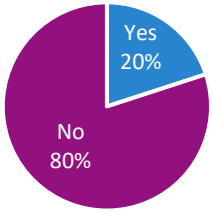
b) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

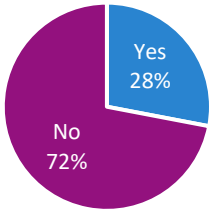


If YES, please explain

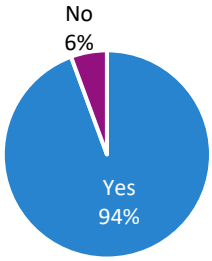
Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?



Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

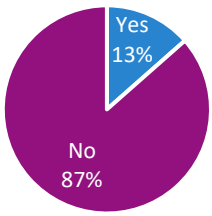


Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?



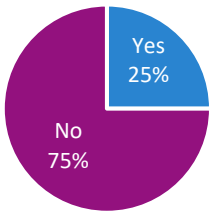
If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?



If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?



If YES, please explain

List 5

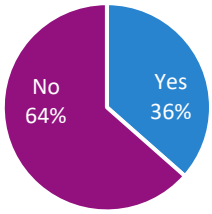
Country	Questions	5-1	5-1Y*Y	5-1YN*Y	VAT RATE	5-2*Y	5-3	5-4	5-5*Y	5-6*Y	5-7*Y
Argentina	x	Y	Y			N	N	N	N		Y
Armenia	x	N				N	N	N	N	N	N
Australia	x	N				N	N	Y	N	N	N
Austria		PLEASE REFER TO EUF'S LEGAL STUDY									
Azerbaijan	x	Y	N		18%	N	N	N	N	N	N
Bangladesh	x	N				N	N	N	N	N	N
Belarus	x	N				N	YN	N	N	N	N
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY									
Bolivia	x	N		Y	13%	N	N	N	N	Y	Y
Bosnia and Herzegovina	x	Y	N	Y	17%	N	N	YN	N	N	N
Botswana	x	Y	N	Y	14%	N	Y	N	N	N	N
Brazil	x	Y	YN	N		YN	Y	N	N	N	N
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY									
Burkina Faso	x	Y	Y			Y	N	Y	N	N	Y
Cameroon	x	Y	N	N		N	N	N	N	N	N
Canada	x	N	N						N	N	N
Chile	x	Y	Y	Y	19%	N	N	N	N	N	N
China	x	Y	N	Y	6%	N	N	YN	N	N	YN
Colombia	x	Y	Y		19%	Y	N	N	N	Y (0)	Y (0)
Congo, Republic of the	x	N				N	N	N	N	N	Y
Costa Rica	x	Y	N	Y	13%	Y	N	Y	N	N	N
Cote d'Ivoire	x	Y	N	N		N	N	N	N	N	N
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY									
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY									
Dominican Republic	x	N				N	N	N	N	N	N
Egypt	x	N				N	N	N	N	N	N
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY									
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY									
France		PLEASE REFER TO EUF'S LEGAL STUDY									
Georgia	x	N				N	N	YN	N	N	N
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Greece		PLEASE REFER TO EUF'S LEGAL STUDY									
Guatemala	x	Y	Y	Y	12%	Y	N	N	Y	N	N
Honduras	x	N				N	Y	N	N	N	N
Hong Kong	x	N		N		N	N	N	N	N	N
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY									
India	x	Y	N	N		N	N	N	N	N	Y
Indonesia	x	Y		Y	11%			N	N	Y	Y
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY									
Israel	x										
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Japan	x	N				N	N	N	N	N	Y
Jordan	x	Y	N	N		N	N	N	Y	Y	N
Kenya	x	Y	N	N		N	N	N	N	Y	Y
Korea	x	Y				N					
Kosovo	x	Y	N	Y	18%	N	Y	Y	N	N	N

Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Lebanon	x	Y	N			Y	N	N	N	Y	Y
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY									
Malta		PLEASE REFER TO EUF'S LEGAL STUDY									
Mauritius	x	N		N		N	N	Y	N	N	N
Mexico	x	Y	N	Y	16%	N	Y	Y	N	N	N
Moldova	x	N	N	N		N	N	N	N	N	N
Mongolia	x	Y	N	Y	10%	N	N	N	N	N	N
Morocco	x	Y						N	N	N	Y
Montenegro	x										
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY									
Nigeria	x	Y	Y	Y		N	N	N	N	Y	Y
North Macedonia	x	Y	Y			N	N	Y	N	N	N
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Oman	x	Y							N		
Peru	x	N	Y			N	Y	N	N	N	N
Poland		PLEASE REFER TO EUF'S LEGAL STUDY									
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY									
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Saudi Arabia	x	Y	N	Y	15%	N	Y	Y	Y	N	Y
Senegal	x	Y	N	N		N	N	N	N	N	N
Serbia	x	N	N	N		N	N	N	N	N	N
Singapore	x	Y	Y			N	Y	Y	N	N	N
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY									
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY									
South Africa	x	Y	N	Y	15%	N	N	Y	N	N	N
Spain		PLEASE REFER TO EUF'S LEGAL STUDY									
Sri Lanka	x	N		N		N	N	N	N	N	N
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY									
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY									
Taiwan	x	N				Y	N	N	N	N	N
Thailand	x	Y	N	N		N	N	N	N	N	N
Tunisia	x	Y	Y	Y	19%	N	Y	Y	N	N	N
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY									
Uganda	x	N	N			N	N	Y	N	Y	Y
Ukraine	x	Y	N	Y	20%	N	N	N	N	N	N
United Arab Emirates	x	Y	Y	Y	5%	N	N	N	N	N	N
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY									
United States		PLEASE REFER TO EUF'S LEGAL STUDY									
Vietnam	x	Y	N	Y	10%	N	Y	Y	N	N	N
Zimbabwe	x	N	N	N		N	N	Y		N	N
YES		**35**	**11**	**18**	**0**	**6**	**10**	**14**	**3**	**7**	**13**
NO		**21**	**25**	**14**	**0**	**45**	**40**	**36**	**51**	**45**	**39**
Total No of Answers		**56**	**36**	**32**	**0**	**51**	**50**	**50**	**54**	**52**	**52**

Section 6 - Third Party Rights

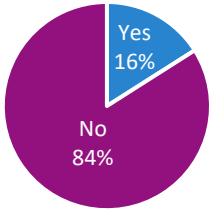
This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)



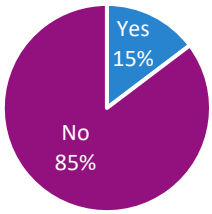
If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?



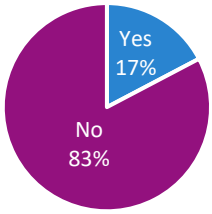
If YES,

a) what are they and how is the procedure?
b) Is there any difference in the application depending on the type of factoring?



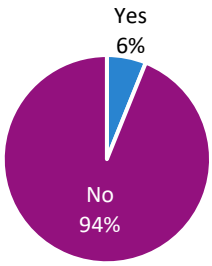
If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?



If YES,

d) what are they and how is the procedure?
e) Is there any difference in the application depending on the type of factoring?



If YES, please explain.

List 6

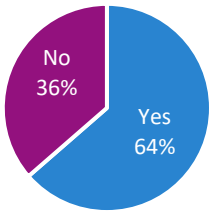
Country	Questions	6-1*Y	6-2*Y	6-2-Yb*Y	6-3*Y	6-3-Yb*Y
Argentina	x	Y	N		N	Y
Armenia	x	N	N	N	N	N
Australia	x	N	N	N	N	N
Austria		PLEASE REFER TO EUF'S LEGAL STUDY				
Azerbaijan	x	N	N		N	N
Bangladesh	x	N	N		N	N
Belarus	x	N	YN	Y	N	
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY				
Bolivia	x	N	N	N	N	N
Bosnia and Herzegovina	x	N		N	N	
Botswana	x	Y	N	N	N	N
Brazil	x	YN	YN	N	N	N
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY				
Burkina Faso	x	Y	N	N	N	
Cameroon	x	N	Y	N	Y	N
Canada	x	Y	Y		Y	
Chile	x	Y	N		Y	N
China	x	YN	YN	Y	N	
Colombia	x	N	N		N	
Congo, Republic of the	x		Y	N		
Costa Rica	x	N	N		N	
Cote d'Ivoire	x	N	Y	N	Y	N
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY				
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY				
Dominican Republic	x	N	N		N	
Egypt	x	N	N	N	N	N
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY				
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY				
France		PLEASE REFER TO EUF'S LEGAL STUDY				
Georgia	x	N	N	N	N	N
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Greece		PLEASE REFER TO EUF'S LEGAL STUDY				
Guatemala	x	Y	Y	N	N	N

Honduras	x	Y	N		N	
Hong Kong	x	YN	N	N	YN	N
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY				
India	x	N	N	N	N	N
Indonesia	x	N	Y	DEP	DEP	DEP
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY				
Israel	x	Y	N	N	N	N
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Japan	x	N	N		N	
Jordan	x	Y	N	Y	N	Y
Kenya	x	Y	N	N	N	N
Korea	x	N	N	N	N	N
Kosovo	x	N	N	Y	N	N
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Lebanon	x	Y	N		N	
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY				
Malta		PLEASE REFER TO EUF'S LEGAL STUDY				
Mauritius	x	N	N	N	Y	N
Mexico	x	Y	Y	N	Y	N
Moldova	x	N	N		N	
Mongolia	x	N	N	N	N	N
Morocco	x					
Montenegro	x					
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY				
Nigeria	x	Y	N	N	N	N
North Macedonia	x	N	N		N	
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Oman	x	Y	N			
Peru	x	N	N	Y	N	N
Poland		PLEASE REFER TO EUF'S LEGAL STUDY				
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY				
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Saudi Arabia	x	N	N	N	N	N
Senegal	x	N	Y	N	Y	N
Serbia	x	N	N	N	N	N
Singapore	x	Y	N		N	
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY				
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY				
South Africa	x	Y	N		Y	N
Spain		PLEASE REFER TO EUF'S LEGAL STUDY				
Sri Lanka	x	N			N	
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY				
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY				
Taiwan	x	N	N		N	
Thailand	x	Y	N	N	N	
Tunisia	x	N	YN	N	Y	N
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY				
Uganda	x	Y	N		N	
Ukraine	x	N	N		N	
United Arab Emirates	x	Y	N	N	N	N
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY				
United States		PLEASE REFER TO EUF'S LEGAL STUDY				
Vietnam	x	N	N		N	
Zimbabwe	x	N	N	N	N	N
YES		19	8	5	9	2
NO		33	42	29	43	31
Total No of Answers		52	50	34	52	33

Section 7 - Prohibition Against Assignments

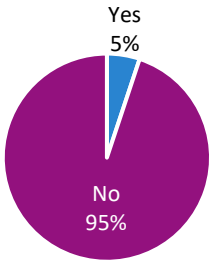
In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?



If YES,

a) Does prohibition of assignment have to be registered?



If YES, please explain the procedure.

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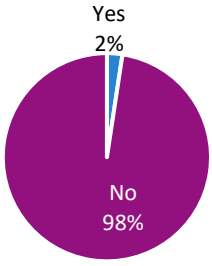
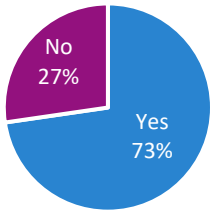
b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?



If YES, please explain.

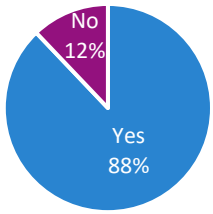
---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

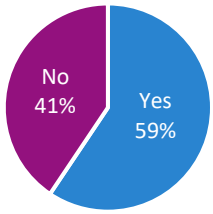


If YES,

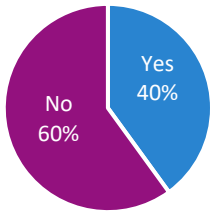
(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?



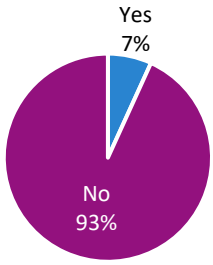
(ii) can assignments be valid again if the debtor pays once to the assignee?



d) Can a receivable be still factorable under prohibition of assignment?

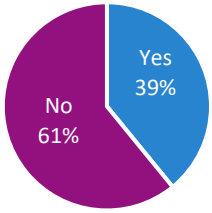


e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

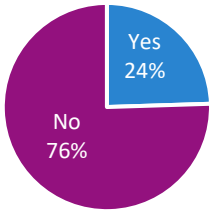


If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

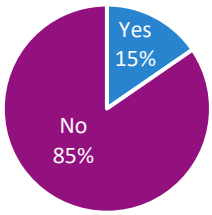


Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?



If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?



If NO, please explain

List 7

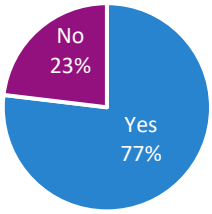
Country	Questions	7-1	7-1-Ya*Y	7-1-Yb*Y	7-1-Yc	7-1-YcY(i)	7-1-YcY(ii)	7-1-Yd	7-1-Ye*Y	7-1N	7-2*Y	7-3*N
Argentina	x	Y	N	N	Y	Y	N	N	N		Y	Y
Armenia	x	N		N	N				N		N	Y
Australia	x	N		N	N			Y	N	N	N	N
Austria		PLEASE REFER TO EUF'S LEGAL STUDY										
Azerbaijan	x	Y	N	N	N						N	N
Bangladesh	x	N									N	Y
Belarus	x	YN	N	N	Y	Y	N	Y	Y		YN	Y
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY										
Bolivia	x	N	N	N	Y	Y	Y	N	N	N	N	N
Bosnia and Herzegovina	x	Y	N	N	Y	Y	N	N	N		N	Y
Botswana	x	Y	N	N	Y	N	Y	N	N	N	N	
Brazil	x	Y	YN	N	Y	Y	YN	Y	N		N	Y
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY										
Burkina Faso	x	N									Y	Y
Cameroon	x	Y	N		Y	Y	Y	Y	N		N	N
Canada	x	N									D	Y
Chile	x	N		N	N					N	N	Y
China	x	YN	N	N	N			N	N	Y	YN	Y
Colombia	x	N								Y	N	Y

Congo, Republic of the	x	N									N	Y
Costa Rica	x	N								Y	N	Y
Cote d'Ivoire	x	Y	N	Y	Y	Y	Y	Y	N	Y	N	Y
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY										
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY										
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY										
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY										
Dominican Republic	x	Y	N	N	N			Y	N	N	N	Y
Egypt	x	Y	N	N	Y	Y	Y	N	N	N	Y	Y
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY										
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY										
France		PLEASE REFER TO EUF'S LEGAL STUDY										
Georgia	x	Y	N	N	Y	Y	Y	YN	N		N	Y
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY										
Greece		PLEASE REFER TO EUF'S LEGAL STUDY										
Guatemala	x	Y	Y	N	Y	N	N	N	N	N	Y	Y
Honduras	x	Y	N	N	Y	Y	Y	N	N	Y	Y	Y
Hong Kong	x	Y	N	N	Y	Y	Y	Y	N		YN	Y
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY										
India	x	Y	N	N	Y	Y	Y	N	N		N	Y
Indonesia	x	Y	N	N	Y	Y	N	N	N		Y	Y
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY										
Israel	x											
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY										
Japan	x	N						Y	N		N	Y
Jordan	x	Y	N	N	N			Y	N		N	Y
Kenya	x	Y	N	N	Y	Y	N	N	N		Y	Y
Korea	x	Y	N	N	Y	Y	Y	N	N		N	Y
Kosovo	x	Y	Y	N	N		Y	N	N		N	Y
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY										
Lebanon	x	Y	N	N	Y	Y	Y	Y	N		N	N
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY										
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY										
Malta		PLEASE REFER TO EUF'S LEGAL STUDY										
Mauritius	x	N								N	N	
Mexico	x	Y	N	N	Y	Y	Y	N	N		Y	Y
Moldova	x	N		N	N				N	N	N	Y
Mongolia	x	N		N	N	N	N	N	N	Y	N	Y
Morocco	x	N									Y	
Montenegro	x	N								N	N	
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY										
Nigeria	x	N	N	N	Y			N	N	Y	N	Y
North Macedonia	x	N								N	N	Y
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY										
Oman	x	Y	N	N	Y	Y		N	N		N	N
Peru	x	Y	N	N	Y	Y	Y	N	N		N	Y
Poland		PLEASE REFER TO EUF'S LEGAL STUDY										
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY										
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY										
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY										
Saudi Arabia	x	Y	N	N	N			Y	Y		N	N
Senegal	x	Y	N		Y	Y	Y	Y	N	Y	N	Y
Serbia	x	N	N	N	N	N	N	Y	N	N	N	Y
Singapore	x	Y	N	N	Y	Y	N	N	N		N	Y
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY										
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY										
South Africa	x	Y	N	N	Y	Y	N	N	N		Y	N
Spain		PLEASE REFER TO EUF'S LEGAL STUDY										
Sri Lanka	x	Y	N	N	Y	Y	Y	N	N	Y	N	Y
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY										
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY										
Taiwan	x	Y	N	N	Y	Y	N	Y	N		N	Y
Thailand	x	Y	N	N	Y	Y	N	Y	Y		N	Y
Tunisia	x	Y	N	YN	YN	YN	YN	YN	N		N	Y
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY										
Uganda	x	Y	N	N	Y	Y	Y	N	N		Y	Y
Ukraine	x	Y	N	N	Y	Y	Y	N	N		Y	Y
United Arab Emirates	x	N								N	N	
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY										
United States		PLEASE REFER TO EUF'S LEGAL STUDY										
Vietnam	x	Y	N	N	Y	Y	N	N	N		Y	Y
Zimbabwe	x	Y	N	N	Y	Y	Y	Y	N	N	N	Y
YES		35	2	1	32	29	19	16	3	9	13	44
NO		20	37	41	12	4	13	24	41	14	40	8
Total No of Answers		55	39	42	44	33	32	40	44	23	53	52

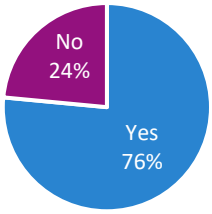
Section 8 - International Transactions

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

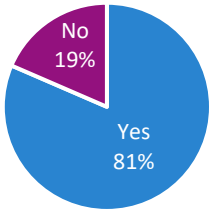
Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?



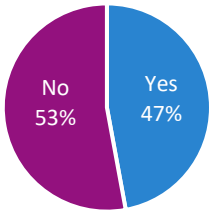
Question 8-2: Can a factoring company approve a foreign debtor for credit risk?



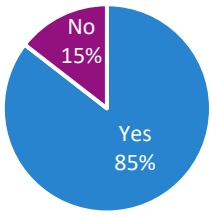
Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?



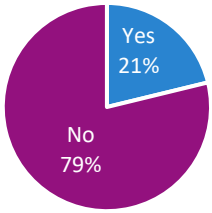
Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?



Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

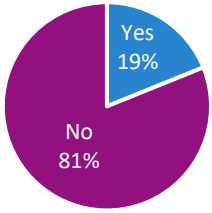


Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

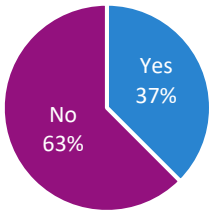


If YES, please refer to the regulation (title, date, number)

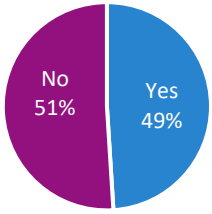
Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?



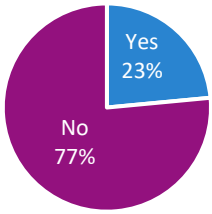
If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?



Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?



Question 8-9: Are there any exceptions to the answers you have provided above?



If YES, please explain

List 8

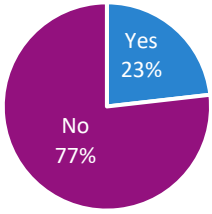
Country	Questions	8-1	8-2	8-3	8-4	8-5	8-6*Y	8-7	8-7Y	8-8	8-9*Y
Argentina	x	Y	N	Y	N	Y	Y	Y	N	Y	Y
Armenia	x	Y	Y	Y	Y	Y	N	N		N	N
Australia	x	Y	Y	Y	Y	Y	N	N		Y	N
Austria		PLEASE REFER TO EUF'S LEGAL STUDY									
Azerbaijan	x	Y	Y	Y	Y	Y	N	N	N	N	Y
Bangladesh	x	N	Y	N	N	Y	N	N		NA	N
Belarus	x	Y	YN	Y	YN	Y	Y	N		YN	N
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY									
Bolivia	x	N	N	N	N	Y	N	N		N	N
Bosnia and Herzegovina	x	Y	Y	Y	YN	Y	YN	N		Y	N
Botswana	x	Y	Y	Y	N	Y	N	N	N	Y	N
Brazil	x	Y	Y	Y	Y	Y	YN	N	N	Y	Y
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY									
Burkina Faso	x	Y	Y	Y	N	N	Y	N		N	N
Cameroon	x	N	N	Y	N	Y	N	Y	Y	N	N
Canada	x	Y	Y	Y	Y	Y	N	Y		Y	Y
Chile	x	Y	Y	Y	Y	Y	N	N		N	N
China	x	YN	N	Y	N	Y	Y	YN	YN	YN	YN
Colombia	x	Y	Y	Y	Y	Y	N	N		Y	N
Congo, Republic of the	x	Y	Y	Y	N	Y	N	N		N	N
Costa Rica	x	Y	Y	Y	Y	Y	N	N		Y	N
Cote d'Ivoire	x	N	Y	Y	N	Y	N	Y	Y	N	N
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY									
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY									
Dominican Republic	x	Y	N	N	N	N	N	N		N	N
Egypt	x	Y	Y	Y		Y	N	Y	N	N	N
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY									
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY									
France		PLEASE REFER TO EUF'S LEGAL STUDY									
Georgia	x	Y	YN	Y	N	YN	N	N		Y	N
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Greece		PLEASE REFER TO EUF'S LEGAL STUDY									
Guatemala	x	N	N	N	N	Y	N	N		N	N
Honduras	x	Y	Y	Y	N	Y	N	Y	Y	N	N
Hong Kong	x	Y	Y	Y	Y	Y	N	N		Y	N
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY									
India	x	N	Y	Y	Y	Y	Y	Y	Y	N	Y
Indonesia	x	N	N	N	N	Y	Y	N		N	N
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY									
Israel	x										
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Japan	x	Y	N	N	N	N	N	N		N	N
Jordan	x	Y	Y	Y	Y	Y	N	N		Y	N
Kenya	x	Y	Y	Y	Y	Y	N	N		Y	N
Korea	x	Y		Y		Y	N	N		Y	N
Kosovo	x	Y	Y	Y	N	N	N	N		N	N
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Lebanon	x	Y	Y	N	N	Y	N	N		Y	N
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY									

Malta		PLEASE REFER TO EUF'S LEGAL STUDY									
Mauritius	x	N	Y	N	Y	Y	N	N		Y	
Mexico	x	N	Y	Y	N	Y	N	N		Y	Y
Moldova	x	Y	Y	Y	Y	Y	N	N		N	N
Mongolia	x	Y	Y	Y	Y	Y	N	N		N	N
Morocco	x				N	N	Y		N	N	
Montenegro	x		Y	Y	Y	Y					
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY									
Nigeria	x	Y	N	Y	N	N	Y	N	N	N	N
North Macedonia	x	Y	Y	Y	Y	N	N	N		N	N
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Oman	x										
Peru	x	Y	Y	Y	Y	Y	N	N		Y	N
Poland		PLEASE REFER TO EUF'S LEGAL STUDY									
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY									
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY									
Saudi Arabia	x	Y	N	Y	N	Y	N	N		N	N
Senegal	x	N	Y	Y	N	Y	N	Y	Y	N	N
Serbia	x	Y	Y	Y	N	Y	N	N	N	N	N
Singapore	x	Y	Y	Y	Y	Y	N	N		Y	Y
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY									
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY									
South Africa	x	Y	Y	Y	Y	Y	N	N		Y	Y
Spain		PLEASE REFER TO EUF'S LEGAL STUDY									
Sri Lanka	x	Not Answered				Y	Y	Y	N		
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY									
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY									
Taiwan	x	Y	Y	Y	Y	Y	N	N		N	N
Thailand	x	Y	Y	Y	N	Y	N	N	N	Y	Y
Tunisia	x	N	N	N	N	Y	N	N		Y	N
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY									
Uganda	x	Y	Y	Y	Y	Y	N	N		Y	Y
Ukraine	x	N	N	N	N	N		N		Y	Y
United Arab Emirates	x	Y	Y	Y	Y	Y	N	N		Y	Y
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY									
United States		PLEASE REFER TO EUF'S LEGAL STUDY									
Vietnam	x	Y	Y	Y	Y	Y	Y	N		N	N
Zimbabwe	x	Y	Y	Y	N	Y	Y	Y	Y	Y	N
YES		**40**	**39**	**44**	**24**	**47**	**11**	**10**	**6**	**25**	**12**
NO		**12**	**12**	**10**	**27**	**8**	**41**	**43**	**10**	**26**	**39**
Total No of Answers		**52**	**51**	**54**	**51**	**55**	**52**	**53**	**16**	**51**	**51**

Section 9 - Payment

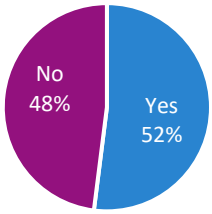
There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?



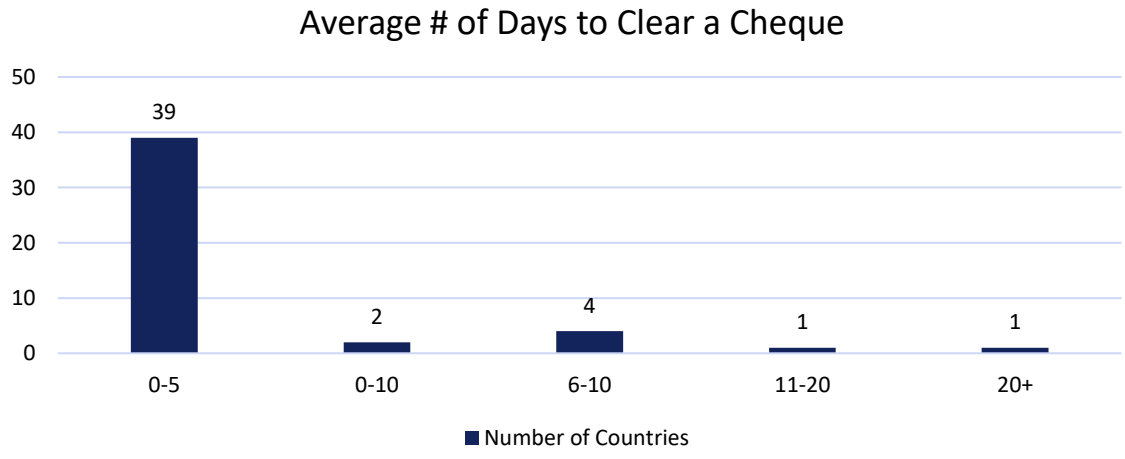
If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

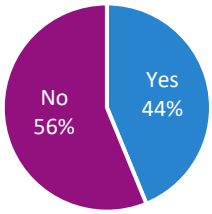


Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

e) 0-5 banking days
f) 6-10 banking days
g) 11-20 banking days
h) More than 20 banking days



Question 9-4: Can post-dated cheques be used in payment of debts?



List 9

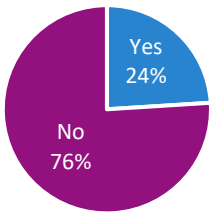
Country	Questions	9-1*N	9-2	9-3	9-4
Argentina	x	Y	Y	0-5	
Armenia	x	N	NA	NA	NA
Australia	x	N	Y	0-5	N
Austria		PLEASE REFER TO EUF'S LEGAL STUDY			
Azerbaijan	x	N	Y	11-20	N
Bangladesh	x	Y	Y	0-5	N
Belarus	x	N			
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY			
Bolivia	x	N	N	0-5	N
Bosnia and Herzegovina	x	N	Y	0-10	N
Botswana	x	N	N	0-5	Y
Brazil	x	N	YN	0-10	Y
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY			
Burkina Faso	x	Y	Y	0-5	N
Cameroon	x	Y	Y	0-5	N
Canada	x	N	Y	0-5	Y
Chile	x	N	Y	0-5	Y
China	x	N	N	0-5	N
Colombia	x	N	N	6-10	N
Congo, Republic of the	x	N	N	0-5	N
Costa Rica	x	N	N	6-10	N
Cote d'Ivoire	x	Y	Y	0-5	N
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY			
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY			
Dominican Republic	x	N	N	0-5	Y
Egypt	x	Y	Y	0-5	Y
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY			
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY			
France		PLEASE REFER TO EUF'S LEGAL STUDY			
Georgia	x	N	NA	NA	NA
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Greece		PLEASE REFER TO EUF'S LEGAL STUDY			
Guatemala	x	N	N	0-5	Y
Honduras	x	N	Y	0-5	N
Hong Kong	x	N	N	0-5	Y
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY			
India	x	N	N	0-5	Y
Indonesia	x	N	Y	0-5	Y
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY			
Israel	x				
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Japan	x	N	Y	0-5	N
Jordan	x	Y	N	0-5	N
Kenya	x	N	Y	0-5	Y
Korea	x	N	Y	0-5	
Kosovo	x	N	N		
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Lebanon	x	Y	Y	0-5	N
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY			
Malta		PLEASE REFER TO EUF'S LEGAL STUDY			
Mauritius	x	Y	N	0-5	N
Mexico	x	N	N	6-10	N
Moldova	x	N			
Mongolia	x	N	N	20+	N
Morocco	x	N	Y	0-5	N
Montenegro	x				
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY			
Nigeria	x	N	N	0-5	Y

North Macedonia	x	N	Y	0-5	Y
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Oman	x	N	Y		Y
Peru	x	N	N	0-5	N
Poland		PLEASE REFER TO EUF'S LEGAL STUDY			
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY			
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Saudi Arabia	x	N	Y	0-5	N
Senegal	x	Y	Y	0-5	N
Serbia	x	N	N		N
Singapore	x	N	Y	0-5	N
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY			
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY			
South Africa	x	N	N	NA	N
Spain		PLEASE REFER TO EUF'S LEGAL STUDY			
Sri Lanka	x	N	Y	6-10	Y
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY			
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY			
Taiwan	x	N	N	0-5	Y
Thailand	x	Y	N	0-5	Y
Tunisia	x	Y	N	0-5	Y
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY			
Uganda	x	N	N	0-5	Y
Ukraine	x	N	NA	NA	NA
United Arab Emirates	x	Y	Y	0-5	Y
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY			
United States		PLEASE REFER TO EUF'S LEGAL STUDY			
Vietnam	x	N	Y	0-5	Y
Zimbabwe	x	N	N	0-5	N
YES		**13**	**26**		**21**
NO		**43**	**24**		**27**
Total No of Answers		**56**	**50**	**0**	**48**

Section 10 - Insolvency of Suppliers or Debtors

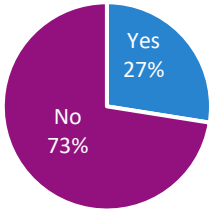
This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?



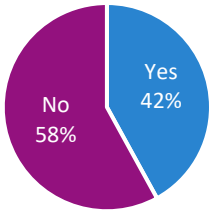
If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

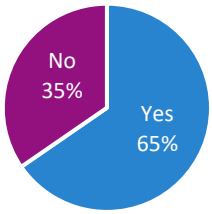


If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

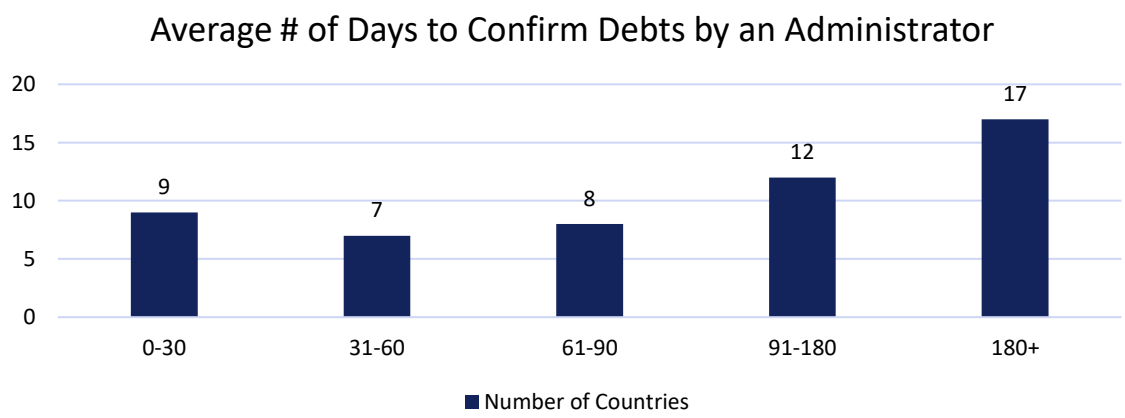


If NO, is it an equal right with the others?



Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days
d) 91-180 days
e) More than 180 days



List 10

Country	Questions	10-1*Y	10-2*Y	10-3	10-3N	10-4
Argentina	x	Y	Y	Y		180+
Armenia	x	N	Y	N	Y	180+
Australia	x	N	N	Y		91-180
Austria		PLEASE REFER TO EUF'S LEGAL STUDY				
Azerbaijan	x	N	N	N	Y	180+
Bangladesh	x	N	N	Y		
Belarus	x	N		YN	Y	61-180
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY				
Bolivia	x	N	N	Y		0-30
Bosnia and Herzegovina	x	YN	YN	N	YN	0-90
Botswana	x	N	N	Y		31-60
Brazil	x	YN	N	YN	YN	91+
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY				
Burkina Faso	x		N	Y		31-60
Cameroon	x	N	N	N	N	0-30
Canada	x	Y	N	N	N	180+
Chile	x	N	Y	Y		180+
China	x	N		YN	Y	0-30
Colombia	x	N	N	N	N (See Expl.)	180+
Congo, Republic of the	x	N	Y	N	Y	0-30
Costa Rica	x	Y	Y	Y		61-90
Cote d'Ivoire	x	N	N	N	N (See Expl.)	0-30
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY				
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY				
Dominican Republic	x	N	N	Y		61-90
Egypt	x	N	N	Y		180+
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY				
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY				
France		PLEASE REFER TO EUF'S LEGAL STUDY				
Georgia	x	N	N	N	YN	31-60
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Greece		PLEASE REFER TO EUF'S LEGAL STUDY				
Guatemala	x	N	N	N	Y	180+
Honduras	x	Y	N	N	Y	91-180
Hong Kong	x	YN	YN	YN		61+
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY				
India	x	N	N	N	Y	91-180
Indonesia	x	N	DEP	DEP		91-180
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY				
Israel	x					
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Japan	x	N	N	N	Y	0-30
Jordan	x	N	N	N		61-90
Kenya	x	N	N	Y		0-30
Korea	x	Y	Y	N	Y	91-180
Kosovo	x	N	N	Y		31-60
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Lebanon	x	Y	Y	Y		180+
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY				
Malta		PLEASE REFER TO EUF'S LEGAL STUDY				
Mauritius	x	N	N	N	Y	31-60
Mexico	x	Y	N	Y		61-90
Moldova	x	Y	Y	N	Y	91-180
Mongolia	x	N	N	N	Y	61-90
Morocco	x		N	N		180+
Montenegro	x					
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY				
Nigeria	x	N	N	Y		180
North Macedonia	x	N	Y	N	Y	91-180
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Oman	x	N	N	N	Y	0-30
Peru	x	Y	Y	N	Y	180+
Poland		PLEASE REFER TO EUF'S LEGAL STUDY				
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY				
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Saudi Arabia	x	N	N	Y		
Senegal	x	N	N	N	N	0-30
Serbia	x	N	N	N	N	180+
Singapore	x	Y	Y	Y		180+

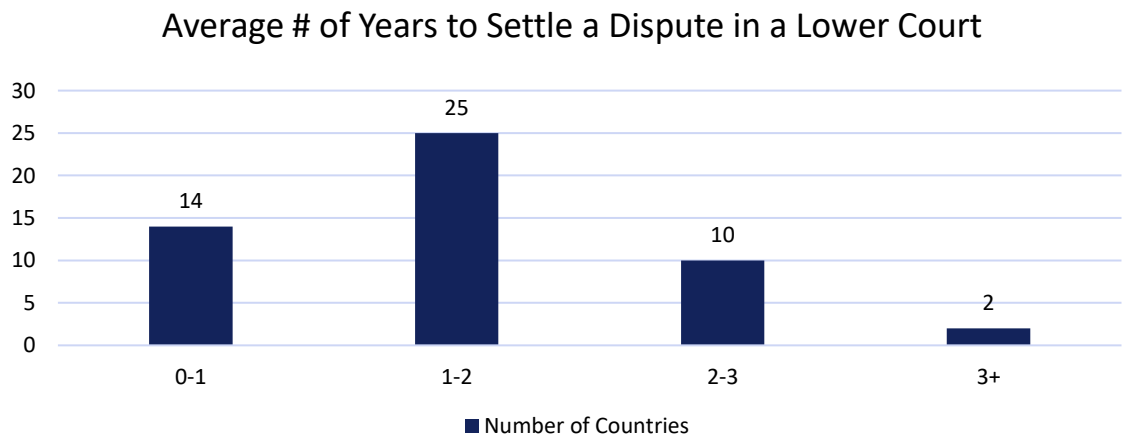
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY				
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY				
South Africa	x	Y	Y	Y		91-180
Spain		PLEASE REFER TO EUF'S LEGAL STUDY				
Sri Lanka	x	N	N		N	91-180
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY				
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY				
Taiwan	x	N	N	Y		180+
Thailand	x	N	Y	Y		180+
Tunisia	x	YN	Y	N	N	180+
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY				
Uganda	x	Y	N	N	N	31-60
Ukraine	x	N	N	N	N	91-180
United Arab Emirates	x	N	N	Y		DEPENDS
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY				
United States		PLEASE REFER TO EUF'S LEGAL STUDY				
Vietnam	x	N	N	N	Y	31-60
Zimbabwe	x	N	N	N	N	91-180
YES		**12**	**14**	**21**	**17**	
NO		**38**	**37**	**29**	**9**	
Total No of Answers		**50**	**51**	**50**	**26**	**0**

Section 11 - Disputes

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

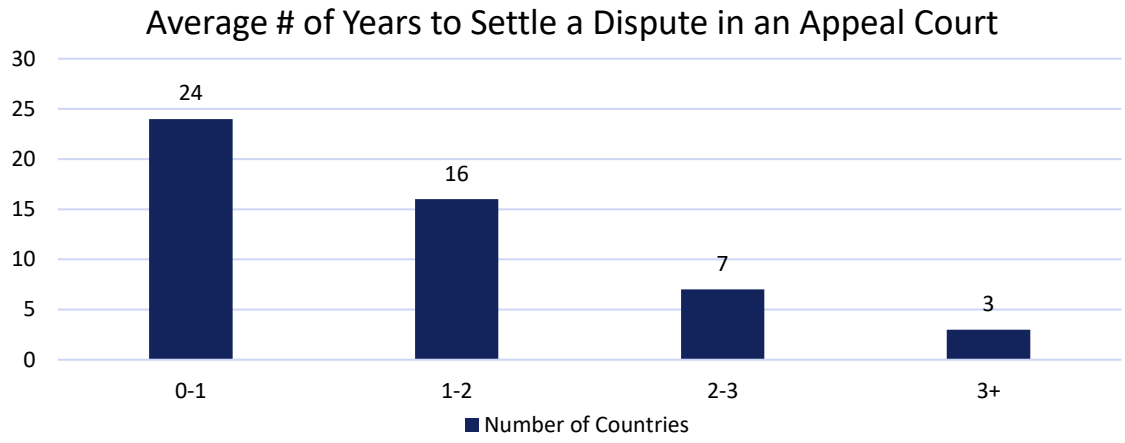
Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

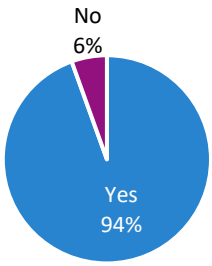


Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

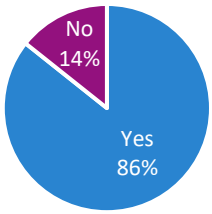


Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?



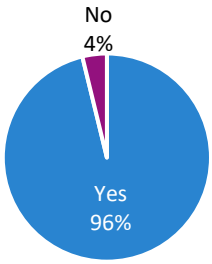
If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?



If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?



List 11

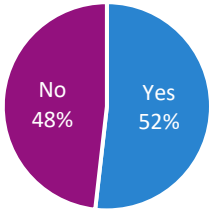
Country	Questions	11-1	11-2	11-3*N	11-4*Y	11-5
Argentina	x	2-3	1-2	Y	Y	Y
Armenia	x	0-1	0-1	Y	Y	Y
Australia	x	0-1	0-1	Y		Y
Austria		PLEASE REFER TO EUF'S LEGAL STUDY				
Azerbaijan	x	2-3	1-2	Y	Y	Y
Bangladesh	x	0-1	0-1	Y	N	Y
Belarus	x	0-1	0-1	Y	Y	Y
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY				
Bolivia	x	0-1	0-1	Y	Y	Y
Bosnia and Herzegovina	x	2-3	3+	Y	Y	Y
Botswana	x	1-2	0-1	Y	N	Y
Brazil	x	1-2	1-2	Y	Y	Y
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY				
Burkina Faso	x	1-2	0-1	Y	Y	Y
Cameroon	x	1-2	1-2	Y	Y	Y
Canada	x	DEPENDS	DEPENDS	Y	Y	Y
Chile	x	2-3	2-3	Y	N	Y
China	x	0-1	0-1	Y	YN	Y
Colombia	x	1-2	1-2	Y	Y	Y
Congo, Republic of the	x	1-2	0-1	Y	Y	Y
Costa Rica	x	0-1	1-2	Y	N	Y
Cote d'Ivoire	x	1-2	1-2	Y	Y	Y
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY				
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY				
Dominican Republic	x	1-2	0-1	N	N	Y
Egypt	x	0-1	0-1	Y	Y	Y
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY				
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY				
France		PLEASE REFER TO EUF'S LEGAL STUDY				
Georgia	x	0-2	0-1	Y	Y	YN
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Greece		PLEASE REFER TO EUF'S LEGAL STUDY				
Guatemala	x	3+	3+	Y	Y	Y
Honduras	x	1-2	0-1	Y	N	Y
Hong Kong	x	1+		Y	YN	Y
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY				
India	x	2-3	1-2	Y	Y	Y
Indonesia	x	1-2	0-1	Y	DEP	Y
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY				
Israel	x					
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Japan	x	0-1	0-1	Y	N	Y
Jordan	x	1-2	1-2	Y	Y	Y
Kenya	x	0-1	0-1	Y	Y	Y
Korea	x	1-2	2-3	Y	Y	Y
Kosovo	x	1-2	0-1	Y	Y	Y
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Lebanon	x	2-3	2-3	Y	Y	N
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY				
Malta		PLEASE REFER TO EUF'S LEGAL STUDY				
Mauritius	x	2-3	2-3	Y	Y	Y
Mexico	x	3+	2-3	Y	Y	Y
Moldova	x	1-2	1-2	Y	Y	Y
Mongolia	x	1-2	0-1	N	Y	Y
Morocco	x	0-1	1-2	Y		
Montenegro	x					

Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY				
Nigeria	x	2-3	2-3	Y	Y	Y
North Macedonia	x	0-1	1-2	Y	Y	Y
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Oman	x	1-2	0-1	Y	Y	Y
Peru	x	2-3	3+	Y	Y	Y
Poland		PLEASE REFER TO EUF'S LEGAL STUDY				
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY				
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY				
Saudi Arabia	x					
Senegal	x	1-2	1-2	Y	Y	Y
Serbia	x	1-2	1-2	N		Y
Singapore	x	1-2	0-1	Y	Y	Y
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY				
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY				
South Africa	x	1-2	0-1	Y	Y	Y
Spain		PLEASE REFER TO EUF'S LEGAL STUDY				
Sri Lanka	x	2-3	2-3	Y	Y	N
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY				
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY				
Taiwan	x	1-2	0-1	Y	Y	Y
Thailand	x	1-2	1-3	Y	Y	Y
Tunisia	x	0-1	0-1	Y	Y	Y
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY				
Uganda	x	1-2	1-2	Y	Y	Y
Ukraine	x	DEPENDS	DEPENDS	Y	Y	Y
United Arab Emirates	x	DEPENDS	DEPENDS	Y	Y	Y
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY				
United States		PLEASE REFER TO EUF'S LEGAL STUDY				
Vietnam	x	1-2	0-1	Y	Y	Y
Zimbabwe	x	0-1	1-2	Y	Y	Y
YES				**52**	**42**	**51**
NO				**3**	**7**	**2**
Total No of Answers		**0**	**0**	**55**	**49**	**53**

Section 12- Late Payments

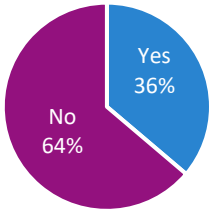
This section tries to find a universal way to replace late payment charges based on LIBOR that disappeared. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?



If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

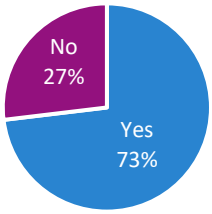


If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

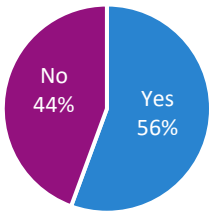
Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?



If YES,

a) Under which circumstances?

b)Can the factor issue an invoice for such interest to the debtor?



Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

If YES, please explain referring to the regulation

List 12

Country	Questions	12-1*Y	12-2*Y	12-3	12-4*Y	12-4-Yb	12-5*Y
Argentina	x	Y	N	34,75%	Y		Y
Armenia	x	Y	Y	6,96%	Y	Y	Y
Australia	x	N	N		Y	Y	N
Austria		PLEASE REFER TO EUF'S LEGAL STUDY					
Azerbaijan	x	N	N		N		Y
Bangladesh	x	N	N		N		N
Belarus	x	Y	YN	12-13%	Y	YN	YN
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY					
Bolivia	x	Y	N	6%	Y	N	Y
Bosnia and Herzegovina	x	Y	N	3.5%	Y	YN	YN
Botswana	x	N	N	3%/MONTH	Y	Y	N
Brazil	x	N	Y	7,65%	Y	YN	Y
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY					
Burkina Faso	x	Y	Y	10%	Y	Y	N
Cameroon	x	Y	N		Y	Y	N
Canada	x	Y	Y		Y	Y	Y
Chile	x	N	N		Y	Y	Y
China	x	N	YN		YN		Y
Colombia	x	Y	N	L+1%	Y	N	Y
Congo, Republic of the	x	Y	N	7%	Y	Y	N
Costa Rica	x	Y	Y	8-9%	Y	N	N
Cote d'Ivoire	x	Y	N	NA	Y	Y	N
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY					
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY					
Dominican Republic	x	N	N	6%	N		N
Egypt	x	Y	N		Y	Y	N
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY					
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY					
France		PLEASE REFER TO EUF'S LEGAL STUDY					
Georgia	x	N	N	10%	YN	Y	YN
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Greece		PLEASE REFER TO EUF'S LEGAL STUDY					
Guatemala	x	N	N	5,50%	Y	N	Y
Honduras	x	Y	N		Y	Y	Y
Hong Kong	x	N	YN		YN		YN
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY					
India	x	N	Y	1%-	Y	Y	Y
Indonesia	x	N	Y	8%	N		N
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY					
Israel	x						
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Japan	x	Y	N	1%	N		N
Jordan	x	Y	N		Y	Y	Y
Kenya	x	N	N	1,5%/month	Y	Y	N
Korea	x	Y	Y		Y		N
Kosovo	x	Y	N		Y	Y	Y
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Lebanon	x	N			N		Y
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY					
Malta		PLEASE REFER TO EUF'S LEGAL STUDY					
Mauritius	x	N	Y	0%	N		N
Mexico	x	Y	N	L+0,5%	Y	N	Y
Moldova	x	Y	N		N		Y
Mongolia	x	N	Y	19%	Y	N	N
Morocco	x	N		3,50%	Y		Y
Montenegro	x						
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY					
Nigeria	x	N	N		N	N	N
North Macedonia	x	Y	Y	10%	Y	N	Y
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Oman	x	N					Y
Peru	x	N	N	0,95	Y	N	Y
Poland		PLEASE REFER TO EUF'S LEGAL STUDY					
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY					
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Saudi Arabia	x	N			N		Y
Senegal	x	Y	N		Y	Y	N

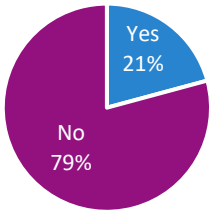
Serbia	x	Y			N	N	Y
Singapore	x	N	Y		Y	N	Y
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY					
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY					
South Africa	x	N	N	NA	Y	Y	Y
Spain		PLEASE REFER TO EUF'S LEGAL STUDY					
Sri Lanka	x	Y	N		N	N	Y
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY					
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY					
Taiwan	x	N	Y		N		Y
Thailand	x	Y	Y		Y	N	N
Tunisia	x	Y	Y	9,50%	Y	Y	N
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY					
Uganda	x	N	N	2.5%	Y	Y	Y
Ukraine	x	N	N	12-13%	N		N
United Arab Emirates	x	Y	Y		Y	N	N
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY					
United States		PLEASE REFER TO EUF'S LEGAL STUDY					
Vietnam	x	Y	Y	4%	Y	N	N
Zimbabwe	x	Y	5%	3%/MONTH	Y	N	Y
YES		**29**	**17**	**0**	**38**	**20**	**29**
NO		**27**	**30**	**0**	**14**	**16**	**23**
Total No of Answers		**56**	**47**	**0**	**52**	**36**	**52**

Section 13 - International Conventions

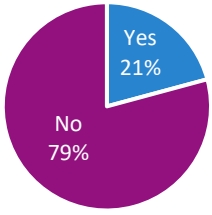
United Nations and UNIDROIT try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

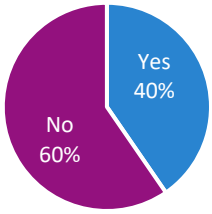
a) The UNIDROIT Convention on International Factoring (1988)



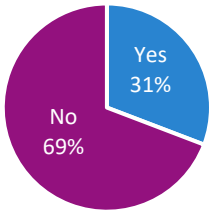
b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)



c) United Nations Convention on Contracts for the International Sale of Goods (1980)



Question 13-2: Is your country a member of Organisation of Islamic Cooperation?



List 13

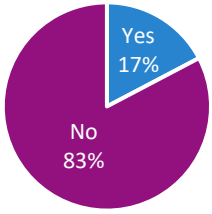
Country	Questions	13-1-a	13-1-b	13-1-c	13-2
Argentina	x	N	N	Y	N
Armenia	x	N	N	Y	N
Australia	x				N
Austria		PLEASE REFER TO EUF'S LEGAL STUDY			
Azerbaijan	x	Y	Y	Y	Y
Bangladesh	x	N	N	N	Y
Belarus	x	YN	N	N	N
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY			
Bolivia	x	Y	Y	N	N
Bosnia and Herzegovina	x	YN	YN	YN	YN
Botswana	x	N			Y
Brazil	x	YN	YN	Y	YN
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY			
Burkina Faso	x				
Cameroon	x	Y	Y	Y	Y
Canada	x	N	N	Y	N
Chile	x	Y	Y	Y	N
China	x	N	N	N	N
Colombia	x	N	N	Y	N
Congo, Republic of the	x	N	N	N	N
Costa Rica	x	N	N	N	N
Cote d'Ivoire	x	Y	Y	Y	Y
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY			
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY			
Dominican Republic	x	N	N	N	N
Egypt	x				Y
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY			
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY			
France		PLEASE REFER TO EUF'S LEGAL STUDY			
Georgia	x	N	N	YN	N
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Greece		PLEASE REFER TO EUF'S LEGAL STUDY			
Guatemala	x	N	N	N	N
Honduras	x	N	N	Y	N
Hong Kong	x	N	N	N	N
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY			
India	x	N	Y	N	N
Indonesia	x	N	N	N	Y
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY			
Israel	x				
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Japan	x	N	N	N	N

Jordan	x	N	N	N	Y
Kenya	x	N	N	N	N
Korea	x	N	N	N	N
Kosovo	x	N	N	N	N
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Lebanon	x	N	N	Y	Y
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY			
Malta		PLEASE REFER TO EUF'S LEGAL STUDY			
Mauritius	x	N	N		N
Mexico	x	Y	N	N	N
Moldova	x	N	N	Y	N
Mongolia	x	N	N	N	N
Morocco	x				
Montenegro	x				
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY			
Nigeria	x	N	N	Y	Y
North Macedonia	x	N	N	N	N
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Oman	x				Y
Peru	x	N	N	Y	N
Poland		PLEASE REFER TO EUF'S LEGAL STUDY			
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY			
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Saudi Arabia	x	N	N	N	Y
Senegal	x	Y	Y	Y	Y
Serbia	x	N	N	N	N
Singapore	x	N	N	Y	N
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY			
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY			
South Africa	x	N	N	N	N
Spain		PLEASE REFER TO EUF'S LEGAL STUDY			
Sri Lanka	x	N	N	N	N
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY			
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY			
Taiwan	x	Y	Y	Y	N
Thailand	x	N	N	N	N
Tunisia	x	Y	Y	Y	Y
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY			
Uganda	x	N	N	Y	Y
Ukraine	x	N	N	N	N
United Arab Emirates	x	N	Y	N	Y
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY			
United States		PLEASE REFER TO EUF'S LEGAL STUDY			
Vietnam	x	N	N	N	N
Zimbabwe	x	Y	N	N	N
YES		**10**	**10**	**19**	**16**
NO		**38**	**38**	**28**	**36**
Total No of Answers		**48**	**48**	**47**	**52**

Section 14 - Receivables from Public Administrations

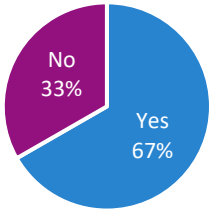
Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

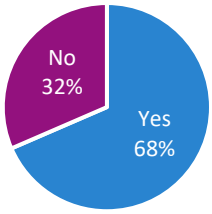


If YES, please give the reference.

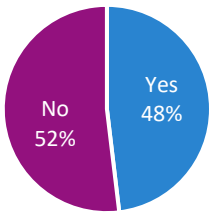
Question 14-2: Is e-invoicing acceptable by public administrations?



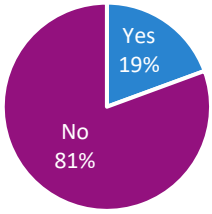
Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?



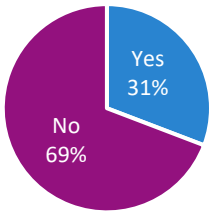
Question 14-4: Can a public administration legally refuse the assignment of a debt?



If YES, is there any law that prohibits the assignment of Government receivables?



Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?



If YES, please list the differences.

List 14

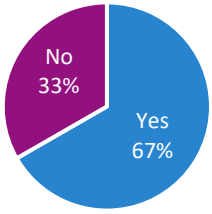
Country	Questions	14-1*Y	14-2	14-3	14-4	14-4Y	14-5*Y
Argentina	x	N	Y	Y	Y	N	N
Armenia	x	N	Y	Y	N	N	N
Australia	x	N	Y	Y	N	N	N
Austria		PLEASE REFER TO EUF'S LEGAL STUDY					
Azerbaijan	x	N	Y	Y	N		N
Bangladesh	x	N	N	Y	N		N
Belarus	x	N	YN	YN	N	N	N
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY					
Bolivia	x	N	N	Y	Y	N	N
Bosnia and Herzegovina	x	YN	N	N	YN	Y	N
Botswana	x	N		Y	N		N
Brazil	x	N	Y	Y	YN	N	N
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY					
Burkina Faso	x	N	N	N	N	N	Y
Cameroon	x	N	Y	Y	N	N	Y
Canada	x	Y	Y	Y	Y	Y	Y
Chile	x	N	Y	Y	N	N	Y
China	x	YN	Y	Y	YN	Y	N
Colombia	x	N	Y	Y	Y	N	Y
Congo, Republic of the	x	N	N	N	N		Y
Costa Rica	x	Y	Y	Y	Y	N	N
Cote d'Ivoire	x	N	Y	N	N	Y	Y
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY					
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY					
Dominican Republic	x	Y	N	N	N		N
Egypt	x	N	Y	N	Y	N	Y
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY					
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY					
France		PLEASE REFER TO EUF'S LEGAL STUDY					
Georgia	x	YN	N	Y	Y	N	N
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Greece		PLEASE REFER TO EUF'S LEGAL STUDY					
Guatemala	x	N	Y	Y	Y	N	Y
Honduras	x	Y	Y	Y	Y	N	Y
Hong Kong	x	N	Y	Y	Y	N	N
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY					
India	x	N	Y	Y	N	N	N
Indonesia	x		Y	Y	Y		DEP
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY					

Israel	x						
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Japan	x	N	N	N	N		N
Jordan	x	N	N	N	Y	N	N
Kenya	x	N	Y	Y	Y	N	N
Korea	x	N	Y	Y	Y	Y	N
Kosovo	x	N	N	N	N		N
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Lebanon	x	Y	N	N	N		N
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY					
Malta		PLEASE REFER TO EUF'S LEGAL STUDY					
Mauritius	x	N	N	N	N	N	N
Mexico	x	Y	Y	Y	Y	N	N
Moldova	x	N	Y	Y	N	N	Y
Mongolia	x	N	N	Y	N		N
Morocco	x	Y	N	N	Y		
Montenegro	x						
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY					
Nigeria	x	N	Y	Y	Y	N	Y
North Macedonia	x	N	Y	Y	N		N
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Oman	x	N	Y	Y	Y	N	Y
Peru	x	N	Y	Y	Y	N	N
Poland		PLEASE REFER TO EUF'S LEGAL STUDY					
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY					
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY					
Saudi Arabia	x	N	Y				
Senegal	x	N	Y	N	N		Y
Serbia	x	Y	Y	Y	N		N
Singapore	x	N	Y	Y	Y	N	N
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY					
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY					
South Africa	x	N	Y	Y	N		Y
Spain		PLEASE REFER TO EUF'S LEGAL STUDY					
Sri Lanka	x	N	N	N	N		Y
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY					
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY					
Taiwan	x	N	Y	N	N		N
Thailand	x	N	N	Y	N		N
Tunisia	x	Y	N	N	Y	Y	YN
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY					
Uganda	x	N	Y	Y	Y	Y	N
Ukraine	x	N	Y	Y	Y	N	N
United Arab Emirates	x	N	N	Y	N		N
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY					
United States		PLEASE REFER TO EUF'S LEGAL STUDY					
Vietnam	x	N	Y	Y	Y	N	N
Zimbabwe	x	N	Y	N	Y	N	N
YES		**9**	**36**	**37**	**25**	**7**	16
NO		**43**	**18**	**17**	**27**	**29**	36
Total No of Answers		**52**	**54**	**54**	**52**	**36**	52

Section 15 - Force Majeure

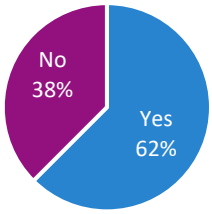
Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?



If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?



If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

List 15

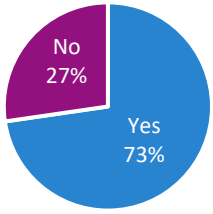
Country	Questions	15-1*Y	15-2*Y
Argentina	x	Y	Y
Armenia	x	Y	Y
Australia	x		
Austria		PLEASE REFER TO EUF'S LEGAL STUDY	
Azerbaijan	x	Y	Y
Bangladesh	x	N	Y
Belarus	x	Y	N
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY	
Bolivia	x	N	N
Bosnia and Herzegovina	x	YN	YN
Botswana	x	Y	
Brazil	x	Y	Y
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY	
Burkina Faso	x	N	N
Cameroon	x	Y	N
Canada	x	Y	Y
Chile	x	Y	Y
China	x	Y	YN
Colombia	x	Y	Y
Congo, Republic of the	x	N	Y
Costa Rica	x	Y	Y
Cote d'Ivoire	x	Y	Y
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY	
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY	
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY	

Denmark		PLEASE REFER TO EUF'S LEGAL STUDY	
Dominican Republic	x	N	N
Egypt	x	Y	Y
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY	
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY	
France		PLEASE REFER TO EUF'S LEGAL STUDY	
Georgia	x	YN	YN
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY	
Greece		PLEASE REFER TO EUF'S LEGAL STUDY	
Guatemala	x	Y	N
Honduras	x	N	N
Hong Kong	x	Y	N
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY	
India	x	Y	Y
Indonesia	x	Y	N
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY	
Israel	x		
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY	
Japan	x	N	N
Jordan	x	Y	Y
Kenya	x	N	Y
Korea	x	Y	Y
Kosovo	x	Y	Y
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY	
Lebanon	x		
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY	
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY	
Malta		PLEASE REFER TO EUF'S LEGAL STUDY	
Mauritius	x	N	N
Mexico	x	Y	N
Moldova	x	N	N
Mongolia	x	N	N
Morocco	x	Y	Y
Montenegro	x		
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY	
Nigeria	x	Y	Y
North Macedonia	x	Y	Y
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY	
Oman	x	Y	Y
Peru	x	Y	Y
Poland		PLEASE REFER TO EUF'S LEGAL STUDY	
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY	
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY	
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY	
Saudi Arabia	x	Y	Y
Senegal	x	Y	Y
Serbia	x		
Singapore	x	Y	Y
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY	
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY	
South Africa	x	N	Y
Spain		PLEASE REFER TO EUF'S LEGAL STUDY	
Sri Lanka	x	N	N
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY	
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY	
Taiwan	x	N	N
Thailand	x	Y	Y
Tunisia	x	Y	Y
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY	
Uganda	x	N	Y
Ukraine	x	N	N
United Arab Emirates	x	N	
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY	
United States		PLEASE REFER TO EUF'S LEGAL STUDY	
Vietnam	x	Y	Y
Zimbabwe	x	Y	N
YES		**34**	**30**
NO		**17**	**18**
Total No of Answers		**51**	**48**

Section 16 – International Two-Factor Transactions

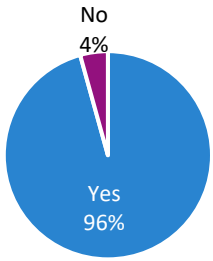
This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?



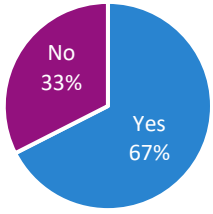
If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

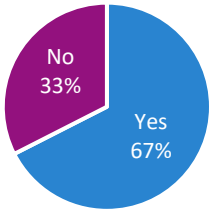


If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?



Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?



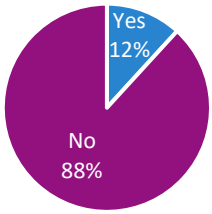
List 16

Country	Questions	16-1*N	16-2*N	16-3	16-4
Argentina	x	N	Y	Y	N
Armenia	x			Y	N
Australia	x	Y	Y	N	Y
Austria		PLEASE REFER TO EUF'S LEGAL STUDY			
Azerbaijan	x	Y	Y	Y	Y
Bangladesh	x	Y	N	NA	NA
Belarus	x	YN	Y	YN	YN
Belgium		PLEASE REFER TO EUF'S LEGAL STUDY			
Bolivia	x	N	Y	Y	N
Bosnia and Herzegovina	x	Y	Y	Y	Y
Botswana	x				
Brazil	x	YN	Y	N	YN
Bulgaria		PLEASE REFER TO EUF'S LEGAL STUDY			
Burkina Faso	x				
Cameroon	x	N	Y	Y	Y
Canada	x	Y	Y	N	N
Chile	x	Y	Y	Y	Y
China	x	Y	Y	YN	YN
Colombia	x	Y	Y	Y	Y
Congo, Republic of the	x	Y	Y	N	Y
Costa Rica	x	Y	Y	Y	Y
Cote d'Ivoire	x	N	Y	Y	Y
Croatia		PLEASE REFER TO EUF'S LEGAL STUDY			
Cyprus	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Czech Republic	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Denmark		PLEASE REFER TO EUF'S LEGAL STUDY			
Dominican Republic	x	N	Y	Y	Y
Egypt	x	Y	Y	N	Y
Estonia		PLEASE REFER TO EUF'S LEGAL STUDY			
Finland	p	PLEASE REFER TO EUF'S LEGAL STUDY			
France		PLEASE REFER TO EUF'S LEGAL STUDY			
Georgia	x	Y	Y	YN	Y
Germany	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Greece		PLEASE REFER TO EUF'S LEGAL STUDY			
Guatemala	x	Y	Y	Y	Y
Honduras	x	Y	Y	Y	Y
Hong Kong	x	Y	Y	YN	N
Hungary	p	PLEASE REFER TO EUF'S LEGAL STUDY			
India	x	Y	Y		YN
Indonesia	x	Y	Y	N	DEP
Ireland		PLEASE REFER TO EUF'S LEGAL STUDY			
Israel	x				
Italy	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Japan	x	Y	Y	N	Y
Jordan	x	Y	Y	Y	N
Kenya	x	Y	Y	Y	N
Korea	x		Y	Y	Y
Kosovo	x	Y	Y	Y	Y
Latvia	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Lebanon	x	Y	Y		
Lithuania	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Luxembourg		PLEASE REFER TO EUF'S LEGAL STUDY			
Malta		PLEASE REFER TO EUF'S LEGAL STUDY			
Mauritius	x	Y	Y	N	N
Mexico	x	N	Y	N	Y
Moldova	x				
Mongolia	x	Y	Y	Y	Y
Morocco	x				
Montenegro	x				
Netherlands		PLEASE REFER TO EUF'S LEGAL STUDY			
Nigeria	x	Y	Y	Y	N

North Macedonia	x	N	Y	Y	Y
Norway	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Oman	x				
Peru	x	Y	Y	Y	Y
Poland		PLEASE REFER TO EUF'S LEGAL STUDY			
Portugal		PLEASE REFER TO EUF'S LEGAL STUDY			
Romania	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Russia	p	PLEASE REFER TO EUF'S LEGAL STUDY			
Saudi Arabia	x	Y	Y	Y	N
Senegal	x	N	Y	Y	Y
Serbia	x	N			
Singapore	x	Y	Y	N	N
Slovakia		PLEASE REFER TO EUF'S LEGAL STUDY			
Slovenia	p	PLEASE REFER TO EUF'S LEGAL STUDY			
South Africa	x				
Spain		PLEASE REFER TO EUF'S LEGAL STUDY			
Sri Lanka	x	Y	Y		
Sweden		PLEASE REFER TO EUF'S LEGAL STUDY			
Switzerland		PLEASE REFER TO EUF'S LEGAL STUDY			
Taiwan	x	Y	Y	N	Y
Thailand	x	N	N	N	Y
Tunisia	x	Y	Y	N	Y
Turkey		PLEASE REFER TO EUF'S LEGAL STUDY			
Uganda	x	N	Y	Y	N
Ukraine	x	-	Y	Y	Y
United Arab Emirates	x	N	Y	Y	Y
United Kingdom	p	PLEASE REFER TO EUF'S LEGAL STUDY			
United States		PLEASE REFER TO EUF'S LEGAL STUDY			
Vietnam	x	Y	Y	Y	N
Zimbabwe	x				
YES		**32**	**45**	**27**	**27**
NO		**12**	**2**	**13**	**13**
Total No of Answers		**44**	**47**	**40**	**40**

Section 17 - Any Other Subjects

Are there any other subjects that you think are important in conducting factoring operations with your country?



If YES, please explain.

INDIVIDUAL COUNTRY ANSWERS

ARGENTINA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☑ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Civil and Commercial Code, article 1421

Question 1-2-1: Are banks allowed to do factoring in your country?

☑ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☑ NO

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☑ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☑ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☑ YES ☐ NO

b) Recourse Factoring?

☑ YES ☐ NO

c) Undisclosed Factoring?

☑ YES ☐ NO

It is not forbbiden, however, it is a risky operation. In Argentina, notification to debtor is needed for the assignment to be enforceable against third parties.

d) Pre-shipment Financing?

☑ YES ☐ NO

e) Factoring based on order approval?

☑ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☑ YES ☐ NO

Financial institutions cannot finance non residents, except in cases in which it could facilitate local exportations (according to Central Bank Regulations – “Active Operations”)

g) Two-Factor International Factoring such as with FCI?

☑ YES ☐ NO

h) Reverse Factoring?

☑ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☑ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☑ NO

If YES, please provide the date, title and number of the law/regulation.

---

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Financial Information Unit - Resolution 30E-2017

c) Minimum Capital Requirement?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Only for Financial Instituions as there are no Factoring Companies

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law No. 25,326.

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☑ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☑ YES ☐ NO

If YES, please provide the definition.

"Hay contrato de factoraje cuando una de las partes, denominada factor, se obliga a adquirir por un precio en dinero determinado o determinable los créditos originados en el giro comercial de la otra, denominada factoreado, pudiendo otorgar anticipo sobre tales créditos asumiendo o no los riesgos." //There is a factoring contract when one of the parties, called a factor, undertakes to acqui for a specific price or a price to be determined the credits originated in the commercial line of the other, called the factored, being able to grant an advance on such credits, assuming or not the risks. "

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☑ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☑ YES ☐ NO

If YES,

a) What are those reports?

Informative regimes for Financial Institutions under Central Bank supervision

b) Are they to be audited?

☑ YES ☐ NO

c) What is the period to be reported?

Monthly

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☑ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☑ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Escriba el texto aquí

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☐ NO

If YES, please provide the name, date and number.

Accounting is governed by IFRS / NIIF. In particular, factoring operations are governed by IFRS 9.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☑ YES ☐ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☑ YES ☐ NO

If YES, please explain

KYC, Solvency, Anti-Money Laundering regulations

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☑ YES ☐ NO

If YES, please provide the date, title and number.
Civil and Commercial Code, article 1614

Question 3-2: Is factoring based on assignment in your country?

☑ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☑ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☑ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☑ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☑ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☑ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☑ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☑ YES ☐ NO

If YES, please explain and refer to the regulation.
Notification by notary public or due notification, Civil and Commercial Code, article 1620

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☑ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☑ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☑ YES ☐ NO

If YES, please explain.

It must be always in written form. For certain cases especifically listed in the Civil and Commercial Code, it must be in public deed. Also, contracts executed under a public deed must be assigned by public deed.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☑ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Confirm that invoice /credits are still unpaid and notify the debtor in connection with the assignment

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☑ NO

b) Non-recourse factoring?

☐ YES ☑ NO
Ver con contaduría

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☑ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☑ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☑ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☑ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☑ NO

However, it is possible to assign future credit rights that will entail the issuance of receivables

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☑ YES ☐ NO

Aunque sí pueden cederse los derechos creditorios futuros que puedan causar la emisión de futuras facturas

Question 3-21: Is assignment of part of a receivable possible?

☑ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☑ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES ☑ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☑ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ☑ NO

Question 4-4: Is e-invoicing applicable in your country?

☑ YES □ NO

If YES, is e-invoicing obligatory for some situations?

☑ YES □ NO

If YES, please explain the criteria.

Factoring transactions or assignments of documents by other parties than financial institutions in general have to issue e-invoices to document the transaction. Financial Institutios are exempted from the obligation to issue e-invoices for this type of transactions if they are included/documented in the Statements of accounts of the clients

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☑ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☑ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☑ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

Assignment between Financial Institutions: not tates applied; Assignment between a Financial Institution and a normal society: rates applied; the passive party is the assignee; consequently -> if the assignee is a financial institution::10,5%; if the assignee is a society: 21%. In addition all commissions are charged with 21%

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☑ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☑ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☑ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES □ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

☑ YES □ NO

If YES, please explain.

Depending the type of the instrumentation carried out and the Province in which the assignment has been performed, the assigment can be subjet to stamp duty

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☑ YES □ NO

If YES, please explain.

The contract that regulates the assignment can set forth limitations or subordinate factors' rights

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

☑ YES □ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☑ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☑ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☑ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☑ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☑ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES ☑ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES ☑ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☑ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

☑ YES □ NO

If YES, please explain.
(For example: Credit subordination can be agreed by the parties)

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☑ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☑ YES □ NO

For financial institutions, only as an exception limited to certain kind of transactions. In case of other creditors, submmited to limitations of Central Bank's foreign exchange regulations.

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES ☑ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☑ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES ☑ NO

Verificar con Créditos

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☑ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

☑ YES □ NO

If YES, please refer to the regulation (title, date, number).

Restrictions apply to all kind of persons. Regulated all in the "Ordered Text of Foreign Exchange" from the Argentine Central Bank

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

☑ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES ☑ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☑ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

☑ YES □ NO

If YES, please explain.
As explained above.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

☑ YES □ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

☑ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- ☑ 0-5 banking days
- O 6-10 banking days
- O 11-20 banking days
- O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

☑ YES □ NO

If YES, under which conditions?

Assignments or any other act entered by the creditor and the supplier into during the denominated "periodo de sospecha" (a certain period of time previous to the insolvency/ bankrupcy of the supplier), and any other unforceable act. In general terms, an unforceable act is an act entered into by the parties before the supplier insolvency, which puts a certain creditor in a better position than any other creditor.

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

☑ YES □ NO

If YES, under which circumstances?

Only a court can declare invalid a prior assignment in the case expressed above in 10-1.

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☑ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

- O 0- 30 days
- O 31-60 days
- O 61-90 days
- O 91-180 days
- ☑ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
O 1 to 2 years
☑ 2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

O 0 to 1 year
☑ 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☑ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☑ YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☑ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☑ YES □ NO

If YES, what is the rate?

When the dispute is solved by a court, the applicable interest rate will be "Tasa Activa Banco de la Nación Argentina para operaciones de descuento de documentos comerciales" Active Rate of Banco Nacion Argentina Bank, applied to the cash discount of commercial d ocuments

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES ☑ NO Ver este punto con Finanzas (Juan Manuel Lombardini)

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

---

for transactions in ARS at 90 days 34,75%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☑ YES □ NO

If YES,

a) under which circumstances?

If it is set forth in the contract under which the supplier agrees to provide goods/services to the debtor.

---

b) can the factor issue an invoice for such interest to the debtor?

☑ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☑ YES □ NO

If YES, please explain referring to the regulation.

Maximum prescription time: five years.
For periodic invoices (which are payable annually or in a shorter term): two years.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☑ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☑ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

☑ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☑ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

☑ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☑ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☑ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☑ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☑ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☑ YES □ NO

If YES, please provide the date, title and number of the Law.

Civil and Commercial Code, article 1730

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☑ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

A fact that cannot be expected, or if expected, cannot be evaded

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES ☑ NO

If NO, please explain the additional requirements.

Notification by notary public or due notification

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☑ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

☑ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES ☑ NO

ARMENIA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

√ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Civil Code of RA

Question 1-2-1: Are banks allowed to do factoring in your country?

√ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

√ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

√ YES ☐ NO

If YES, please explain.
Central Bank of RA

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

√ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

√ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

√ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Law on Credit organizations

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

√ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

√ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

√ YES ☐ NO

b) Recourse Factoring?

√ YES ☐ NO

c) Undisclosed Factoring?

√ YES ☐ NO

d) Pre-shipment Financing?

√ YES ☐ NO

e) Factoring based on order approval?

√ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

√ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

√ YES ☐ NO

h) Reverse Factoring?

√ YES ☐ NO

i) Islamic International Factoring?

√ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

√ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

RA Law on Banking, RA Law on Credit Organizations

b) Anti-Money Laundering?

√ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Anti-Money Laundring and Terrorist Financing Law of RA

c) Minimum Capital Requirement?

√ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

d) Data Protection?

√ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law on Banking Secrecy of RA

e) GAAP/IAS/IFRS Accounting Principles?

√ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

√ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

√ YES ☐ NO

h) Reserve Requirements against liquidity risk?

√ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES √ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

_____

b) is membership compulsory?

☐ YES √ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES √ NO

If YES, please provide the definition.

_____

_____

_____

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

√ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES √ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES √ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES √ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES √ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES √ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES √ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES √ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES √ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES √ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

√ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES √ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES √ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

√ YES ☐ NO

If YES, please provide the date, title and number.

Civil Code of RA

Question 3-2: Is factoring based on assignment in your country?

√ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES √ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES √ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES √ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES √ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES √ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

√ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES √ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES √ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES √ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES √ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES √ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES √ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

√ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

√ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

√ YES ☐ NO

b) Non-recourse factoring?

√ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES √ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES √ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES √ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

√ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

√ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

√ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

√ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

√ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

√ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

√ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

√ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

√ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

√ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

√ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES √ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

√ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES √ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES √ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES √ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES √ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES √ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES √ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES √ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES √ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES √ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES √ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES √ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES √ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES √ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES √ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES √ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

√ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES √ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES √ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

√ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

√ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

√ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

√ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

√ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

√ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES √ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES √ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES √ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES √ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES √ NO

If NO, what is the most common payment structure?

Bank transfer

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES □ NO N/A

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

O 0-5 banking days
O 6-10 banking days N/A
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO N/A

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES √ NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

√ YES □ NO

If YES, under which circumstances?

in case of information about the bankruptcy of the factor.

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES √ NO

If NO, is it an equal right with the others?

√ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
√ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

√ 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

√ 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

√ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

√ YES □ NO

If YES, under which conditions?
Article 315 of Civil procedure code

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

√ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

√ YES □ NO

If YES, what is the rate?

max 0,13% per day

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

√ YES □ NO

If YES, what is it called?

REPO

IF YES, who publishes it?

The Cental Bank of RA

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

6,96%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

√ YES □ NO

If YES,

a) under which circumstances?

The factor acquires late payment interest claim right from the debtor specified in the supply contract.

b) can the factor issue an invoice for such interest to the debtor?

√ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

√ YES □ NO

If YES, please explain referring to the regulation.

According to Civil Procedure Code of RA, the monetary claims are subject to submission within 3 years from the moment the claim arises.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES √ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES √ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

√ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES √ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES √ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

√ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

√ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES √ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES √ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES √ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

√ YES □ NO

If YES, please provide the date, title and number of the Law.

Civil Code of RA

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

√ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

□ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

√ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES √ NO

AUSTRALIA

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES … NO x

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO…

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO…

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES … NO x

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO x

If YES,

a) Is approval of managers by the governing body required?

YES … NO…

b) Is approval of the shareholders by the governing body required?

YES … NO…

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO…

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO…

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO…

b) Recourse Factoring

YES x NO…

c) Undisclosed Factoring

YES x NO…

d) Pre-shipment Financing

YES x NO…

e) Factoring based on order approval

YES x NO…

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO…

g) 2-Factor International Factoring such as with FCI

YES x NO…

h) Reverse Factoring

YES x NO…

i)

j) Islamic International Factoring

YES … NO x

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES … NO x

If YES, please provide the date, title and number of the law/regulation

---

b) Anti-Money Laundering

YES x NO…

If YES, please provide the date, title and number of the regulation
AUSTRAC

---

c) Minimum Capital Requirement

YES … NO x

If YES, please provide the date, title and number of the regulation

---

d) Data Protection

YES … NO x

If YES, please provide the date, title and number of the regulation

---

e) GAAP/IAS/IFRS Accounting Principles

YES x NO…

f) Obligation to publicly disclose yearly financial reports

YES … NO x

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES … NO x

h) Reserve Requirements against liquidity risk

YES … NO x

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO…

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES … NO…

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO x

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES … NO x

If YES,

a) What are those reports?

---

b) Are they to be audited?

YES … NO x

---

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES … NO x

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES … NO…

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO…

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO x

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO…

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO…

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES x NO…

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES … NO x

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

YES x NO…

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES … NO x

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO x

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES x NO…

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES x NO…

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)
ASIC

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES x NO…

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO x

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO x

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES x NO…

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO…

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO…

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO…

b) Non-recourse factoring?

YES x NO…

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO…

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES x NO…

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO x

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES x NO…

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES x NO…

Question 3-21: Is assignment of part of a receivable possible?

YES … NO x

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO…

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES … NO x

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO…

If YES, are they also allowed to split a particular receivable between factors?

YES … NO…

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO…

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES x NO…

Question 4-3: Is signature required on an invoice for validity?

YES … NO x

Question 4-4: Is e-invoicing applicable in your country?

YES x NO…

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO…

SECTION 5 – TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES … NO x

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO…

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO…

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES x NO…

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES … NO x

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO…

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO x

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO x

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO…

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO…

d) Can a receivable be still factorable under prohibition of assignment?

YES x NO…

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO x

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES x NO…

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES … NO x

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO…

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO…

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO…

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES x NO…

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO…

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO…

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES x NO…

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

_____

_____

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES x NO…

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO x

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES x NO…

If NO, is it an equal right with the others?

YES … NO…

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days
d) 91-180 days X
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO…

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES … NO…

If YES, under which conditions?
Not Sure

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO…

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES … NO x

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
1%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO…

If YES,

a) Under which circumstances?

If it is part of seller's trade condition

---

b) Can the factor issue an invoice for such interest to the debtor?

YES x NO…

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

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a) The UNIDROIT Convention on International Factoring (1988)

YES … NO…

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO…

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO…

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO x

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES x NO…

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES x NO…

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO x

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO x

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES … NO…

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES … NO…

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES x NO…

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO…

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES … NO x

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES x NO…

AZERBAIJAN

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.
655 - 657

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
AR Central Bank

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES x NO …
(Not particularly, but only credit companies are allowed to operate factoring)

If YES,

a) Is approval of managers by the governing body required?

YES … NO x

b) Is approval of the shareholders by the governing body required?

YES x NO …

c) Please provide the title, date and number of the relevant regulation/law.

AR Civil Code 655.6

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO … If it is considered in license

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO … (Except Islamic Factoring)

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES … NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES … NO x

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation
Law of Antimonopoly Activity, dated 4th March 1993, The Law of Unfair Competition dated 29 June 1995, Law on Natural Monopolies dated 15 December 1998

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation

Law Of The Republic Of Azerbaijan On The Prevention Of The Legalization Of Criminally Obtained Funds Or Other Property And The Financing Of Terrorism dated 10 February 2009

c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation
If it is bank; if no, it is appropriate to get external legal opinion

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
Law on Personal Data dated 11 May 2011

e) GAAP/IAS/IFRS Accounting Principles

YES x NO …

f) Obligation to publicly disclose yearly financial reports

YES x NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES x NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES … NO …

If YES, please provide the definition.

655.1. Factoring is financing with assignment of money claims. According to factoring agreement one party (Factor) grants or undertakes to grant to the other party (Customer) financial resources on account of money claim proceeding of Customer (Creditor) to the third party (Debtor), proceeding from delivery of goods, carrying out works or providing services to the third party third party by the customer (Creditor) and the customer assigns or undertakes to assign the claim to the factor.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO x

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …
If it is bank; if no, it is appropriate to get external legal opinion

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If YES,

a) What are those reports?

---

b) Are they to be audited?

YES … NO …

---

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES … NO x

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES … NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO …

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO x

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES … NO x

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO x

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.
655-657 of Civil Code

Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES … NO x

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO x

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES … NO x

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO x

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO x

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES x NO …

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO x

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … NO x

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES … NO x

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO x

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES x NO …

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES x NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES x NO …

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES x NO …

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES x NO …

If YES, are they also allowed to split a particular receivable between factors?

YES x NO …

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO …

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES … NO x

Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES x NO …

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO x

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO x

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO x

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.
Factor does not pay taxes, buyer pays when it makes payment per invoice.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO x

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO x

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO x

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO …

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES … NO x

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES x NO …

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO x

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES x NO …

If YES, please explain
(Governmental bodies sometimes hesitate such kind of operations due to some technical issues)

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES x NO …

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days
b) 6-10 banking days
c) 11-20 banking days X
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO x

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO x

If NO, is it an equal right with the others?

YES x NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days
d) 91-180 days
e) More than 180 days. X

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years X
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year
b) 1 to 2 years X
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?
Based on contract information between customers

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES … NO x

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES … NO x

If YES,

a) Under which circumstances?

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b) Can the factor issue an invoice for such interest to the debtor?

YES … NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES x NO …

If YES, please explain referring to the regulation
3 months

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES x NO …

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES x NO …

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES x NO …

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES x NO …

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES x NO …

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES x NO …

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO x

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.
Civil Code

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES x NO …

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.
If it is recognised and declared by the government officially as force-majeure.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES x NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES x NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES x NO …

BANGLADESH

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.

Bangladesh Bank, FE Circular No. 25 dated June 30, 2020

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
Bangladesh Bank

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO … We do not have any references

If YES,

a) Is approval of managers by the governing body required?

YES … NO …

b) Is approval of the shareholders by the governing body required?

YES … NO …

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES … NO x

c) Undisclosed Factoring

YES … NO x

d) Pre-shipment Financing

YES … NO x

e) Factoring based on order approval

YES … NO x

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES … NO x

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES … NO x

i) Islamic International Factoring

YES … NO x

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES … NO x

If YES, please provide the date, title and number of the law/regulation

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b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation

---

c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation
We do not have a specific reference

---

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
We do not have reference

---

e) GAAP/IAS/IFRS Accounting Principles

YES x NO …

f) Obligation to publicly disclose yearly financial reports

YES x NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES x NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES … NO x

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES x NO …

If YES, please define the relevant Islamic finance instrument.
We do not have any references

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES … NO x

If YES,

a) What are those reports?

---

b) Are they to be audited?

YES … NO …

---

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES x NO …

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES x NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO x

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES x NO …

If YES, please explain and refer to the relevant regulation (title, date, number)
120 days from shipment

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO x

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones
Respective association

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES x NO …

If YES, please explain
Proper due diligence process

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.
We do not have references

Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO x

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES … NO x

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO x

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO x

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO … We do not have references

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO x

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO …

If YES, please explain
We do not have references

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … NO x

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO …

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO x

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO x

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES … NO x

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES … NO … We do not have any reference

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO x

If YES, are they also allowed to split a particular receivable between factors?

YES … NO …

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO …

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES x NO …

Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES … NO x

If YES, is e-invoicing obligatory for some situations?

YES … NO …

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO x

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES … NO x

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO …

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO …

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES … NO x

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO …

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO …

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO …

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES … NO x

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES … NO x

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO N/A

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

_____

_____

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES x NO …

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES x NO …

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO x

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES x NO …

If NO, is it an equal right with the others?

YES … NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days. We do not have references
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year. X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year. X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES … NO x

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES … NO x

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
We do not have any reference

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES … NO x

If YES,

a) Under which circumstances?

---

b) Can the factor issue an invoice for such interest to the debtor?

YES … NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO x

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO x

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES x NO …

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES … NO x

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES x NO …

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO x

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES … NO x

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES x NO …

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

We do not have any references

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES x NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES … NO x

If NO, please explain
In Bangladesh companies or banks can act as export factors only.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES … NO … N/A

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES … NO … N/A

BELARUS

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.
The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Banking Code of the Republic of Belarus

Question 1-2-1: Are banks allowed to do factoring in your country?

☐ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☐ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☐ NO

If YES, please explain.

The National Bank of the Republic of Belarus

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

-

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☐ NO

b) Recourse Factoring?

☐ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☐ NO

e) Factoring based on order approval?

☐ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO

h) Reverse Factoring?

☐ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES ☐ NO

k) POM (Purchase Order Management)

☐ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

---

b) Anti-Money Laundering?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

LAW OF THE REPUBLIC OF BELARUS
June 30, 2014 N 165-3

«ON ACTIONS TO PREVENT LEGITIMIZATION OF PROCEEDS OF CRIME AND FINANCING OF TERRORISM AND FINANCING WEAPONS OF MASS DESTRUCTION PROLIFERATION»

---

c) Minimum Capital Requirement?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

RESOLUTION OF THE BOARD OF THE NATIONAL BANK OF THE REPUBLIC OF BELARUS OF 28.09.2006 N 137

«ON APPROVAL OF THE INSTRUCTION ON SAFE OPERATION NORMS FOR BANKS, «DEVELOPMENT BANK OF THE REPUBLIC OF BELARUS JOINT STOCK COMPANY» AND NON-BANK CREDIT AND FINANCIAL INSTITUTIONS»

d) Data Protection?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Law Of The Republic Of Belarus "On Information, Informatization and Protection of information"

e) GAAP/IAS/IFRS Accounting Principles?

☐ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☐ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☐ NO

If YES, please provide the definition.

Factoring contract - an agreement whereby a bank or non-bank financial institution undertakes to the other party (parties), the creditor or creditor and the debtor, to enter into a monetary obligation between the creditor and the debtor by paying the creditor the amount of the debtor's monetary obligation for a fee.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☐ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☐ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☐ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☐ NO

If YES, please provide the name, date and number.

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Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☐ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☐ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☐ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☐ YES ☐ NO

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

☐ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☐ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☐ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☐ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☐ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☐ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☐ NO

b) Non-recourse factoring?

☐ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

□ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

□ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

□ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES □ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES □ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES □ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES □ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES □ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES □ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

Transactions for the financing of receivables of Tobacco and alcohol are invalid

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b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES □ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES □ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES □ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES □ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES □ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

O 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES □ NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES □ NO

If YES, under which circumstances?

_____

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

- O 0- 30 days
- O 31-60 days
- O 61-90 days
- O 91-180 days
- O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

□ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

□ YES □ NO

If YES, under which conditions?
The clause must be specified in the contract

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES □ NO

If YES, what is the rate?

The National Bank refinancıng rate

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?

SWAP transactions, pawnshop loans

IF YES, who publishes it?

The National Bank of the Republic of Belarus

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

12%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES □ NO

If YES,

a) **under which circumstances?**

b) **can the factor issue an invoice for such interest to the debtor?**

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES □ NO

If YES, please explain referring to the regulation.

The term must be specified in the contract, and if not, the law only prescribes a maximum period of about 30 days

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES □ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES □ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES □ NO

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

□ YES □ NO

If NO, please explain.

In the case of full service

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES □ NO

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.
Banking Code of the Republic of Belarus

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
National Bank is the regulator

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES x NO …

If YES,

a) Is approval of managers by the governing body required?

YES … NO x

b) Is approval of the shareholders by the governing body required?

YES … NO x

c) Please provide the title, date and number of the relevant regulation/law.

Banking Code of the Republic of Belarus

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES x NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES … NO x

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

YES x NO …

k) POM (Purchase Order Management)

YES … NO x

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation
The Law of the Republic of Belarus N 94-3 dd. 12.12.2013

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation
The Law of the Republic of Belarus N 165-3 dd. 30.06.2014

c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation
Banking Code

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
The Law of the Republic of Belarus N 99-3 dd. 07.05.2014

e) GAAP/IAS/IFRS Accounting Principles

YES … NO x

f) Obligation to publicly disclose yearly financial reports

YES … NO x

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES x NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.
Factoring agreement- an agreement according to which one party (factor) – a bank or a non-bank credit and financial institution undertakes to the other party – a creditor or creditor and a debtor to enter into a monetary obligation between the creditor and the debtor by paying the creditor the amount of the debtor's monetary obligation for remuneration.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO x

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …

If YES,

a) What are those reports?

Financial statements

b) Are they to be audited?

YES x NO …

c) What is the period to be reported?

Monthly

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES x NO …

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES x NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES x NO …

If YES, please explain
Alcohol and tobacco are forbidden

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES x NO …

If YES, please provide the name, date and number
Accounting rules on factoring

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones
Registries of the Ministry of Internal Affairs

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO x

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.
Banking Code

Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO x

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES … NO x

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO x

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO x

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO x

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO x

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … NO x

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES … NO x

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES … NO x

b) Non-recourse factoring?

YES … NO x

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO x

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO x

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES … NO x

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES x NO …

If YES, are they also allowed to split a particular receivable between factors?

YES x NO …

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO …

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES x NO …

Question 4-3: Is signature required on an invoice for validity?

YES … NO x

Question 4-4: Is e-invoicing applicable in your country?

YES x NO …

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES x NO …

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES … NO x

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO …

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO …

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES x NO …

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES … NO x

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO …

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO …

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO …

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES x NO …

If YES, please explain
If the debtor does not sign the notification

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES … NO x

If NO, please explain
We do not have any information

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES … NO x

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES x NO …

If YES, please refer to the regulation (title, date, number)
A lot of currency Laws

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.
Bank transfer

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES … NO … We do not have such experience

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days
b) 6-10 banking days We do not have such experience
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO … We do not have such experience

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO … We do not have such experience

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES x NO …

If NO, is it an equal right with the others?

YES … NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days
d) 91-180 days. X
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year. X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year. X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES … NO … We do not have any information

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES x NO …

If YES, what is the rate?
Refinancing rate of the National Bank

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
13% p.a.

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

b) Can the factor issue an invoice for such interest to the debtor?

YES … NO x

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO x

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO … No information

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO x

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES … NO x

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES … NO x

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO … No information

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO x

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

No information

YES … NO … Usually all the contracts have force majeure conditions

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES … NO x

If NO, please explain the additional requirements.
Assignment is required by Law.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES … NO x

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES … NO x

BOLIVIA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☑ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Comercial code, law 393 of financial services, collection of standars for financial services, rules for factoring and factoring companies

Question 1-2-1: Are banks allowed to do factoring in your country?

☑ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☑ YES ☐ NO

If YES, please explain.

The autority in change of regulating and supervising Factoring activities is the Authority Supervisory of Financial Sistem (ASFI)

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☑ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☑ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☑ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Law 393 of Financial Services, Rules for Factoring and Factoring companies of the 21/10/2015.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☑ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Rules for factoring and factoring companies of the 21/10/2015.

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☑ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☑ YES ☐ NO

b) Recourse Factoring?

☑ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☑ NO

d) Pre-shipment Financing?

☐ YES ☑ NO

e) Factoring based on order approval?

☐ YES ☑ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☑ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☑ YES ☐ NO

h) Reverse Factoring?

☑ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☑ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES ☑ NO

k) POM (Purchase Order Management)

☐ YES ☑ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☑ NO

If YES, please provide the date, title and number of the law/regulation.

_____

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law 393 of Financial Services, Rules for Factoring and Factoring companies of the 21/10/2015, Procedure manual with an approach based on risk management against the legitimization of illicit

c) Minimum Capital Requirement?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law 393 of Financial Services, Rules for Factoring and Factoring companies of the 21/10/2015.

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law 393 of Financial Services, Rules for Factoring and Factoring companies of the 21/10/2015.

e) GAAP/IAS/IFRS Accounting Principles?

☐ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☑ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☑ YES ☐ NO

If YES, please provide the definition.

Financial activity carried out by a supervised entity consisting of the receipt of autorized comercial documents reprecenting debt demandable by it´s client´s, assuming or not the credit risk with the buyer or assigned in exchange for advance payment of money or charging an amouth for the service

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Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☑ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☑ YES ☐ NO

If YES,

a) What are those reports?

The reports required by the supervisory authority are the Risk Rating Reports, Financial Statements.

b) Are they to be audited?

☑ YES ☐ NO

c) What is the period to be reported?

The period of presentation of these reports is daily, monthly and annual

---

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☑ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☑ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☑ YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).
One year.

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☑ YES ☐ NO

If YES, please provide the name, date and number.
Rules for factoring and factoring companies of the 21/10/2015

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☑ YES ☐ NO

If YES, please explain which ones

Payment behavior reports within the financial system and credit raiting

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☑ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☐ YES ☑ NO

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

☑ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☑ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☑ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☑ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☑ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☑ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☑ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☑ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☑ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☑ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?
Through bills of exchange or promisory notes as well as assignment of invoices

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☑ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☑ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☑ YES ☐ NO

b) Non-recourse factoring?

☑ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☑ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☑ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☑ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☑ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☑ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES ☑ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES ☑ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

□ YES ☑ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES ☑ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES ☑ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES ☑ NO

Question 4-3: Is signature required on an invoice for validity?

☑ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

□ YES ☑ NO

If YES, is e-invoicing obligatory for some situations?

□ YES □ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES ☑ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES ☑ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

2) If NO, is it value added tax?

☑ YES □ NO

i) If YES, what is the rate of tax?

13%

ii) If it is not VAT, please explain.

It is a VAT

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☑ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☑ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☑ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

☑ YES □ NO

If YES, please explain.
The bill of exchange must be bought from a Tax regulator office.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

☑ YES □ NO

If YES, please explain.
Customer requiered a bill of exchange or promisory notes

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☑ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES ☑ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☑ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☑ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☑ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☑ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

☑ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES ☑ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☑ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES ☑ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☑ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES ☑ NO

If NO, please explain.

Because this figure is not property regulated in Bolivia

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction? ✓

□ YES ☑ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES ☑ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES ☑ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES ☑ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☑ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ☑ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☑ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES ☑ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ☑ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☑ NO

If NO, what is the most common payment structure?
The most common form of payment is by wire transfer

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ☑ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- ☑ 0-5 banking days
- O 6-10 banking days
- O 11-20 banking days
- O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES ☑ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☑ NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ☑ NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☑ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

Ø 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☑ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☑ YES □ NO

If YES, under which conditions?

Managed with CNC - National Charmed of Commerce

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☑ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☑ YES □ NO

If YES, what is the rate?
Same rate of Factoring MN 6%, ME 9%

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES ☑ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
The borrowing rate is about 6%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☑ YES □ NO

If YES,

a) under which circumstances?

Under agreement duly signed

b) can the factor issue an invoice for such interest to the debtor?

□ YES ☑ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☑ YES □ NO

If YES, please explain referring to the regulation.

The protest of the letter must be made before the third day of not receiving the payment, otherwise we lose the right granted by the commercial document

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

☑ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

☑ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES ☑ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☑ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES ☑ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☑ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☑ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☑ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☑ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES ☑ NO

If YES, please provide the date, title and number of the Law.

_____

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES ☑ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

_____

_____

_____

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES ☑ NO

If NO, please explain the additional requirements.

Rules of our regulator require a Bill of exchange or promisory notes

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☑ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

☑YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES ☑ NO

BOSNIA
&
HERZEGOVINA

Facilitating Open Account - Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Zakon o faktoringu (Službene novine FBiH, broj: 14/16 i 74/20)

Question 1-2-1: Are banks allowed to do factoring in your country?

☐ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☐ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☐ NO

If YES, please explain.

Federal Banking Agency supervises the operations of factoring companies

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

Saglasnost se odnosi na kvalifikovano učešće.

c) Please provide the title, date and number of the relevant regulation/law.

Law of factoring – articles 25. to 38.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☐ NO

b) Recourse Factoring?

☐ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☐ NO

e) Factoring based on order approval?

☐ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO

h) Reverse Factoring?

☐ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

Law on Competition (Official Gazette of BiH, No. 48/05, 76/07 and 80/09)

b) Anti-Money Laundering?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law on Prevention of Money Laundering and Financing of Terrorist Activities (Official Gazette of BiH, No. 47/14 and 67/16)

c) Minimum Capital Requirement?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

EUR 750 ths

d) Data Protection?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation. Pravnici?

Law on Personal Data Protection (Official Gazette of BiH, No. 49/06, 76/11 and 89/11)

e) GAAP/IAS/IFRS Accounting Principles?

☐ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☐ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☐ NO

If YES, please provide the definition.

Factoring is the legal business of buying and selling an existing outstanding or future short-term monetary claim arising from a contract for the sale of goods or services in the country and abroad, which is transferred to the factor contract and which takes over the claim from the seller to collect it in its own name. (Article 2 of the Law on Factoring)

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☐ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☐ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☐ NO

If YES,

a) **What are those reports?**

The Decision on Minimum Standards for the Structure, Content, Manner and Deadlines for Submitting Information and Reports of Factoring Companies of the Banking Agency of the FBiH (Official Gazette 70/16, 85/16 and 104/16) defines the obligations regarding notification and reporting of the Agency. The decision in question defines, in Article 2, the obligations regarding the submission of information on all matters important for the performance of supervision, while Articles 8 and 9 define the financial reports to be submitted to the Agency.

b) Are they to be audited?

☐ YES ☐ NO

c) **What is the period to be reported?**

The Decision on Minimum Standards for the Structure, Content, Manner and Deadlines for Submitting Information and Reports of Factoring Companies of the Banking Agency of the FBiH (Official Gazette 70/16, 85/16 and 104/16) defines the deadlines for informing and reporting the Agency Deadlines are defined in Articles 2, 10 and 12, depending on the nature of the information or report.

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

MIGA exclusion list.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☐ NO

The law defines that factoring is the legal business of buying and selling existing outstanding or future short-term receivables, as well as that short-term receivables are receivables due within 180 days from the date of sale of goods or services, and are defined by the contract of sale or the provision of services.Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☐ NO

To the best of our knowledge, there is no special regulation in the area of accounting.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☐ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☐ NO

Central loan registry

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☐ NO

Standard identification proces.

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc...) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☐ YES ☐ NO

Law on Obligations

Question 3-2: Is factoring based on assignment in your country?

☐ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☐ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of

the assignor?

☐ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☐ NO

Question 3-6: Is notice to the debtor-necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☐ NO

If YES, please explain and refer to the regulation. The seller is obliged to inform the buyer about the same within five days from the day of concluding the contract with the factor. The buyer is obliged to pay the factor instead of the seller within the agreed deadline.If the contract does not specify who is obliged to inform the buyer about the concluded contract on the transfer of the claim, it will be considered that it is the seller.The notice on the transfer of the claim must be made in writing and contain information on the concluded factoring contract, date of concluding the contract, information on the factor by which the buyer is obliged to make payment, as well as payment instructions: account number or account numbers, claim amount, payment currency and others.The notification shall be deemed to have been delivered if it is sent by written correspondence, electronically or in any other appropriate manner from which the identity of the sender and the receipt of the notification can be established.(Article 19 of the Law on Factoring)

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☐ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☐ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☐ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☐ NO

b) Non-recourse factoring?

☐ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

☐ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor conside red as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

□ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

□ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

□ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES □ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax? 17%

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES □ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and

charges?

□ YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES □ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES □ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES □ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES □ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES □ NO

If YES, please explain.

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES □ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES □ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES □ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES □ NO

If NO, what is the most common payment structure? Cash, credit founds

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

○ 0-5 banking days ○ 6-10 banking days ○ 11-20 banking days ○ More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES □ NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES □ NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

○ 0- 30 days ○ 31-60 days ○ 61-90 days ○ 91-180 days ○ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules

for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

○ 0 to 1 year ○ 1 to 2 years ○ 2 to 3 years ○ More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

○ 0 to 1 year ○ 1 to 2 years ○ 2 to 3 years ○ More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

□ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

□ YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES □ NO

If YES, what is the rate? 10%?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer? 3,5

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES □ NO

If YES,

a) under which circumstances? If it's contractual obligation?

b) can the factor issue an invoice for such interest to the debtor?

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES □ NO

If YES, please explain referring to the regulation. The Law of Obligation regulates the institute of statute of limitations - even in the case of statute of limitations, proceedings can be initiated, but if the debtor raises an objection of statute of limitations, and the lawsuit is founded, the lawsuit will be rejected - the general statute of limitations is 5 years

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES □ NO

SECTION 14 - RECEIVABLES FRM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES □ NO

If YES, please give the reference. Public procurement Law

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES □ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES □ NO

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.
the Law No. 14/16 on Factoring of the Federation of Bosnia and Herzegovina dated 24 February 2016

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
Federal banking Agency

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO x Article 25 of Law on Factorin

If YES,

a) Is approval of managers by the governing body required?

YES … NO …

b) Is approval of the shareholders by the governing body required?

YES … NO …

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO … All parties need to have approval of its home country / regulator

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

Article 26 of the Law on Factoring

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES … NO x

d) Pre-shipment Financing

YES … NO x

e) Factoring based on order approval

YES … NO x

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES … NO x

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES … NO x

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES … NO x

If YES, please provide the date, title and number of the law/regulation

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b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation

Article 67 of the Law on Factoring

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c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation

Article 27 of the Law on Factoring

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d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation

Article 97 of the Law on Factoring

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e) GAAP/IAS/IFRS Accounting Principles

YES x NO … Article 68 of the Law on Factoring

f) Obligation to publicly disclose yearly financial reports

YES x NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES … NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.

Factoring is a legal business of buying and selling existing unmatured or future short-term monetary claims arising from an agreement on the sale of goods or provision of services in the country and abroad, which is transferred to the factor through an agreement, with the factor assuming the claim from the seller in order to collect it in their own name and for their own account.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO …

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x Article 2 of the Law on Factoring

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO x

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …

If YES,

a) What are those reports?

Reports on type of factoring, exposure, maturity and they are prescribed by the Federal Banking Agency

b) Are they to be audited?

YES … NO x

c) What is the period to be reported?

Monthly, quarterly, annually – decision on minimum standards of structure, content, method and deadlines for submission of information and reports of factoring companies is made by the Federal Banking Agency

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES x NO …

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES x NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES x NO …

If YES, please explain
Transfer of receivables prohibited by law on factoring or related to the nature of creditor.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES x NO …

If YES, please explain and refer to the relevant regulation (title, date, number)
180 days from the date of sale of goods.

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO x

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO … Not specifically defined in regulations

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones
Central Loan Registry, LRC

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO x

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.
Law on Factoring (No 14/16)

Question 3-2: Is factoring based on assignment in your country?

YES … NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO x

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

Only agreement between assignor and assignee

YES … NO x

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO x

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO x

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO x. Undisclosed assignment is possible

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO x

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES x NO …

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

File lawsuits in accordance with the law

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO x

If YES, please provide the reference of the relevant regulation.

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YES … NO x

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO …

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YES … NO x

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YES … NO x

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YES x NO …

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YES x NO …

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YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES x NO …

If YES, are they also allowed to split a particular receivable between factors?

YES … NO …. It is not regulated.

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Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

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YES … NO x

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

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Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES … NO x

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO x

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It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO x

1) If YES, please explain the types and rates of the taxes for each case.

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2) If NO, is it value added tax?

YES x NO …

i) If YES, what is the rate of tax?

17%

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ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES x NO …

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO …

If YES,

a) what are they and how is the procedure?

Law on Factoring defines receivables which by their nature cannot be transferred.

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b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO x

If YES,

a) what are they and how is the procedure?

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b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO x

If YES, please explain the procedure.

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b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO x

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES x NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES x NO …

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES x NO …

If YES, please refer to the regulation (title, date, number)

Under the conditions defined by Law of Foreign Exchange Operations

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES x NO …

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

_____

_____

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.
Open Account, Bills of Exchange

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

Invoice

YES x NO …

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO x

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES x NO …

If YES, under which conditions?

A legal action can be refute if it is undertaken 6 months before submission of the proposal for opening bankruptcy proceeding.

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES x NO …

If YES, under which circumstances?

Under the conditions defined by Law on Obligations.

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO x

If NO, is it an equal right with the others?

YES … NO x

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days. X
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years. X
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years. X

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?

Procedure is initiated by the proposal of the authorised person, proposal should contain original foreign (or) court decision or arbitral decision, tax, ..,etc.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES x NO …

If YES, what is the rate?
10%

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
No data available

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

Late payment, Article 22 of the Law on Factoring

b) Can the factor issue an invoice for such interest to the debtor?

YES x NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO x

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO x

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO x

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES … NO x

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES … NO x

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES x NO …

If YES, Is there any law that prohibits the assignment of Government receivables?

YES x NO …. There is a law that limits the assignment

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO …

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES x NO …

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES … NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES … NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES … NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES … NO …

BOTSWANA

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES … NO x

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
NBFIRA requires factoring companies to have a special licence to operate.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES x NO …

If YES,

a) Is approval of managers by the governing body required?

YES x NO …

b) Is approval of the shareholders by the governing body required?

YES x NO …

c) Please provide the title, date and number of the relevant regulation/law.

Non-Banking Financial Institutions Regulatory Authority (NBFIRA) Act of Botswana

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Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)
N/A

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES … NO x

d) Pre-shipment Financing

YES x NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES … NO …. Not known yet.

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES x NO …

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation
Competition Authority Act

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation
Financial Intelligence Authority Act

c) Minimum Capital Requirement

YES … NO x

If YES, please provide the date, title and number of the regulation

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
Credit Information Bill to be Promulgated soon

e) GAAP/IAS/IFRS Accounting Principles

YES x NO …

f) Obligation to publicly disclose yearly financial reports

YES x NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES … NO x

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES … NO x

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO … Not known yet.

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …

If YES,

a) What are those reports?

Credit agreements, annual financial statements

b) Are they to be audited?

YES … NO x

c) What is the period to be reported?

Annual

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES … NO x

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES x NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO x

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES x NO …

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO x

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones
Facilities with other lenders

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES x NO …

If YES, please explain
KYC, AML, CFT, Credit evaluation, credit cover

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES … NO x

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

YES x NO … But includes cession as well

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …. Cession

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES x NO …

If YES, please explain.
Cession is also be used as distinct from normal assignment

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

Not yet but plans are to introduce a collateral registry.

YES … NO x.

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO x

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES x NO … Though not applicable in Botswana

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES x NO …

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES x NO …

If YES, please explain and refer to the regulation

Assignment notice stamped on the invoice to be accepted by the buyer.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES x NO …

If YES, how must the acceptance of notification be made in your country?

Assignment notice stamped on the invoice and signed in acceptance by buyer or buyer's representative

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES x NO …

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.
Normal demand based on accepted invoices assigned by the supplier to the factor.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES x NO …

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO …. N/A

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO … N/A

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

In the factoring agreement

YES x NO …

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES … NO x

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO x

If YES, are they also allowed to split a particular receivable between factors?

YES … NO …

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO …

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES x NO …

Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES … NO x

If YES, is e-invoicing obligatory for some situations?

YES … NO …

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES x NO …

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO x

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO x

i) If YES, what is the rate of tax?

14%

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES x NO …

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES …x NO …

If YES, please explain

Prior agreements of hypothecation of receivables.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO x

If YES,

a) what are they and how is the procedure?

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO x

If YES,

a) what are they and how is the procedure?

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO x

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO x. One has to do a due diligence

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES x NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO x

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES x NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO x

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO x

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

N/A

YES … NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO x

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES x NO …

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

_____

_____

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES … NO x

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES x NO …

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES x NO …

If NO, is it an equal right with the others?

YES … NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days. X
c) 61-90 days
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year. X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES … NO x

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES … NO x

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
3% per month

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

If agreed in the factoring agreement between the parties

---

b) Can the factor issue an invoice for such interest to the debtor?

YES x NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO … Not Sure

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO … Not Sure

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES x NO …

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES … NO … Not practiced yet

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES y NO …

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO x

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.
Not sure of the specific one

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES … NO … Not Sure

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES … NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES … NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES … NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES … NO …

Currently No Two-Factor Transaction Taking Place

BRAZIL

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☒ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☒ YES ☐ NO

Factoring is recognised in Brazil as a specific activity provided by commercial factoring companies only. However it is provided in many different forms and known as Receivables Finance, provided by Banks and FIDCS (investment funds for receivables)

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☐ YES ☒ NO Depending on the type and purpose, a NBFI might operate with receivables, but not acting as a factor.

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☒ NO

If YES, please explain.

Receivables Finance is offered in many different forms, and supervision depends on legal form used: Banks (supervised by the Central Bank), FIDCS (Investment Funds for Receivables supervised by the securities & exchange commission), and factoring companies that are not supervised.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☒ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☒ NO

If NO, please refer to the relevant regulation (title, date, number).

Factoring services are not part of Central Bank regulation for NBFI

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☒ NO **Factoring Companies are not NBFIs in Brazil**

Question 1-6: Are the following operations legally possible for factoring companies ~~(as NBFIs)~~ in your country? **Factoring Companies are not NBFIs, and NBFIs are not Factors**

a) Non-recourse Factoring?

☒ YES ☐ NO

b) Recourse Factoring?

☒ YES ☐ NO

c) Undisclosed Factoring?

☒ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☒ NO

e) Factoring based on order approval?

☐ YES ☒ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☒ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☒ YES ☐ NO

h) Reverse Factoring?

☒ YES ☐ NO

i) Islamic International Factoring?

☒ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☒ YES ☐ NO

k) POM (Purchase Order Management)

☐ YES ☒ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☒ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

SBDC Law 12529 - 2011

b) Anti-Money Laundering?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law 12.683 - 2012

c) Minimum Capital Requirement?

☐ YES ☒ NO

If YES, please provide the date, title and number of the regulation.

d) Data Protection?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

LGPD – Law nº 13.709 - 2018

e) GAAP/IAS/IFRS Accounting Principles?

☒ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☐ YES ☒ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☒ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☒ NO

Question 1-8: Are there any local factoring associations?

☒ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

ANFAC - www.anfac.com.br - atendimento@anfac.com.br

b) is membership compulsory?

☐ YES ☒ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☒ YES ☐ NO

If YES, please provide the definition.

"cumulative and continuous provision of services of credit and market assistance, credit management, selection and risks, management of receivables and payables, purchase of credit rights resulting from commercial sales in installments or from service rendering (factoring)"

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☒ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☒ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☒ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☒ YES ☐ NO

If YES,

a) What are those reports?

AML report

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b) Are they to be audited?

☐ YES ☒ NO

c) What is the period to be reported?

Annual basis

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☒ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☒ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☒ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☒ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☒ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☒ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☒ YES ☐ NO

If YES, please explain which ones

Public registries and credit bureau such as Serasa Experian

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☒ YES ☐ NO

If YES, please explain

KYC, legal registration, risk assessment, payment behaviour of account receivables

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☒ YES ☐ NO

If YES, please provide the date, title and number.

Civil Code - art 286 to art 298

Question 3-2: Is factoring based on assignment in your country?

☒ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☒ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☒ YES ☐ NO

If YES, please explain.

Endorsement of credit instrument: usually the invoice is issued together with a "Duplicata", which is a credit instrument that can be endorsed to the factor or discounted in a bank, transferring the credit rights.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☒ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☒ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Electronic registration provided by authorised private companies

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☒ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☒ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☒ YES ☐ NO

If YES, please explain and refer to the regulation.

In writing and acknowledged by the buyer - art 290 civil code

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☒ YES ☐ NO

If YES, please explain.

If buyer was not notified

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☒ NO

If YES, how must the acceptance of notification be made in your country?

The Law requires notification but not acceptance.

It is however safer to request written acknowledgement and acceptance

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☒ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☒ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☒ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Demonstrate that buyer was duly notified of the assignment, ideally acknowledged and accepted in writing, and assignment clause with correct payment instructions was written in the invoice.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☒ YES ☐ NO

b) Non-recourse factoring?

☒ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☒ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☒ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☒ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☒ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☒ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☒ NO

Question 3-21: Is assignment of part of a receivable possible?

☒ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☒ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☒ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☒ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES ☒ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☒ YES ☐ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☒ YES ☐ NO

Question 4-3: Is signature required on an invoice for validity?

☒ YES ☐ NO

Question 4-4: Is e-invoicing applicable in your country?

☒ YES ☐ NO

If YES, is e-invoicing obligatory for some situations?

☒ YES ☐ NO

If YES, please explain the criteria.

Mandatory e-invoicing is being progressively implemented in different regions and industries

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☒ YES ☐ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☒ YES ☐ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☐ YES ☒ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

☐ YES ☒ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

☒ YES ☐ NO

If YES, please explain.

Several taxes apply to factoring company revenue (factoring charges+interest):
PIS 1,65% flat, COFINS 7,6% flat, IOF (tax applied for all financial transactions) 0,38% flat+0,00589%per day
For Banks, only IOF applies
For FIDCS no tax

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

☒ YES ☐ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

☐ YES ☒ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

☐ YES ☒ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

☐ YES ☒ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

☐ YES ☒ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☒ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

☒ YES □ NO

If YES,

a) what are they and how is the procedure?

Court decision

---

b) is there any difference in the application depending on the type of factoring?

□ YES ☒ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☒ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES ☒ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☒ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☒ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☒ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☒ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☒ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES ☒ NO

d) can a receivable still be factorable under prohibition of assignment?

☒ YES ☐ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

☐ YES ☒ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

☒ YES ☐ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

☐ YES ☒ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☒ YES ☐ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☒ YES ☐ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☒ YES ☐ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☒ YES ☐ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☒ YES ☐ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☒ YES ☐ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

☐ YES ☒ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☒ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES ☒ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☒ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

☒ YES □ NO

If YES, please explain.

Foreign exchange regulations in Brazil are complicated matter, and it should be seen on a case by case basis, purchase of foreign currency, maintenance of accounts outside Brazil, and payments need to be legally justified and properly documented.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☒ NO

If NO, what is the most common payment structure?

Boleto: a bank collection instrument

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

☒ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- O ☒ 0-5 banking days
- O 6-10 banking days
- O 11-20 banking days
- O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

☒ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☒ NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ☒ NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ☒ NO

If NO, is it an equal right with the others?

☒ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
☒ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☒ YES ☐ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☒ YES ☐ NO

If YES, under which conditions?

The foreign decision must be submited to Brazilian Court for approval

---

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☒ YES ☐ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☐ YES ☒ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

☒ YES ☐ NO

If YES, what is it called?

CDI

IF YES, who publishes it?

CETIP — "Central de Custódia e Liquidação Financeira de Títulos"

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

N.A. but interbank rate for BRL is at 7,65% p.a.

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☒ YES ☐ NO

If YES,

a) under which circumstances?

It is a standard market practice

---

b) can the factor issue an invoice for such interest to the debtor?

☐ YES ☒ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☒ YES ☐ NO

If YES, please explain referring to the regulation.

Civil code art 206: 5 years

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☒ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☒ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

☒ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☒ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☒ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

☒ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☒ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES ☒ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☒ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☒ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☒ YES ☐ NO

If YES, please provide the date, title and number of the Law.

Civil code art 393 and 399

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☒ YES ☐ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES ☒ NO

If NO, please explain the additional requirements.

We don't have a court experience. Introductory letter signed by the buyer + invoice notice of assignment are mandatory. Factoring agreement, assignment term might be requested

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☒ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES ☒ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

☒ YES □ NO

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES **X** NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

X YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

X YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

X YES ☐ NO

If YES, please explain.
COAF-(Council For Financial Activities Control/Financial Intelligence Unit)

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES **X** NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES **X** NO

b) Is approval of the shareholders by the governing body required?

☐ YES **X** NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

X YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

X YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

X YES ☐ NO

b) Recourse Factoring?

X YES ☐ NO

c) Undisclosed Factoring?

X YES ☐ NO

d) Pre-shipment Financing?

X YES ☐ NO

e) Factoring based on order approval?

X YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

X YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

X YES ☐ NO

h) Reverse Factoring?

X YES ☐ NO

i) Islamic International Factoring?

☐ YES **X** NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

X YES ☐ NO

k) POM (Purchase Order Management)

X YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

X YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

The Federal Constitution of Brazil 1988, provides in its article 170, the general principles of economic activity, based on the free competition, freedom of initiative, consumer protection and repression of abuse of economic power.

Also Law No. 12.529/11, structures the Brazilian System for the Defense of Competition - SBDC and provides for the prevention and repression of infractions against the economic order (free competition in this case).

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b) Anti-Money Laundering?

X YES ☐ NO

If YES, please provide the date, title and number of the regulation.

A Lei 9.613/98 provides for crimes of "laundering" or concealment of assets, rights and values.

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c) Minimum Capital Requirement?

☐ YES **X** NO

If YES, please provide the date, title and number of the regulation.

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d) Data Protection?

X YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law 13.709/18 provides for the processing of personal data, including in digital media, by a natural person or by a legal entity governed by public or private law, in order to protect the fundamental rights of freedom and privacy and the free development of personality of the natural person.

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e) GAAP/IAS/IFRS Accounting Principles?

X YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☐ YES **X** NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

X YES ☐ NO

h) Reserve Requirements against liquidity risk?

☐ YES **X** NO

Question 1-8: Are there any local factoring associations?

X YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

ANFAC-website: anfac.com.br

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b) is membership compulsory?

☐ YES **X** NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

X YES ☐ NO

If YES, please provide the definition.

Law nº 9.249/95, consolidated in the national legal system a more precise definition for the practice of the commercial development activity, when, in its art. 58, described the activity of factoring companies as the activity of companies that explore the activities of cumulative and continuous provision of credit advisory services, marketing, credit management, selection and risks, administration of accounts payable and receivable, purchases of credit rights resulting from sales forward market or the provision of services.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES **X** NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES **X** NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES **X** NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES X NO

If YES,

a) What are those reports?

Factoring companies are regulated and registered by BACEN (Central Bank of Brazil), but there are no specific records for the factoring activity. However, such companies are required to regularly present their financial statements like any regularly incorporated company.

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b) Are they to be audited?

X YES ☐ NO

c) What is the period to be reported?

Annually, companies (from any segment) must submit their consolidated financial statements to the Federal Revenue Service of Brazil.

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

X YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

X YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES **X** NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES **X** NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES **X** NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

X YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

X YES ☐ NO

If YES, please explain which ones

Mainly their financial reports and feedback from banks wich have relationship.

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

X YES ☐ NO

If YES, please explain

Check With suppliers references about relantionship.

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

X YES ☐ NO

If YES, please provide the date, title and number.

Brazilian Commercial Code (Law No. 556/1850); Brazilian Civil Code, arts. 1,065 to 1,078, referring to the purchase of commercial credits; and Law nº 5.474/68, referring to trade bills involved in the purchase and sale of goods and in the provision of services;

Question 3-2: Is factoring based on assignment in your country?

X YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

X YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES **X** NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

X YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

X YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)
The main requirement is intra- party formalization.

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

X YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

X YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

X YES ☐ NO

If YES, please explain and refer to the regulation.

Article 290 of the Civil Code determines that the assignment of credit is not effective in relation to the debtor, except when notified; but by notified if there is the debtor who, in public or private writing, declared himself aware of the assignment made.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ***X*** NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES **X** NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES **X** NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES **X** NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

X YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

The Brazilian Civil Code (Law 10406/20020 provides for the right of recourse against the drawee who unjustly paid the assignor, provided that the drawee has been formally notified of the assignment of credits.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

X YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

X YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

X YES ☐ NO

b) Non-recourse factoring?

X YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

YES **X** NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES X NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

X YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

X YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

X YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

X YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

X YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

X YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

X YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

X YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

X YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

X YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

X YES □ NO

Question 4-3: Is signature required on an invoice for validity?

X YES □ NO

The signature of the drawee, declaring that he has received the goods object of the invoice (delivery receipt), is mandatory for the assigned credit title to be valid.

Question 4-4: Is e-invoicing applicable in your country?

X YES □ NO

If YES, is e-invoicing obligatory for some situations?

X YES □ NO

If YES, please explain the criteria.

Since 2009, Brazilian legislation establishes the mandatory use of the Electronic Invoice (NF-e), replacing the physical models (printed).

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES X NO

Not so far. The government sector and the Brazilian legal system are not prepared for this mechanism.

The federal government is on the right path, however, it should be materialized much more slowly than the private sector, considering not only the uncertainties of the Blockchain system itself (which will give security to the document), but also a regulatory environment that is still not satisfactory, which it can generate great legal uncertainty for all involved.

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

X YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

X YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES **X** NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

X YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES **X** NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES **X** NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES X NO

If YES,please explain

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES X NO

IF YES,please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

X YES □ NO

If YES, please explain.

The validity of the credit title depends on its certainty, liquidity and enforceability, which means that it must be the object of a legitimate commercial business.

If the condition of an extrajudicial executive title is verified, and its regular transmission to the factor, only debts linked to labor or tax debts could affect the validity and feasibility of an account receivable.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES **X** NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

YES **X** NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES **X** NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES **X** NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

X YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

X YES □ NO

If YES, please explain the procedure.

Yes, the contractual prohibition of assignment of receivables is valid, as long as it is expressly provided for between the parties in a contractual clause.

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES **X** NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

X YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

X YES □ NO

Yes, as long as a contractual amendment is made, containing a clause repealing the prohibition on the transfer of obligations.

(ii) can assignments be valid again if the debtor pays once to the assignee?

X YES □ NO

If there is a prohibition clause, if the debtor pays the transferee and the transferor does not disagree with this, the transaction is valid.

If the assignor deviates from this payment, it may charge both the debtor and the assignee (subsidiary liability).

d) can a receivable still be factorable under prohibition of assignment?

X YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES **X** NO

If YES, please explain.

_____

_____

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES **X** NO

If YES, please explain.

_____

_____

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

X YES □ NO

If NO, please explain.

_____

_____

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

X YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

X YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

X YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

X YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

X YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

X YES □ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES **X** NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

X YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

_____

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES **X** NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES **X** NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

0-5 banking days
X 6-10 banking days
11-20 banking days
More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

X YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

X YES □ NO

If YES, under which conditions?

Yes, Law 11.101/2005 (Bankruptcy and Concordat Law), with regard to fraud to creditors, provides in its article 168, that those who "Practice, before or after the sentence that decrees bankruptcy, grant judicial reorganization or approve the extrajudicial recovery, fraudulent act that results or may result in damage to creditors, in order to obtain or ensure undue advantage for themselves or others.

the subjective element of the crime is the intent.

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES **X** NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

X YES NO

If NO, is it an equal right with the others?

Labor, tax and secured creditors have preference in the event of the debtor's insolvency.

□ YES X NO

□

No. Unless the debt is secured by collateral (fiduciary sale).

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
X 91-180 days
O More than 180 days

There is no defined deadline, but we estimate something between 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
O 1 to 2 years (X)
O 2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

O 0 to 1 year
O 1 to 2 years (X)
O 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

X YES □ NO

If NO, what are the ways of legal settlement of disputes?

_____

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

X YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

X YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ***X*** NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

X YES □ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

X YES □ NO

If YES,

a) **under which circumstances?**

_____

_____

b) **can the factor issue an invoice for such interest to the debtor?**

X YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

X YES □ NO

If YES, please explain referring to the regulation.

Maximum time for collection of debts, certain and payable is 5 years.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) **The UNIDROIT Convention on International Factoring (1988)?**

X YES □ NO

b) **The United Nations Convention on the Assignment of Receivables in International Trade (2001)?**

X YES □ NO

c) **United Nations Convention on Contracts for the International Sale of Goods (1980)?**

X YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

X YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES **X** NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

X YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

X YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

X YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

YES **X** NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES **X** NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

X YES □ NO

If YES, please provide the date, title and number of the Law.

Yes, the Brazilian Civil Code (law 10406/2002) in its article 393.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

X YES □ NO

Yes, the exclusion of the Act of God and Force Majeure clause must be expressly provided for in the contract.

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

The Brazilian judiciary does not list an exemplary list to determine the occurrence of acts of God and force majeure. The particularities of each case must be taken into account, with the exception that unpredictability is common to all of them.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

X YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

X YES □ NO

If NO, please explain.

_____

_____

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES **X** NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES **X** NO

BURKINA FASO

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.
Loi No 006-2022/ALT 13 Juin 2022

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
Central Bank and Commission Bancaire de l'UMOA

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES x NO …

If YES,

a) Is approval of managers by the governing body required?

YES x NO …

b) Is approval of the shareholders by the governing body required?

YES x NO …

c) Please provide the title, date and number of the relevant regulation/law.

Loi Bancaire

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES … NO x

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES … NO …

d) Pre-shipment Financing

YES x NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES x NO …

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

YES x NO …

k) POM (Purchase Order Management)

YES x NO …

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES … NO x

If YES, please provide the date, title and number of the law/regulation

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b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation
Loi sur la Blanchissement des Capiteaux

---

c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation
Banks: xof 10 000 million and NBFI xof 3 000 million

---

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation

---

e) GAAP/IAS/IFRS Accounting Principles

YES x NO …

f) Obligation to publicly disclose yearly financial reports

YES x NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES x NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES x NO …

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES y NO …

If YES,

a) What are those reports?

---

b) Are they to be audited?

YES … NO x

---

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES x NO …

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES x NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES x NO …

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES x NO …

If YES, please provide the name, date and number
Plan compatible bancaire

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES x NO …

If YES, please explain
KYC

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES x NO …

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES x NO …

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES x NO …

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES x NO …

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES x NO …

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES x NO …

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES x NO …

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES x NO …

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES x NO …

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES x NO …

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES x NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES … NO x

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES … NO x

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO x

If YES, are they also allowed to split a particular receivable between factors?

YES … NO …

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES … NO x

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES … NO x

Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES … NO x

If YES, is e-invoicing obligatory for some situations?

YES … NO …

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO x

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES x NO …

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO …

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES x NO …

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES x NO …

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES x NO …

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES x NO …

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES … NO n

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO …

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO …

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO …

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES x NO …

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES … NO x

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES x NO …

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

_____

_____

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES x NO …

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES x NO …

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO x

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO …

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES x NO …

If NO, is it an equal right with the others?

YES … NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days. X
c) 61-90 days
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year. X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES x NO …

If YES, what is the rate?
6%

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES x NO …

If YES, what is it called?

IF YES who publishes it?
Central Bank

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
10%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

b) Can the factor issue an invoice for such interest to the debtor?

YES x NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO …

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO …

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO …

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO …

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES … NO x

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES … NO x

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES x NO …

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES … NO x

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES … NO x

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES … NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES … NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES … NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES … NO …

CAMEROON

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.
UEMOA – Uniform Law Project on Factoring

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES … NO x

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
Central Bank

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO …

If YES,

a) Is approval of managers by the governing body required?

YES … NO …

b) Is approval of the shareholders by the governing body required?

YES … NO …

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES … NO x

If NO, please refer to the relevant regulation (title, date, number)
UEMOA Uniform Law Project on Factoring

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES … NO x

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES x NO …

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation

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b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation

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c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation
Minimum capital requirement for financial institution authorised to do factoring (bank, financial institutions)

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d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
Law No 2013-450 relating to the protection of personal data

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e) GAAP/IAS/IFRS Accounting Principles

YES … NO x

f) Obligation to publicly disclose yearly financial reports

YES x NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES x NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.

Transaction by which the member transfers by contract with effect subrogation its debt to the factor, who in return for remuneration paid him in advance all or part of the amount of transferred receivables

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES x NO …

If YES, please define the relevant Islamic finance instrument.
Microfinance and Banking Law

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …

If YES,

a) What are those reports?

The application texts are being prepared

b) Are they to be audited?

YES x NO …

c) What is the period to be reported?

The application texts are being prepared

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES x NO …

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES x NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES x NO …

If YES, please explain
The Law explains 8 categories of sales that do not apply to factoring

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES x NO …

If YES, please provide the name, date and number
Application text are being prepared

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones
The member communicates to the factor any information allowing to assess the solvency of each debtor.

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO x

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.
OHADA Uniform Act relating to Security Rights

Question 3-2: Is factoring based on assignment in your country?

YES … NO x

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO x

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES x NO …

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES x NO …

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)
Registration in the trade and movable property credit registration

---

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO x

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO x

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO x

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … NO x

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO x

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES x NO …

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES x NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES x NO …

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES … NO x

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO …

If YES, are they also allowed to split a particular receivable between factors?

YES … NO …

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES … NO x

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES … NO x

Question 4-3: Is signature required on an invoice for validity?

YES … NO x

Question 4-4: Is e-invoicing applicable in your country?

YES … NO x

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO x

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO x

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO x

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES x NO …

If YES,

a) what are they and how is the procedure?

Any tax payment is a privilege

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES x NO …

If YES,

a) what are they and how is the procedure?

Any tax payment claim is a privilege

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO x

If YES, please explain the procedure.
Registrer trade

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO …

If YES, please explain.

Registrer trade

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES x NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES x NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES x NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES x NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES … NO x

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES … NO x

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES … NO x

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES x NO …

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES x NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO …x
If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES x NO …

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES x NO …

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO x

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO x

If NO, is it an equal right with the others?

YES … NO x

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days. X
b) 31-60 days
c) 61-90 days
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?

Through the exequatur procedure

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES x NO …

If YES, what is the rate?

It depends on the conditions applicable by each institution.

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
Not known

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

If the invoice has an expired due date.

b) Can the factor issue an invoice for such interest to the debtor?

YES x NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES x NO …

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES x NO …

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES x NO …

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES x NO …

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES x NO …

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES x NO …

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES x NO …

If YES, please list the differences.

<u>The competent court is different</u>

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.
Civil Code of the different countries

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES … NO x

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES … NO x

If NO, please explain the additional requirements.
Local Law applies

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES x NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES x NO …

SECTION 17 - ANY OTHER SUBJECTS

Are there any other subjects that you think are important in conducting factoring operations with your country?

YES x NO …

If YES, please explain.

To carry out factoring business it is important not to neglect the digitization aspect.

CANADA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

Any and all answers provided herein are solely based on the laws of Québec (and the federal laws of Canada applicable therein)

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

X YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Keizersgracht 559
1017 DR Amsterdam
The Netherlands
T: +31 (0)20 627 03 06
E: fci@fci.nl
W: www.fci.nl
Chamber of Commerce 40537377
VAT: NL801484169B01

Question 1-2-1: Are banks allowed to do factoring in your country?

X YES ☐ NO

NB : Under the *Bank Act*, a "foreign bank" is generally not permitted to engage in or carry on business in Canada except through a foreign bank subsidiary, an authorised foreign branch or other approved entity.

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

X YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

X YES ☐ NO

If YES, please explain.
If a specifically regulated entity such as a bank or credit cooperative.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES X NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

X YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

X YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

X YES ☐ NO

b) Recourse Factoring?

X YES ☐ NO

c) Undisclosed Factoring?

X YES ☐ NO

d) Pre-shipment Financing?

X YES ☐ NO

e) Factoring based on order approval?

X YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

X YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

X YES ☐ NO

h) Reverse Factoring?

X YES ☐ NO

i) Islamic International Factoring?

☐ YES ☐ NO
We do not have this answer

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

X YES ☐ NO

k) POM (Purchase Order Management)

☐ YES ☐ NO
We are not familiar with this concept

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters? a) Competition Rules?

X YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

Competition Act, R.S.C., 1985, c. C-34

---

b) Anti-Money Laundering?

X YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17 **provided that** the factoring company is an entity or person listed in Section 5 of said law

---

c) Minimum Capital Requirement?

☐ YES X NO
Unless a regulated entity, such as a bank

If YES, please provide the date, title and number of the regulation.

---

d) Data Protection?

X YES ☐ NO

If YES, please provide the date, title and number of the regulation.
For federally-regulated entities : Personal Information Protection and Electronic Documents Act (S.C. 2000, c. 5)
For all other entities in Québec :
ACT RESPECTING THE PROTECTION OF PERSONAL INFORMATION IN THE PRIVATE SECTOR, chapter P-39.1

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e) GAAP/IAS/IFRS Accounting Principles?

X☐ YES ☐ NO
For banks, we do not know for NBFIs

f) Obligation to publicly disclose yearly financial reports?

☐ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

x YES ☐ NO

h) Reserve Requirements against liquidity risk?

x YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES X NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

□ YES □ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

□ YES X NO
* "Factoring Entity" is, however, defined under the federal Factoring Entity Regulations, SOR/2001-38

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

□ YES X NO
Strict consumer protection would however apply (assignee being liable to the consumer in the same manner as the merchant/assignor)

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

□ YES X NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

□ YES □ NO

If YES, please define the relevant Islamic finance instrument.
We do not have this answer

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

X YES □ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

□ YES □ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

X YES □ NO
*assignment of certain claims created by or existing under specific laws may be restricted

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

□ YES X NO
b) Are there also some restrictions in terms of goods and/services involved?

□ YES X NO
*except for regulatory compliance restrictions (e.g. trade sanctions)

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

X YES □ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

□ YES X NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

X YES □ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

X YES □ NO

If YES, please explain which ones
Registre des droits personnels et réels mobiliers (Québec)

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

x YES □ NO

If YES, please explain

Regular full due diligence including KYC etc

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

X YES □ NO

If YES, please provide the date, title and number.
Civil Code of Québec

Question 3-2: Is factoring based on assignment in your country?

X YES □ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

□ YES X NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

□ YES X NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

□ YES X NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

X YES □ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Only for the effectiveness (perfection) of an assignment of a "universality of claims" (accounts) – Registre des droits personnels et réels mobiliers, online or paper requests, CAD52 for paper request / CAD44 for electronic submission, registration is made without expiry date

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Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

□ YES X NO

Registration of the assignment of a universality of claims would provide priority of future creditors but assignment would remain subject to prior creditors.
Assignment of claims (other than universality) is not perfected by registration and assigned accounts remain subject to rights of other registered creditors (release will typically be requested)

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

□ YES X NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

X YES □ NO

If YES, please explain and refer to the regulation.

In writing.

Effective against debtor “as soon as the debtor has acquiesced in it or received a copy or a pertinent extract of the act of assignment or any other evidence of the assignment which may be set up against the assignor.
If the debtor cannot be found in Québec, the assignment may be set up against the debtor and third persons upon the publication of a notice in accordance with the rules of the Code of Civil Procedure (chapter C-25.01) for notification by public notice.”

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

X YES □ NO

If YES, please explain.
Competing claims of right to payment (third-party registered creditor, for example).

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

□ YES X NO
Acceptance will however generally protect the assignee against compensation/set-off claims.

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

□ YES X NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

□ YES X NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

X YES □ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

X YES □ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

X YES □ NO
*we do not offer this form of factoring, however assignment as collateral (i.e. without transfer of ownership) is not recognised by Québec law

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

□ YES X NO

b) Non-recourse factoring?

x YES ☐ NO
The complete answer would have to be looked at by our accounting group not legal.

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

☐ YES X NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES X NO
*The assignment of an account as collateral for obligations of the assignor is no longer recognised under Québec law. Only an outright assignment (sale) is legally recognised.

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

X YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO
We do not understand the question

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

X YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

X YES □ NO
*with obvious credit and documentary risks that this would entail

Question 3-21: Is assignment of part of a receivable possible?

X YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent* assignees of the relevant receivables?

X YES □ NO
*If debtor is duly notified of an assignment (but has not acquiesced unconditionally in the assignment), compensation (set-off) remains possible for debts and obligations of assignor but only those arising up until notification.
*first and subsequent

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

X YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

X YES □ NO
*No legal prohibition, but not advisable.

If YES, are they also allowed to split a particular receivable between factors?

X YES □ NO
*No legal prohibition, but not advisable.

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

X YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

X YES □ NO

* Typically after signature of a frame-work agreement providing for such electronic form of assignements

Question 4-3: Is signature required on an invoice for validity?

□ YES X NO

Question 4-4: Is e-invoicing applicable in your country?

X YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES X NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

X YES □ NO
*BL that is not in paper format will not be considered negotiable.

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES x□ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES x□ NO

1) If YES, please explain the types and rates of the taxes for each case.

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and nonbanks?

□ YES □ NO

If YES, please explain.
We do not have this answer

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES □ NO
We do not have this answer

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES □ NO
We do not have this answer

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES X NO
*Generally the deemed trust of tax authorities does not operate over assets which a tax debtor has sold in the ordinary course to third party purchasers.

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES X NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES X NO

*Stamp duty or transfer tax would only indirectly apply if factoring transaction involves real (immoveable) property.

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

X YES □ NO

If YES, please explain.
Rights (moveable hypothec) of any third party creditor registered before assignment, tax authorities for unpaid taxes on factored receivables for which assignee is aware prior to assignment.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's* claim invalidates the assignment?

X YES □ NO

If YES,

a) what are they and how is the procedure?

Certain receivables created by or existing under law and specifically described as non-assignable (e.g. "amount due or becoming due by the federal government as or on account of salary, wages, pay or pay and allowances", "amounts by the State [Québec] in respect of a fiscal law as a refund"…)
*debtor's

---

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's* claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

X YES □ NO

If YES,

a) what are they and how is the procedure?

As account debtor, the federal government will not acknowledge assignment unless assignment (of any receivable payable by the federal government) is notified to the Crown in prescribed manner (s. 68 of Financial Administration Act (R.S.C., 1985, c. F-11)
+ Where the transferee is at arms' length with the transferor, a trustee in bankruptcy may attack any transactions where creating a preference that occur in the time beginning three months prior to the initial bankruptcy event and ending on the date of bankruptcy (12 months if non-arm's length).
*or debtor's

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES X NO

*Civil Code provides that "a restriction on the exercise of the right to dispose of property may only be stipulated by gift or will". Beyond this two (non-contractual) means of restricting assignment, a restriction could only be made by way of law (specific legal restrictions, i.e. amounts by the State [Québec] in respect of a fiscal law as a refund.).
Despite this limitation on restrictions, it is advisable to request any contractual provision purportedly prohibiting assignment to be deleted (potential exposure of assignor to contractual damages)

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES □ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES □ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES □ NO

If YES, please explain.

Nothing general but needs to be looked at case by case, we cannot answer on general terms

---

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

X YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

X YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

X YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

X YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

X YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

X YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES X NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

X YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

X YES □ NO

*Yes, if local debtor is located in Québec (provided that sales contract does not provide for exclusive jurisdiction of courts of another country). Québec court will however apply law applicable to sales contract.

Question 8-9: Are there any exceptions to the answers you have provided above?

X YES □ NO

If YES, please explain.

*Yes, if local debtor is located in Québec, provided however, that sales contract does not provide for exclusive jurisdiction of courts of another country or expressly exclude jurisdiction of Québec courts. For matters related to sales contract, Québec court will apply law applicable to sales contract / chosen by the parties if it is pleaded.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES X NO

If NO, what is the most common payment structure?
Electronic payments

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

x□ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

X 0-5 banking days o 6-10 banking days o 11-20 banking days o More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

x□ YES □ NO
but not advisable, this is not our practice

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

X YES □ NO

If YES, under which conditions?
-Where the transferee is at arms' length with the transferor, a trustee in bankruptcy may attack any transactions where creating a preference that occur in the time beginning three months prior to the initial bankruptcy event and ending on the date of bankruptcy (12 months if non-arm's length). The trustee bears the burden of proving that the bankrupt intended to give a preference to that creditor, although a transaction will be presumed to have the requisite intent if it has the effect of giving a creditor a preference.
- Trustee may also attack transactions between the debtor and persons who provide the debtor with either no consideration or inadequate consideration for the asset, goods, or services provided

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES X NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES X NO

*Unless receivable is guaranteed by hypothec (lien) and such hypothec is also transferred to assignee.

If NO, is it an equal right with the others?

□ YES X NO

*with other unsecured creditors

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

o 0- 30 days o 31-60 days o 61-90 days o 91-180 days x More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court? o 0 to 1 year o 1 to 2 years o 2 to 3 years o More than 3 years

Impossible to determine, case by case

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case? o 0 to 1 year o 1 to 2 years o 2 to 3 years o More than 3 years

Impossible to determine, case by case

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

X YES □ NO

* if provided for in sales contract

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

X YES □ NO

If YES, under which conditions?

s. 652 of Code of Civil Procedure:

An arbitration award made outside Québec, whether or not confirmed by a competent authority, may be recognized and declared to have the same force and effect as a judgment of the court if the subject matter of the dispute is one which could be submitted to arbitration in Québec and if recognition and enforcement of the award are not contrary to public order. The same applies for a provisional or safeguard measure.

The application for recognition and enforcement must be accompanied by the arbitration award or measure concerned and the arbitration agreement and by a translation certified in Québec of those documents if they are drawn up in a language other than French or English. Consideration may be given, in interpreting the rules in this matter, to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration at New York on 10 June 1958.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

X YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

X YES □ NO

If YES, what is the rate?
Applicable in the absence of a contractually agreed rate, the legal rate is 5% p.a.

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

X YES □ NO

If YES, what is it called?
CORRA (Canadian Overnight Repo Rate Average)

IF YES, who publishes it?
Bank of Canada

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Depends of the risk rating of the borrower; a AAA would be at +/- 60 bps

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Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

X YES □ NO

If YES,

a) under which circumstances?

Under the same circumstances as the assignor would be entitled to claim. If late payment interest is provided under sale contract, factor would be entitled to claim such assigned

right. In the absence of a contractual rate, factor could also claim interest at legal rate accruing as of its formal demand against debtor.

---

b) can the factor issue an invoice for such interest to the debtor?

X YES □ NO

*nothing limits this, however it would be a very rare practice

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

X YES □ NO

If YES, please explain referring to the regulation.
Legal limitation period (*prescription légale*) is generally 3 years.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES X NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES X NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

X YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES X NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

X YES □ NO

If YES, please give the reference.
For receivables owing by federal administration, see answer to question 6-3

Question 14-2: Is e-invoicing acceptable by public administrations?

X YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

X YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

X YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

X YES □ NO

The federal *Financial Administration Act* provides for a general prohibition unless certain criteria are met and notification is given in prescribed manner (see. s. 67-71 https://laws.justice.gc.ca/eng/acts/F-11/FullText.html)

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

X YES □ NO

If YES, please list the differences.
For legal action against it, government of Québec is referred to it in the proceedings as the "Attorney General of Québec" followed by the name of the government department or body concerned (for example, Attorney General of Québec – Ministère de la Famille).

Against federal administration:
Before Federal court: The appropriate documentation must be filed in the Federal Court Registry. Regional Federal Court Registry Offices. When the Crown is sued in the Federal Court, the proper defendant is "Her Majesty The Queen". For Federal Court, service on the Attorney General is set out in Rule 133 of the *Federal Courts Rules*.
Before Québec courts: The Deputy Attorney General of Canada must be served, either at the office of the Deputy Attorney General in Ottawa or at the appropriate regional office of the Department of Justice Canada. When the Crown is sued in provincial court, the proper defendant is "Attorney General of Canada."

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

X YES □ NO

If YES, please provide the date, title and number of the Law.
Covered in general terms by the Civil Code (s. 1470 in particular)
https://www.legisquebec.gouv.qc.ca/en/document/cs/CCQ-1991

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

X YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.
Event must be "unforeseeable and irresistible", "including external causes with the same characteristics" (definition provided under Civil Code)

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

x□ YES □ NO
Provided that i) IF and EF have accepted GRIF and edifactoring.com rules amongst themselves and ii) account debtor has received proper notice of assignment. A pertinent extract of the act of assignment between supplier and EF may also be required before a court.

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

X YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES X NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES x□ NO
Until we would have to pay under approval

SECTION 17 ANY OTHER SUBJECTS

Question 17-1: Are there any other subjects that you think are important in conducting factoring operations with your country?

X YES □ NO

If YES, please explain.
Conflict of laws rules : Effectiveness (perfection) of an assignment of receivables will typically be determined by the laws of the *situs* of the receivable (not automatically those of the assignor's jurisdiction).

Thank you.

CHILE

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES … NO x

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES … NO x

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO x

If YES,

a) Is approval of managers by the governing body required?

YES … NO …

b) Is approval of the shareholders by the governing body required?

YES … NO …

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES x NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES … NO x

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

YES x NO …

k) POM (Purchase Order Management)

YES x NO …

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation
Law No. 20169 Regulates Unfair Competition. Decree Law 21. Defence of Free Competition

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation
Law 20393 Criminal Liability of Legal Persons

c) Minimum Capital Requirement

YES … NO x

If YES, please provide the date, title and number of the regulation

d) Data Protection

YES … NO x

If YES, please provide the date, title and number of the regulation

e) GAAP/IAS/IFRS Accounting Principles

YES … NO x

f) Obligation to publicly disclose yearly financial reports

YES … NO x

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES … NO x

h) Reserve Requirements against liquidity risk

YES … NO x

Question 1-8: Are there any local factoring associations?

YES x NO …

If YES,

a) please provide the name(s) and contact details (website and e-mail).

ACHEF – website: www.achef.cl and EFA – website: www.efa.cl

b) is membership compulsory?

YES … NO x

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES … NO x

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO x

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES … NO x

If YES,

a) What are those reports?

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b) Are they to be audited?

YES … NO …

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c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES … NO x

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES … NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO …

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO x

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones
Patrimony, Guarantees, Movable property

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES x NO …

If YES, please explain
Sign contract

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.
Law 19.983

Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES x NO …

If YES, please explain.
The registration of the transfer is automatic in the Internal Revenue Service (www.sii.cl) Governmental Institution

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Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES … NO x

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

YES x NO …

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

The Registration is automatic with the

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO x

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES x NO …

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES x NO …

If YES, please explain and refer to the regulation
It is electronic, automatic

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES x NO …

If YES, please explain
Rejecting the content of the invoice within 8 days from the issuance.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES x NO …

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Only domestic

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES … NO x

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO x

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO x

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES … NO x

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES x NO …

If YES, are they also allowed to split a particular receivable between factors?

YES … NO x

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO …

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES x NO …

Question 4-3: Is signature required on an invoice for validity?

YES … NO x

Question 4-4: Is e-invoicing applicable in your country?

YES x NO …

If YES, is e-invoicing obligatory for some situations?

YES x NO …

If YES, please explain the criteria
There are always electronic invoices.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES x NO …

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES x NO …

1) If YES, please explain the types and rates of the taxes for each case.

The commissions are subject to taxes and the assignment has no tax

2) If NO, is it value added tax?

YES x NO …

i) If YES, what is the rate of tax?

19%

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES x NO …

If YES, please explain
Preferential credits according to Civil Code

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO x

If YES,

a) what are they and how is the procedure?

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES x NO …

If YES,

a) what are they and how is the procedure?

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES … NO x

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO …

If YES, please explain the procedure.

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b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO x

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO x

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO …

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO x

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES x NO …

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES x NO …

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES x NO …

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES x NO …

If YES, under which circumstances?
Suspicious payments

Fradulant acts

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES x NO …

If NO, is it an equal right with the others?

YES … NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days
d) 91-180 days
e) More than 180 days. X

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years. X
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years. X
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES … NO x

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES … NO x

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
There are no minimums, but a usual average can be given

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

Law of payment to 30 days

---

b) Can the factor issue an invoice for such interest to the debtor?

YES x NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES x NO …

If YES, please explain referring to the regulation
There is no minimum term, as long as it is expired

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES x NO …

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES x NO …

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES x NO …

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO x

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES x NO …

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES x NO …

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO x

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES x NO …

If YES, please list the differences.

The Law requires an additional certificate of conformity of the invoice in order to be irrevocably accepted.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.
Civil Code

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES x NO …

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.
Requirement: Be judicially declared.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES x NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES x NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES x NO …

CHINA

SECTION1-LOCAL REGULATIONS

Question 1-1：

Yes.

(1) Civil Code of the People's Republic of China (Book Ⅲ Contracts, Chapter XVI Factoring Contracts)

Document Number: Order No. 45 of the President of the People's Republic of China

Date Issued: May 28th, 2020

Effective Date: Jan 1st, 2021

Issuing Authority: National People's Congress

(2) The Interim Provisions for Factoring Business of Commercial Banks

Document Number: Order No. 5, 2014 of China Banking Regulatory Commission

Date Issued: April 10th, 2014

Issuing Authority: China Banking Regulatory Commission

Question 1-2-1:

Yes

Question 1-2-2:

Yes

Question 1-3:

Yes. Unlike banks, non-bank factoring companies are actually regulated and supervised by a local authority known as "financial supervisory

bureau". The China Banking and Insurance Regulatory Commission (Formerly the China Banking Regulatory Commission, which belongs to the central government) is only responsible for establishing general supervisory polices on the non-bank factoring industry and authorizes local financial supervisory bureaus, which are bodies of the local governments, to exercise concrete supervision. The local financial supervisory bureau can also develop their own supervising polices based on different local environments.

On the other hand, all banks in China are governed and supervised by the China Banking and Insurance Regulatory Commission (CBIRC) directly. CBIRC sets up agencies all around the country to supervise banks, and the agencies are not parts of the local governments.

Question 1-4-1:

Yes

a) Yes. At least the resume of the management is required to be reported to the governing body and reviewed.
b) Yes. Setting up new non-bank factoring companies must be approved by the governing body and the approving process inevitably includes approving the shareholders. If a non-bank factoring company wants to change shareholder, it also needs the approval of the local financial

supervisory bureau.

c) Different local financial supervisory bureaus have issued their own versions of provisions for factoring business of non-bank factoring companies.

Question 1-4-2:

Yes

Question 1-5；

Yes，but only limited to providing credit assessment on debtors, and consulting business related to factoring

Question 1-6:

a) Yes

b) Yes

c) Yes

d) No

e) Yes

f) Yes

g) Yes

h) Yes

i) No

j) Yes

k) Yes

Question 1-7:

a) Yes.

Law of the People's Republic of China Against Unfair Competition

Document Number: Order No. 10 of the President of the People's republic of China

Date Issued: Sep 2nd, 1993

Latest Date Revised: April 23rd, 2019

Issuing Authority: National People's Congres

b) Yes

c) Yes

d) Yes

e) Yes

f) Yes

g) Yes

h) Yes

Question 1-8:

Yes

a)

(1) CBA Factors Association of China (CBA: China Banking Association) also known as the Factoring Committee of China Banking Association website: https://www.china-cba.net/index/lists/catid/113.html

(2) Commercial Factoring Expertise Committee of CATIS

(CATIS: China Association of Trade in Services)

website: http://www.cfec.org.cn, Email: cfec@cfec.org.cn

b) No

c) Question 1-9

Yes

A factoring contract shall mean a contract whereby a creditor of accounts receivable assigns its existing or future accounts receivable to the factor, and the factor provides services such as financing, accounts receivable management or collection, and guarantee of the debtor's payment, etc.

Question 1-10

No

Question 1-11

No

Question 1-12

No

Question 1-13

Yes

a) Financial accounting reports, statistical reports, operation and management reports and other documents

b) No

c)

Question 1-14

Yes

a) No

b) Yes

The underlying transaction that involves the goods and/services must be legal.

Question 1-15

No

Question 1-16

No

SECTION 2-FACTORING SUPPLIER RISK MITIGATION

Question 2-1

Yes

Question 2-2

Yes

Mortgage/charge, pledge/pawn, lien and more broadly, guarantee

Question 2-3

Yes

Check its trading records and fund transfer records if the factor is a bank and the new client used to clear funds in the bank

SECTION 3-TRANSFER OF RECEIVABLES

Question 3-1

Yes

Civil Code of the People's Republic of China (Book Ⅲ Contracts, Chapter XVI Factoring Contracts)

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Question 3-2

Yes

Question 3-3

No

Question 3-4

No

Question 3-5-1

No

Question 3-5-2

Yes

Registration Authority: Credit Reference Center (CRC), the People's Bank of China

China’s central Bank, the People’s Bank of China, has developed an online platform called “the CRC Uniform Registration System for Movable Property Financing” where the mortgagee, pledgee, assignee, lessor etc. can register their rights. The system is made up of different modules as “financial leasing”, “assignment of receivables”, “pledge of receivables”, “pledge of certificate of deposit, warehouse receipt and bill of lading”, etc.

Question 3-5-3

Yes

Question 3-6

Yes

Question 3-7

No

Question 3-8

Yes

Force Majeure

Question 3-9

No

Question 3-10

No

Question 3-11

No

Question 3-12

Yes

Question 3-13

Yes

Question 3-14

No

Question 3-15

a) No

b) No (for bank factors)

Question 3-16

No

Question 3-17

Yes

For bank factors, in non-recourse factoring the prepayment may be treated as a loan, but the borrow is the debtor rather than the supplier.

Question 3-18

Yes

Question 3-19

Yes

Question 3-20

Yes, but bank factors cannot finance future receivables under the regulations of China Banking and Insurance Commission.

Question 3-21

Yes

Question 3-22

Yes

Question 3-23

Yes

Yes

Yes

SECTION 4-ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Question 4-1

Yes

Question 4-2

Yes

Question 4-3

No

Question 4-4

Yes

Yes

For Example, online shopping, the online vendor can only provide

electronic invoices.

Question 4-5

Yes

SECTION 5-TAXATION

Question 5-1

Yes

No

Yes

6%

Question 5-2

No

Question 5-3

No

Question 5-4

No

Question 5-5

No

Question 5-6

No

Question 5-7

Yes

If the factoring transaction is deemed as a loan by the tax authority,

it is subject to stamp duty. If it is deemed as discounting (just as bill discounting) by the tax authority, there is no stamp duty.

SECTION 6- THIRD PARTY RIGHTS

Question 6-1

No

Question 6-2

No

Question 6-3

No

SECTION 7-PROHIBITION AGAINST ASSIGNMENT

Question 7-1

No

Question 7-2

No

Question 7-3

Yes

SECTION 8-INTERNATIONAL TRANSACTIONS

Question 8-1

Yes

Question 8-2

No

Question 8-3

Yes

Question 8-4

No

Question 8-5

Yes

Question 8-6

Yes

Too many foreign exchange control regulations

Question 8-7

No

Question 8-8

No, only if the judges are able to do so

Question 8-9

In July 2021, The Second Intermediate People's Court of Shanghai Municipality, for the first time ever, judged a case between a Chinese state-owned enterprise and a Swiss ship engine manufacturer based on Swiss and Singaporean law.

SECTION 9-PAYMENT

Question 9-1

No

TT payment

Question 9-2

No.

Question 9-3

Not sure. Checks are not frequently used.

Question 9-4

Not sure. Checks are not frequently used.

SECTION 10-INSOLVENCY OF SUPPLIERS OR DEBTORS

Question 10-1

No

Question 10-2

No

Question 10-3

Yes

Question 10-4

Not sure

SECTION 11-DISPUTES

Question 11-1

Not sure

Question 11-2

Not sure

Question 11-3

Yes

Question 11-4

Yes

If the contract of the underlying transaction stipulates that the dispute should be settled by a foreign arbitration tribunal such as ICC or FCI.

Question 11-5

Yes

SECTION 12-LATE PAYMENTS

Question 12-1

No

Question 12-2

No. But the central bank is trying to make DR (Interbank bond repurchase rate) the RMB risk free rate.

Question 12-3

It’s up to the bank that lends money to the factoring company.

Question 12-4

Yes

a)

If the contract of the underlying transaction stipulates that there is interest for late payment

b)

Not sure

Question 12-5

Not sure

SECTION 13-INTERNATIONAL CONVENTIONS

Question 13-1

No

Question 13-2

No

Question 13-3

No

Question 13-4

No

SECTION 14-RECEIVABLES FROM PUBLIC ADMINISTRATION

Question 14-1

No

Question 14-2

Yes

Question 14-3

Yes

Question 14-4

No

Question 14-5

No

SECTION 15-FORCE MAJEURE

Question 15-1

Yes

Civil Code of the People's Republic of China (Book Ⅲ Contracts, Chapter XVI Factoring Contracts)

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Question 15-2

No

SECTION 16-INTERNATIONAL TWO-FACTOR TRANSACTIONS

Question 16-1

Yes

Question 16-2

Yes

Question 16-3

No

Question 16-4

No

COLOMBIA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognizes and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

A: YES
If YES, please give the date, number, if any, and title of the Law or Regulation.
In Colombia, factoring operations are regulated as atypical contracts, despite of that we have the following regulatory framework:

- The most representative regulation is the Decree 2669 of 2012 by which the factoring operations are regulated for the non-banking financial institutions.
- Commercial Code – Decree 410,1971, in relation to the circulation of securities through endorsement, and its modifications by Law 1231,2008 and Law 1676, 2013 (that modifies the Law 1231 of 2008 and regulates tacit and express acceptance of the invoice and LAFT issues).
- Civil Code – Law 84, 1873.

- Decree 1625 de 2016: Regulates financial transaction tax exemptions for factors monitored by the Financial Superintendency of Colombia (SFC).
- Decree 1154, 2020 (MINCIT –Industry and commerce Ministry), by which the circulation of electronic invoices is regulated.
- Resolution 015, 2021 (DIAN—Tax Authority), by which the registration of the electronic invoice of sale is developed as a security and is issues the technical annex for the registration of the electronic sales invoice as a security

Question 1-2-1: Are banks allowed to do factoring in your country?
A: YES

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?
A: YES

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?
A: YES

If YES, please explain.

- The Financial Superintendency of Colombia (SFC) monitors factoring activities carried out by financial institutions.
- Superintendency of Companies monitors factoring activities carried out by NBFI.
- Superintendency of industry and commerce –SIC.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?
A: NO

If YES,

a) Is approval of managers by the governing body required?

☐YES ☐NO

b) Is approval of the shareholders by the governing body required?

☐YES ☐NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?
A: YES

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?
A: YES

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?
A: YES

b) Recourse Factoring?
A: YES

c) Undisclosed Factoring?
A: YES

d) Pre-shipment Financing?
A: NO

e) Factoring based on order approval?
A: NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?
A: NO

g) Two-Factor International Factoring such as with FCI?
A: NO

h) Reverse Factoring?
A: YES

i) Islamic International Factoring?
A: NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?
A: YES

If YES, please provide the date, title and number of the law/regulation.

- Decree 2152,1992: Whereby the Ministry of Economic Development was restructured.
- Law 155,1959: Provisions on restrictive business practices.
- Ley 1231, 2008: By which the invoice is unified as a security as a financing mechanism for the micro, small and medium business, and other provisions are issued.
- Law 1340, 2009: Through which rules are issued on the protection of competition.

b) Anti-Money Laundering?
A: YES

If YES, please provide the date, title and number of the regulation.

- Decree/ Law 663, 1993 EOSF –Organic statute of the financial system.
- Law 1676, 2013 (article 88). By which access to credit is promoted and rules are issued on security interests.
- External Circular 027, 2020. Part I, Title IV, Chapter IV: Instructions relating to the management of the risk of money laundering and the financing of terrorism.
- Decree 1154, 2020. Modifications regarding the circulation of the electronic sales invoice as a security

c) Minimum Capital Requirement?
A: NO

If YES, please provide the date, title and number of the regulation.

d) Data Protection?
A: YES

If YES, please provide the date, title and number of the regulation.

- Political Constitution, 1991- article 15
- Law 1266, 2008: Habeas data Law
- Law 1581, 2012: By which general provisions are issued for the protection of personal data. This law is regulated by the Decree 1377, 2013.
- Decree 1074, 2015: Single Regulatory Decree of the Commerce Sector, Industry and Tourism. Chapter 25 by which the Law 1581 of 2012 is regulated, and Chapter 26 which aims to regulate the minimum information that the National Registry of Databases must contain, created by Law 1581 of 2012, as well as the terms and conditions under which the register in this the Responsible for the Treatment.

e) GAAP/IAS/IFRS Accounting Principles?
A: YES

f) Obligation to publicly disclose yearly financial reports?
A: YES

g) Risk Management that covers monitoring of operation, internal control and risk assessment?
A: YES

h) Reserve Requirements against liquidity risk?
A: YES

Question 1-8: Are there any local factoring associations?
A: YES

If YES,

a) please provide the name(s) and contact details (website and e-mail).
• Asobancaria https://www.asobancaria.com/ , info@asobancaria.com
• Asofactoring - Asociación Colombiana de Factoring y Entidades Afines. (Colombian Association of Factoring and Related Entities) http://www.asofactoring.com/

b) is membership compulsory?

A: NO

Question 1-9: Is there a legal definition of factoring / factoring contract?
A: YES

If YES, please provide the definition.
The following definition is taken from Decree 2669 of 2012 (by which the factoring operations are regulated for the non-banking financial institutions).

- Factoring activity: Factoring activity is understood to be the professional and habitual performance of factoring operations that may be accompanied by the related operations referred to in this decree.

- Factoring operation: That one by which a factor acquires, for consideration, certain patrimonial rights, of credit content, regardless of the title that contains them or its cause, such as and without being limited to them: sales invoices, promissory notes , bills of exchange, pledge bonds, enforceable judgments and conciliation acts, the transfer of which will be made according to the nature of the rights, by endorsement, in the case of securities or by assignment in other cases.

- Factoring contract: It is the agreement of wills through which the factoring operations defined in this decree are implemented

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?
A: YES

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?
A: NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?
A: NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?
A: YES

If YES,

a) What are those reports?
It's important to mention that we have some reports where you can easily identify the balances, credits and clients corresponding to the Product Factoring, such as:

- F-453 "Distribution of balances by products"
- F-454 "Amounts and number of credits approved or disbursed for crops"
- F-536 Individual Report of Modified and Restructured Active Credit Operations.
- Monthly Requirement CE007, C014, C022
- PAD Weekly Requirement
- PAD Approved and Rejected Requests Requirement

And there are other reports in which we inform the supervising authorities of the entire portfolio of the Bank, grouped by the type of portfolio, clients, cities, types of guarantees, rates etc. in which information on the indebtedness of customers with Factoring products is sent, but where it's not so easy to identify them because they are sent grouped with the other products. Those are:

- F-341- Individual Report by Debtor - Active Credit Operations
- F-238 Net stable funding ratioF-338- Breakdown of sectorization of main operations
- F-322-323 Deposits and Placements by Municipality
- F-230 Daily Control of Own Position and Global Exchange Position
- F-281 Weekly Report Main Active and Passive Accounts-Closing Balances
- F-326- Liquidation of Commercial and Consumer Credits
- F-343- Individual Report - Sale and / or Purchase of Active Credit Operations and / or Write-off PortfolioF-473- Interest Rate Structure of the Balance Sheet Variations
- UIAF - PRGE General Products ReportF-534- Use of financial products and services
- F-317- Interest rates, loan portfolio balances, natural and legal personsF-458- Contractual Cash Flows and Standard Measurement of Liquidity Risk
- F-477- Consolidated report of individual loan portfolio provisions - countercyclical

b) Are they to be audited?

YES

c) What is the period to be reported?
They have different periodicities, there are reports that are sent monthly, daily, weekly, quarterly or sporadically. For example, the F-453 is a monthly report and is sent with information to the court of the last day of the previous month, while the PAD Weekly Requirement is a weekly report and is sent with information to the court of every Tuesday.

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)
A: NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐YES ☐NO

b) Are there also some restrictions in terms of goods and/services involved?

☐YES ☐NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?
A: YES

If YES, please explain and refer to the relevant regulation (title, date, number).

Law 2024, 2020. Fair Payment Law (Ley de Pago en plazos justos), through which rules of payment in fair deadlines in the commercial field and other provisions are made in the matter of payment and billing. This law only applies to local factoring operations.

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?
A: NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?
A: YES

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?
A:NO

If YES, please explain which ones

Question 2- 3: Are there other steps that a factor in your country usually take before onboarding a new client?
A: YES

If YES, please explain

Financial entities are obliged by law to know their clients when linking them. The Financial Superintendency of Colombia (SFC) establishes the parameters and data that monitored entities must follow (Basic Legal Circular).

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?
A: YES

If YES, please provide the date, title and number.

- Commercial Code – Decree 410,1971, in relation to the circulation of securities through endorsement, and its modifications by Law 1231,2008 and Law 1676, 2013 (that modifies the Law 1231 of 2008 and regulates tacit and express acceptance of the invoice and LAFT issues).
- Civil Code – Law 84, 1873.
- Decree 2669, 2012 by which the factoring operations are regulated for the non-banking financial institutions.
- Decree 1154, 2020 (MINCIT –Industry and commerce Ministry), by which the circulation of electronic invoices is regulated.
- Resolution 015, 2021 (DIAN--National Customs and Tax Department), by which the registration of the electronic bill of sale is developed as a security and is issues the technical annex for the registration of the electronic sales invoice as a security.

Question 3-2: Is factoring based on assignment in your country?
A: YES

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?
A: NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?
A: YES

If YES, please explain.
The entity *DIAN* is been working in a project called RADIAN, which refers to a system through which electronic invoices can circulate in national territory. It won´t work with subrogation, it will only work by endorsement.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?
A: YES (By RADIAN but only for the circulation of electronic invoices by endorsement).

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?
A: YES

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

In Colombia, by RADIAN project, the DIAN is looking for a system through which electronic invoices can circulate in national territory by endorsement, as we mention in the question 3-4.
• This system is being implemented but it is not working yet.
• The electronic invoices will circulate outside the system, but the endorsement is registered in the way to have the quality of legitimate holder.
• We still do not know the costs.

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?
A: YES (By RADIAN but only for the circulation of electronic invoices by endorsement).

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

A: NO

Question 3- 7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)
A: NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?
A: NO

If YES, please explain.

Question 3- 9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?
A: NO
If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

A: NO

Question 3- 11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?
A: NO

If YES, please explain.

Question 3- 12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?
A: YES

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.
1. The factor usually has the credit document and a promissory note that it can execute against its client.
2. If there was an indirect payment and the client does not pay the factor, the factor may execute the promissory note against the client through an executive process.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?
A: YES

If NO, please explain the procedure.

Question 3- 14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?
A: YES

Question 3-15: Does the factoring company recognize the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?
A: YES

b) Non-recourse factoring?
A: YES

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?
A: YES
If YES, please provide the reference to the relevant regulation.

It is considered that the prepayment of an obligation in factoring without recourse is an account that affects the account receivable of the supplier.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?
A: NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?
A: YES

If YES, is extended retention (effective in subsequent sales) of title also possible?
A: NO

Question 3-19: Can future (not born under an existing non-performed contract) receivable be assigned in advance?
A: YES

Question 3- 20: Can future (not born under an existing non-performed contract) receivable be factored (assigned and financed) before the relevant receivable arises?
A: NO

Question 3-21: Is assignment of part of a receivable possible?
A: YES

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?
A: YES

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?
A: YES

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?
A: YES

If YES, are they also allowed to split a particular receivable between factors?
A: YES

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?
A: YES

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?
A: YES

Question 4-3: Is signature required on an invoice for validity?
A: YES

Question 4-4: Is e-invoicing applicable in your country?
A: YES

If YES, is e-invoicing obligatory for some situations?
A: YES

If YES, please explain the criteria.
DIAN has set parameters making the electronic invoice mandatory in the country despite it has been being implemented by stages.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?
A: YES

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?
A: YES

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

A: YES

1) **If YES, please explain the types and rates of the taxes for each case.**

Factoring commission

Commissions in factoring operations can trigger a taxable income for Corporate Income Tax (CIT), Value add tax (VAT) and Industry and trade tax as follows:

CIT: FY 2021 34%
CIT Self Withholding: 11%
Special Self withholding: 0,80%
VAT:19%
ITT: Commissions are subject to ITT and the applicable rate depends on the municipality where the activity is carried out.

The commission are related to the supplier relationship and are derived from commercial and operative management.

Discounting charge revenues

CIT: FY 2021 34%
Special Self withholding: 0,80%
Withholding tax: In factoring operations, the withholding tax must be applied by concept of "other income" at 2.5% rate if the operation is not related to reimbursement and acquisition of securities.
VAT: Discounting charge revenues are not subject to VAT.

2) If NO, is it value added tax?

Please refer to Question 5-1, 1

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?
A: Yes, the CIT rate for financial institutions is 34% (FY 2021) while for the other entities is 31% (FY 2021)

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?
A: NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?
A: NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?
A: NO

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?
A: YES

There is a stamp tax, but it is rate for 2021 and following is 0%

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

Please Refer to Question 5-6

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)
A: NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?
A: NO

If YES,
a) what are they and how is the procedure?
b) is there any difference in the application depending on the type of factoring?
□YES □NO
If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?
A: NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?
□YES □NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?
A: NO

A. If YES,

a) Does prohibition of assignment have to be registered?
□YES □NO

If YES, please explain the procedure.

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?
□YES □NO

If YES, please explain.

c) Can a prior prohibition/ban of assignment invalidate an assignment?
□YES □NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□YES □NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□YES □NO

d) can a receivable still be factorable under prohibition of assignment?
□YES □NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□YES □NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
A: YES

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?
A: NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?
A: YES

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalization has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?
A: YES

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?
A: YES

Question 8- 3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?
A: YES

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?
A: YES

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?
A: YES

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?
A: NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?
A: NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?
□YES □NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?
A: YES

Question 8-9: Are there any exceptions to the answers you have provided above?
A: NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?
A: NO

If NO, what is the most common payment structure?

The most common payment is by bank transfers.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?
A: NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?
A: 6-10 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?
A: NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?
A: NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?
A: NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
A: NO

If NO, is it an equal right with the others?
In Colombia, not all creditors are treated equally; Colombian legislation establishes a ranking for creditors within a reorganization or liquidation process. The Colombian Civil Code (articles 2488 to 2511) establishes the preference and order in which creditors must be paid:
• The first class to be paid corresponds to employment-related obligations and special tax-related
obligations.
• The second class includes creditors who have a pledge constituted in their favor.
• Creditors who have a mortgage belong in the third class.
• Other tax-related obligations and strategic suppliers to the business belong in the fourth class.
• Finally, all other creditors who have a title such as a promissory note or contract with no guarantees are part of the fifth class and are paid last.
• Credits with related companies are subordinated and paid after the fifth class.

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?
A: More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?
A: 1 to 2 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?
A: 1 to 2 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?
A: YES

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?
A: YES

If YES, under which conditions?

The arbitration awards issued abroad will be recognized in Colombia by the competent judicial authority at the request of the interested party, with the understanding that this is the result of the arbitration court abroad chosen by the parties, which according to The New York convention is born into national legal life through Law 39 of 1990, which obliges states to recognize arbitration awards issued abroad, determining their execution and compliance, understanding that they are raised Circumstances where the state may reject the recognition of foreign awards, when the due process of arbitration is violated, or when it is necessary to protect the rules of public order of the legislation where recognition of the arbitration award is sought. Also, Law 1563 of 2012 recognizes the existence of both national arbitration and national arbitration.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?
A: YES

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?
A: YES

If YES, what is the rate?

It changes every month and it is published by the regulator -Financial Super Intendency Of Colombia

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?
A: NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
A: Libor 30 + 1%

Question 12- 4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?
A: YES

If YES,

a) **under which circumstances?**

   Term of expiration, breach of payment obligation

b) **can the factor issue an invoice for such interest to the debtor?**

   A: NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?
A: YES

If YES, please explain referring to the regulation.

The Commercial Code stablishes the exchange action which proceeds when the term contained in the security has expired so the credit incorporated in the security is not paid. The article 780 shows that the action also proceeds in case of lack of acceptance or partial acceptance and when the drawee or the acceptor are declared bankrupt, or in a state of liquidation, or bankruptcy is opened, or are in any other similar situation.
This action prescribes in 3 years from the expiration date of the security, and this term is interrupted with the presentation of the executive demand, and interrupted the prescription, the term begins to count again.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?
A: NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?
A: NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?
A: YES

Question 13-2: Is your country a member of Organization of Islamic Cooperation?
A: NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)
A: NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?
A: YES

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?
A: YES

Question 14-4: Can a public administration legally refuse the assignment of a debt?
A: YES

If YES, is there any law that prohibits the assignment of Government receivables?
A: NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?
A: YES

If YES, please list the differences.
Legal actions against public sector entities versus private sector entities are similar but differ in the competent body to hear the controversy, the procedural process that is carried out and the associated regulations. In processes against public entities, the Code of Administrative Procedure and Administrative Litigation Law 1437 of 2011 must be observed.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?
A: YES

If YES, please provide the date, title and number of the Law.

- Civil Code – Law 84, 1873. Article 64.
- Law 95, 1890. Article 1.

- Judgment SC16932-2015 of the Supreme Court of Justice
- Judgment S SU449 – 2016 of the Constitutional court

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?
A: YES

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

The article 64 of the Civil code mentions *that Force majeure or fortuitous event is called the unforeseen or the one that is not possible to resist, such as a shipwreck, an earthquake, the arrest of enemies, the acts of authority exercised by a public official, etc.*, so the requirements so that the extraordinary event is considered as force majeure could be applicable to a contract are that the event must be unpredictable and irresistible or insurmountable.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?
A: YES

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?
A: YES
If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?
A: YES

Question 16-4: Does the import factor recognize the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?
A: YES

SECTION 17 ANY OTHER SUBJECTS

Question 17-1: Are there any other subjects that you think are important in conducting factoring operations with your country?
A: NO

If YES, please explain.
Thank you.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.
Law 54-2021 dd. 31.12.2021 governing Factoring Activities in Republic of Congo

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
The Central Bank

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO x

If YES,

a) Is approval of managers by the governing body required?

YES … NO …

b) Is approval of the shareholders by the governing body required?

YES … NO …

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES x NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES x NO …

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

YES x NO …

k) POM (Purchase Order Management)

YES x NO …

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation

Regulation No. 01/20/CEMAC/UMAC/COBAC on the protection of consumers of banking products and services in CEMAC dd 03.07.2020

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation

- Regulation COBAC R- 2005/01 dd. 01.04.2005
- Regulation No. 01/16/CEMAC/UMAC/CM dd. 11.04.2012

c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation
10.000.000.000 Regulation COBAC B-2019/01

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
Law No. 29/2019 dd. 10.10.2019

e) GAAP/IAS/IFRS Accounting Principles

YES x NO …

f) Obligation to publicly disclose yearly financial reports

YES … NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES … NO …

h) Reserve Requirements against liquidity risk

YES … NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.

An operation by which the member (transferor or supplier) transfers, by an Agreement or written contract with subrogation effect, its receivables from the factor who, in return for payment, pays it in advance all or part of the amount of the transferred receivables, while bearing or not, in accordance with the agreement, the risks of possible insolvency on the assigned receivables.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES x NO …

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO x

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …

If YES,

a) What are those reports?

TEG (Taux Effectif Global)

b) Are they to be audited?

YES … NO …

c) What is the period to be reported?

Quarterly

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES x NO …

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES x NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES x NO …

If YES, please explain
- conditional sales.
- the sale or rental of real estate.
- the sale of a company.
- barter
- cash payments.

- debts for which payment by the debtor is conditional on the completion of a procedure or action
- receivables for which the customer has issued invoices without the goods being delivered or the services provided
- receivables that due date has expired.
- receivables from commercial transactions of disputed nature
- debts for which the debtor authorizes may invoke set-off (except in the case of a debt due after the liquidation of all the operations in progress)
- receivables from client companies that have common financial links, shareholders or managers with the supplier.
- assignments for the benefit of an individual for personal, family or household purposes
- assignments of receivables resulting from transactions on a stock market
assignments of receivables arising from interbank payment systems and agreements, or from clearing and settlement systems relating to securities or other assets or financial instruments.
- assignments of receivables arising from the transfer of collateral on securities or other financial instruments or assets held with intermediaries or from the sale, loan, holding or agreement to buy back these securities: assets or instruments.
- assignments of receivables resulting from a letter of credit or an independent guarantee.
- assignments of receivables arising from financial services, including trading in financial instruments.
- assignments of receivables arising from securities created by other laws or
- assignments of receivables arising from lessor privileges, with the exception of buildings by destination.
- assignments of receivables resulting from the transfer of rights or a claim arising from an insurance policy
- assignments of receivables resulting from the transfer of wage claims or damages made by employees.
- assignments of receivables arising from claims brought before the courts.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Not defined in the factoring Law but as a factor we have some restrictions in the credit periods as we don't exceed 180 days.

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES x NO …

If YES, please provide the name, date and number
Plan comptable des etablissements de credit de la CEMAC / Chart of accounts for CEMAC credit institutions

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones
Factoring companies have to check the credit information bureau of the Central Bank

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES x NO …

If YES, please explain
Factoring companies have to:

- Check if the client is legally registered
- Check if the client has met all requirements in terms of financial report declaration
- Check is the client pays its social security
- Take the client's application to their credit committee.

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.

Law 54-2021 dd. 31.12.2021 governing Factoring Activities in Republic of Congo

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Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO x

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES x NO …

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO x

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES x NO …

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES x NO …

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES x NO …

If YES, please explain and refer to the regulation

In writing

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES x NO …

If YES, please explain.

Subrogation must be sent by the factor to the debtor 10 days after the assignment for information. Also, the debtor must be notified by the factor or the supplier after the facility agreement is signed.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES x NO …

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

The debtor must be notified in writing to make a second payment in case of indirect payment. After 3 correspondences, the factor is entitled of suing the debtor.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES x NO …

If YES, please provide the reference of the relevant regulation.

Law 54-2021 dd. 31.12.2021 governing Factoring Activities in Republic of Congo

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO x

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES x NO …

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES … NO x

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO x

If YES, are they also allowed to split a particular receivable between factors?

YES … NO …

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES … NO x

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES … NO x

Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES … NO x

If YES, is e-invoicing obligatory for some situations?

YES … NO …

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO x

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES … NO x

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO …

1) If YES, please explain the types and rates of the taxes for each case.

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2) If NO, is it value added tax?

YES … NO …

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES x NO …

If YES, please explain
Stamp duty is required for factoring agreement signed between the factor and the supplier to be valid.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO …

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES x NO …

If YES,

a) what are they and how is the procedure?

Payment of social security

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b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO …

If YES,

a) what are they and how is the procedure?

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b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES … NO x

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO …

If YES, please explain the procedure.

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b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO …

If YES, please explain.

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c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO …

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.
Payment order

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES … NO x

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO x

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES x NO …

If YES, under which circumstances?
If the payment is not made

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO x

If NO, is it an equal right with the others?

YES x NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days. X
b) 31-60 days
c) 61-90 days
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year. X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?

If this has been provided in the sales contract

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES x NO …

If YES, what is the rate?
Default interest

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
7% per year

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

If the debtor has not respected the payment deadlines

b) Can the factor issue an invoice for such interest to the debtor?

YES x NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO x

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO x

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO x

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES … NO x

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES … NO x

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES x NO …

If YES, please list the differences.

1) The government has immunity from execution
2) Legal action against a public administration are handled by different courts

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES … NO x

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES x NO …

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES x NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES … NO x

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES x NO …

SECTION 17 - ANY OTHER SUBJECTS

Are there any other subjects that you think are important in conducting factoring operations with your country?

YES … NO …

If YES, please explain.

COSTA RICA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☐ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☐ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☐ NO

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☐ NO

b) Recourse Factoring?

☐ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☐ NO

e) Factoring based on order approval?

☐ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO

h) Reverse Factoring?

☐ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

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b) Anti-Money Laundering?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation

"Ley sobre estupefacientes, sustancias psicotrópicas, drogas de uso no autorizado, actividades conexas, legitimación de capitales y financiamiento al terrorismo" Mach 2009

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c) Minimum Capital Requirement? Metin

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

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d) Data Protection?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Protección de la Persona frente al Tratamiento de sus Datos Personales. July, 2011

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e) GAAP/IAS/IFRS Accounting Principles?

☐ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☐ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☐ NO

If YES, please provide the definition.

Ley Marco del contrato de factoreo

"Contrato de Gestión mercantil mediante el cual, una persona física o jurídica que desarrolla una actividad lucrativa,
llamada cliente, transmite a la empresa de factoreo llamada

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☐ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☐ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☐ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

January to december.

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☐ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☐ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☐ NO

If YES, please explain which ones

We have a law named ·Garantías Mobiliarias". We need to do publicity to our guarantees.

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☐ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☐ YES ☐ NO

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

☐ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☐ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☐ NO

If YES, please explain and refer to the regulation.
In writing

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☐ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?

in writing

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☐ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☐ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

1. It needs to have assignor documents
2. It needs to notify to debtor.
3. It needs to register assignament in Garantías Modiliarias (publicity).
4. Its needs to demonstrate non debtor payment.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☐ NO

b) Non-recourse factoring?

☐ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

□ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

□ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

□ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES □ NO

If YES, please explain the criteria.

Our law only acepts e- invoicing.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

13%

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES □ NO

If YES, please explain.

Non bank has to pay VAT. Banks no.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES □ NO

If YES, please explain.

_____

_____

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES □ NO

If YES, please explain.

_____

_____

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES □ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES □ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES □ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES □ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES □ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES □ NO

If NO, what is the most common payment structure?

Transfer

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

O 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES □ NO

If YES, under which conditions?

You need to demonstrate insolvence presented to court and/or judicial collect to the debtor

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES □ NO

If YES, under which circumstances?

It is possible if you can demonstrate that assignment was to evade another creditors

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

O 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

□ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

□ YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES □ NO

If YES, what is the rate?
Average rate o public deposits

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?
Tasa básica pasiva

IF YES, who publishes it?
Banco Central de Costa Rica

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
8%-9%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES □ NO

If YES,

a) under which circumstances?
Only in judicial Collect

b) can the factor issue an invoice for such interest to the debtor?

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES □ NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES □ NO

If YES, please give the reference.

We need to consider the law (Ley de Contratación Administrativa)

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES □ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES □ NO

If YES, please provide the date, title and number of the Law.

_____

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

_____

_____

_____

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

□ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES □ NO

DOMINICAN REPUBLIC

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES … NO x

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES … NO x

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO x

If YES,

a) Is approval of managers by the governing body required?

YES … NO …

b) Is approval of the shareholders by the governing body required?

YES … NO …

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES x NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES … NO …

g) 2-Factor International Factoring such as with FCI

YES … NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES … NO x

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES … NO x

If YES, please provide the date, title and number of the law/regulation

---

b) Anti-Money Laundering

YES … NO x

If YES, please provide the date, title and number of the regulation

---

c) Minimum Capital Requirement

YES … NO x

If YES, please provide the date, title and number of the regulation

---

d) Data Protection

YES … NO x

If YES, please provide the date, title and number of the regulation

---

e) GAAP/IAS/IFRS Accounting Principles

YES … NO x

f) Obligation to publicly disclose yearly financial reports

YES … NO x

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES … NO x

h) Reserve Requirements against liquidity risk

YES … NO x

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES … NO x

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO …

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES … NO x

If YES,

a) What are those reports?

---

b) Are they to be audited?

YES … NO …

---

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES … NO x

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES … NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO …

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO x

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES … NO x

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO x

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES … NO x

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES x NO …

If YES, please explain.
There must be a notification

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES … NO x

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO x

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO x

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES x NO …

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES x NO …

If YES, please explain and refer to the regulation
Notification should be made by a legal officer

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES x NO …

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … NO x

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES … NO x

b) Non-recourse factoring?

YES … NO x

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO x

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO x

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES … NO x

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES … NO x

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES … NO x

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES x NO …

If YES, are they also allowed to split a particular receivable between factors?

YES … NO x

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO …

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES x NO …

Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES x NO …

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES x NO …

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES … NO x

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO …

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO …

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO …x
If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO x

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO x

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO x

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES x NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO x

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES … NO x

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES … NO x

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES … NO x

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.
Wire transfer

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES … NO x

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES x NO …

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES x NO …

If NO, is it an equal right with the others?

YES … NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days. X
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year. X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES … NO x

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES … NO x

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES … NO x

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
6% p.a.

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES … NO x

If YES,

a) Under which circumstances?

---

b) Can the factor issue an invoice for such interest to the debtor?

YES … NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO x

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO x

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO x

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES x NO …

If YES, please give the reference.
Rules established by National Treasury and Controller

Question 14-2: Is e-invoicing acceptable by public administrations?

YES … NO x

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES … NO x

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO x

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES … NO x

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES … NO x

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES … NO x

If NO, please explain the additional requirements.
Need to notify via a legal officer

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES x NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES x NO …

EGYPT

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☑YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Law No. 176 of the year 2018 Promulgating the Law Regulating Financial Lease and Factoring Activities

Question 1-2-1: Are banks allowed to do factoring in your country?

☐ YES ☑ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☑ YES ☐ NO

If YES, please explain.
The Financial Regulatory Authority (FRA)

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☑ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☑ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☑ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

please check Q 1-1 and the FRA decrees relation to the mentions law

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☑ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☑ YES ☐ NO

b) Recourse Factoring?

☑ YES ☐ NO

c) Undisclosed Factoring?

☑ YES ☐ NO

d) Pre-shipment Financing?

☑ YES ☐ NO

e) Factoring based on order approval?

☑ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☑ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☑ YES ☐ NO

h) Reverse Factoring?

☑ YES ☐ NO

i) Islamic International Factoring?

☑ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES ☑ NO

k) POM (Purchase Order Management)

☑ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

The Egyptian Competition Law No# 3 for 2005

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

The Anti-Money Laundering Law No# 80 for 2002

c) Minimum Capital Requirement?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law No# 176 for 2018, Regulating Financial Lease and Factoring Activities

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law No# 176 for 2018, Regulating Financial Lease and Factoring Activities

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☑ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☑ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

Egyptian Factoring Association

b) is membership compulsory?

☑ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☑ YES ☐ NO

If YES, please provide the definition.

Factoring: the purchase of current and future financial rights arising out of the sale of goods and provision of services.

Factoring contact: a finance contract established between a factor and a seller, whereby the factor purchases current and future financial rights arising from the sale of goods and provision of services.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☑ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☑ YES ☐ NO

If YES, please define the relevant Islamic finance instrument.

Commodity Murabaha

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☑ YES ☐ NO

If YES,

a) What are those reports?

Monthly and quarterly reports reflecting the activity performance in terms of turnover and outstanding FIU.

b) Are they to be audited?

☑ YES ☐ NO

c) What is the period to be reported?

monthly and quarterly covering the annual performance

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☑ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☑ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☑ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☑ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☑ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☑ YES ☐ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☑ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☑ YES ☐ NO

If YES, please provide the date, title and number.

The Egyptian Civil Code No. 131 of 1948

Question 3-2: Is factoring based on assignment in your country?

☑ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☑ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☑ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☑ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☑ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

registration may be made in the public notary office

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☑ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☑ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☑ YES ☐ NO

If YES, please explain and refer to the regulation.

in writing

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☑ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☑ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☑ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☑ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

the export factor can support through sending the required documentation proving the validity of assignment and the reliability of the transaction

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Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☑ NO

b) Non-recourse factoring?

☑ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☑ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☑ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☑ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☑ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☑ NO

Question 3-21: Is assignment of part of a receivable possible?

☑ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☑ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☑ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

☑ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☑ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

☑ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

☑ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☑ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☑ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES ☑ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☑ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☑ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☑ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☑ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ☑ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☑ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☑ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☑ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☑ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☑ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☑ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

☑ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES ☑ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☑ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES ☑ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

☑ YES □ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☑ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☑ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☑ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☑ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☑ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ☑ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

☑ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES ☑ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES ☑ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ☑ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

☑ YES □ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

☑ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- ☑ 0-5 banking days
- O 6-10 banking days
- O 11-20 banking days
- O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

☑ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☑ NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ☑ NO

If YES, under which circumstances?

_____

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☑ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
☑ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- ☑ 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- ☑ 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☑ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☑ YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☑ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☑ YES □ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES ☑ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☑ YES □ NO

If YES,

a) under which circumstances?

if it is an agreed upon condition in the factoring agreement between the factor and the seller

---

b) can the factor issue an invoice for such interest to the debtor?

☑ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES ☑NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☑ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

☑ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES ☑ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☑ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☑ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

☑ YES □ NO

If YES, please list the differences.

different court and different procedures

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☑YES □ NO

If YES, please provide the date, title and number of the Law.
The Egyptian Civil Code No. 131 of 1948

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☑YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☑ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☑ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES ☑ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

☑ YES □ NO

GEORGIA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ■ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

There is a new draft law on Factoring, being prepared by the Parliament of Georgia, however it is still not in force and will not be in force for the foreseeable future.

Question 1-2-1: Are banks allowed to do factoring in your country?

■ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☐ YES ■ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

■ YES ☐ NO

If YES, please explain.
National Bank of Georgia

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☐ NO
N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment.

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO
N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO
N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

c) Please provide the title, date and number of the relevant regulation/law.

N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☐ NO

N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☐ NO

N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☐ NO

N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

b) Recourse Factoring?

☐ YES ☐ NO

N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

c) Undisclosed Factoring?

☐ YES ☐ NO

N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

d) Pre-shipment Financing?

☐ YES ☐ NO

N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

e) Factoring based on order approval?

☐ YES ☐ NO

N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO
N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO
N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

h) Reverse Factoring?

☐ YES ☐ NO
N/A (Not Applicable / Irrelevant), because NBFIs are not allowed to conduct factoring at the moment

i) Islamic International Factoring?

☐ YES ■ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

■ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.
Law of Georgia on "Competition"

b) Anti-Money Laundering?

■ YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Law of Georgia on "Facilitation of Prevention of Money Laundering and Terrorism Financing".

c) Minimum Capital Requirement?

☐ YES ■ NO

If YES, please provide the date, title and number of the regulation.

d) Data Protection?

■ YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Law of Georgia on "Personal Data Protection"

e) GAAP/IAS/IFRS Accounting Principles?

■ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

■ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

■ YES ☐ NO

h) Reserve Requirements against liquidity risk?

■ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ■ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

■ YES ☐ NO

If YES, please provide the definition.

Law of Georgia on “Commercial Bank Activities” (23/02/1996, N121), Article 1, Paragraph “P”:
„Factoring – a trade commission transaction which is adjusted to crediting of a customer's working capital, that includes collection of a customer's accounts receivables, crediting and guarantees for credit and foreign exchange risks;“

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ■ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ■ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ■ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

■ YES ☐ NO

If YES,

a) What are those reports?

Information regarding the amount and quantity of factored receivables executed within a specific time period

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b) Are they to be audited?

☐ YES ■ NO

c) What is the period to be reported?

The reporting is done on the basis of random requests received from the National Bank of Georgia (the supervising authority).

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ■ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ■ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ■ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

■ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ■ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before on boarding a new client?

■ YES ☐ NO

If YES, please explain
Depends on a client

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

■ YES ☐ NO

If YES, please provide the date, title and number.
The Civil Code of Georgia (26/06/1997, N786)

Question 3-2: Is factoring based on assignment in your country?

■ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

■ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ■ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ■ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ■ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (Registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ■ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ■ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ■ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

■ YES ☐ NO

If YES, please explain.
When the debtor is a governmental entity, it can refuse to pay the assignee, on the basis of the Law of Georgia on State Procurement and its own internal regulations.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ■ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ■ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

■ YES ☐ NO

If YES, please explain.
In accordance with the Civil Code of Georgia, for an assignment to be valid and enforceable, the Creditor must execute a written contract with the Assignee.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ■ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

■ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

■ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ■ NO

b) Non-recourse factoring?

☐ YES ■ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ■ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the Factor as prepayment?

☐ YES ■ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ■ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ■ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ■ NO

Question 3-21: Is assignment of part of a receivable possible?

■ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

■ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

■ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

■ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES ■ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

■ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

■ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ■ NO

Question 4-4: Is e-invoicing applicable in your country?

■ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ■ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

■ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

According to the Georgian Tax Legislation, factoring transactions are qualified as financial service / financial operation and income from factoring transactions is exempted from VAT (both domestic and international factoring operations).

The only tax to be applied on the corporate level is corporate income tax.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES ■ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ■ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ■ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

■ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ■ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ■ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ■ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ■ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ■ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES ■ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ■ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES ■ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

■ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ■ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ■ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

■ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

■ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

■ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES ■ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ■ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ■ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

■ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

■ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

■ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

■ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

■ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES ■ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ■ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ■ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

■ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ■ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ■ NO

If NO, what is the most common payment structure?
Transfers

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES □ NO N/A

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor? N/A

- O 0-5 banking days
- O 6-10 banking days
- O 11-20 banking days
- O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO
N/A

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ■ NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ■ NO

If YES, under which circumstances?

_____

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ■ NO

If NO, is it an equal right with the others?

■ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

- O 0- 30 days
- O **31-60 days**
- O 61-90 days
- O 91-180 days
- O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- O **1 to 2 years**
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O **0 to 1 year**
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

■ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

■ YES □ NO

If YES, under which conditions?
The judgment of a foreign arbitration tribunal can be enforced in Georgia, if Georgian common court system recognizes the specific organization under the auspices of which the arbitration tribunal has been constituted, or if Georgia as a state has signed a relevant international agreement (i.e. ICSID and UNCITRAL)

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

■ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ■ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES ■ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
10%p.a.

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

■ YES □ NO

If YES,

a) **under which circumstances?**

IF the Supplier fulfils his obligations in accordance with the main Agreement and the Debtor defaults on the payment to the Factor, due to its own fault, the Factor is authorized to claim late payment interest within the agreement signed with Debtor

b) **can the factor issue an invoice for such interest to the debtor?**

■ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

■ YES □ NO

If YES, please explain referring to the regulation.
Under the Civil Code of Georgia, there is a general 3 year limit on the commencement of legal action on the basis of a contractual obligation, therefore delayed payment of receivable under the factoring arrangement shall fall within abovementioned limitation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ■ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ■ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

■ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ■ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

■ YES □ NO

If YES, please give the reference.
When the debtor is a governmental entity, it can refuse to pay the assignee, on the basis of the Law of Georgia on State Procurement and its own internal regulations.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES ■ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

■ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

■ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ■ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ■ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES ■ NO

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES ■ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

■ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

■ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES ■ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

■ YES □ NO

SECTION 17 ANY OTHER SUBJECTS

Question 17-1: Are there any other subjects that you think are important in conducting factoring operations with your country?

□ YES ■ NO

If YES, please explain.

Thank you.

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☒ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Legal reform regarding factoring is under processing.

Question 1-2-1: Are banks allowed to do factoring in your country?

☒ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☐ YES ☒ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☒ NO

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☒ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☒ NO

If NO, please refer to the relevant regulation (title, date, number).

Factoring is regulated by the LAW OF GEORGIA ON COMMERCIAL BANK ACTIVITIES and only Commercial Banks are allowed to do factoring

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☒ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☒ NO

b) Recourse Factoring?

☐ YES ☒ NO

c) Undisclosed Factoring?

☐ YES ☒ NO

d) Pre-shipment Financing?

☐ YES ☒ NO

e) Factoring based on order approval?

☐ YES ☒ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☒ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☒ NO

h) Reverse Factoring?

☐ YES ☒ NO

i) Islamic International Factoring?

☐ YES ☒ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☒ NO

If YES, please provide the date, title and number of the law/regulation.

---

b) Anti-Money Laundering?

☐ YES ☒ NO

If YES, please provide the date, title and number of the regulation.

---

c) Minimum Capital Requirement?

☐ YES ☒ NO

If YES, please provide the date, title and number of the regulation.

---

d) Data Protection?

☐ YES ☒ NO

If YES, please provide the date, title and number of the regulation.

---

e) GAAP/IAS/IFRS Accounting Principles?

☐ YES ☒ NO

f) Obligation to publicly disclose yearly financial reports?

☐ YES ☒ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☒ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☒ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☒ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☒ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☒ YES ☐ NO

If YES, please provide the definition.

factoring – a trade-commission transaction which is adjusted to crediting of a customer's working capital, that includes collection of a customer's accounts receivables, crediting and guarantees for credit and foreign exchange risks;

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☒ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☒ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☒ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☒ YES ☐ NO

If YES,

a) What are those reports?

Monthly balances for National Bank of Georgia and daily outstanding balance for Credit Info Bureau

b) Are they to be audited?

☒ YES ☐ NO

c) What is the period to be reported?

On monthly or daily basis

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☒ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☒ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☒ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☒ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☒ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☒ YES ☐ NO

If YES, please explain
Compliance Check

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☒ YES ☐ NO

If YES, please provide the date, title and number.
Civil Code of Georgia, dated 26/06/1997

Question 3-2: Is factoring based on assignment in your country?

☒ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☒ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☒ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☒ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☒ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☒ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☒ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☒ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☒ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☒ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☒ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☒ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☒ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☒ YES ☐ NO

b) Non-recourse factoring?

☒ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☒ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☒ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☒ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☒ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☒ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☒ NO

Question 3-21: Is assignment of part of a receivable possible?

☒ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES ☒ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☒ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES ☒ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☒ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES ☒ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ☒ NO

Question 4-4: Is e-invoicing applicable in your country?

☒ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☒ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES ☒ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES ☒ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☒ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☒ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☒ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☒ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☒ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ☒ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☒ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☒ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES ☒ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☒ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☒ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☒ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☒ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☒ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☒ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

☒ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

☒ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☒ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☒ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☒ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☒ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES ☒ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☒ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES ☒ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☒ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ☒ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☒ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☒ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ☒ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☒ NO

If NO, what is the most common payment structure?
Bank Transfer

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ☒ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- ○ 0-5 banking days
- ○ 6-10 banking days
- ○ 11-20 banking days
- ○ More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES ☒ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☒ NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ☒ NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ☒ NO

If NO, is it an equal right with the others?

□ YES ☒ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

- ○ 0- 30 days
- ☒ 31-60 days
- ○ 61-90 days
- ○ 91-180 days
- ○ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- ☒ 0 to 1 year
- ○ 1 to 2 years
- ○ 2 to 3 years
- ○ More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- ☒ 0 to 1 year
- ○ 1 to 2 years
- ○ 2 to 3 years
- ○ More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☒ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☒ YES □ NO

If YES, under which conditions?
Under revision of Supreme Court of Georgia

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES ☒ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ☒ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□YES ☒ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
10-11% P.A.

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES ☒ NO

If YES,

a) **under which circumstances?**

---

b) **can the factor issue an invoice for such interest to the debtor?**

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES ☒ NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified the same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☒ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☒ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES ☒ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☒ NO

P.S. The reason is, that my country does not have any special Law/ regulation to govern factoring.

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☒ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES ☒ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☒ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☒ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☒ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☒ YES □ NO

If YES, please provide the date, title and number of the Law.
Civil Code of Georgia, dated 26/06/1997

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☒ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

If party is substantially obstructed, jeopardised or is harmed as a result of force majeure that could not have been foreseen at the time when the contract was entered

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☒ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☒ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

☒ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

☒ YES □ NO

GUATEMALA

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.

Ley de los Contrados de Factoraje y Descuento Decretor 2018, August 16th 2019/ The Factoring and Discount Contracts Law, Decree 1-2018, 16th August 2019

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES … NO x

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO x

If YES,

a) Is approval of managers by the governing body required?

YES … NO …

b) Is approval of the shareholders by the governing body required?

YES … NO …

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES … NO x

d) Pre-shipment Financing

YES x NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES … NO x

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES … NO x

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES … NO x

If YES, please provide the date, title and number of the law/regulation

---

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation

---

c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation
Decree 2-70 Commercial Code Jan 1st 1971

---

d) Data Protection

YES … NO x

If YES, please provide the date, title and number of the regulation

---

e) GAAP/IAS/IFRS Accounting Principles

YES … NO x

f) Obligation to publicly disclose yearly financial reports

YES … NO x

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES … NO x

h) Reserve Requirements against liquidity risk

YES … NO x

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.

A seller or transferor assigns one or more credit rights in favour of a factor in whole or in part so that the latter performs one or several of the 6 functions stipulated in the Law.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO x

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES … NO x

If YES,

a) What are those reports?

---

b) Are they to be audited?

YES x NO …

c) What is the period to be reported?

December of each year

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES … NO x

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES … NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO …

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES x NO …

If YES, please provide the name, date and number

The Factoring and Discount Contracts Law, Decree 1-2018, 16th August 2019

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES … NO x

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES x NO …

If YES, please explain
Anti-money laundering checks

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.

The Factoring and Discount Contracts Law, Decree 1-2018, 16th August 2019

Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO x

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES x NO …

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO x

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)
Registro de Guarantias Mobiliarias on line, Q300 per invoice

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES x NO …

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES x NO …

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES x NO …

If YES, please explain and refer to the regulation
In writing or email with confirmation of reception

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES x NO …

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES x NO …

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … NO x

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES x NO …

If YES, please provide the reference to the relevant regulation.
Decree 1-2018

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES x NO …

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO x

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO x

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES … NO …x

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES x NO …

If YES, are they also allowed to split a particular receivable between factors?

YES … NO x

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO …

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES x NO …

Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES x NO …

If YES, is e-invoicing obligatory for some situations?

YES x NO …

If YES, please explain the criteria
Since June 2022, there are only e-invoices allowed

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO x

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES x NO …

1) If YES, please explain the types and rates of the taxes for each case.

VAT

2) If NO, is it value added tax?

YES x NO …

i) If YES, what is the rate of tax?

12%

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES x NO …

If YES, please explain
For financial institutions there is no VAT tax, for non-banks there is 12% VAT

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES x NO …
If YES, please explain.
It is something that is added, but in export factoring is already included in the price generated.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES x NO …

If YES, please explain
First come first right if there are any monies left over the subcontracts can collect any leftover

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES x NO …

If YES,

a) what are they and how is the procedure?

If the legal notification is not done and if the claim is not registered it invalidates assignment.

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO x

If YES,

a) what are they and how is the procedure?

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES x NO …

If YES, please explain the procedure.
It is registered in the contract for both parties

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO x

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES x NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO x

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO x

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO x

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO x

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES x NO …

If YES, please explain
Only the clauses stipulated in the contract

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES … NO x

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES … NO x

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES … NO x

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.
Bank transfer, ACH, wire transfer

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES … NO x

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES x NO …

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO x

If NO, is it an equal right with the others?

YES x NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days
d) 91-180 days
e) More than 180 days. X

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years. X

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years. X

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES … NO x

If YES, what is the rate?
It is stipulated in each case but it usually double the ratetghyt

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
5.50% in local currency

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

When the maturity date comes. It is on a day rate basis.

b) Can the factor issue an invoice for such interest to the debtor?

YES … NO x

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES x NO …

If YES, please explain referring to the regulation
90 days

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO x

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO x

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO x

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES x NO …

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES x NO …

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES x NO …

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO x

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES x NO …

If YES, please list the differences.
The procedure is different for the public sector from private sector

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SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.
Decreto Ley 106

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES … NO x

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES x NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES x NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES x NO …

HONDURAS

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☐ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☐ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☐ NO

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Not available

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☐ NO Not available

If NO, please refer to the relevant regulation (title, date, number). Not available

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Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☐ NO Not available

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☐ NO Not available

b) Recourse Factoring?

☐ YES ☐ NO Not available

c) Undisclosed Factoring?

☐ YES ☐ NO Not available

d) Pre-shipment Financing?

☐ YES ☐ NO Not available

e) Factoring based on order approval?

☐ YES ☐ NO Not available

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO Not available

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO Not available

h) Reverse Factoring?

☐ YES ☐ NO Not available

i) Islamic International Factoring?

☐ YES ☐ NO Not available

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

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b) Anti-Money Laundering?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Decreto 144-2014 contentivo de la Ley Especial contra el Lavado de Activos

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c) Minimum Capital Requirement?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Ley del Sistema Financiero

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d) Data Protection?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Ley del Sistema Financiero

---

e) GAAP/IAS/IFRS Accounting Principles?

☐ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☐ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☐ NO

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☐ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☐ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☐ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Depending on the country and type of goods. Internal policy.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☐ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☐ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☐ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☐ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☐ YES ☐ NO

If YES, please provide the date, title and number.
Código de Comercio, Artículo 891-897 y Código Civil Artículo 1666-1676

Question 3-2: Is factoring based on assignment in your country?

☐ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☐ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☐ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☐ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☐ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☐ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

If NO, please explain the procedure.
N/A

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☐ NO

b) Non-recourse factoring?

☐ YES ☐ NO Not applicable

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

☐ YES ☐ NO Not applicable

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☐ NO

If YES, please provide the reference of the relevant regulation.
N/A

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

□ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

□ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

□ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES □ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES □ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES □ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES □ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES □ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES □ NO

If YES, please explain.
Enforceable resolution

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

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b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES □ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES □ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES □ NO

If YES, please explain.
The ones that apply to each case.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES □ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES □ NO

If NO, what is the most common payment structure?
Wire transfers

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

O 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES □ NO

If YES, under which conditions?
When there is a default

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES □ NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

O 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

□ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

□ YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES □ NO

If YES, what is the rate?
Rate of penalty 3.00%

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES □ NO

If YES,

a) **under which circumstances?**

In non payment cases

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b) **can the factor issue an invoice for such interest to the debtor?**

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES □ NO

If YES, please explain referring to the regulation.
90 days

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES □ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES □ NO

If YES, please list the differences.

One is regulated by the Ley de Procedimiento Administrativo and the other one by Codigo Civil

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SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES □ NO

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

□ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES □ NO

SECTION 17 ANY OTHER SUBJECTS

Question 17-1: Are there any other subjects that you think are important in conducting factoring operations with your country?

□ YES □ NO

If YES, please explain.

Thank you.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES … NO x

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO x

If YES,

a) Is approval of managers by the governing body required?

YES … NO …

b) Is approval of the shareholders by the governing body required?

YES … NO …

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES x NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES x NO …

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

YES x NO …

k) POM (Purchase Order Management)

YES x NO …

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation
For example, Competition Ordinance

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation
Anti-Money Laundering and Counter-Terrorist Financing Ordinance, for example

c) Minimum Capital Requirement

YES … NO x

If YES, please provide the date, title and number of the regulation

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
For example, Personal Data (Privacy) Ordinance

e) GAAP/IAS/IFRS Accounting Principles

YES x NO …

f) Obligation to publicly disclose yearly financial reports

YES … NO x

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES … NO x

h) Reserve Requirements against liquidity risk

YES … NO x

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES … NO x

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO x

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES … NO x

If YES,

a) What are those reports?

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b) Are they to be audited?

YES … NO …

---

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES … NO x

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES … NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO …

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO …

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES x NO …

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES … NO x

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO x

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES … NO x

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO x

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO x

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO x

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES x NO …

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO …x
If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES x NO …

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES … NO …

b) Non-recourse factoring?

YES … NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO …

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO x

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES x NO …

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES x NO …

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES x NO …

If YES, are they also allowed to split a particular receivable between factors?

YES … NO x

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO …

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES x NO …

Question 4-3: Is signature required on an invoice for validity?

YES …. NO x

Question 4-4: Is e-invoicing applicable in your country?

YES x NO …

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO …

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES … NO x

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO …

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO …

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES x NO …

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO …

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES x NO …

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO x

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO x

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES x NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES x NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES x NO …

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES x NO …

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO …

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO …

If YES, please explain

_____

_____

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES … NO x

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO …

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES x NO …

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES x NO …

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO x

If NO, is it an equal right with the others?

YES … NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days
d) 91-180 days
e) More than 180 days. X

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years. X
d) More than 3 years. X

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years. X
d) More than 3 years. X

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES … NO x

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES x NO …

If YES, what is it called?
For Example HONIA

IF YES who publishes it?
For Example, Treasury Markets Association

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
No

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

---

b) Can the factor issue an invoice for such interest to the debtor?

YES … NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES x NO …

If YES, please explain referring to the regulation
For Example, Limitation. Ordinance

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO x

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO x

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO x

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO …

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES … NO …

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES … NO …

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO …

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO …

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES … NO …

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES … NO …

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES x NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES … NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES x NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES … NO …

HONG KONG

INDIA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

✓YES □ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Factoring Regulation Act, 2011

Question 1-2-1: Are banks allowed to do factoring in your country?

✓YES □ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

✓YES □ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

✓YES □ NO

If YES, please explain.
Reserve Bank of India is the central bank for India and is the competent authority for granting license as well as supervising the affairs of factoring companies in India.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

✓YES □ NO

If YES,

a) Is approval of managers by the governing body required?

✓YES □ NO

b) Is approval of the shareholders by the governing body required?

✓YES □ NO

c) Please provide the title, date and number of the relevant regulation/law.

NBFC Factor Regulations 2012

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

✓YES □ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

✓YES □ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

✓YES □ NO

b) Recourse Factoring?

✓YES □ NO

c) Undisclosed Factoring?

□ YES ✓ NO

d) Pre-shipment Financing?

✓YES □ NO

e) Factoring based on order approval?

✓YES □ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

✓YES □ NO

g) Two-Factor International Factoring such as with FCI?

✓YES □ NO

h) Reverse Factoring?

✓YES □ NO

i) Islamic International Factoring?

☐ YES ✓ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports). There is no such regulation.

✓YES □ NO

k) POM (Purchase Order Management). There is no such regulation.

✓YES □ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

✓YES □ NO

If YES, please provide the date, title and number of the law/regulation.
The Competition Act 2002

b) Anti-Money Laundering?

✓YES □ NO

If YES, please provide the date, title and number of the regulation.

Prevention of Money Laundering Act 2002

c) Minimum Capital Requirement?

✓YES □ NO

If YES, please provide the date, title and number of the regulation.
NBFC-Factors 2012 by RBI

d) Data Protection?

✓YES □ NO

If YES, please provide the date, title and number of the regulation.
RBI Master Directions

e) GAAP/IAS/IFRS Accounting Principles?

✓YES □ NO

f) Obligation to publicly disclose yearly financial reports?

✓YES □ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

✓YES □ NO

h) Reserve Requirements against liquidity risk? Only Banks are subject to reserve requirements.

□YES ✓NO

Question 1-8: Are there any local factoring associations?

✓YES □ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

Factors Association of India

b) is membership compulsory?

☐ YES ✓NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

✓YES □ NO

If YES, please provide the definition.

2 (j) of Factoring Regulation Act 2011 defines it as "factoring business" means the business of acquisition of receivables of assignor by accepting assignment of such receivables or financing, whether by way of making loans or advances or otherwise against the security interest over any receivables but does not include—
(i) credit facilities provided by a bank in its ordinary course of business against security of receivables;
(ii) any activity as commission agent or otherwise for sale of agricultural produce or goods of any kind whatsoever or any activity relating to the production, storage, supply, distribution, acquisition or control of such produce or goods or provision of any services.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country? The answer is based on common sense.

✓YES □ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ✓NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ✓NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

✓YES □ NO If YES,

a) What are those reports?

Some of the important reporting's, mandated by RBI are Credit Information bureau, Information utilities, CERSAI, SMA2, Wilful Defaulters, Non cooperative borrowers, Defaulting borrowers, Report on large credits (RLC), Priority sector reporting(PSL), Fraud Management Report (FMR), Suspected transaction report (STR)

Are they to be audited?

✓YES □ NO

b) What is the period to be reported?

Different reporting have different period ranging from month / quarterly to half yearly.

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

✓YES □ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

✓YES □ NO

b) Are there also some restrictions in terms of goods and/services involved?

✓YES □ NO

If YES, please explain.
As RBI NBFC-Factors 2012 guidelines

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

✓YES □ NO

If YES, please explain and refer to the relevant regulation (title, date, number).
Master Direction on Exports

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

✓YES □ NO

If YES, please provide the name, date and number.
RBI -NBFC Factor regulations

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

✓YES □ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

✓YES □ NO

If YES, please explain which ones
An online registry called CERSAI

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

✓YES □ NO

If YES, please explain
Complete credit assessment as per RBI guidelines and internal risk framework.

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

✓YES □ NO

If YES, please provide the date, title and number.
Factoring Regulation Act, 2011

Question 3-2: Is factoring based on assignment in your country?

✓YES □ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

✓YES □ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

□ YES ✓ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

✓YES NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

✓YES NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

As per the Central Government's directives issued in relation to sanctioning of loans by banks and financial institutions, the lenders of the loan shall register all information with regards to security interests that they have been created on any asset or property with CERSAI. Such registration is required to be completed within a period not exceeding 30 days from the date of the creation of security interests. From 2012 it was extended to include the registration of any security interests that were created via the assignment of factoring or accounts receivables. Cost is marginal

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES ✓NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

✓YES □ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

✓YES □ NO

If YES, please explain and refer to the regulation.
A letter call Debtor Introductory Letter / Notice of Assignment is sent to the debtor.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ✓NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ✓NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ✓NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ✓NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

✓YES □ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

By deed of assignment, the export factor can take legal actions against the buyer.
NOA is mandatory and the invoices must be stamped accordingly at a conspicuous place.
Follow guidelines of Factoring Regulation Act

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

✓YES □ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

✓YES □ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

✓YES □ NO

b) Non-recourse factoring?

✓YES □ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ✓ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ✓ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

✓YES □ NO

This seems to be about the sellers right of retention of goods, if the terms of contract are not fulfilled by the buyer. Yes, even Indian 'Sale of goods act 1930' allow the seller to retain title if the terms of contract are not fulfilled.

If YES, is extended retention (effective in subsequent sales) of title also possible?

✓YES □ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

□YES □ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ✓NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES ✓NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

✓YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

✓YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

✓ YES □NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES ✓ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

✓YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

✓YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ✓ NO

Question 4-4: Is e-invoicing applicable in your country?

✓YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ✓NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country? In April'20, the Central Government had started evaluating ways to implement electronic bills of lading and other trade documentation. This is under implementation / testing stage.

✓YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

✓YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES ✓NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES ✓NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

Goods and Services Tax (GST)

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ✓NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ✓NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ✓ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ✓ NO

If YES, please explain.

_____

_____

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ✓NO

If YES, please explain.

_____

_____

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

✓YES □ NO

If YES, please explain.

Factoring agreement has to be on stamp paper, besides this Personal / Corporate guarantee (if any) are on stamp paper. Demand Promissory note has to be affixed with INR. 1 revenue stamp.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ✓NO

However, Factors must intimate the seller's existing lenders of the factoring arrangement and ensure that proceeds are credited into the working capital (loan) accounts, in order to prevent double financing.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ✓NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES ✓NO

If YES, please explain.

_____

_____

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ✓ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES ✓NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

✓YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ✓NO

If YES, please explain the procedure.

_____

_____

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ✓ NO

If YES, please explain.

_____

c) Can a prior prohibition/ban of assignment invalidate an assignment?

✓YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

✓YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

✓YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES ✓ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ✓ NO

If YES, please explain.

_____

_____

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ✓NO

If YES, please explain.

_____

_____

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

✓YES □ NO

If NO, please explain.

_____

_____

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES ✓NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

✓YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

✓YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

✓YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

✓YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

✓YES □ NO

If YES, please refer to the regulation (title, date, number).

The Foreign Exchange Management Act, 1999

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable? Yes. However, foreign currency payments can be used to settle import bills as well.

✓YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

✓YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES ✓NO

Question 8-9: Are there any exceptions to the answers you have provided above?

✓YES □ NO

If YES, please explain.
Yes, if both parties agree to change the jurisdiction, in absence of which the jurisdiction mentioned in the agreement will prevail.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ✓NO

If NO, what is the most common payment structure?

With advancement in technology, mostly online mode has become the preferred option these days.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ✓NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

✓0-5 banking days
6-10 banking days
o11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

✓YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ✓NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ✓NO

If YES, under which circumstances?

_____

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ✓NO

If NO, is it an equal right with the others?

✓YES □ NO. My answer is 'No'.

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
✓91-180 days
O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
O 1 to 2 years
✓2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

O 0 to 1 year
✓1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

✓YES □ NO

If NO, what are the ways of legal settlement of disputes?

_____

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

✓YES □ NO

If YES, under which conditions?

A predetermined selection of an international seat of arbitration.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

✓YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ✓NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

✓YES □ NO

If YES, what is it called?

LIBOR. It is called MIBOR (Mumbai Interbank Offer Rate.

IF YES, who publishes it?

It is calculated by the National Stock Exchange on a daily basis.

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Subject to market practice. Can be very low. Lower than 100 bps for FCY

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

✓YES □ NO

If YES,

a) **under which circumstances?**

Consequences of late payment are mentioned in the Facility Letter and has to be obliged.

b) **can the factor issue an invoice for such interest to the debtor?**

✓YES □ NO

Subject to buyer-seller contract

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

✓YES □ NO

If YES, please explain referring to the regulation.

Depending upon the legal remedy the time limit varies, generally a demand notice is sent giving 14 days' time. Some legislations specifically mandates 30 days or in some cases 60 days' time, from the receipt of the notice, before taking legal action.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) **The UNIDROIT Convention on International Factoring (1988)?**

□ YES ✓NO

b) **The United Nations Convention on the Assignment of Receivables in International Trade (2001)?**

✓YES □ NO

c) **United Nations Convention on Contracts for the International Sale of Goods (1980)?**

□ YES ✓NO

□

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ✓NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ✓NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

✓YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

✓YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES ✓ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ✓ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ✓ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

✓YES □ NO

If YES, please provide the date, title and number of the Law.
It is governed by India Contract 1872

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

✓YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.
Impossibility, in performing the contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

✓YES □ NO

If NO, please explain the additional requirements.

_____

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

✓YES □ NO

If NO, please explain.

_____

_____

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

✓YES ✓NO

SECTION 17 ANY OTHER SUBJECTS

Question 19-1: Are there any other subjects that you think are important in conducting factoring operations with your country?

✓YES □ NO

If YES, please explain.
As per RBI, only registered and licensed NBFI-Factoring companies can offer Factoring product in India apart from Banks. No private company can offer Factoring service or product.

Thank you.

INDONESIA

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.
Peraturan Presiden No.9 / No. 29/ POJK 05/ 2014/ Peraturan Kementerian Keuangan 113/PMK.06/2019

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
DJKN / OJK

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES x NO …

If YES,

a) Is approval of managers by the governing body required?

YES x NO …

b) Is approval of the shareholders by the governing body required?

YES x NO …

c) Please provide the title, date and number of the relevant regulation/law.

PP No. 9/2009 / POJK 05/2014 / No. 29 / Kemen Keu 113 / PMK 06/2019

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES …x NO …

e) Factoring based on order approval

YES … NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES … NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES x NO …

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

YES … NO …

k) POM (Purchase Order Management)

YES … NO …

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES … NO x

If YES, please provide the date, title and number of the law/regulation

---

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation
Peraturan Bank Indonesia No.19/10/PBI/2017

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c) Minimum Capital Requirement

YES … NO …

If YES, please provide the date, title and number of the regulation

---

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation

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e) GAAP/IAS/IFRS Accounting Principles

YES … NO …

f) Obligation to publicly disclose yearly financial reports

YES … NO x

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES x NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.

Anjak piutang (Factoring) adalah kegiatan pembiayaan dalam bentuk pembelian piutang dagang jangka pendek suatu perusahaan berikut pengurusan atas piutang tersebut
Factoring is a financing activity in the form of purchasing a company's short-term trade receivables and managing these receivables

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES x NO …

If YES, please define the relevant Islamic finance instrument.

67/DSN – MUI /111/ 2008

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …

If YES,

a) What are those reports?

Tri-monthly and yearly report

b) Are they to be audited?

YES … NO …

c) What is the period to be reported?

Tri-monthly and yearly report

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES x NO …

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES x NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO x

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES x NO …

If YES, please explain and refer to the relevant regulation (title, date, number)

Peraturan Menteri Kluargan No.84/PMK 012/2006 BAB.2 Pasul 4(1)/ No. 29 / POJK. 05/2014 Pasul 10 (2)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES x NO …

If YES, please provide the name, date and number
No.29 /POJK. 05/2014. / Peraturan Kemen Keu 113 / PMK 06/2019

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES … NO x

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES x NO …

If YES, please explain
KYC Legal documents

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.
KUHP Article 63(1)

Question 3-2: Is factoring based on assignment in your country?

YES … NO x

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES … NO x

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES x NO …

If YES, please explain.
KUHP Article 63 (1)

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES … NO … Unclear on question

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO …. Unclear on question

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO … Case by case

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO x

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO x

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO …

If YES, please explain
Case by case

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … NO …

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.
Case by case

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES … NO …. Depends

b) Non-recourse factoring?

YES … NO …. Depends

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO x

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO …x

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES … NO x

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES … NO x

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO x

If YES, are they also allowed to split a particular receivable between factors?

YES … NO x

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO …

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES x NO …

Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES x NO …

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES x NO …

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO …

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES x NO …

i) If YES, what is the rate of tax?

11%

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO …

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO …

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES x NO …

If YES, please explain.
Stamp Duty

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES x NO …

If YES, please explain
Case by case

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES x NO …

If YES,

a) what are they and how is the procedure?

Taxes will be prioritised

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.
Case by case

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO …

If YES,

a) what are they and how is the procedure?

Case by case

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.
Case by case

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO x

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO x

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES x NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES x NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO x

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO x

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES x NO …

If YES, please explain
If it is already sold/assigned to another party

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES … NO x

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES … NO x

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES … NO x

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES x NO …

If YES, please refer to the regulation (title, date, number)

USD 100,000

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.
Bank transfers

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES x NO …

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES x NO …

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO …

If YES, under which circumstances?
Case by case

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO …. Case by case

If NO, is it an equal right with the others?

YES … NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days
d) 91-180 days. X
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year. X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES … NO …

If YES, under which conditions?
Case by case

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES … NO x

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES x NO …

If YES, what is it called?
JIBOR

IF YES who publishes it?
Bank of Indonesia

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
8% IDR

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES … NO x

If YES,

a) Under which circumstances?

---

b) Can the factor issue an invoice for such interest to the debtor?

YES … NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO x

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO x

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES x NO …

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO …

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES x NO …

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES x NO …

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES x NO …

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO …

If YES, please list the differences.
Case by case

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.
Artikel BW 1244 and 1245

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES … NO x

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES x NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES … NO x

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES … NO … Depends

ISRAEL

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☑ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Supreme Court ruling dated 05/22/2018, number 7281-15 Coface Finance (Israel) Ltd. vs Agrexco Agricultural Export company Ltd.AND proper Conduct of Banking Directives Published by Bank of Israel

Question 1-2-1: Are banks allowed to do factoring in your country?

☑ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☑ YES ☐ NO

If YES, please explain.

In the case of banks, Bank of Israel is the local authority. In case of NBFI, the Capital Marketing authority, Insurance and Savings.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☑ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☐ NO

b) Recourse Factoring?

☐ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☐ NO

e) Factoring based on order approval?

☐ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO

h) Reverse Factoring?

☐ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☑ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES ☐ NO

k) POM (Purchase Order Management)

☐ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

The Economic Competition Law 5748-1988 (26.07.1988) which governed by Israel Competition Authority

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

There are laws and orders governed by Israel Money Laundering and Terror Financing Prohibition Authority such as: Prohibition on Money Laundering Lay 5760-2000, International Legal Assistance Law 5758-1998 etc.

c) Minimum Capital Requirement?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

_____

d) Data Protection?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

_____

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☑ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☑ YES ☐ NO

If YES, please provide the definition.

Supreme Court ruling dated 05/22/2018, number 7281-15 Coface Finance (Israel) Ltd. vs Agrexco Agricultural Export company Ltd.AND proper Conduct of Banking Directives Published by Bank of Israel

Type text here

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☐ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☑ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☑ YES ☐ NO

If YES,

a) What are those reports?

Exposure reports supervised by Bank of Israel

b) Are they to be audited?

☑ YES ☐ NO

c) What is the period to be reported?

Financial reports every quarter.

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☑ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☑ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☑ YES ☐ NO

If YES, please explain.

Military goods are restricted in some level and Goods that have sanctions from the European or American regulator. also internal policies depends on the factoring companie's risk management.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☑ YES ☐ NO

If YES, please provide the name, date and number.

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SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☑ YES ☐ NO

If YES, please explain which ones

D&B or BDI and the registrar of Companies .

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☑ YES ☐ NO

If YES, please explain

KYC reports approved internally before onboarding a new client and financial reports if applicable

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☑ YES ☐ NO

If YES, please provide the date, title and number.

Supreme Court ruling dated 05/22/2018, number 7281-15 Coface Finance (Israel) Ltd. vs Agrexco Agricultural Export company Ltd.AND proper Conduct of Banking Directives Published by Bank of Israel

Question 3-2: Is factoring based on assignment in your country?

☐ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☐ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☐ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☐ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☐ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☐ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☐ NO

b) Non-recourse factoring?

☐ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

□ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ☑ NO

Question 4-4: Is e-invoicing applicable in your country?

☑ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☑ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☑ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES □ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES □ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES □ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES □ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☑ YES □ NO

If YES, please explain.

floating charges preferential rights of sub- contractors of client.to avoid competition factor can obtain for letter of consent from the competitors.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES □ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES □ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES □ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES □ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES □ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

O 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES □ NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES □ NO

If YES, under which circumstances?

_____

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

O 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

□ YES □ NO

If NO, what are the ways of legal settlement of disputes?

_____

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

□ YES □ NO

If YES, under which conditions?

_____

_____

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES □ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES □ NO

If YES,

a) under which circumstances?

---

b) can the factor issue an invoice for such interest to the debtor?

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES □ NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES □ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES □ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES □ NO

If YES, please provide the date, title and number of the Law.

_____

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

_____

_____

_____

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

□ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES □ NO

IVORY COAST

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.
UEMOA – Uniform Law on Factoring

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES … NO x

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
Central Bank of West African States

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO x. only bank and microfinance

If YES,

a) Is approval of managers by the governing body required?

YES … NO …

b) Is approval of the shareholders by the governing body required?

YES … NO …

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES … NO x

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES … NO x

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES … NO x

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES … NO …

i) Islamic International Factoring

YES x NO …

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation

---

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation

---

c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation
Minimum capital required for financial institutions

---

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
Law No 2008 du 25/01/2008

---

e) GAAP/IAS/IFRS Accounting Principles

YES … NO x

f) Obligation to publicly disclose yearly financial reports

YES x NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES x NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.

Transaction by which the member transfers by contract with effect subrogation its debt to the factor, who in return for remuneration paid him in advance all or part of the amount of transferred receivables

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES x NO …

If YES, please define the relevant Islamic finance instrument.
Microfinance and Banking Law

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …

If YES,

a) What are those reports?

Not disponible yet

b) Are they to be audited?

YES x NO …

c) What is the period to be reported?

Not disponible yet

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES x NO …

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES x NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES x NO …

If YES, please explain
The Law explains 8 categories of sales that do not apply to factoring

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES x NO …

If YES, please provide the name, date and number
To be prepared on Central Bank

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones
The member communicates to the factor any information allowing to assess.

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO x

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.
OHADA Uniform Act

Question 3-2: Is factoring based on assignment in your country?

YES … NO x

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO x

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES x NO …

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES x NO …

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)
Commercial registration

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO x

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO x

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO x

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … NO x

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO x

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES x NO …

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES x NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES x NO …

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES … NO x

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO …

If YES, are they also allowed to split a particular receivable between factors?

YES … NO …

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES … NO x

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES … NO x

Question 4-3: Is signature required on an invoice for validity?

YES … NO x

Question 4-4: Is e-invoicing applicable in your country?

YES … NO x

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO x

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO x

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO x

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES x NO …

If YES,

a) what are they and how is the procedure?

Any tax payment is a privilege

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES x NO …

If YES,

a) what are they and how is the procedure?

A derogation to be requested

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO x

If YES, please explain the procedure.
Commercial registration

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO …

If YES, please explain.

With Commercial Registration

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES x NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES x NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES x NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES x NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES x NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES … NO x

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES x NO …

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES x NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x
If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES x NO …

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES x NO …

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO x

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO x

If NO, is it an equal right with the others?

YES … NO x

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days. X
b) 31-60 days
c) 61-90 days
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?

By the application process named Exequatur

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES x NO …

If YES, what is the rate?

It depends on the conditions applicable by each institution.

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
N/A

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

If the invoice has an expired due date.

b) Can the factor issue an invoice for such interest to the debtor?

YES x NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES x NO …

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES x NO …

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES x NO …

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES x NO …

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES x NO …

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES … NO x

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES x NO …

If YES, please list the differences.

The competent court is different

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.
Civil Act in each country

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES x NO …

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

The event is considered as a force majeure is based must meet the following conditions:

- Unforeseeable
- Irresistible
- Beyond the control of the persons concerned

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES … NO x

If NO, please explain the additional requirements.
Local Law applies

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES x NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES x NO …

SECTION 17 - ANY OTHER SUBJECTS

Are there any other subjects that you think are important in conducting factoring operations with your country?

YES x NO …

If YES, please explain.

To develop factoring it is important to accelerate digitization of process at all levels.

JAPAN

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☑ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☑ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☑ NO

If YES, please explain.

Factoring companies in general are not subject to supervision by specific local authority, but certain activities that falls under the scope of "money lending business" may be regulated by Financial Services Agency.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☑ NO (provided that the activities do not fall under "money lending business")

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☑ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☑ YES ☐ NO

b) Recourse Factoring?

☑ YES ☐ NO

c) Undisclosed Factoring?

☑ YES ☐ NO

d) Pre-shipment Financing?

☑ YES ☐ NO
(but not practical)

e) Factoring based on order approval?

☑ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☑ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☑ YES ☐ NO

h) Reverse Factoring?

☑ YES ☐ NO

i) Islamic International Factoring?

☑ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☑ YES ☐ NO

k) POM (Purchase Order Management)

☐ YES ☑ NO (except under special circumstances)

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No.54, 1947)

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Act on Prevention of Transfer of Criminal Proceeds (Act No.22, 2007)

c) Minimum Capital Requirement?

☐ YES ☑ NO

If YES, please provide the date, title and number of the regulation.

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Act on the Protection of Personal Information (Act No.57, 2003)

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

(but not necessarily IAS/IFRS)

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

(for certain items)

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☑ NO (except for certain large companies)

h) Reserve Requirements against liquidity risk?

☐ YES ☑ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☑ NO

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☑ NO ?

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☑ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☑ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☑ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☑ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☑ YES ☐ NO

If YES, please explain which ones

(as needed on case by case basis)

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☑ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☑ YES ☐ NO

If YES, please provide the date, title and number.

Civil Code (Act No.89, 1896), Act on Special Provisions, etc. of the Civil Code Concerning the Perfection Requirements for the Assignment of Movables and Claims (Act No.104, 1998)

Question 3-2: Is factoring based on assignment in your country?

☑ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☑ NO (except in some cases)

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☑ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☑ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☑ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

(provided that perfection may be effected by certain form of notice instead of registration):
Registration will be filed (by submitting application in paper form or on-line) with Tokyo Legal Affairs Bureau.
Filing fee will be required (7,500yen or 15,000yen depending on number of receivables).
Normally, the application is processed on the day of submission.

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☑ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☑ YES ☐ NO

(notice is necessary to perfect assignment)

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☑ YES ☐ NO

If YES, please explain and refer to the regulation.

In order to secure the right to claim the payment to the debtor with the priority over third parties, notice to the debtor must be made (i) by assignor in writing and containing a "fixed date" or (ii) by assignee which must be accompanied by a certificate of registration of assignment.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☑ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☑ NO

If YES, how must the acceptance of notification be made in your country?

(but acceptance by the debtor can work as a substitute for a notice, and written acceptance by the debtor containing "fixed date" has the effect of perfecting the assignment)

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO (provided that "fixed date" by public notary is one method of obtaining "fixed date" in a written notice or acceptance)

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☑ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☑ YES ☐ NO ?

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

ref. Q3-7

In order to secure the right to claim the payment to the debtor with the priority over third parties, notice to the debtor must be made (i) by assignor in writing and containing a "fixed date" or (ii) by assignee which must be accompanied by a certificate of registration of assignment

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☑ NO Depends on the facts of each transaction

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☑ NO

b) Non-recourse factoring?

☑ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☑ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☑ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☑ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☑ NO "no (at least not practical)"

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☑ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☑ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

☑ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☑ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☑ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

☑ YES □ NO (but not practical)

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☑ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ☑ NO

Question 4-4: Is e-invoicing applicable in your country?

☑ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☑ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☑ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☑ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☑ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

Factoring commission. VAT free
Discounting Charge. VAT free
Another charges(for collection or credit research). VAT 10%

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☑ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☑ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☑ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☑ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

☑ YES □ NO

If YES, please explain. Export factoring agreement JPY4,000
Notice of credit line JPY200

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☑ YES □ NO

If YES, please explain.

pledges, assignment for security purpose, preferential rights

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO except for general claims for avoidance may be available for any other creditor of the debtor.

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☑ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☑ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☑ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES ☑ NO but debtor can refuse to pay to assignee who knew or who was grossly negligent in not knowing the prohibition of assignment

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

☑ YES □ NO but practically debtor's consent should be obtained.

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☑ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☑ NO

provided that debtor in general can raise defenses available under the contract against the assignee

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☑ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☑ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☑ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☑ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☑ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☑ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ☑ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☑ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☑ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ☑ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☑ NO

If NO, what is the most common payment structure?

Wire transfer

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

☑ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- ☑ 0-5 banking days
- O 6-10 banking days
- O 11-20 banking days
- O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES ☑ NO for practical purposes (post-dating does not legally invalidate a cheque, but will put the payee and the bank on alert)

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

☑YES □ NO

If YES, under which conditions?

Assignment may be avoided if such assignment reduces assignor's assets or is made in preference of certain creditor after it has become unable to pay its debts.

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

☑YES □ NO

If YES, under which circumstances?

Same as above.

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ☑ NO

If NO, is it an equal right with the others?

☑ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
✓ More than 180 days But mostly closed within one year.

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- Ø 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- Ø 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☑ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☑ YES □ NO

If YES, under which conditions?

Japan is a member of New York Convention.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☑ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☑ YES □ NO

If YES, what is the rate?

3% as of year 2021

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

☑ YES □ NO

If YES, what is it called?

TIBOR

IF YES, who publishes it?

JBA TIBOR Administration

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

NA

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☑ YES □ NO

If YES,

a) under which circumstances?

Depending on the terms of the factoring agreement.

b) can the factor issue an invoice for such interest to the debtor?

☑ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES ☑ NO

provided that if the period of statute of limitations passes, the debtor can raise it as a defense.

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☑ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☑ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

☑ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☑ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑ NO No, provided that contracts with public administrations usually contains provisions on prohibition of assignment of receivables.

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES □ NO NA

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES □ NO NA

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES ☑ NO except under the general rule which applies to any debtor for refusal to pay to assignee who knows or who was grossly negligent in not knowing the contractual provision on prohibition of assignment.

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☑ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES ☑ NO

If YES, please provide the date, title and number of the Law.

No, but there is a general rule that an obligor is not liable to pay damages for breach of contractual obligation if the cause is not attributable to the obligor (Article 415, Paragraph 1 of Civil Code (Act No. 89, 1896).)

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES ☑ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

No, but obligor may raise as a defense that the cause of breach was not attributable to the obligor even if there is no express provision in the contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☑ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☑ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES ☑ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES ☑ NO

JORDAN

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☒ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

- **The Finance Companies Regulation No. 107 of the year 2021.**
- **The Civil Law No. 43 of 1976**
- **The Banking Law No. 28 of 2000**

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Question 1-2-1: Are banks allowed to do factoring in your country?

× YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

× YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

× YES ☐ NO

If YES, please explain.

Central Bank of Jordan, acting as a regulator for the purposes of granting licenses to carryout out financing activities, including the factoring.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

× YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

× YES ☐ NO

b) Is approval of the shareholders by the governing body required?

× YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

The Finance Companies Regulation No. 107 of the year 2021 ("Finance Companies Regulation")

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

× YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

✕ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ✕ NO

b) Recourse Factoring?

✕ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ✕ NO

d) Pre-shipment Financing?

✕ YES NO

e) Factoring based on order approval?

✕ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

✕ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

✕ YES ☐ NO

h) Reverse Factoring?

✕ YES ☐ NO

i) Islamic International Factoring?

✕ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

× YES ☐ NO

k) POM (Purchase Order Management)

× YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

× YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

Competition Law No. 33 for the Year 2004.

---

b) Anti-Money Laundering?

× YES ☐ NO

If YES, please provide the date, title and number of the regulation.

For Finance Companies, the AML/CFT Instructions no. 8 for the year 2020. For banks, the AML/CFT Instructions no. 18 for the year 2018.

c) Minimum Capital Requirement?

× YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Finance Companies Regulation.

d) Data Protection?

× YES NO

If YES, please provide the date, title and number of the regulation.

Credit Information Law No. 15 for the Year 2010
Banking Law.

---

e) GAAP/IAS/IFRS Accounting Principles?

× YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

× YES ☐ NO

Banks are required to disclose yearly financial reports, however, NBFI disclosure depends on the company type whereas if it's a public shareholding company then its obliged to disclose its yearly financial reports.

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

× YES ☐ NO

h) Reserve Requirements against liquidity risk?

× YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES × NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

× YES ☐ NO

If YES, please provide the definition.

Article (2) of the Finance Companies Regulation defines factoring as a financial activity that involves purchasing existing and future financial rights resulting from the sale of goods or the provision of services.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ✕ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ✕ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ✕ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ✕ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

✕ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

✕ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ✕ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

✕ YES NO

If YES, please explain and refer to the relevant regulation (title, date, number).

time barred receivables.

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ✕ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

X YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

X YES ☐ NO

If YES, please explain which ones

Shareholders list in the registration certification & the relevant POAs if any

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

X YES ☐ NO

If YES, please explain

Full customer CDD & financial analysis, with focus of AR / AP quality

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

× YES ☐ NO

If YES, please provide the date, title and number.

The Civil Law No. 43 of 1976

Question 3-2: Is factoring based on assignment in your country?

YES ✕ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

✕ YES NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ✕ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ✕ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ✕ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ✕ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

✕ YES NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

✕ YES NO

If YES, please explain and refer to the regulation.

Notarial

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES ✕ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

✕ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?

In writing, preferably in notarial form.

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

✕ YES ☐ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

✕ YES ☐ NO

If YES, please explain.

- **The assignment agreement will only be valid if agreed on by all three parties (i.e. the creditor/assignor, the debtor and the third party/assignee). Accordingly, it would be important to add the debtor as a party to the agreement.**

- **The agreement must be formally executed before the Notary Public.**
- **The assignor must be indebted to the third party / assignee.**
- **Assignment must be complete and unconditional, except for an appropriate or customary condition, and the contract is not made subject to future substance.**
- **The payment stipulated therein should not be deferred to an unknown date.**
- **The assignment should not be temporary.**
- **The money subject matter of the assignment must be known / ascertainable and can be substituted.**
- **The money subject matter of a restricted assignment must be a debt or an in kind that cannot be substituted, and that both are equal in type, amount and character.**
- **It should be purely attached, so that none of its parties is put in conditional or noticeable situation, and the transfer is not affected by the attachment after execution**

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

× YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☐ YES × NO

If NO, please explain the procedure.
Such receivables remain under the beneficiary's ownership

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES × NO

Question 3-15: Does the factoring company recognize the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES X NO

b) Non-recourse factoring?

☐ YES X NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES X NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES X NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

× YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES **X** NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

× YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

× YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

× YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

× YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

× YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

× YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

× YES NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

□ YES × NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES × NO

Question 4-3: Is signature required on an invoice for validity?

YES × NO

Question 4-4: Is e-invoicing applicable in your country?

× YES NO

If YES, is e-invoicing obligatory for some situations?

× YES NO

If YES, please explain the criteria.

In most governmental transactions, payment orders (invoices) are issued electronically.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES × NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

X YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES X NO

1) **If YES, please explain the types and rates of the taxes for each case.**

2) **If NO, is it value added tax?**

□ YES X NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

Income tax rates applicable on income

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES X NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES X NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES X NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

X YES □ NO

If YES, please explain.
All applicable taxes are obliged to be paid regardless of the execution status

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

X YES □ NO

If YES, please explain.
Stamp duty is applicable to all officially assigned invoices

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES X NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

X YES □ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES X NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

X YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES X NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

X YES □ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

× YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES × NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES × NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES × NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

× YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES × NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES × NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

× YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

X YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

X YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

X YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

X YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

X YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES X NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES X NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

X YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES X NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

X YES □ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES X NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

X 0-5 banking days
○ 6-10 banking days
○ 11-20 banking days
○ More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES X NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES X NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES X NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES X NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

- ○ 0- 30 days
- ○ 31-60 days
- X 61-90 days
- ○ 91-180 days
- ○ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

○ 0 to 1 year
× 1 to 2 years
○ 2 to 3 years
○ More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

○ 0 to 1 year
×1 to 2 years
○ 2 to 3 years
○ More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

× YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

× YES □ NO

If YES, under which conditions?

The court will determine whether to recognize and enforce a foreign arbitration judgment based on whether the country where the arbitral award was issued is a party to a bilateral cooperation agreement with Jordan. If such an agreement does not exist, then the determination will be based on whether said country is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in 1958.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

× YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

× YES □ NO

If YES, what is the rate?
9%

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES X NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

This is determined on a case by case basis and takes into consideration many factors (such as financial risk, etc..)

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

× YES □ NO

If YES,

a) under which circumstances?

If the debt is not settled on time, past due interest rate is applicable. The rate will be agreed upon in advance

---

b) can the factor issue an invoice for such interest to the debtor?

× YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

× YES □ NO

If YES, please explain referring to the regulation.

10 years as of the due date according to the Commercial Act No. 12 of 1966.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES × NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

YES × NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES × NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

× YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES X NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES × NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES × NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

× YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES × NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES × NO

If YES, please list the differences.

KENYA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

The law of contract (amendment), 2019

Question 1-2-1: Are banks allowed to do factoring in your country?

☐ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☐ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☐ NO

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☐ NO

b) Recourse Factoring?

☐ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☐ NO

e) Factoring based on order approval?

☐ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO

h) Reverse Factoring?

☐ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

Competition Act, 2012 and the Competition General Rules, 2019.

b) Anti-Money Laundering?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

The proceeds of crime and Anti-Money Laundering Act, 2009

c) Minimum Capital Requirement?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

---

d) Data Protection?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Data Protection Act, 2019.

e) GAAP/IAS/IFRS Accounting Principles?

☐ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☐ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

N/A

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☐ NO

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☐ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☐ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES

☐ NO

If YES,

a) What are those reports?

N/A

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

N/A

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☐ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☐ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☐ NO

If YES, please explain which ones

Assignment of receivables to any other parties.

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☐ NO

If YES, please explain

Due diligence of both the supplier and the buyer.

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☐ YES ☐ NO

If YES, please provide the date, title, and number.

The Law of Contract Act, Cap 23 Laws of Kenya, and the Movable Propery Security Rights Act, 2017

Question 3-2: Is factoring based on assignment in your country?

☐ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☐ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

The collateral registry is an electronic registry established under the Movable Property Security Right Act, 2017 and the Movable Property Security Rights (General) Regulations, 2017 for the purpose of receiving, storing, and making accessible to the public information on registered notices. The registry is hosted by the Business Registration Service under the Company Registry. Timeline for registration is 1 day. There is no cost for filing the initial notice but search requests cost USD 5. Duration is valid for 10 years, which can be renewed for a further 10 years.

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors? It depends on the nature of the securities that have been taken and registered by the other creditors under other applicable legislation such as the companies Act, 2015 which regulates the taking of debenture.

☐ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☐ NO

If YES, please explain and refer to the regulation.

The form of notification is governed by the contract between the assignor and the debtor.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☐ NO

If YES, please explain.

If the debtor is declared bankrupt or insolvent.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?
By writing, either by email or by contract.

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☐ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☐ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

For a valid cause of action to arise against the debtor, the contract of assignment must be effective/valid and it ought to stipulate that a suit for a second payment against the debtor is a remedy for unjust/unjustifiable payments to the first creditor.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☐ NO

b) Non-recourse factoring?

☐ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

The law of contract (amendment) Act 2019

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

□ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

□ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

□ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES □ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

Income tax chargeable and payable under the provisions of the Income Tax Act, Cap 470 Laws of Kenya.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES □ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES □ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES □ NO

If YES, please explain.

The stamp duty is applicable when the registration of the receivables is done by the factor is the collateral registry. This is under the provisions of the Stamp Duty Act, Cap 480 Laws of Kenya.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES □ NO

If YES, please explain.

Stamp duty is payable on all contract documents that are signed in respect to the factoring transaction.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES □ NO

If YES, please explain.

A floating debenture/charge means that a financier has taken interest in the supplier's receivables. Thus a search prior an approval to check whether a supplier's receivables are attached to another financier is key during the due diligence stage.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES □ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES □ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES □ NO

If YES, please explain.

Contractual barriers that would affect the factoring operations include vitiating factors in the underlying contract between the supplier and the debtor (the existence of mistake, mis presentation, duress, undue influence or illegality) that may render the contract void ab initio or voidable.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES □ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES □ NO

If NO, what is the most common payment structure?

Bank transfer.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

○ 0-5 banking days
○ 6-10 banking days
○ 11-20 banking days
○ More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES □ NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES □ NO

If YES, under which circumstances?

_____

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

○ 0- 30 days
○ 31-60 days
○ 61-90 days
○ 91-180 days
○ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

○ 0 to 1 year
○ 1 to 2 years
○ 2 to 3 years
○ More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

○ 0 to 1 year
○ 1 to 2 years
○ 2 to 3 years
○ More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

□ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

□ YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES □ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

1.5% per month

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES □ NO

If YES,

a) under which circumstances?

Under reverse factoring.

---

b) can the factor issue an invoice for such interest to the debtor?

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES □ NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

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a) The UNIDROIT Convention on International Factoring (1988)?

□ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES □ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES □ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES □ NO

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

KOREA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

1. Commercial Act

Article 168-11 (Definition) A person who engages in the business of purchasing and recovering business bonds acquired or to be acquired by another person through the sale of goods or securities, provision of services, etc. is called a bonds purchasing business entity.

2. Banking Act

Article 27-2 (Operation of incidental Services)

(2) Where a bank intends to be engaged in incidental services, it shall file a report thereon with the Financial Services Commission within seven days prior to the date on which it intends to start such services: Provided, that it may be engaged in the services provided for in the following among the incidental services without reporting thereon:

3. Factoring (referring to purchase and recovery of bonds on sales price of a company and affairs related thereto)

Question 1-2-1: Are banks allowed to do factoring in your country?

☐ YES ☐ NO

Please see the above.

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☐ YES ☐ NO

Basically 'Factoring' falls with the scope of commercial activities defined in the Commercial Acts and each law / regulation governing each business of financial industry allows respective non-bank financial institutions to operate as factors in a way that directly sets out factoring is a type of business permissible or each company gets approval from regulatory authority to do so.

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☐ NO

If YES, please explain.

Financial Services Commission, Financial Supervisory Service, Fair Trade Commission, etc. in general regulate and/or supervise the activities of factoring companies as part of those overall inspection of all financial companies.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☐ NO

It and what they should meet qualification for depends on what type of NBFIs they are.

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Yes. But actual payment and receipt with those transactions are to be made via FX bank(s).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☐ NO

Yes in general. But what extent to which operations are permitted differs in the industry in which that company is.

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☐ NO

b) Recourse Factoring?

☐ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☐ NO

e) Factoring based on order approval?

☐ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO

h) Reverse Factoring?

☐ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES ☐ NO

k) POM (Purchase Order Management)

☐ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

All companies including factoring ones in my country must abide by relevant laws / regulations with following matters.

---

b) Anti-Money Laundering?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

---

c) Minimum Capital Requirement?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

---

d) Data Protection?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

---

e) GAAP/IAS/IFRS Accounting Principles?

☐ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☐ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☐ NO

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☐ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☐ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☐ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☐ NO

Generally NO. But there may be any restrictions in accordance with nature of the underlying contract in very exceptional cases.

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☐ NO

If YES, please provide the name, date and number.

For the bank, there is a guidance on accounting for factoring

---

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☐ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☐ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☐ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☐ YES ☐ NO

If YES, please provide the date, title and number.

Civil Act
Section 4 Assignment of Claim
Article 449 (Assignability Nature of Claim)
Article 450 (Requisite for Setting up Assignment of Nominative Claim against Obligor)
Article 451 (Effect of Consent or Notice)
Article 452 (Notice of Assignment and Estoppel)

Question 3-2: Is factoring based on assignment in your country?

☐ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☐ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☐ NO

If YES, please explain and refer to the regulation.
The notice or consent of assignment cannot be set up against a third person other than the obligor, unless it is put in writing with a certified fixed date. However, there are some legal ways as writing with a certified fixed date.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☐ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?
Acceptance is necessary only when there is a ban on assignment clause in the contract between assignor and obligor.

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☐ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☐ NO

If YES, please explain.
Certified mail via Post office

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.
The assignee has burden of proof that there is effective notice of assignment to the obligor or consent by the obligor.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☐ NO

b) Non-recourse factoring?

☐ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

☐ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

□ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

□ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES □ NO However, it seems necessary in practice for many reasons.

Question 4-4: Is e-invoicing applicable in your country?

□ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES □ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES under strict requirements. □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES □ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES □ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES □ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES □ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES □ NO

If YES, please explain.
Only it is needed to be perfection, NOA or consent.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES □ NO But third parties having secured right/interest in this receivable may prohibit the assignment.

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES □ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES □ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES □ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES □ NO It has nothing to do with legal question.

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES under Foreign Exchange regulation. □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES □ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES □ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES □ NO
But normally use fund transfer for the payment.

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

O 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES □ NO

If YES, under which conditions?
An administrator can freeze all kinds of debt of the obligor and distribute in proportionate.

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES □ NO

If YES, under which circumstances?
See the answer above.

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

- O 0- 30 days
- O 31-60 days
- O 61-90 days
- O 91-180 days
- O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

□ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

□ YES in general □ NO

If YES, under which conditions?
Korean Courts in principle recognize judgment or arbitral award obtained from courts/tribunal in other country, except where the judgment or arbitral award is excessively unfair to one party.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES □ NO

If YES, what is the rate?
Overdue interest rate in market: lower of (i) 3% per annum over base rate or (ii) 15% per annum. But as it is factoring, so base rate may be applied for the buyers' late payment.

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?
TERM SOFR for USD

IF YES, who publishes it?
CME

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
Depends on level of funding cost of factoring company, US bank provides less rate for USD factoring

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES □ NO

If YES,

a) **under which circumstances?**

When arising a late payment

b) **can the factor issue an invoice for such interest to the debtor?**

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES □ NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES □ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES □ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES □ NO

If YES, please provide the date, title and number of the Law.
Notwithstanding the fact that there are a few clauses the effect of force majeure in specific situations, there is no definition of "force majeure".

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.
Please see the answer above. We cannot explain to this question.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

□ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES □ NO

SECTION 17 ANY OTHER SUBJECTS

Question 17-1: Are there any other subjects that you think are important in conducting factoring operations with your country?

□ YES □ NO

If YES, please explain.

Thank you.

KOSOVO

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.
CBK Regulation on Factoring since 2008

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
CBK (Central Bank of Kosovo)

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES x NO …

If YES,

a) Is approval of managers by the governing body required?

YES … NO x

b) Is approval of the shareholders by the governing body required?

YES x NO …

c) Please provide the title, date and number of the relevant regulation/law.

Regulation on the Registration, Supervision and Activities of Non-Banking Financial Institutions, No:11/11, May 28, 2015

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES x NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES … NO x

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES … NO x

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation
Competition Law of the Republic of Kosovo No: 03/L-229 dd. 25th Nov. 2010

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation
Regulation on Prevention of Money Laundering and Financing of Terrorism of the Central Bank of Kosovo, 24th Nov. 2016; and Law No: 03/L-196 on Prevention of Money Laundering and Financing of terrorism, 2013

c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation
Regulation on Bank Capital Adequacy, No: 11/11, May 2012, Central bank of Kosovo

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
Law on Personal Data Protection of the republic of Kosovo No:06/L-082, 25th January 2019

e) GAAP/IAS/IFRS Accounting Principles

YES x NO …

f) Obligation to publicly disclose yearly financial reports

YES x NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES x NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO x

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.

Factoring is a permitted financial activity whereby the factor purchases and /or accepts existing non-matured or future short term receivables up to one year.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO x

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …

If YES,

a) What are those reports?

Report on Factoring Claims (FG)

b) Are they to be audited?

YES x NO …

c) What is the period to be reported?

NBFI with factoring activity shall submit to the CBK Banking Supervision Department not later than 15 (fifteen) calendar days after the end of each month.

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES x NO …

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES x NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES x NO …

If YES, please explain
The Bank does not finance the trade of the items that are not legally possible, especially those that can not circulate legally.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO x

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …
Based on our lending practices, the evaluation of creditworthiness is always mandatory. Thereby also in case of factoring the same principle is followed. From the perspective of rank assessment a comprehensive review of the case is performed, the financial figures along with other qualitative assessment is performed and an appropriate result rating is set. Similarly, on the same principle, KYC is a mandatory process, all clients are screened against official black list in compliance with our Group policy on restructive measures and embargo.

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES …x NO x

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO …

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES … NO x

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES … NO x

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES x NO …

If YES, please explain.
In the Republic of Kosovo factoring can be excersised only on the basis of a factoring contract in written form. Factoring contract includes names, type of factoring, etc.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES … NO …

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES x NO …

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)
It should be registered at the Pledge Office of the Ministry of Trade and Industry. It can be electronically through e-pledge for all the individuals and legal entities.

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES x NO …

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO x

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES x NO …

If YES, please explain and refer to the regulation
CBK Registration since 2008.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES x NO …

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Invoices must be valid. They would be detailed with date and all the requirements. It should also bring all other evidence which indicates that the requirements have been made achievable.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES x NO …

If YES, please provide the reference of the relevant regulation.

Law No 04/L-136 on the Registration of a Pledge in the Registry of a Movable Property of the Republic of Kosovo

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO x

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES x NO …

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES … NO x

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO x

If YES, are they also allowed to split a particular receivable between factors?

YES … NO x

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES … NO x.
We are waiting from the assembly to approve the Law and maybe it will enter into force at the end of this year.

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES … NO x

Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES … NO x

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO x

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO x

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES x NO …

i) If YES, what is the rate of tax?

18%

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES x NO …

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES x NO …

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.
The factoring company is obliged to pay VAT for its services.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES x NO …

If YES, please explain.

For ex. (Foreign Factoring) If the foreign factoring includes more than one factor, the factor that is resident in Kosovo shall be required to conclude an interfactor agreement, which shall regulate the relationship between the domestic factor and the foreign factor and which shall be in compliance with the applicable Law in Kosovo.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES x NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES x NO …

If YES, please explain the procedure.

This is not specified in our country in the basis of factoring, but we are comparing it on the practice of the Tax Administration of the Republic of Kosovo, while we still do not have a specific Law that regulates factoring.

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO x

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO x

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES x NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO x

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO x

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES … NO x

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES x NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

_____

_____

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x. We do not work with cheques

If NO, what is the most common payment structure.
The most common structure is through the bank accounts.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES … NO x

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO …

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES x NO …

If NO, is it an equal right with the others?

YES … NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days. X
c) 61-90 days
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year. X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES x NO …

If YES, what is the rate?
11.87%

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
No available information

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

Based on the Central Bank Rules

b) Can the factor issue an invoice for such interest to the debtor?

YES x NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES x NO …

If YES, please explain referring to the regulation

Law of Enforcement Procedure of the Republic of Kosovo No. 04/L-139, which regulates that the debtor has a deadline for voluntary fulfilment of invoices on court decisions, then they are immediately executed by the bailiff.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO x

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO x

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO x

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES … NO x. Because we do not have a Law on electronic signatures

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES … NO x

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO x

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO x

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.
Law on Obligations of the Republic of Kosovo, No. 04/L-077, June 19, 2012

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES x NO …

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.
For. Ex. (Fire explosion, floods, earthquakes, civil riots, or revolutions, acts of terrorism, acts of army Government or State power bodies, theft, malicious damage, strike or any other causes on events of this nature, beyond the reasonable control of the parties.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES x NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES x NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES x NO …

LEBANON

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☒ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Lebanese Code of Obligations and Contract/Assignment of proceeds- date: 20/10/1932

Question 1-2-1: Are banks allowed to do factoring in your country?

☒ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☒ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☒ NO

If YES, please explain.

Unless, it is done by a financial Company, then it would be regulated by the Central Bank of Lebanon.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☒ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☒ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☐ NO

It depends object of each company.

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☒ YES ☐ NO

b) Recourse Factoring?

☒ YES ☐ NO

c) Undisclosed Factoring?

☒ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☒ NO

e) Factoring based on order approval?

☐ YES ☒ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☒ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☒ YES ☐ NO

h) Reverse Factoring?

☒ YES ☐ NO

i) Islamic International Factoring?

☒ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters? a) Competition Rules?

☐ YES ☒ NO

If YES, please provide the date, title and number of the law/regulation.

---

b) Anti-Money Laundering?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

24/11/2015, Fighting Money Laundering and Terrorist Financing, Law nr.44

---

c) Minimum Capital Requirement?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Code of Commerce – date: 24/12/1942

---

d) Data Protection?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

10/10/2018, Electronic Transaction and Personal Data, Law nr. 81

---

e) GAAP/IAS/IFRS Accounting Principles?

☒ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☒ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☒ YES ☐ NO

h) Reserve Requirements against liquidity risk? ☐

YES ☐ NO
X

Question 1-8: Are there any local factoring associations?

☐ YES ☒ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☒ NO

If YES, please provide the definition.

_____

_____

_____

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☒ NO

Question 1-11: Are there any different regulations applicable to the factoring of oneperson-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☒ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☒ NO

If YES, please define the relevant Islamic finance instrument.

_____

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☒ YES ☐ NO

If YES,

a) What are those reports?

Company Annual Reports

---

b) Are they to be audited?

☑ YES ☐ NO

c) What is the period to be reported?

Yearly

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☑ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☑ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☑ YES ☐ NO

If YES, please explain.

Origin of receivables should be clear and legal.
Without Real State.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☑ YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

---

6 months

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☒ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☒ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☒ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☒ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc...) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☒ YES ☐ NO

If YES, please provide the date, title and number.

Code of Obligations and Contracts - date: 20/10/1932

Question 3-2: Is factoring based on assignment in your country?

☒ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☒ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☒ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☒ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☒ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☒ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☒ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☒ YES ☐ NO

If YES, please explain and refer to the regulation.

In writing. Code of Obligations and Contracts (Article 284) and Code of Commerce (Articles 325 till 335).

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☒ NO

If YES, please explain.

In case of opposability of exceptions.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☒ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☒ YES ☐ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☒ YES ☐ NO

If YES, please explain.

The debtor must be notified.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☑ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

_____

_____

_____

_____

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

_____

_____

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☑ YES ☐ NO

b) Non-recourse factoring?

☒ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☒ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

There is no specific law.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☒ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

There is no specific law.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☒ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☒ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☒ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

☐ YES ☒ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☒ YES ☐ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☐ YES ☒ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☐ YES ☐ NO

If YES, are they also allowed to split a particular receivable between factors?

☐ YES ☐ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☐ YES ☑ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☐ YES ☑ NO

Question 4-3: Is signature required on an invoice for validity?

☑ YES ☐ NO

Question 4-4: Is e-invoicing applicable in your country?

☐ YES ☑ NO

If YES, is e-invoicing obligatory for some situations?

☐ YES ☐ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☐ YES ☑ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☒ YES ☐ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☐ YES ☒ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

☐ YES ☐ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and nonbanks?

☒ YES ☐ NO

If YES, please explain.

It is revenues Taxes.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☒ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☒ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☒ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES □ NO

If YES, please explain.

Stamps on Agreements and documents with an amount.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES □ NO

If YES, please explain.

Stamps on Agreements and documents with an amount.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☒ YES ☐ NO

If YES, please explain.

Credit Insurance/ Guarantees/ Referential Rights.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

☐ YES ☒ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

☐ YES ☐ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☒ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☒ YES ☐ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

☐ YES ☒ NO

If YES, please explain the procedure.

_____

_____

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

☐ YES ☒ NO

If YES, please explain.

_____

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☒ YES ☐ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☒ YES ☐ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

☒ YES ☐ NO

d) can a receivable still be factorable under prohibition of assignment?

☒ YES ☐ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

☐ YES ☒ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

☐ YES ☒ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

☐ YES ☒ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☐ YES ☒ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☒ YES ☐ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☒ YES ☐ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☐ YES ☒ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☐ YES ☒ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☒ YES ☐ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

☐ YES ☒ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☒ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☒ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ☒ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

☒ YES ☐ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

☒ YES ☐ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- ☒ 0-5 banking days
- ○ 6-10 banking days
- ○ 11-20 banking days
- ○ More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

☐ YES ☒ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

☒ YES ☐ NO

If YES, under which conditions?

If it is sign before 18 months.

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

☒ YES ☐ NO

If YES, under which circumstances?

If it is sign before the bankruptcy

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☒ YES ☐ NO

If NO, is it an equal right with the others?

☐ YES ☐ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

○ 0- 30 days

○ 31-60 days

○ 61-90 days

○ 91-180 days

✓ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

○ 0 to 1 year

○ 1 to 2 years

☒ 2 to 3 years

○ More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

○ 0 to 1 year

○ 1 to 2 years

☒ 2 to 3 years

○ More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☒ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☒ YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES ☒ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ☒ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?

There is an interbank borrowing rate

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES ☒ NO

If YES,

a) **under which circumstances?**

---

b) can the factor issue an invoice for such interest to the debtor?

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☒ YES □ NO

If YES, please explain referring to the regulation.

IT depends on each case.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☒ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☒ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

☒ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

☒ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

☒ YES ☐ NO

If YES, please give the reference.

Assignment of proceeds/Notification.

Question 14-2: Is e-invoicing acceptable by public administrations?

☐ YES ☒ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☐ YES ☒ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☐ YES ☒ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

☐ YES ☐ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

☐ YES ☒ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES □ NO

If YES, please provide the date, title and number of the Law.

No specific Law

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☒ YES ☐ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☒ YES ☐ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

☐ YES ☐ NO

Notification Letter

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

☐ YES ☐ NO

SECTION 17 ANY OTHER SUBJECTS

Question 19-1: Are there any other subjects that you think are important in conducting factoring operations with your country?

□ YES ☒ NO

If YES, please explain.

Thank you.

We would like to inform you that there is no specific law for the Factoring in our country.
Kindly note that we have completed the above questions, based on what we do particularly internally as a bank which regulated by central bank of Lebanon.

Name of Respondent (To be published □ YES ☒ NO):
Company / Association (To be published □ YES ☒ NO):
Country:
Contact Details (To be published □ YES ☒ NO):

MAURITIUS

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☑ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☐ YES ☑ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☑ YES ☐ NO

If YES, please explain.
NBFIs are regulated by the Financial Services Commission

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☑ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☑ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☑ YES ☐ NO

b) Recourse Factoring?

☑ YES ☐ NO

c) Undisclosed Factoring?

☑ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☑ NO

e) Factoring based on order approval?

☐ YES ☑ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☑ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☑ YES ☐ NO

h) Reverse Factoring?

☑ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☑ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

Competition Act 2007

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

The Financial Intelligence and Anti Money Laundering Act 2002

c) Minimum Capital Requirement?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

As per the licensing conditions of the Regulator (FSC)

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

The Data Protection Act 2017

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☑ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☑ NO

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☑ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☑ YES ☐ NO

If YES,

a) What are those reports?

Yearly Financial Statements

b) Are they to be audited?

☑ YES ☐ NO

c) What is the period to be reported?

Financial year

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☑ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☑ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☑ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☑ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☑ YES ☐ NO

If YES, please explain

Analysis of credit worthiness of debtors, type of transaction, dilution rate, concentration rate and invoice compliance.

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☐ YES ☑ NO

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

☐ YES ☑ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☑ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☑ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☑ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☑ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☑ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☑ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☑ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☑ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☑ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☑ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☑ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

There must be a notification of assignment to the buyer and proper acknowledgement of the assignment by the buyer.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☑ NO

b) Non-recourse factoring?

☐ YES ☑ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☑ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☑ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☑ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☑ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☑ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☑ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES ☑ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☑ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES ☑ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☑ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ☑ NO

Question 4-4: Is e-invoicing applicable in your country?

☑ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☑ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES ☑ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES ☑ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☑ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☑ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

☑ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☑ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ☑ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☑ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

☑ YES □ NO

If YES,

a) what are they and how is the procedure?

Outstanding taxes due to the Government. An Attachment Order is served on the Factor attaching the amount of taxes due.

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES ☑ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

_____

_____

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES □ NO

If YES, please explain.

_____

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES □ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES ☑ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☑ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES ☑ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☑ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES ☑ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☑ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☑ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ☑ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☑ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☑ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

☑ YES □ NO

If NO, what is the most common payment structure?

* For all payment in foreign currencies are via Bank transfer.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ☑ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

☑ 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES ☑ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☑ NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ☑ NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ☑ NO

If NO, is it an equal right with the others?

☑ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
Ø 31-60 days
O 61-90 days
O 91-180 days
O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
O 1 to 2 years
☑ 2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

O 0 to 1 year
O 1 to 2 years
☑ 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☑ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☑ YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☑ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ☑ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency? ✓

☑ YES □ NO

If YES, what is it called?

The REPO rate

IF YES, who publishes it?

The Central Bank (Bank of Mauritius)

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

0%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES ☑ NO

If YES,

a) under which circumstances?

---

b) can the factor issue an invoice for such interest to the debtor?

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES ☑ NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☑ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☑ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☑ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES ☑ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES ☑ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES ☑ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☑ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☑ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES ☑ NO

If YES, please provide the date, title and number of the Law.

_____

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES ☑ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

_____

_____

_____

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☑ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☑ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES ☑ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES ☑ NO

MEXICO

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

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FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

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Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☒ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Ley General de Títulos y Operaciones de Crédito. Last amendment 06/22/2018

Question 1-2-1: Are banks allowed to do factoring in your country?

☒ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☒ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☒ YES ☐ NO

If YES, please explain.
CNBV Comisión Nacional Bancaria y de Valores. This is a Government institution that rules and supervises the factoring activities.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☒ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Ley General de Organizaciones y Actividades Auxiliares de Crédito. Last amendment 03/09/2018

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☒ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☒ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☒ YES ☐ NO

b) Recourse Factoring?

☒ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☒ NO

d) Pre-shipment Financing?

☐ YES ☒ NO

e) Factoring based on order approval?

☒ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☒ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☒ YES ☐ NO

h) Reverse Factoring?

☒ YES ☐ NO

i) Islamic International Factoring?

☒ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☒ YES ☐ NO

k) POM (Purchase Order Management)

☒ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☒ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

Ley de Comisión Nacional Bancaria y de Valores. last amendment 03/09/2021
Ley de Federal de Competencia Económica, last amendment 05/20/2021

b) Anti-Money Laundering?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Ley Federal para la Prevención e Identificación de operaciones de Procedencia Ilícita, last amendment 05/20/2021

c) Minimum Capital Requirement?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Ley General de organizaciones y actividades Auxiliares de Crédito, last amendment 03/09/2018.
Disposiciones de Carácter General Aplicables a las Instituciones de Crédito. last Amendment 05/20/2021

d) Data Protection?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Ley General de Transparencia y Acceso a la Información. Last Amendment 05/20/2021
Ley General de Transparencia y Acceso a la Información Pública. Last Amendment 05/20/2021

e) GAAP/IAS/IFRS Accounting Principles?

☒ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☒ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☒ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☒ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☒ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

Asociación Mexicana de Factoraje Financiero y Actividades Similares, A.C. www.factoraje.com.mx
contacto@factoraje.com.mx

b) is membership compulsory?

☐ YES ☒ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☒ YES ☐ NO

If YES, please provide the definition.

Article 419 of Ley General de Títulos y Operaciones de Crédito. Provides a definition: An agreement entered between a Factor a factored with the purpose of the factor acquiring Account Receivables from the factored for a determined price in local or foreign currency.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☒ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☒ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☒ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☒ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☒ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☒ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☒ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☐ YES ☒ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☒ YES ☐ NO

If YES, please explain which ones
The KYC, credit bureau and the our Compliance area

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☒ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☒ YES ☐ NO

If YES, please provide the date, title and number.

Ley General de Títulos y Operaciones de Crédito, last amendment 06/22/2018
Código Civil Federal. Last amendment 01/11/2021

Question 3-2: Is factoring based on assignment in your country?

☒ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☒ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☒ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☒ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☒ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)
The registry should be done before at The Registro Único de Garantías Mobiliarias, under the supervision of the Economic Affairs Ministry. Inmediate and electronic registry can be done by a Factor company without any fee and renewable every 5 years.

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☒ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☒ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☒ YES ☐ NO

If YES, please explain and refer to the regulation.
The Ley General de Títulos y Operaciones de Crédito provides the form of notification and some rules depending on whether the factoring operation is being concerted , locally or abroad.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☒ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☒ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?
Under the Ley General de Títulos y Operaciones de Crédito. a) By a letter notifying the assignment, send by certified mail with returned receipt and b) before with a Notary Public

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☒ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☒ YES ☐ NO

If YES, please explain.
To make it safer for the Factor company it is better to notify the assignment to the debtor before a notary public, only if the debtor is a Mexican company

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☒ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.
At Bancomext we need to hire a law firm specialist in litigation matters to draft on sue before the competent court.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☒ YES ☐ NO

b) Non-recourse factoring?

☒ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

☒ YES ☐ NO

If YES, please provide the reference to the relevant regulation.
Under the Ley General de Títulos y Operaciones de Crédito.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☒ YES ☐ NO

If YES, please provide the reference of the relevant regulation.
Under the Ley General de Títulos y Operaciones de Crédito.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☒ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☒ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☒ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES ☒ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☒ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☒ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES ☒ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☒ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☒ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ☒ NO

Question 4-4: Is e-invoicing applicable in your country?

☒ YES □ NO

If YES, is e-invoicing obligatory for some situations?

☒ YES □ NO

If YES, please explain the criteria.
In Mexico all the invoices should be issued electronically

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☒ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☒ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES ☒ NO

1) If YES, please explain the types and rates of the taxes for each case.

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

16 %

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☒ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

☒ YES ☐ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

☒ YES ☐ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

☐ YES ☒ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

☐ YES ☒ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

☐ YES ☒ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☒ YES □ NO

If YES, please explain.

If insolvency is being declared, labor rights and taxes are rights to be collect before any other obligations by the company (factored).

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

☒ YES □ NO

If YES,

a) what are they and how is the procedure?

The procedure is ruled by judgement actions.

b) is there any difference in the application depending on the type of factoring?

□ YES ☒ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

☒ YES □ NO

If YES,

a) what are they and how is the procedure?

There can be taxes originated from the factored company and only if a judgement has declared that payment.

b) is there any difference in the application depending on the type of factoring?

□ YES ☒ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☒ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☒ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☒ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☒ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☒ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

☒ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES X□ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES X□ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

X□ YES □ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

X□ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES X NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

X YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

X YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES X NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

X YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES X NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES X NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

X YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

X YES □ NO

If YES, please explain.
Just in case that a judgement recognizes the foreign award

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☒ NO

If NO, what is the most common payment structure?
Wire transfer

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ☒ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- O 0-5 banking days
- ☒ 6-10 banking days
- O 11-20 banking days
- O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES ☒ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

X □ YES □ NO

If YES, under which conditions?

Under condition that the judge declares that the insolvency period comes 270 days before the insolvency declaration by the court award

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES X NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

X □ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
X O 61-90 days
O 91-180 days
O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- Ø More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O 0 to 1 year
- O 1 to 2 years
- Ø 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

□ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

□ YES □ NO

If YES, under which conditions?

Uner the condition that the parties had agreed on an arbitration settlement

---

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☒ YES □ NO

If YES, what is the rate?
Depends on the entity and the operational risk factor.

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES ☒ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
It could be Libor + 0.50%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☒ YES □ NO

If YES,

a) under which circumstances?

Only if that condition is established in the factoring agreement and the notification Letter

b) can the factor issue an invoice for such interest to the debtor?

□ YES ☒ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☒ YES □ NO

If YES, please explain referring to the regulation.

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SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

☒ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☒ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES ☒ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☒ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

☒ YES □ NO

If YES, please give the reference.

According to our Organic Law

Question 14-2: Is e-invoicing acceptable by public administrations?

☒ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☒ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☒ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☒ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☒ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☒ YES □ NO

If YES, please provide the date, title and number of the Law.
The Código Civil Federal, last amendment 01/11/2021

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES ☒ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES X□ NO

If NO, please explain the additional requirements.

It is not sufficient for the enforceability on the assigment. This assigment needs to be enforce under Article 419 and applicable from our Ley General de Títulos y Operaciones de Crédito

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

X□ YES □ NO

If NO, please explain.

_____

_____

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES X□ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

X□ YES □ NO

MOLDOVA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☒ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

BCR Chisinau S.A. - Uz Intern

Question 1-2-1: Are banks allowed to do factoring in your country?

☒ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☒ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☐ NO

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☒ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Law on non-bank financial institutions no. 1 from March 16, 2018

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☒ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☒ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☒ YES ☐ NO

b) Recourse Factoring?

☒ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☐ NO

e) Factoring based on order approval?

☐ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☒ YES ☐ NO

h) Reverse Factoring?

☒ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☒ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.
Law on competition no. 183 from July 11, 2012

b) Anti-Money Laundering?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Law on preventing and combating money laundering no. 183 from December 22, 2017

c) Minimum Capital Requirement?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Law on joint stock companies no. 1134-XIII from April 02, 1997

d) Data Protection?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Law on the protection of personal data no. 133 from July 08, 2011

e) GAAP/IAS/IFRS Accounting Principles?

☒ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☒ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☒ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☒ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☒ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☒ YES ☐ NO

If YES, please provide the definition.
By factoring contract, a party, which is the supplier of goods and services (adherent), undertakes to assign to the other party, which is a factoring company (factor), the claims arising or which will arise in the future from contracts for the sale of goods, provision of services and performance of works to third parties, and the factor assumes at least 2 of the following obligations:
a) financing of the adherent, including through loans and advance payments;
b) receivables accounting;
c) ensuring the performance of the procedures for summoning and collecting the receivables;
d) assuming the debtor's insolvency risk for the receivables taken over (delcredere).

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☐ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☐ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☐ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☒ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☒ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☒ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☒ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☒ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☒ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☐ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☐ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☒ YES ☐ NO

If YES, please provide the date, title and number.
Civil Code no. 1107-XV from June 6, 2002

Question 3-2: Is factoring based on assignment in your country?

☒ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☒ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☒ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☒ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☒ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☒ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☒ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☒ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☒ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☒ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☒ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☒ YES ☐ NO

If YES, please explain.
The contract is void unless expressly provided for the amount to be paid to the factor. The amount is calculated according to the circumstances, with special emphasis on the possible credit fee and, in addition, on the percentage that represents the total deductions from the assigned receivables.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☒ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☐ NO

b) Non-recourse factoring?

☐ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☒ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☒ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☒ NO

Question 3-21: Is assignment of part of a receivable possible?

☒ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☒ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☒ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☐ YES ☒ NO

If YES, are they also allowed to split a particular receivable between factors?

☐ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☒ YES ☐ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☒ YES ☐ NO

Question 4-3: Is signature required on an invoice for validity?

☒ YES ☐ NO

Question 4-4: Is e-invoicing applicable in your country?

☒ YES ☐ NO

If YES, is e-invoicing obligatory for some situations?

☒ YES ☐ NO

If YES, please explain the criteria.
In case if a company participates in public/state acquisitions

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☐ YES ☐ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☐ YES ☒ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☐ YES ☒ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

☐ YES ☒ NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

☐ YES ☒ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☒ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☒ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☒ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☒ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ☒ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☒ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☒ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☒ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES ☒ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☒ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES ☒ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

☒ YES ☐ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

☐ YES ☒ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

☐ YES ☒ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

☐ YES ☒ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☒ YES ☐ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☒ YES ☐ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☒ YES ☐ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☒ YES ☐ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☒ YES ☐ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☒ YES ☐ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

☐ YES ☒ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☒ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES ☒ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ☒ NO

If YES, please explain.

_____

_____

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☒ NO

If NO, what is the most common payment structure?
BANK TRANSFER

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

○ 0-5 banking days
○ 6-10 banking days
○ 11-20 banking days
○ More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

☒ YES □ NO

If YES, under which conditions?
Execution of debtor obligations not based on an act of the insolvency administrator / liquidator is prohibited during 180 days from the date of initiating the insolvency procedure or the simplified bankruptcy procedure. For unsecured creditors, it is forbidden to individually enforce the debt mass over the entire insolvency process.

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

☒ YES □ NO

If YES, under which circumstances?
The receivables are subject to the verification procedure, provided by this law, by the provisional administrator or the insolvency administrator, or by the liquidator, except for the receivables ascertained by enforceable titles. The insolvency administrator / liquidator shall immediately verify each application for admission registered in the insolvency court and the documents submitted and shall conduct a thorough investigation to determine whether the claim is uncontested or in dispute, what is the exact value according to the documents resulting from the claim and the priority of each claim.

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ☒ NO

If NO, is it an equal right with the others?

☒ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

○ 0- 30 days

○ 31-60 days
○ 61-90 days
• 91-180 days
○ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

○ 0 to 1 year
• 1 to 2 years
○ 2 to 3 years
○ More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

○ 0 to 1 year
• 1 to 2 years
○ 2 to 3 years
○ More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☒ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☒ YES □ NO

If YES, under which conditions?
A foreign arbitral award issued in accordance with an arbitration agreement in the territory of a foreign state party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in New York on June 10, 1958, may be recognized and enforced in the Republic of Moldova. A foreign arbitral award the recognition and enforcement of which are governed either by the international treaty to which the Republic of Moldova is a party or on the basis of the principle of reciprocity as regards the effects of the foreign arbitral award

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☒ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☒ YES ☐ NO

If YES, what is the rate?
An interest rate equal to the base rate of the National Bank of Moldova plus 5 percentage points

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

☐ YES ☒ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☐ YES ☒ NO

If YES,

a) under which circumstances?

b) can the factor issue an invoice for such interest to the debtor?

☐ YES ☐ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☒ YES □ NO

If YES, please explain referring to the regulation.
In accordance with the Civil Code, the general term within which the person can defend, by way of initiating an action in court, the violated right is 3 years.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☒ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☒ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

☒ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☒ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☒ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

☒ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☒ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES ☒ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☒ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

☒ YES □ NO

If YES, please list the differences.
The creditor may request the bailiff to initiate the forced execution only In case of non-execution of the executory document issued on the basis of a final court decision within 3 months from the date of its presentation.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES ☒ NO

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES ☒ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

MONGOLIA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☑ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Law on Non-bank financial activities, 12 December 2002

Question 1-2-1: Are banks allowed to do factoring in your country?

☐ YES ☑ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☑ YES ☐ NO

If YES, please explain.

Financial Regulatory Commission of Mongolia

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☑ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☑ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☑ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

LAW ON NON-BANK FINANCIAL ACTIVITIES

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☑ NO

If NO, please refer to the relevant regulation (title, date, number).

Mongolian Law on conducting settlement in national currency, July 9, 2009

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☑ NO

b) Recourse Factoring?

☐ YES ☑ NO

c) Undisclosed Factoring?

☐ YES ☑ NO

d) Pre-shipment Financing?

☐ YES ☑ NO

e) Factoring based on order approval?

☐ YES ☑ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☑ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☑ NO

h) Reverse Factoring?

☐ YES ☑ NO

i) Islamic International Factoring?

☐ YES ☑ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

LAW OF MONGOLIA ON COMPETITION

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

MONGOLIAN LAW ON COMBATING MONEY LAUNDERING AND TERRORISM FINANCING

c) Minimum Capital Requirement?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

MONGOLIAN LAW ON NON-BANK FINANCIAL ACTIVITIES, AND REGULATIONS BY FRC

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

CIVIL LAW,
LAW ON COMMUNICATIONS,

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☑ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

☐ YES ☑ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☑ YES ☐ NO

If YES, please provide the definition.

LAW ON NON-BANK FINANCIAL ACTIVITIES

4.1.2. 'Factoring' shall mean sale (transfer) by creditor of his/her right to monetary payment to a third party who thereafter becomes liable for exercise of the right to the payment and for any consequences;

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☑ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☑ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☑ NO

c) What is the period to be reported?

There is no relevant information

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☑ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☑ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☑ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☑ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☑ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☑ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☑ NO

If YES, please explain

There's a limited knowledge and experience on factoring operations in Mongolia.

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☑ YES ☐ NO

If YES, please provide the date, title and number.

CIVIL LAW, 10 Jan, 2002, Ulaanbaatar Mongolia

Question 3-2: Is factoring based on assignment in your country?

☑ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☑ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☑ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☑ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☑ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☑ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☑ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☑ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☑ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☑ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?

consent letter, acceptance letter

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☑ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☑ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☑ YES ☐ NO

b) Non-recourse factoring?

☑ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

☐ YES ☑ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☑ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☑ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☑ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☑ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES ☑ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☑ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☑ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES ☑ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES ☐ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☐ YES ☑ NO

Question 4-3: Is signature required on an invoice for validity?

☑ YES ☐ NO

Question 4-4: Is e-invoicing applicable in your country?

☐ YES ☑ NO

If YES, is e-invoicing obligatory for some situations?

☐ YES ☐ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☐ YES ☑ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☑ YES ☐ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☐ YES ☑ NO

1) If YES, please explain the types and rates of the taxes for each case.

2) If NO, is it value added tax?

☑ YES ☐ NO

i) If YES, what is the rate of tax?

10%

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

☐ YES ☑ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☑ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☑ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☑ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ☑ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☑ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES ☑ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☑ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES ☑ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES ☑ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☑ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

☑ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☑ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☑ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☑ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☑ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☑ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☑ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☑ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ☑ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☑ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES ☑ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ☑ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☑ NO

If NO, what is the most common payment structure?

Wire transfer

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ☑ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

O 0-5 banking days
O 6-10 banking days
O 11-20 banking days
☑ More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES ☑ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☑ NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ☑ NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ☑ NO

If NO, is it an equal right with the others?

☑ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O ☑ 61-90 days
O 91-180 days
O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
☑ 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

☑ 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

□ YES ☑ NO

If NO, what are the ways of legal settlement of disputes?

District's civil court

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☑ YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☑ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☐ YES ☑ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

☑ YES ☐ NO

If YES, what is it called?

risk free interest rates

IF YES, who publishes it?

by commercial banks themselves but not open for public

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

19% p.a. in local currency

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☑ YES ☐ NO

If YES,

a) under which circumstances?

it it's stated in a mutually agreed contract or letters

---

b) can the factor issue an invoice for such interest to the debtor?

☐ YES ☑ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES ☑ NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☑ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☑ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES ☑ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☑ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES ☑ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☑ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES ☑ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☑ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES ☑ NO

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES ☑ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☑ YES ☐ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☑ YES ☐ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

☑ YES ☐ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

☑ YES ☐ NO

MONTENEGRO

MONTENEGRO - FCI LEGAL STUDY QUESTIONS (GROUP II)

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal or are going to deal with.

The questionnaire has been separated into different thematical sections. It can be hardly said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial part of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES X NO…

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

YES X NO…

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES X NO…

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES X NO…

If YES, please explain.
Central Bank of Montenegro

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES X NO…

If YES,

a) Is approval of managers by the governing body required?

YES … NO…

b) Is approval of the shareholders by the governing body required?

YES X NO…

c) Please provide the title, date and number of the relevant regulation/law.

DECREE PROMULGATING THE LAW ON FINANCIAL LEASING, FACTORING, PURCHASE OF RECEIVABLES, MICRO-LENDING AND CREDIT-GUARANTEE OPERATIONS , 1 November 2017

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES X NO…

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES … NO X

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES X NO…

b) Recourse Factoring

YES X NO…

c) Undisclosed Factoring

YES X NO…

d) Pre-shipment Financing

YES … NO…

e) Factoring based on order approval

YES X NO…

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES X NO…

g) 2-Factor International Factoring such as with FCI

YES X NO…

h) Reverse Factoring

YES X NO…

i) Islamic International Factoring

YES X NO…

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES … NO…

If YES, please provide the date, title and number of the law/regulation

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b) Anti-Money Laundering

YES … NO…

If YES, please provide the date, title and number of the regulation

---

c) Minimum Capital Requirement

YES X NO…

If YES, please provide the date, title and number of the regulation

DECREE PROMULGATING THE LAW ON FINANCIAL LEASING, FACTORING, PURCHASE OF RECEIVABLES, MICRO-LENDING AND CREDIT

1 November 2017

d) Data Protection

YES X NO…

If YES, please provide the date, title and number of the regulation

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e) GAAP/IAS/IFRS Accounting Principles

YES … NO…

f) Obligation to publicly disclose yearly financial reports

YES … NO…

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES … NO…

h) Reserve Requirements against liquidity risk

YES … NO…

Question 1-8: Are there any local factoring associations?

YES … NO…

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO…

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES X NO…

If YES, please provide the definition.

The factoring shall be a legal transaction where a person that carries out factoring operations (factor) purchases the object of factoring resulting from a legal transaction of sale of goods or delivery of service concluded between the creditor of the object of factoring and debtor of the object of factoring (hereinafter referred to as the underlying activity).

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO…X

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO…X

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO…X

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES … X NO…

If YES,

a) What are those reports?

reports and other data on their financial standing and operations.

b) Are they to be audited?

YES …X NO…

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES … NO…X

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES … NO…

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO…

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … X NO…

If YES, please explain and refer to the relevant regulation (title, date, number)
One year. The Law above

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO…

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES … NO…

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES … NO…

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO…

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES …X NO…

If YES, please provide the date, title and number.
The Law above

Question 3-2: Is factoring based on assignment in your country?

YES …X NO…

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES … NO…

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO…

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES … NO…X

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES … NO…X

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO…

Question 3-6: Is notice to the debtor-necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO…X

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO…X

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO…X

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO…X

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO…X

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO…X

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … X NO…

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES … X NO…

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES … NO…

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES … NO…

b) Non-recourse factoring?

YES … NO…

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO…

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO…

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO…

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO…

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES … X NO…

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … X NO…

Question 3-21: Is assignment of part of a receivable possible?

YES … X NO…

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES … X NO…

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES …X NO…

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO…

If YES, are they also allowed to split a particular receivable between factors?

YES … NO…

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES … NO…

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES … NO…

Question 4-3: Is signature required on an invoice for validity?

YES … NO…

Question 4-4: Is e-invoicing applicable in your country?

YES … NO…

If YES, is e-invoicing obligatory for some situations?

YES … NO…

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES … NO…

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO…

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO…

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO…

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO…

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO…

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO…

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO…

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO…

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO…

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO…

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO…

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO…

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO…

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES … NO…X

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO…
If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO…

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO…

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO…

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO…

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO…

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO…

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

YES … NO…X

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO…X

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES … NO…

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES … NO…

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES …X NO…

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES … X NO…

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … X NO…

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES …X NO…

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO…

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO…

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO…

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO…

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO…

If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO…

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES … NO…

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO…

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO…

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO…

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO…

If NO, is it an equal right with the others?

YES … NO…

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES … NO…

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES … NO…

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES … NO…

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES … NO…

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO…

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES … NO…

If YES,

a) Under which circumstances?

---

b) Can the factor issue an invoice for such interest to the debtor?

YES … NO…

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO…

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same

international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO…

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO…

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO…

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO…

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO…

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES … NO…

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES … NO…

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO…

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO…

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO…

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES … NO…

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES … NO…

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

MOROCCO

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☒ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

the regulations governing factoring are those relating to credit institutions

Question 1-2-1: Are banks allowed to do factoring in your country?

☒ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☒ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☒ YES ☐ NO

If YES, please explain.

Law No. 34-03 relating to credit institutions and organizations assimilated Dahir n ° 1-05-178 of 15 moharrem 1427 promulgating law n ° 34-03 relating to credit institutions and similar organizations (BO n ° 5400 of 2March 2006).

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☒ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☒ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☒ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

As a credit institution, we are supervised by 2 regulatory bodies :
--The central bank
--The financial intelligence unit (ANRF)

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☒ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☒ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☒ YES ☐ NO

b) Recourse Factoring?

☒ YES ☐ NO

c) Undisclosed Factoring?

☒ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☒ NO

e) Factoring based on order approval?

☐ YES ☒ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☒ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☒ NO

h) Reverse Factoring?

☒ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☒ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES ☒ NO

k) POM (Purchase Order Management)

☐ YES ☒ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters? a) Competition Rules?

☐ YES ☒ NO

If YES, please provide the date, title and number of the law/regulation.

b) Anti-Money Laundering?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Circular N 40 / G / 2007, August 2, 2007-Circular on internal control of credit institutions
Circular 5-W-17 of Bank Al Maghrib relating to the due diligence obligation incumbent on credit institutions
Decision n ° D.4 / 11 of the Financial Intelligence Processing Unit relating to the declaration of suspicion and the communication of information;
Law n ° 43-05 relating to the fight against money laundering, promulgated by Dahir n ° 1.07.79 of 28 rabii I 1428 (April 17, 2007), published in the Official Bulletin n ° 5522 of 15 rabii II 1428 (May 3, 2007), supplementing the Penal Code.
As amended and supplemented by the following texts:
Law n ° 13-10, promulgated by Dahir n ° 1.11.02 of 15 safar 1432 (20 January 2011), published in the Official Bulletin n ° 5911 bis of 19 safar 1432 (24 January 2011), modifying and supplementing certain provisions of the Criminal Code, the Code of Criminal Procedure and Law No. 43.05 on the fight against money laundering.
Law n ° 145-12, promulgated by Dahir n ° 1.13.54 of 21 joumada II 1434 (May 2, 2013), published in Official Bulletin n ° 6152 of 5 rejeb 1434 (May 16, 2013), amending and supplementing Criminal Code and Law No. 43-05 relating to the fight against money laundering.

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c) Minimum Capital Requirement?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

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d) Data Protection?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

---

e) GAAP/IAS/IFRS Accounting Principles?

☒ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☒ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☒ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☒ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☒ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

☒ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☒ YES ☐ NO

If YES, please provide the definition.

In Morocco, factoring is defined by the banking law (February 16, 2006) which "factoring" is the agreement by which a credit institution undertakes to collect and either by acquiring said receivables, or by acting as agents of the commercial creditor with, in the latter case, a performance guarantee ".
It follows from this definition that factoring consists of a transfer of trade receivables, by way of subrogation, from their holder to a factoring company which undertakes, in return, to guarantee, collect or finance them.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☒ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☒ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☒ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☒ YES ☐ NO

If YES,

a) What are those reports?

State 700- Threats
Statement 711-Inherent Risks in factoring

---

b) Are they to be audited?

☒ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☒ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☒ YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Law N ° 32-10 fixing payment deadlines in Morocco

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☒ YES ☐ NO

If YES, please provide the name, date and number.
Chart of accounts for credit institutions, called PCEC

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☒ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☐ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☒ YES ☐ NO

If YES, please explain

- Carries out a visit to the customer's premises and draws up the report of the visit;
- Checks whether the customer's banking movements agree with the requested lines;
- Analyzes the balance sheets of the last 3 years (including the study of the customers and suppliers item);
- Analyzes the customer's debt ratio
- Calculation of financial ratios;
- Requests the assessment of the debtor risk from the insurance;
- Risk assessment Fraud/AML/FT/embargo violation

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☒ YES ☐ NO

If YES, please provide the date, title and number.

529 to 536 of law 15-95 forming the Commercial Code Promulgated by Dahir n° 1-96-83 of 15 rabii 1417
(1 August 1996)

Question 3-2: Is factoring based on assignment in your country?

☐ YES ☒ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☒ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☒ YES ☐ NO
If YES, please explain.

Market pledge

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☒ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☒ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☒ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☒ YES ☐ NO

If YES, please explain and refer to the regulation.

Subrogation demand letter
subrogation provides a legal right to a third party (factor) to collect a debt
Current Debt On a balance sheet,

Réglementation :Dahir (9 Ramadan 1331) forming code of obligations and contracts (B.O. 12 September 1913) (1)

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☐ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☒ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☐ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☒ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

_____

_____

_____

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

If NO, please explain the procedure.

_____

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☒ YES ☐ NO

Factoring company recognises assigned receivable in its balance sheet in asset as an account receivable assets

b) Non-recourse factoring?

☒ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☒ NO

If YES, please provide the reference to the relevant regulation.

_____

_____

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☒ NO

If YES, please provide the reference of the relevant regulation.

_____

_____

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☒ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☒ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☒ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☒ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES ☒ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES ☒ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

□ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES □ NO

If YES, are they also allowed to split a particular receivable between factors ?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

□ YES ☒ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES ☒ NO

Question 4-3: Is signature required on an invoice for validity?

⛔ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

⛔ YES □ NO

If YES, is e-invoicing obligatory for some situations ?

□ YES ⛔ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

⛔ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) **If YES, please explain the types and rates of the taxes for each case.**

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and nonbanks?

□ YES □ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ⛔ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ⛔ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ⛔ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions ?

⛔ YES □ NO

If YES, please explain.

stamps are used in the factoring contract as well as pledge acts

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds ? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES □ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES ⊟ NO

A. If YES,

a) Does prohibition of assignment have to be registered ?

□ YES □ NO

If YES, please explain the procedure.

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b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES □ NO

If YES, please explain.

c) Can a prior prohibition/ban of assignment invalidate an assignment ?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment ?

□ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES □ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility ?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES □ NO

If YES, please explain.

RECEVEIVABLES FACTORED AT ONOTHER COFACTOR

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES ⛔ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES ⛔ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

⛔ YES □ NO

If YES, please refer to the regulation (title, date, number).

Dahir of 25 Rejeb 1358 (10 September 1939) prohibiting or regulating the export of capital, foreign exchange transactions and the trade in gold

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Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES ⛔ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES ⛔ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ⛔ NO

If NO, what is the most common payment structure ?

The most common payment structure is bill of exchange

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

⛔ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

⊖ 0-5 banking days ○ 6-10

banking days ○ 11-20

banking days ○ More than 20

banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES ⛔ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES □ NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ⛔ NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ⛔ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

○ 0- 30 days ○ 31-60

days ○ 61-90 days

○ 91-180 days

⊖ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

⊖ 0 to 1 year

○ 1 to 2 years

○ 2 to 3 years

○ More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

○ 0 to 1 year

⊖ 1 to 2 years

○ 2 to 3 years

○ More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

⊟ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

□ YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ⊟ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

the lowest borrowing rate of interest for our factoring company is 3,5%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

⛔ YES □ NO

If YES,

a) **under which circumstances?**

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b) **can the factor issue an invoice for such interest to the debtor?**

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

⛔ YES □ NO

If YES, please explain referring to the regulation.

The minimum/maximum time to take legal action against a debtor is 90 days from the due date

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SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

⛀ YES □ NO

If YES, please give the reference.

the receivables from public administrations IS ASSIGNED BY A PUBLIC MARKET PLEDGE

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES ⛀ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES ⛀ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

⛤ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables ?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES □ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

⛤ YES □ NO

If YES, please provide the date, title and number of the Law.

Article 269 of the Dahir forming the Code of Obligations and Contracts (DOC)

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

⛤ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

□ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES □ NO

SECTION 17 ANY OTHER SUBJECTS

Question 19-1: Are there any other subjects that you think are important in conducting factoring operations with your country?

NIGERIA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☑ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☑ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☑ YES ☐ NO

If YES, please explain.

The CBN at the moment assumes this regulatory oversight over the provision of debt factoring services as a busines

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☑ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☑ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☑ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☑ NO

If NO, please refer to the relevant regulation (title, date, number).

Section 19 (8) of the Bank and Other Financial Institutions Act 2020 (BOFIA)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☑ YES ☐ NO

b) Recourse Factoring?

☑ YES ☐ NO

c) Undisclosed Factoring?

☑ YES ☐ NO

d) Pre-shipment Financing?

☑ YES ☐ NO

e) Factoring based on order approval?

☑ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☑ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☑ YES ☐ NO

h) Reverse Factoring?

☑ YES ☐ NO

i) Islamic International Factoring?

☑ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☑ YES ☐ NO

k) POM (Purchase Order Management)

☑ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

The Federal Competition and Consumer Protection Act (FCCPA) 2018.

b) Anti-Money Laundering?

☐ YES ☐ NO

✓

If YES, please provide the date, title and number of the regulation.

Money Laundering Prohibition and Prevention Act, 2022; Economic and Financial Crimes Commission Act, 2004, and Proceeds of Crime (Recovery and Management) Act, 2022, .

c) Minimum Capital Requirement?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Companies and Allied Matters Act 2020, and Banks and other Financial Institutions Act, 2020, Revised Guidelines for Finance Companies.

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Nigerian Data Protection Regulation 2019

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☑ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

☐ YES ☑ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☑ YES ☐ NO

If YES, please provide the definition.

The Banks Other Financial Institutions Act, 2020 defines factoring as the business of acquiring debts due to any person. The Revised Guidelines for Finance Companies in Nigeria 2014 issued by the Central Bank of Nigeria defines debt factoring in the Guidelines as the business of purchasing debts from clients at a discount and making a profit from the collection of such debts.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☑ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☑ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☑ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☑ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☑ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☑ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☑ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☑ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☑ YES ☐ NO

If YES, please explain which ones

The registries to check are the Lands Registry of each state, Corporate Affairs Commission, Court Registry, National Collateral Registry

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Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☑ YES ☐ NO

If YES, please explain

A Factor may also request that a Seller should provide other documents such as corporate authorisation for the transaction such as its certificate of incorporation, the constitutional documents, corporate authorisation for the transaction, a list of customers/debtors, relevant tax returns, audited financial statements, etc., as conditions to the transaction.

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☑ YES ☐ NO

If YES, please provide the date, title and number.

The Banking and Other Financial Institutions Act, 2020; and the Revised Guidelines for Finance Companies in Nigeria, 2014

Question 3-2: Is factoring based on assignment in your country?

☑ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☑ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ ☑ YES No

If YES, please explain.

Other legal procedures that may be adopted include creation of charge on the asset of the debtor

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☑ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☑ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☑ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☑ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☑ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☑ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☑ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☑ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☑ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☑ YES ☐ NO

b) Non-recourse factoring?

☐ YES ☑ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☑ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☑ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☑ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☑ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☑ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☑ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

☑ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

☑ YES □ NO

If YES, is e-invoicing obligatory for some situations?

☑ YES □ NO

If YES, please explain the criteria.

Within the import and export sectors in Nigeria, Suppliers and buyers are required to submit e-invoices to the Central Bank of Nigeria's (CBN) dedicated portal for e-invoice validation. Suppliers and buyers operating in imports and exports will need to register on a dedicated electronic platform provided by the CBN. Once a supplier or buyer is successfully registered, a CBN-appointed service provider issues a verification report and digital certificate valid for one year. Suppliers must use the digital certificate for signing e-invoices to be submitted.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES ☑ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☑ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☑ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

Value Added Tax (VAT) is charged on the Factoring Commission. The rate of VAT In Nigeria is 7.5% of the receivables. Capital Gains Tax (CGT) is imposed on the discounting charge revenue, but given that factoring involves the purchase of receivables at a discount, that implies that the seller will not make any gains on that sale, therefore CGT will not be paid.

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☑ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☑ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☑ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

☑ YES □ NO

If YES, please explain.

The documents/agreements governing the factoring relationship will be liable to stamp duties.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

☑ YES □ NO

If YES, please explain

Written documents/agreements governing the factoring relationship will be liable to stamp duties.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☑ YES □ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES ☑ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES □ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES ☑ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☑ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

☑ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☑ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☑ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☑ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES ☑ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES ✓ □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES ☑ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES □ NO ✓

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer by itself abroad for the debts of any other local entity?

☑ YES □ NO

If YES, please refer to the regulation (title, date, number).

Dealings and transactions in foreign exchange in Nigeria are regulated by the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (Chapter F34), Laws of the Federal Republic of Nigeria 2004 and various other laws and regulations. Under the laws, a person is only permitted to access the Nigerian official foreign exchange market to purchase foreign currency to pay for what is described as 'eligible transactions.' Eligible transactions are defined as any transaction adequately supported by appropriate documentation and specified by the CBN from time to time. Based on the list of current eligible transactions as prescribed by the CBN, the transfer of Naira-denominatedd receivables by Sellers in Nigeria is not classified as an eligible transaction. Consequently, Debtors resident in Nigeria will not be permitted to have access to the official market to purchase foreign currency to settle receivables to offshore Factors.

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☑ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES ☑ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES ☑ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ☑ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES □ NO ✓

If NO, what is the most common payment structure?
Bank transfers, cash etc.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ✓ □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

O ✓ 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

✓ □ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☑ NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ☑ NO

If YES, under which circumstances?

_____

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☑ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
O ✓ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

□ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

□ YES □ NO

If YES, under which conditions?

For a foreign judgement to be enforced in Nigeria, such judgement must first be registered through the order of the court.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ☑NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES ☑NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

This is not specifically provided for in Nigeria

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES ☑NO

If YES,

a) **under which circumstances?**

---

b) **can the factor issue an invoice for such interest to the debtor?**

□ YES ☑NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES ☑ NO

If YES, please explain referring to the regulation.

There is generally no minimum time for which a Factor can institute an action, provided that the cause of action has arisen. However, actions bothering on simple contacts must be commenced within 6 years of the occurrence of the breach. This is pursuant to the Limitation of Action Act/ Laws of the various States in Nigeria.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☑ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☑ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

☑ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

☑ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

☑ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☑ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☑ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☑ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

☑ YES □ NO

If YES, please list the differences.

In debt collection against a public administration, pre-action notice is required. This is subject to the establishing statute/law governing the administration.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☑ YES □ NO

If YES, please provide the date, title and number of the Law.

Common law and Equity principles on the doctrine of frustrations and force majure.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☑ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

For Force Majeure to be pleaded even when not provided in the contract, the event must be such that it was reasonably unforeseeable by either of the parties and the effect of such occurrences could not have been mitigated by either party e.g an Act of God.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☑ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☑ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

☑ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES ☑ NO

NORTH MACEDONIA

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.
Law on Financial companies No.158 from 2010

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
Ministry of Finance

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES x NO …

If YES,

a) Is approval of managers by the governing body required?

YES x NO …

b) Is approval of the shareholders by the governing body required?

YES x NO …

c) Please provide the title, date and number of the relevant regulation/law.

Law on Financial Companies No 158 from 2010

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES x NO …

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES … NO x

d) Pre-shipment Financing

YES x NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES x NO …

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

YES x NO …

k) POM (Purchase Order Management)

YES x NO …

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation
Law on Competition Rules Official Gazette of the Republic Macedonia n. 145/2010 6p. 136/11, 41/14, 53/16 and 83/18

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation
Law on Prevention of Money Laundering and Terrorism Financing No. 120 from 2018

c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation
Law on Financial Companies No. 158 from 2010

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
Law on Personal Data Protection No.42 from 2020.

e) GAAP/IAS/IFRS Accounting Principles

YES x NO …

f) Obligation to publicly disclose yearly financial reports

YES x NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES x NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.

Factoring is a financial activity where based on an agreement concluded in a written form, the financial company (factor) buys the accounts receivable of another domestic or foreign legal entity (creditor) with or without the right of recourse.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO x

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …

If YES,

a) What are those reports?

Reports

---

b) Are they to be audited?

YES x NO …

---

c) What is the period to be reported?

Annual

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES … NO x

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES … NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES … NO x

If YES, please explain

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO x

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones
Central Registry

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO x

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.
Law of Obligations No.18 from 2001

Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES x NO …

If YES, please explain.
Cession

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES x NO …

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES x NO …

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES x NO …

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES x NO …

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES x NO …

If YES, please explain and refer to the regulation
Certified Post

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES x NO …

If YES, please explain.
The assignment must be certified by a notary public in order to be processed by an enforcement agent without court proceedings.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES x NO …

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.
File a lawsuit before court with financial evidence that explains that the funds have not been paid.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES x NO …

If YES, please provide the reference of the relevant regulation.
Law of Obligations No.18 from 2001

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES x NO …

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES x NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES x NO …

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES x NO …

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES x NO …

If YES, are they also allowed to split a particular receivable between factors?

YES x NO …

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO …

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES x NO …

Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES x NO …

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES x NO …

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES x NO …

1) If YES, please explain the types and rates of the taxes for each case.

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2) If NO, is it value added tax?

YES … NO …

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES x NO …

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES … NO x

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO …

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO …

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES … NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES … NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO …

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO x

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES x NO …

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES … NO x

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.
Cashless payment

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES x NO …

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES x NO …

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES x NO …

If YES, under which circumstances?
If the factor was aware of the potential insolvency and if it was concluded 3 months before the insonvency

---

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO x

If NO, is it an equal right with the others?

YES x NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days
c) 61-90 days
d) 91-180 days. X
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?
A court in local jurisdiction should acknowledge the decision/verdict of the foreign arbitration tribunal

---

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES x NO …

If YES, what is the rate?
8% for physical persons and 10% for legal entities, annually increased by reference interest rate of the Central Bank.

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES x NO …

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
10%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

According to the terms & conditions determined in the contract.

b) Can the factor issue an invoice for such interest to the debtor?

YES … NO x

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES x NO …

If YES, please explain referring to the regulation
The minimum time limit is immediately when there is a delayed payment and the maximum time limit is three years.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO x

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO x

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO x

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES x NO …

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES x NO …

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO x

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.
Law of Obligations No.18 from 2001

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES x NO …

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

Such requirements are not specifically stipulated by Law.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES … NO x

If NO, please explain the additional requirements.
It should beacknowledged by a competent court

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES x NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES x NO …

OMAN

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☑ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☐ YES ☑ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☑ NO

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☑ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO We don't no since there is no practice for factoring.

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO We don't no since there is no practice for factoring.

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☐ NO We don't know for sure, however if the NBFIs dose it will be based on an internal decision from that institution.

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☐ NO there is no factoring companies in Oman.

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☐ NO

b) Recourse Factoring? there is no specific answer to this following operation because there no specific regulation

☐ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☐ NO

e) Factoring based on order approval?

☐ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO

h) Reverse Factoring?

☐ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES ☐ NO

k) POM (Purchase Order Management)

☐ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO If there were factoring companies, they would be subject to the competition law, as we have the competition law in the Sultanate of Oman.

If YES, please provide the date, title and number of the law/regulation.

Royal Decree No. 67/2014 promulgating the Competition Protection and Monopoly Prevention Law

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Royal Decree No. 30/2016 promulgating the Anti-Money Laundering and Terrorist Financing Law

c) Minimum Capital Requirement?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

ROYAL DECREE 18/2019 PROMULGATING THE COMMERCIAL COMPANIES LAW

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Royal Decree No. 69/2008 the Electronic Transactions Law

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☑ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

_____

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☑ NO

If YES, please provide the definition.

_____

_____

_____

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO As long as there is no legislation regulating factoring, there is no prohibition at present.

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☐ NO

In Oman, Murabaha is a type of Islamic finance that is implemented in accordance with the regulatory framework for Islamic finance issued by the Central Bank of Oman (CBO). It is important to note that currently, Oman does not have specific and comprehensive regulations governing factoring practices. Nevertheless, in Oman, financial institutions utilize factoring as a facility instrument, which is regulated by the general commercial rules, commercial customs, and established legal precedents.

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☐ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☐ NO

As mentioned previously, the absence of specific regulations for factoring in Oman means that there is no definitive answer to the question.

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☑ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☑ YES ☐ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☐ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☑ YES ☐ NO

If YES, please provide the date, title and number.

Royal Decree No. 29/2013 Civil Law

Royal Dgree 55/90 THE COMMERCIAL LAW

Question 3-2: Is factoring based on assignment in your country?

☐ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☑ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☑ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☐ NO 

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☑ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☑ YES ☐ NO

If YES, please explain and refer to the regulation.

The subrogation of debt requires the debtor's consent; otherwise, the subrogation of debt is deemed legally void.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☒ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☑ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?

acceptance must be in writing

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☒ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☒ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☑ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

POA (Power of Attorny)

indirect lawsuit or throw subrogation of debt.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☐ NO

b) Non-recourse factoring?

☐ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

☑ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☑ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES ☑ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☑ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

☑ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

☑ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☑ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☑ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☑ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES □ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES □ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES □ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☑ YES □ NO

If YES, please explain.

As this is a commercial transaction, various forms of security interest, such as floating charges and personal guarantees, will be included, among others.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☑ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☑ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☑ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☑ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☑ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES ☒ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☒ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☑ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES ☑ NO

If NO, please explain.

the POA is valid withen the jurisdiction of Oman.

the validity of POA in other countries is depend to that country regolations.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES □ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☑ NO

If NO, what is the most common payment structure?

Bank transfer

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

☑ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

O 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

☑ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☑ NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ☑ NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ☑ NO

If NO, is it an equal right with the others?

☑ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

- ☑ 0- 30 days
- O 31-60 days
- O 61-90 days
- O 91-180 days
- O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

O 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☑ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☑ YES □ NO

If YES, under which conditions?
acceptance of the parties.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☑ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ☑ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES □ NO

If YES,

a) under which circumstances?

---

b) can the factor issue an invoice for such interest to the debtor?

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☑ YES □ NO

If YES, please explain referring to the regulation.

10 years based on the ROYAL DECREE 55/90 PROMULGATING THE COMMERCIAL LAW

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

☑ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

☑ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☑ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☑ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☑ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

☑ YES □ NO

If YES, please list the differences.
There are specialized courts for handling disputes called "Administrative Courts."

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☑ YES □ NO

If YES, please provide the date, title and number of the Law.
Royal Decree No. 29/2013 promulgating the Civil Transactions Law

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☑ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.
Majeure circumstances that prevent the parties to the contract from executing their contractual obligations, such as: hurricanes, epidemics, earthquakes, etc.)

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

□ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES □ NO

PERU

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

X YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Resolution SBS N ° 4358-2015, Regulation of factoring, discount and factoring companies

Question 1-2-1: Are banks allowed to do factoring in your country?

X YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

X YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

X YES ☐ NO

If YES, please explain.
SBS

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

X YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

X YES ☐ NO

b) Is approval of the shareholders by the governing body required?

X YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

X YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

X YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

X YES ☐ NO

b) Recourse Factoring?

X YES ☐ NO

c) Undisclosed Factoring?

X YES ☐ NO

d) Pre-shipment Financing?

X YES ☐ NO

e) Factoring based on order approval?

X YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

X YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES X NO

h) Reverse Factoring?

☐ YES X NO

i) Islamic International Factoring?

☐ YES X NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES X NO

k) POM (Purchase Order Management)

☐ YES X NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

X YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

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b) Anti-Money Laundering?

X YES ☐ NO

If YES, please provide the date, title and number of the regulation.

---

c) Minimum Capital Requirement?

X YES ☐ NO

If YES, please provide the date, title and number of the regulation.

---

d) Data Protection?

X YES ☐ NO

If YES, please provide the date, title and number of the regulation.

---

e) GAAP/IAS/IFRS Accounting Principles?

X YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

X YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

X YES ☐ NO

h) Reserve Requirements against liquidity risk?

X YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES X NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

X YES ☐ NO

If YES, please provide the definition.
"Factoring is the operation by which the Factor acquires, for consideration, from a person, called Client, instruments of credit content, in some cases providing additional services in exchange for remuneration. The Factor assumes the credit risk of the debtors of the instruments acquired, hereinafter Debtors. "

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES X NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES X NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES X NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

X YES ☐ NO

If YES,

a) What are those reports?

Reports of lines of credit, balances, owed (with name of the supplier and buyer)

b) Are they to be audited?

X YES ☐ NO

c) What is the period to be reported?

Monthly

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES X NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

X YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

X YES ☐ NO

If YES, please provide the name, date and number.
SBS

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

X YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

X YES ☐ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

X YES ☐ NO

If YES, please explain
KYC, Compliance, Board of Directors, Know-how of the business

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

X YES ☐ NO

If YES, please provide the date, title and number.
Law 27287 "Law of securities" (June 19th, 2000), Law 29623 "Law of negotiable invoices as a financing mechanism" (December 7th, 2010) and Res. SBS N ° 4358-2015 "Regulation of factoring and discount" (July 25th, 2015).

Question 3-2: Is factoring based on assignment in your country?

X YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

X YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES X NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

X YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

X YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

X YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

X YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

X YES ☐ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES X NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

X YES ☐ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES X NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES X NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

X YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Yes, the final creditor is the rightful one. If the debtor pays to the first creditor, the obligation doesn't disappear.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

X YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES X NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES X NO

b) Non-recourse factoring?

X YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

X YES ☐ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

X YES ☐ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

X YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

X YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

X YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

X YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

X YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

X YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

X YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

X YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

X YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

X YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

X YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES X NO

Question 4-4: Is e-invoicing applicable in your country?

X YES □ NO

If YES, is e-invoicing obligatory for some situations?
X YES □ NO

If YES, please explain the criteria.
Pandemic

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

X YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES X NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES X NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

X YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES X NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES X NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES X NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES X NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES X NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES X NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

X YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES X NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES X NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

X YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES X NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES X NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

X YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

X YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

X YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES X NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES X NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES X NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

X YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

X YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

X YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

X YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

X YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

X YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES X NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES X NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

X YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES X NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES X NO

If NO, what is the most common payment structure?
Wire Transference

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES X NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

X 0-5 banking days
○ 6-10 banking days
○ 11-20 banking days
○ More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES X NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

X YES □ NO

If YES, under which conditions?

(i) when the parties enter into the assignment, in order to prejudice other creditors, and (ii) when the assets are not enough to pay all obligations, according to the legal payment sequence.

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

X YES □ NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES X NO

If NO, is it an equal right with the others?

X YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

The ordinary insolvency process can't last more than 90 days, from the day of the application until the resolution

- ○ 0- 30 days
- ○ 31-60 days
- ○ 61-90 days
- ○ 91-180 days
- ○ X More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- ○ 0 to 1 year
- ○ 1 to 2 years
- X 2 to 3 years
- ○ More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- ○ 0 to 1 year
- ○ 1 to 2 years
- ○ 2 to 3 years
- X More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

X YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

X YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

X YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES X NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES X NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

0.95

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

X YES □ NO

If YES,

a) **under which circumstances?**

---

b) **can the factor issue an invoice for such interest to the debtor?**

□ YES X NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

X YES □ NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES X NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES X NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

X YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES X NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES X NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

X YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

X YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

X YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES X NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES X NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

X YES □ NO

If YES, please provide the date, title and number of the Law.
Civil Code, Legislative Decree 295

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

X YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.
it has to be an extraordinary, irresistible and unpredictable event

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

X YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

X YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

X YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

X YES □ NO

SAUDI ARABIA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☑ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☑ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☑ YES ☐ NO

If YES, please explain.

SAMA

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☑ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☑ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☑ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Sama Circular dated 19/3/2012

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☑ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☑ YES ☐ NO

b) Recourse Factoring?

☑ YES ☐ NO

c) Undisclosed Factoring?

☑ YES ☐ NO

d) Pre-shipment Financing?

☑ YES ☐ NO

e) Factoring based on order approval?

☑ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☑ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☑ YES ☐ NO

h) Reverse Factoring?

☑ YES ☐ NO

i) Islamic International Factoring?

☑ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

Companies law & Anti trust law

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

AML Law & AML manual

c) Minimum Capital Requirement?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Implementing rule of finance

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

As published at SDAIA website

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☒ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☒ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☒ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☒ YES ☐ NO

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☒ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☒ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☒ YES ☐ NO

If YES, please define the relevant Islamic finance instrument.

Tawarruq - Ijarah & Mushataka

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☒ YES ☐ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☒ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☒ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☒ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☒ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ● NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

● YES ☐ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

● YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

● YES ☐ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

● YES ☐ NO

If YES, please explain

Investigation, risk assessment (through SIMAH $ BAYAN)

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☑ YES ☐ NO

If YES, please provide the date, title and number.

Law of commercial papers and electronic transactions issued in 2007

Question 3-2: Is factoring based on assignment in your country?

☑ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☑ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☑ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☑ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

● YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Under the Saudi Arabian Law of Commercial Paoers and electronic transactions an assignment of accounts receivable must be registered with the Ministry of Commerce and Investment in order to be effective against third parties, including the insolvency practitioner of the assignor.

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

● YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

● YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

● YES ☐ NO

Under the Saudi Arabian Law of Commercial Papers and Electronic Transactions, the notice to the debtor must be in writing and must be received by the debtor in order to be effective. The notice must include certain information, such as the name and address of the assignee, the amount and nature of the receivable, and the date and terms of the assignment.

If YES, please explain and refer to the regulation.

There is no specific legal form required for the notice to the debtor, but it must be in writing and may be delivered by various means, such as by hand, by mail, by email, or by other electronic means. However, it is recommended that the notice be delivered by a method that provides proof of delivery or receipt, such as registered mail, certified mail, or email with a read receipt.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

● YES ☐ NO

If YES, please explain.

such as fraud , already paid or invalidity

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☑ NO

If YES, how must the acceptance of notification be made in your country?

Note: It is not a must, but as per our internal procedures we have to receive the debtor acceptance of the assignment of rights by sending his approval or by signing the same assignment as a third party (acknowledge)

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☐ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☑ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☑ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Treated case by case

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☑ YES ☐ NO

b) Non-recourse factoring?

☑ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

☑ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

the prepayment or the reverse factoring is considered as non recourse factoring (on the supplier)

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☑ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

SAMA Circulars mentioned above

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

● YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

● YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

● YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ● NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES ● NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

● YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

● YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES ● NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

● YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

● YES □ NO

Question 4-3: Is signature required on an invoice for validity?

● YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

● YES □ NO

If YES, is e-invoicing obligatory for some situations?

● YES □ NO

If YES, please explain the criteria.

As per Zakat,Tax Customs Authority regulations. Please check their website: https://zatca.gov.sa/en/pages/default.aspx

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

● YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

● YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES ● NO

1) If YES, please explain the types and rates of the taxes for each case.

2) If NO, is it value added tax?

● YES □ NO

i) If YES, what is the rate of tax?

15%

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ● NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

● YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

● YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

● YES □ NO

If YES, please explain.
It may be liable depending on T & Cs of the factoring agreement

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ● NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

● YES □ NO

If YES, please explain.
registration fees or may be notarization fee

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ● NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ● NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES ● NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ● NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES ● NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

● YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ● NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ● NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES ● NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

● YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

● YES □ NO

If YES, please explain.

In case of silent factoring , there is no assignment at all due to the buyer's ban of assignment , but we only deal with disclosed factoring

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ● NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES ● NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

● YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES ● NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

● YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES ● NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

● YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ● NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ● NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES ● NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ● NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ● NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

● YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

● 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES ● NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ● NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ● NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

● YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

□ YES □ NO

If NO, what are the ways of legal settlement of disputes?

_____

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

□ YES □ NO

If YES, under which conditions?

_____

_____

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ● NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

N/A

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES ● NO

If YES,

a) under which circumstances?

---

b) can the factor issue an invoice for such interest to the debtor?

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

● YES □ NO

If YES, please explain referring to the regulation.

90 days

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ● NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ● NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES ● NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

● YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ● NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

● YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES □ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

● YES □ NO

If YES, please provide the date, title and number of the Law.

There is no specific law but it is covered in many circulars issued by SAMA or MOJ

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

● YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

Depends on case by case

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

● YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

● YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

● YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES ● NO

Note: but it may recognize the receivables in the provisions

SENEGAL

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.
UEMOA – Uniform Law on Factoring

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES … NO x

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
Central Bank of West African States

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO x. only bank and microfinance

If YES,

a) Is approval of managers by the governing body required?

YES … NO …

b) Is approval of the shareholders by the governing body required?

YES … NO …

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES … NO … N/A

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES … NO x

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES x NO …

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES … NO x

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES … NO …

i) Islamic International Factoring

YES x NO …

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation

---

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation

---

c) Minimum Capital Requirement

YES x NO …

If YES, please provide the date, title and number of the regulation
Minimum capital required for financial institutions

---

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
Law No 2008 du 25/01/2008

---

e) GAAP/IAS/IFRS Accounting Principles

YES … NO x

f) Obligation to publicly disclose yearly financial reports

YES x NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES x NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.

Transaction by which the member transfers by contract with effect subrogation its debt to the factor, who in return for remuneration paid him in advance all or part of the amount of transferred receivables

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES … NO x

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES x NO …

If YES, please define the relevant Islamic finance instrument.
Microfinance and Banking Law

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …

If YES,

a) What are those reports?

Not disponible yet

b) Are they to be audited?

YES x NO …

c) What is the period to be reported?

Not disponible yet

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES x NO …

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

YES x NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES x NO …

If YES, please explain
The Law explains 8 categories of sales that do not apply to factoring

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES … NO x

If YES, please explain and refer to the relevant regulation (title, date, number)

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES x NO …

If YES, please provide the name, date and number
To be prepared on Central Bank

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES x NO …

If YES, please explain which ones
The member communicates to the factor any information allowing to assess.

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO x

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.
OHADA Uniform Act

Question 3-2: Is factoring based on assignment in your country?

YES … NO x

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES … NO x

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES x NO …

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES x NO …

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)
Commercial registration

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES … NO x

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO x

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO x

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … NO x

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES x NO …

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO x

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES x NO …

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES x NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES x NO …

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES … NO x

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES … NO x

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES … NO …

If YES, are they also allowed to split a particular receivable between factors?

YES … NO …

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES … NO x

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES … NO x

Question 4-3: Is signature required on an invoice for validity?

YES … NO x

Question 4-4: Is e-invoicing applicable in your country?

YES … NO x

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES … NO x

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO x

1) If YES, please explain the types and rates of the taxes for each case.

---

2) If NO, is it value added tax?

YES … NO x

i) If YES, what is the rate of tax?

---

ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES … NO x

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES … NO x

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES x NO …

If YES,

a) what are they and how is the procedure?

Any tax payment is a privilege

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES x NO …

If YES,

a) what are they and how is the procedure?

A derogation to be requested

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO x

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO x

If YES, please explain the procedure.
Commercial registration

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO …

If YES, please explain.

With Commercial Registration

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES x NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES x NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES x NO …

d) Can a receivable be still factorable under prohibition of assignment?

YES x NO …

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES x NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES … NO x

If YES, please explain

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES … NO x

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES … NO x

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES … NO x

If YES, please refer to the regulation (title, date, number)

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES x NO …

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES x NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x
If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES x NO …

If NO, what is the most common payment structure.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES x NO …

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES … NO x

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO x

If NO, is it an equal right with the others?

YES … NO x

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days. X
b) 31-60 days
c) 61-90 days
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?

By the application process named Exequatur

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES x NO …

If YES, what is the rate?

It depends on the conditions applicable by each institution.

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES … NO x

If YES, what is it called?

IF YES who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
N/A

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

If the invoice has an expired due date.

b) Can the factor issue an invoice for such interest to the debtor?

YES x NO …

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES x NO …

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES x NO …

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES x NO …

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES x NO …

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES x NO …

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES … NO x

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES … NO x

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO …

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES x NO …

If YES, please list the differences.

The competent court is different

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.
Civil Act in each country

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES x NO …

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

The event is considered as a force majeure is based must meet the following conditions:

- Unforeseeable
- Irresistible
- Beyond the control of the persons concerned

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES … NO x

If NO, please explain the additional requirements.
Local Law applies

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES x NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES x NO …

SECTION 17 - ANY OTHER SUBJECTS

Are there any other subjects that you think are important in conducting factoring operations with your country?

YES x NO …

If YES, please explain.

To develop factoring it is important to accelerate digitization of process at all levels.

SERBIA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognizes and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☒ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

***Factoring Law* (Official Gazette No. 62/2013) (30/2018)**

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1017 DR Amsterdam
The Netherlands

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E: fci@fci.nl
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Chamber of Commerce 40537377
VAT: NL801484169B01

Question 1-2-1: Are banks allowed to do factoring in your country?

☒ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☒ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☒ YES ☐ NO

If YES, please explain.

Ministry of Finance oversees NBFIs and National Bank of Serbia oversees the banks that provide factoring services.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☒ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☒ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☒ NO

c) Please provide the title, date and number of the relevant regulation/law.

Factoring Law *(Official Gazette No. 62/2013) (30/2018), article 7*

The Industry is regulated by the Ministry of Finance which oversees NBFIs, but only with regard to their licensing, while the National Bank of Serbia oversees the banks that provide factoring services through its regular bank supervision. After approval, NBFI's owner or authorized person need to submit the application for entry in the Public Register of Business Entities.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☒ **YES** ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☒ **YES** ☐ NO

NBFIs can only perform factoring and factoring-related activities. (Article 5 of Factoring Law)

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☒ **YES** ☐ NO

b) Recourse Factoring?

☒ **YES** ☐ NO

c) Undisclosed Factoring?

☐ YES ☒ **NO**

d) Pre-shipment Financing?

e) ☐ YES ☒ **NO**

f) Factoring based on order approval?

☒ YES ☐ NO

g) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☒ **YES** ☐ NO

h) Two-Factor International Factoring such as with FCI?

☒ **YES** ☐ NO

i) Reverse Factoring?

☒ **YES** ☐ NO

j) Islamic International Factoring?

☐ YES ☒ **NO**

k) RESCUE (Receive Extra Support for Collection of Unpaid Exports) A product (not supported by FCI) which helps FCI members doing direct export factoring (both disclosed and undisclosed) to collect unpaid A/R when something goes wrong with the seller or with a buyer.

☐ YES ☒ **NO**

l) POM (Purchase Order Management)

☐ YES ☒ **NO**

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☒ **NO**

If YES, please provide the date, title and number of the law/regulation.

---

b) Anti-Money Laundering?

☒ **YES** ☐ NO

If YES, please provide the date, title and number of the regulation.

Administration for the Prevention of Money Laundering – AML/CFT Law (Official Gazette of RS, 113/17, 91/19, 153/20)

c) Minimum Capital Requirement?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Factoring Law *(Official Gazette No. 62/2013) (30/2018), article 6*

d) Data Protection?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law on Personal Data Protection *(Official Gazette No. 87/2018)*

e) GAAP/IAS/IFRS Accounting Principles?

☒ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☒ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☒ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☒ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☒ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

Serbian Section for Factoring Development at the Serbian Chamber of Commerce
15, Resavska street, 11000 Belgrade, Serbia.
Contact person: Ms. Tanja Kursar, President of the SFA, tanja.kursar@aofi.rs,
phone + 381 11 655 8240, cell: + 381 64 65 83845

b) is membership compulsory?

☐ YES ☒ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☒ YES ☐ NO

If YES, please provide the definition.
Factoring is the financial service of selling and purchasing existing non-matured or future short-term receivables arising from agreements on the sale of goods or provision of services, either nationally or abroad

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☒ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business /individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☒ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☒ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☒ YES ☐ NO

a) What are those reports?

Those are reports about liabilities and assets

b) Are they to be audited?

☐ YES ☒ NO

c) What is the period to be reported?

at every quarter

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☒ NO

If YES,

a) Are only receivables that arise from provision of goods and/or servicesfactored?

☒ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☒ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☒ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☒ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☒ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☒ YES ☐ NO

If YES, please explain which ones

Serbian Business Register Agency, National bank, Anti-Corruption Agency, Administration for the prevention of Money Laundering, Association of Serbian banks, and every other public register.

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☒ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☒ YES ☐ NO

If YES, please provide the date, title and number.

Law on foreign currency transactions, ("Official Herald of the Republic of Serbia", Nos. 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018)

Question 3-2: Is factoring based on assignment in your country?

☒ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☒ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☒ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☒ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☒ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☒ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☒ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☒ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☒ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☒ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☒ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☒ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☒ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☒ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☒ YES ☐ NO

b) Non-recourse factoring?

☒ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

☐ YES ☒ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☒ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☒ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☒ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☒ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☒ NO

Question 3-21: Is assignment of part of a receivable possible?

☒ YES ☐ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☒ YES ☐ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☒ YES ☐ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☐ YES ☒ NO

If YES, are they also allowed to split a particular receivable between factors?

☐ YES ☒ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☒ YES ☐ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☒ YES ☐ NO

Question 4-3: Is signature required on an invoice for validity?

☒ YES ☐ NO

Question 4-4: Is e-invoicing applicable in your country?

☐ YES ☒ NO

If YES, is e-invoicing obligatory for some situations?

☐ YES ☐ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☐ YES ☒ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☐ YES ☒ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☐ YES ☒ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

☐ YES ☒ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

☐ YES ☒ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

☐ YES ☒ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

☐ YES ☒ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

☐ YES ☒ NO

If YES, please explain.

_____

_____

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

☐ YES ☒ NO

If YES, please explain.

_____

_____

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

☐ YES ☒ NO

If YES, please explain.

_____

_____

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or playability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☐ YES ☒ NO

If YES, please explain.

_____

_____

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

☐ YES ☒ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

☐ YES ☒ NO

If YES, please explain.

_____

_____

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

☐ YES ☒ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

☐ YES ☒ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☐ YES ☒ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

☐ YES ☒ NO

If YES, please explain the procedure.

_____

_____

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

☐ YES ☒ NO

If YES, please explain.

_____

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☐ YES ☒ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☐ YES ☒ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

☐ YES ☒ NO

d) can a receivable still be factorable under prohibition ofassignment?

☒ YES ☐ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

☐ YES ☒ NO

If YES, please explain.

_____

_____

B. If NO on the question 7-1 (on the previous page), if the assignment is stillvalid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

☐ YES ☒ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

☐ YES ☒ NO

If YES, please explain.

_____

_____

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☒ YES ☐ NO

If NO, please explain.

_____

_____

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalization has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☒ YES ☐ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☒ YES ☐ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☒ YES ☐ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☐ YES ☒ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☒ YES ☐ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

☐ YES ☒ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

☐ YES ☒ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

☐ YES ☒ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☐ YES ☒ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

☐ YES ☒ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

☐ YES ☒ NO

If NO, what is the most common payment structure?

Bank transfers

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

☐ YES ☒ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

☐ 0-5 banking days
☐ 6-10 banking days
☐ 11-20 banking days
☐ More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

☐ YES ☒ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

☐ YES ☒ NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

☐ YES ☒ NO

If YES, under which circumstances?

_____

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☐ YES ☒ NO

If NO, is it an equal right with the others?

☐ YES ☒ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

☐ 0- 30 days
☐ 31-60 days
☐ 61-90 days
☐ 91-180 days
☒ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- ☐ 0 to 1 year
- ☒ 1 to 2 years
- ☐ 2 to 3 years
- ☐ More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- ☐ 0 to 1 year
- ☒ 1 to 2 years
- ☐ 2 to 3 years
- ☐ More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☐ YES ☒ NO

If NO, what are the ways of legal settlement of disputes?

_____

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☐ YES ☐ NO

If YES, under which conditions?

_____

_____

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☒ YES ☐ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☒ YES ☐ NO

If YES, what is the rate?
Legal penalty interest rate. (Based policy rate + increase in the key)
for domestic currency 9% p/a, on EMU 8% p/a.

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

☐ YES ☐ NO

If YES, what is it called?

_____

IF YES, who publishes it?

_____

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

_____

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☐ YES ☒ NO

If YES,

a) **under which circumstances?**

_____

_____

b) **can the factor issue an invoice for such interest to the debtor?**
c) ☐ YES ☒ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☒ YES ☐ NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

☐ YES ☒ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

☐ YES ☒ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

☐ YES ☒ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

☐ YES ☒ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

☒ YES ☐ NO

If YES, please give the reference.
45 days

Question 14-2: Is e-invoicing acceptable by public administrations?

☒ YES ☐ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☒ YES ☐ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☐ YES ☒ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

☐ YES ☐ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

☐ YES ☒ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☐ YES ☐ NO

If YES, please provide the date, title and number of the Law.

_____

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☐ YES ☐ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

_____

_____

_____

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☐ YES ☒ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☐ YES ☐ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

☐ YES ☐ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

☐ YES ☐ NO

SECTION 17 ANY OTHER SUBJECTS

Question 19-1: Are there any other subjects that you think are important in conducting factoring operations with your country?

☐ YES ☒ NO

If YES, please explain.

Thank you.

SINGAPORE

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☑ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☑ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☑ YES ☐ NO

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☑ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☑ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☑ YES ☐ NO

b) Recourse Factoring?

☑ YES ☐ NO

c) Undisclosed Factoring?

☑ YES ☐ NO

d) Pre-shipment Financing?

☑ YES ☐ NO

e) Factoring based on order approval?

☑ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☑ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☑ YES ☐ NO

h) Reverse Factoring?

☑ YES ☐ NO

i) Islamic International Factoring?

☑ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☑ YES ☐ NO

k) POM (Purchase Order Management)

☑ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

Sections 34 and 37 of the Competitions Act (Cap. 50B).

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Section 27B of the Monetary Authority of Singapore Act (Cap. 186); Section 39 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A); Section 8 of the Terrorism (Suppression of Financing) Act (Cap.325).

c) Minimum Capital Requirement?

☐ YES ☑ NO

If YES, please provide the date, title and number of the regulation.

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Parts IV, V and VI of the Personal Data Protection Act 2012 (No. 26 of 2012).

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☑ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

_____

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☑ NO

If YES, please provide the definition.

_____

_____

_____

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☑ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☑ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☑ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☑ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☑ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☑ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☑ YES ☐ NO

If YES, please explain which ones

Accounting and Corporate Regulatory Authority (ACRA) is the registery to check security interests in relation to corporate client.

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☑ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☑ YES ☐ NO

If YES, please provide the date, title and number.

Section 4(8) of the Civil Law Act (Cap. 43) sets out the requirements of a valid legal assignment.

Question 3-2: Is factoring based on assignment in your country?

☑ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☑ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☑ YES ☐ NO

If YES, please explain.

Equitable Assignment.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☑ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☑ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☑ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☑ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☑ YES ☐ NO

If YES, please explain and refer to the regulation.

Express notice in writing should be provided pursuant to section 4(8) of the Civil Law Act (Cap. 43).

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☑ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☑ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☑ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☑ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Express notice in writing of the assignment should have been provided to the debtor. This prevents discharge of the debt via payment to the first creditor, and allows the factor to sue for payment of the same debt.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☑ NO

b) Non-recourse factoring?

☐ YES ☑ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☑ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☑ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☑ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☑ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☑ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☑ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

☑ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☑ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☑ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES ☑ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES ☑ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ☑ NO

Question 4-4: Is e-invoicing applicable in your country?

☑ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☑ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☑ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☑ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☑ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

7% Goods and Services Tax (GST) is applicable only to factoring commission.

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☑ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

☑ YES □ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

☑ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☑ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ☑ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☑ YES □ NO

If YES, please explain.

Creation of security interest prior to a legal assignment of receivable may compete factor's rights to collect the receiveable and keep the proceeds.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☑ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☑ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☑ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☑ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☑ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES ☑ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES ☑ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☑ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☑ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☑ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☑ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☑ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☑ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☑ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☑ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ☑ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☑ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☑ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

☑ YES □ NO

If YES, please explain.

If the assignment agreement contains a jurisdiction clause that prevents the commencement of litigation in Singapore, the Court has to consider whether it has jurisdiction to hear the claim in the first place, and may not go on to consider the merits of the claim.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☑ NO

If NO, what is the most common payment structure?

PayNow, MEPS, Payment Transfers are common mode of payment.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

☑ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- ☑ 0-5 banking days
- O 6-10 banking days
- O 11-20 banking days
- O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES ☑ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

☑ YES □ NO

If YES, under which conditions?

Yes, but only if the assignment falls under the requirements under the Insolvency, Restructuring and Dissolution Act to permit the Official Assignee / Trustee / Liquidator to avoid the transaction. E.g. if the assignment is found to be an unfair preference / under value transaction.

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

☑ YES □ NO

If YES, under which circumstances?

Yes, the administrator will consider the validity of the assignment when it adjudicates the proof of debt submitted in the insolvent debtor's bankruptcy / liquidation.

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☑ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

- O 0- 30 days
- O 31-60 days
- O 61-90 days
- O 91-180 days
- O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☑ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☑ YES □ NO

If YES, under which conditions?

A foreign arbitral award is enforceable in Singapore with leave of Court under section 46 of Arbitration Act or sections 19 and 29 of the International Arbitration Act.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☑ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ☑NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

☑ YES □ NO

If YES, what is it called?

Singapore Overnight Rate Average (SORA)

IF YES, who publishes it?

Monetary Authority of Singapore

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Pricing is based on the credit risk of the counterparty.

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☑ YES □ NO

If YES,

a) under which circumstances?

Late payment interest is possible if it was agreed in the sales contract.

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b) can the factor issue an invoice for such interest to the debtor?

□ YES ☑NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☑ YES □ NO

If YES, please explain referring to the regulation.

Yes, the limitation period is generally 6 years from the date the cause of action accrued for contract claims under section 6 of the Limitation Act.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☑ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☑ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

☑ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☑ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

☑ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☑ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☑ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☑ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☑ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☑ YES □ NO

If YES, please provide the date, title and number of the Law.

Please refer to the Frustrated Contracts Act (Cap. 115).

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☑ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

Yes, force majeure is applicable even if it has not been provided by the contract, if the contract becomes impossible to perform or frustrated. The frustration event should be something truly beyond the ambit of the contract because it was not within the contemplation of the parties, and they have not provided for an allocation of loss in such event.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☑ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☑ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES ☑ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES ☑ NO

SOUTH AFRICA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☑ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☑ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☑ NO

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☑ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☑ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☑ YES ☐ NO

b) Recourse Factoring?

☑ YES ☐ NO

c) Undisclosed Factoring?

☑ YES ☐ NO

d) Pre-shipment Financing?

☑ YES ☐ NO

e) Factoring based on order approval?

☑ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☑ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO

h) Reverse Factoring?

☑ YES ☐ NO

i) Islamic International Factoring?

☑ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES ☐ NO

k) POM (Purchase Order Management)

☐ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

Competition Act 89 of 1998.

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Financial Intelligence Centre Act 38 of 2001, General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022.

c) Minimum Capital Requirement?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Regulation 38 of the Regulations Relating to Banks, promulgated under the Banks Act 94 of 1990 (applies to Banks).

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Protection of Personal Information Act 4 of 2013.

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☑ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☑ YES ☐ NO

If YES, please provide the definition.

Although there is no statutory definition of factoring, factoring can be defined as a contractual arrangement in terms of which the factor discounts a supplier's receivables (either on a recourse or non-recourse basis) through a transfer or cession (assignment) of such receivables to the factor, following which the factor administers the collection of the receivables from the buyer(s).

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☑ YES ☐ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☐ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☑ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☑ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☑ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☑ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☑ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☑ YES ☐ NO

If YES, please explain

Yes, the Financial Intelligence Centre Act 38 of 2001 sets out the "Know Your Customer" (KYC) procedures that accountable institutions must follow before entering into transactions with clients.

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☐ YES ☑ NO

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

☐ YES ☑ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☑ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☑ YES ☐ NO

If YES, please explain.

A transfer of receivables is effected by way of an 'out-and-out cession' in terms of which the cedent transfers its rights against the debtor to the cessionary so that the cessionary becomes the holder of such rights.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☑ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☑ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3 Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ✓NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☑ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☑ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☑ YES ☐ NO

If YES, please explain.

Unless the parties agree otherwise, the debtor may raise against the factor, as cessionary, any defence he or she could have raised against the supplier.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☑ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☑ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☑ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☑ YES ☐ NO

b) Non-recourse factoring?

☑ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☑ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☑ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☑ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☑ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☑ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☑ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

☑ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES ☑ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☑ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

☑ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☑ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ☑ NO

Question 4-4: Is e-invoicing applicable in your country?

☑ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☑ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES ☑ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

✓ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES ✓ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

✓ YES □ NO

i) If YES, what is the rate of tax?

Both factoring commission and discounting charges are subject to VAT and Income Tax. The VAT is levied at 15% and the Income Tax is levied at 27%. In addition to the factoring commission and discounting charges, interest may also be charged, however, such interest is exempt from VAT.

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ✓ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ✓ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

✓ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ✓ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ✓ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ✓ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☑ YES □ NO

If YES, please explain.

A pre-existing cession (whether in security or out and out cession) over present and future receivables or a general notarial bond over the movable assets of the supplier which was concluded or granted before the factoring transaction could rank ahead of the factor's rights.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

☑ YES □ NO

If YES,

a) what are they and how is the procedure?

In the case of business rescue or liquidation. Normal business rescue or liquidation processes would ensue.

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☑ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☑ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☑ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☑ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☑ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES ✓ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES ☑ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☑ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

☑ YES □ NO

If YES, please explain.

Contractual barriers could include a restriction on cession in the underlying agreement. Where receivables are purchased in the absence of the debtor's consent where such consent is required, the purchase of receivables will be void.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES ☑ NO

If NO, please explain.

This depends on the laws of the jurisdiction in which the power of attorney will be used.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☑ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☑ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☑ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☑ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☑ YES □ NO

Question 8-5: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ✓ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☑ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

✓ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

✓ YES □ NO

If YES, please explain.

There are public policy exceptions to the enforcement of foreign judgements in South Africa.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☑ NO

If NO, what is the most common payment structure?

Payments are generally made by electronic funds transfer (EFT) or SWIFT.

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ☑ NO

Not applicable. The usage of cheques has been discontinued.

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

O 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Not applicable. The usage of cheques has been discontinued.

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES ☑ NO

Not applicable. The usage of cheques has been discontinued.

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

☑ YES □ NO

If YES, under which conditions?

In an instance where an insolvent disposes of property less than 6 months prior to insolvency which has the effect of preferring one of its creditors, with such a disposition being the cause for the debtor's insolvency, the court can set the transaction aside as a voidable disposition – unless the person who received the disposition can prove that the disposition was made in the ordinary course. Such voidable disposition are one of the impeachable transactions under Section 29(1) of the Insolvency Act.

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

☑ YES □ NO

If YES, under which circumstances?

Section 30 of the Insolvency Act deals with 'undue preference to creditors', where a debtor makes a disposition of his property at a time when his liabilities exceed his assets with the intention of preferring one creditor over another. If the debtor's estate is subsequently sequestrated, the court can set aside this disposition. This is very similar to a voidable disposition discussed above, but the debtor in this case needs to have the intention or goal of giving money or assets to one creditor to the disadvantage of other creditors and his liabilities must exceed his assets at the time of this disposition, rather than immediately after the disposition. An undue preference may be set aside, at any time before the insolvency event.

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☑ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O ✓ 91-180 days
O More than 180 days

SECTION 11: DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
✓1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

✓0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

✓YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

✓YES □ NO

If YES, under which conditions?

The settlement will need to be made an order of court in South Africa.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

✓YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ✓NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES ✓ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Not applicable.

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☑YES □ NO

If YES,

a) under which circumstances?

The factoring company acquires the rights in relation to the receivables. Accordingly, the factoring company will is entitled to any late payment interest to which the supplier is entitled.

b) can the factor issue an invoice for such interest to the debtor?

☑YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☑ YES □ NO

If YES, please explain referring to the regulation.

In terms of the Prescription Act 69 of 1969, a debt arising out of contract or any other liability prescribes (expires) in 3 years from the date that the debt arose. As such, legal action must be instituted within 3 years from such date.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☑ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☑ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES ☑ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☑ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ✓ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

☑ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☑ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES ☑ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

☑ YES □ NO

If YES, please list the differences.

Public administrations are subject to different legislation where different processes may apply during times of financial distress.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES ☑ NO

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☑ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

In the absence of a force majeure clause, the common law position of "supervening impossibility" will apply. When performance by a party of its obligations becomes objectively impossible as a result of unforeseeable and unavoidable events which are not the fault of any party, then the obligation to perform and the right to receive performance under the agreement are extinguished.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

□ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES □ NO

SECTION 17 ANY OTHER SUBJECTS

Question 19-1: Are there any other subjects that you think are important in conducting factoring operations with your country?

✓YES □ NO

If YES, please explain.

South Africa has exchange controls in place and the Exchange Control Regulations, 1961 (promulgated pursuant to the Currency and Exchanges Act, 1933), regulate amongst other things, the flow of currency into and out of South Africa.

The Exchange Control Regulations apply (subject to some exceptions and monetary limits) to both actual (eg flows of funds) and notional transfers of value (e.g. intellectual property and other assets) by a South African resident to a beneficiary outside of South Africa. For any such actual and notional transfers of value, the South African resident must obtain prior exchange control approval from the Financial Surveillance Department of the South African Reserve Bank (FinSurv). Applications for approval under the Exchange Control Regulations are effected through "Authorised Dealers". "Authorised Dealers" include the South African banks, and the local branches of foreign banks, which are approved by the South African Reserve Bank as authorised dealers in foreign currency.

The purchase of the receivables results in a cross border flow of funds (i.e. payment by the factor to the supplier, and payment by the buyer to the factor), thus requiring exchange control approval. The obligation to obtain approval rests with the South African resident(s) (i.e. the supplier and the buyer). The supplier will have to disclose to its bank (in the bank's capacity as Authorised Dealer) the reason for the incoming funds from the factor, and the buyer will have to disclose to its bank the reason for the outgoing payment to the factor. Failure to obtain exchange control approval may result in payments by the buyer to the factor being blocked. Failure to obtain exchange control approval may also, to the extent applicable, affect any enforcement rights that the factor may have against the buyer and the factor's ability to remit the proceeds of such enforcement out of South Africa.

Thank you.

Name of Respondent (To be published □ YES □ NO):
Company / Association (To be published □ YES □ NO):
Country: South Africa

Contact Details (To be published □ YES □ NO):

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☑ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Not applicable

Question 1-2-1: Are banks allowed to do factoring in your country?

☑ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☑ YES ☐ NO

If YES, please explain.

The central Bank of Sri Lanka monitors and regulates all the Banks and Non Banking Financial Institutions in the country. However, there is no specific authority to particularly monitor factoring.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☑ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

No Law on this or any governing authority particularly established to regulate factoring

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☑ NO

If NO, please refer to the relevant regulation (title, date, number).

In Sri Lanka, NBFIs do factoring only in local currency

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☑ YES ☐ NO

b) Recourse Factoring?

☑ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☑ NO

d) Pre-shipment Financing?

☐ YES ☑ NO

e) Factoring based on order approval?

☐ YES ☑ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☑ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☑ NO

h) Reverse Factoring?

☐ YES ☑ NO

i) Islamic International Factoring?

☐ YES ☑ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES ☑ NO

k) POM (Purchase Order Management)

☐ YES ☑ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

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b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Prevention of Money Laundering Act No.5 of 2006

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c) Minimum Capital Requirement?

☐ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

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d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Personal Data Protection Act No.9 of 2022

---

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☑ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

_____

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☑ NO

If YES, please provide the definition.

_____

_____

_____

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☑ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☑ NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☑ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☑ YES ☐ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☑ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☐ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☐ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☐ YES ☑ NO

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

☑ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☑ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☑ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☑ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☑ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☑ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☐ YES ☑ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☑ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☑ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☑ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☑ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☑ YES ☐ NO

b) Non-recourse factoring?

☑ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☑ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☑ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☑ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☑ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☑ NO

Question 3-21: Is assignment of part of a receivable possible?

☑ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES ☑ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES ☑ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES ☑ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☑ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ☑ NO

Question 4-4: Is e-invoicing applicable in your country?

□ YES ☑ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☑ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES ☑ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES ☑ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

_____

_____

2) If NO, is it value added tax?

□ YES ☑ NO

i) If YES, what is the rate of tax?

_____

ii) If it is not VAT, please explain.

_____

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☑ NO

If YES, please explain.

_____

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☑ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☑ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☑ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ☑ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☑ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES □ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☑ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☑ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☑ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☑ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☑ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

☑ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES □ NO ✓

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☑ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES ✓ □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES □ NO ✓

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

□ YES ✓ □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☑ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

☑ YES □ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

☑ YES □ NO Type text here

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES ☑ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES □ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☑ NO

If NO, what is the most common payment structure?

online transfers

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

☑ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

O 0-5 banking days
☑ 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

☑ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☑ NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES □ NO ✓

If YES, under which circumstances?

_____

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES □ NO

If NO, is it an equal right with the others?

□ YES ☑ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days ✓
O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
O 1 to 2 years
☑ 2 to 3 years
O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

O 0 to 1 year
O 1 to 2 years
☑ 2 to 3 years
O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☑ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☑ YES □ NO

If YES, under which conditions?
Foreign Arbitration Award will have to be proved again in the local Courts.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

□ YES ☑ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☑ YES □ NO

If YES, what is the rate?
2%

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES ☑ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
RFR

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES ☑ NO

If YES,

a) **under which circumstances?**

b) **can the factor issue an invoice for such interest to the debtor?**

□ YES ☑ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☑ YES □ NO

If YES, please explain referring to the regulation.

Six years ✓

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☑ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☑ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES ☑ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☑ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES ☑ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES ☑ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES ☑ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

☑ YES □ NO

If YES, please list the differences.

Legal action against a public authority can be instituted only because of an action which was done by executive or administrative body

---

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES ☑ NO

If YES, please provide the date, title and number of the Law.

_____

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES □ NO ✓

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

_____

_____

_____

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☑ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☑ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES □ NO

SRI LANKA

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Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☑ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☑ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☑ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☑ YES ☐ NO

If YES, please explain.
The leasing company is allowed to do factoring business. The authority is Ministry of Economic Affairs.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☑ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☑ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☑ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☑ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☑ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☑ YES ☐ NO

b) Recourse Factoring?

☑ YES ☐ NO

c) Undisclosed Factoring?

☑ YES ☐ NO

d) Pre-shipment Financing?

☑ YES ☐ NO

e) Factoring based on order approval?

☑ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☑ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☑ YES ☐ NO

h) Reverse Factoring?

☐ YES ☑ NO

i) Islamic International Factoring?

☐ YES ☑ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☑ YES ☐ NO

k) POM (Purchase Order Management)

☑ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

---

b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

---

c) Minimum Capital Requirement?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

---

d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

---

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☑ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

_____

b) is membership compulsory?

☐ YES ☑ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☑ NO

If YES, please provide the definition.

_____

_____

_____

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☑ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☑ YES ☐ NO

If YES,

a) What are those reports?

There is a report the Bank need to submit to Joint Credit Information Center including Client's factoring facility, O/S.

b) Are they to be audited?

☐ YES ☑ NO

c) What is the period to be reported?

Monthly

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☑ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☑ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☑ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☑ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☑ YES ☐ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☐ YES ☑ NO

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☑ YES ☐ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☑ YES ☐ NO

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

☑ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☑ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES ☑ NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☑ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☑ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☑ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☑ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☑ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☑ YES ☐ NO

If YES, please explain.
If t

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☑ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☑ YES ☐ NO

If YES, please explain.

Assignment cluase should be stated in each invoice to delivery to the debtor.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☑ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☑ NO

b) Non-recourse factoring?

☑ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☑ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☑ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☑ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☑ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☑ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES ☑ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☑ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☑ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

☑ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

□ YES ☑ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES ☑ NO

Question 4-3: Is signature required on an invoice for validity?

☑ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

☑ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☑ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES ☑ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES ☑ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

☑ YES □ NO

If YES, please explain.
The business tax rate in banking industry is diffrenet from non-bank industry.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☑ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☑ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☑ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ☑ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☑ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☑ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☑ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☑ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☑ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☑ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES ☑ NO

d) can a receivable still be factorable under prohibition of assignment?

☑ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☑ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☑ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☑ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☑ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☑ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☑ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☑ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☑ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ☑ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☑ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

□ YES ☑ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ☑ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☑ NO

If NO, what is the most common payment structure?

T/T

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ☑ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

Ø 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

☑ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☑ NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ☑ NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☑ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

- O 0- 30 days
- O 31-60 days
- O 61-90 days
- O 91-180 days
- O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- Ø 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- Ø 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☑ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☑ YES □ NO

If YES, under which conditions?

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☑ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES ☑ NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

☑ YES □ NO

If YES, what is it called?

TAIFX3

IF YES, who publishes it?

TAIPEI FOREIGN EXCHANGE MARKET DEVELOPMENT FOUNDATION

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Sorry. We have no idea on this.

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES ☑ NO

If YES,

a) **under which circumstances?**

---

b) **can the factor issue an invoice for such interest to the debtor?**

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☑ YES □ NO

If YES, please explain referring to the regulation.

The maximum time limit is 15 years.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

☑ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

☑ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

☑ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☑ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

☑YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES ☑NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES ☑NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☑NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☑NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES ☑NO

If YES, please provide the date, title and number of the Law.

_____

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES ☑NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

_____

_____

_____

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☑ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☑ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES ☑ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

☑ YES □ NO

THAILAND

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☑ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Notification of the Bank of Thailand No.FPG. 20/2555 Permission for Commercial Banks to Conduct Factoring Business (17 Dec 2012)

Question 1-2-1: Are banks allowed to do factoring in your country?

☑ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☐ YES ☐ NO

KBank note: As we are a bank, we can answer you only bank related questions.

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☑ YES ☐ NO

If YES, please explain.

Bank of Thailand (BOT)

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☐ NO KBank note: As we are a bank, we can answer you only bank related questions.

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

KBank note: As we are a bank, we can answer you only bank related questions.

☐ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

KBank note: As we are a bank, we can answer you only bank related questions.

☐ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

KBank note: As we are a bank, we can answer you only bank related questions.

a) Non-recourse Factoring?

☐ YES ☐ NO

b) Recourse Factoring?

☐ YES ☐ NO

c) Undisclosed Factoring?

☐ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☐ NO

e) Factoring based on order approval?

☐ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO

h) Reverse Factoring?

☐ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☐ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES ☐ NO

k) POM (Purchase Order Management)

☐ YES ☐ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☑ YES ☐ NO

If YES, please provide the date, title and number of the law/regulation.

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b) Anti-Money Laundering?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

1) ANTI-MONEY LAUNDERING ACT B.E. 2542 (1999)

2) Counter-Terrorism and Proliferation of Weapon of Mass Destruction Financing Act B.E. 2559 (2016)

c) Minimum Capital Requirement?

☐ YES ☑ NO

If YES, please provide the date, title and number of the regulation.

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d) Data Protection?

☑ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Personal Data Protection Act, B.E.2562 (2019)

e) GAAP/IAS/IFRS Accounting Principles?

☑ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☑ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☑ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☑ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☑ YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

Thai Factor Association, https://thaifactors.or.th.

b) is membership compulsory?

☐ YES ☑ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☑ YES ☐ NO

If YES, please provide the definition.

Factoring business refer to the business whereby a customer agrees to transfer local or international trade debt to a factor, and such factor agrees to grant credit which includes execution of one or serveral of the following transactions: (1) Account receivable management (2) Trade debt collection (3) Assumption of debtor default risk.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☑ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☑ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☑ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES ☑ NO

If YES,

a) What are those reports?

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b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☑ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☐ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☑ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☑ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☑ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☑ YES ☐ NO

If YES, please explain which ones

We check the receivables must not be assigned to the other financial institute.

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☐ YES ☑ NO

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☑ YES ☐ NO

If YES, please provide the date, title and number.
The Civil and Commercial Code of Thailand, Section 303 Transfer of Claims.

Question 3-2: Is factoring based on assignment in your country?

☑ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☑ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☑ YES ☐ NO

If YES, please explain.
Business Security Act B.E. 2558 (2015)

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☑ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☑ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

- A business security agreement shall be done in writing and filed with the registration officer in the Department of Business Development.
- The registration shall at least contain the details according to the Business Security Act.
- The security receiver, with written consent provided by the security provider, shall have a duty to proceed with registration with the Registration Officer via the Department of Business Development's website.
- When registration is completed, there is no need to renewal such registration.
- Rate of fees for the registration is specified in the Business Security Act which depends on the type of the registered security.

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☑ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☑ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☑ YES ☐ NO

If YES, please explain and refer to the regulation.

Notification of assignment in written. In case there is prohibition of assignment, the debtor must provide written consent to the bank.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☑ YES ☐ NO

If YES, please explain.

The assignment of right is not complying with the law.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☑ YES ☐ NO

If YES, how must the acceptance of notification be made in your country?

In case there is prohibit provision of the assignment stated in the contract between the debtor and the assignee, so the acceptance by the debtor is necessary.

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☑ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☑ YES ☐ NO

If YES, please explain.

The assignment must be in force both seller and buyer country law.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☑ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

1. Export factor ensure that the assignment is valid and enfortable in seller country law.
2. Export factor / the seller send the notification of assignment to the buyer.

In case of there are prohibition of assignment in sale contract, the buyer must have consent by written.

3. Export factor allow Import factor to send the payment instruction to the buyer.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☑ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☑ YES ☐ NO

b) Non-recourse factoring?

☑ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☑ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☑ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☑ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☑ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☑ NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES ☑ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☑ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☑ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES ☑NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☑ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☑ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

☑ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

☑ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☑ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES ☑ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☑ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES ☑ NO

1) If YES, please explain the types and rates of the taxes for each case.

2) If NO, is it value added tax?

□ YES ☑ NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

Subject to specific business tax at 3.3% based on fee.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☑ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☑ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☑ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☑ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☑ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ☑ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☑ YES □ NO

If YES, please explain.
The conditional assignment and registration of business security agreement.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES ☑ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☑ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☑ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☑ NO

If YES, please explain the procedure.

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b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☑ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☑ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☑ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES ☑ NO

d) can a receivable still be factorable under prohibition of assignment?

☑ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

☑ YES □ NO

If YES, please explain.

Our bank allows non-notification of assignment for factoring with recourse but not allow for factoring without recourse.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☑ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☑ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☑ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☑ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☑ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES ☑ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☑ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ☑ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☑ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES ☑ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☑ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

☑ YES □ NO

If YES, please explain.

The factoring company can prepay its local supplier in the invoice currency of international sale if the factoring company and its local supplier have agreement allow to do so.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

☑ YES □ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ☑ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

Ø 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

☑ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☑ NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

☑ YES □ NO

If YES, under which circumstances?

- In case of the assignment of right to us occurs after the supplier becomes the insolvent debtor.

- The supplier does any action during the three-month period before filing for insolvency in order to cause its other creditors disadvantage.

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☑ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
☑ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- Ø 1 to 2 years (6 Months to 2 years)
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O 0 to 1 year
- Ø 1 to 2 years (1 to 3 years)
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☑ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☑ YES □ NO

If YES, under which conditions?

The prevailing party must file the petition to the Thai court to enforce the foreign arbitration award. Additionally, the Thai court retains a general discretion to refuse and enforcement of the award if, ~~apparently, the subject matter of the dispute is not capable of settlement by foreign arbitration~~ under Thai law or to do so would be contrary to public policy or good morals.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☑ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☑ YES □ NO

If YES, what is the rate?

Under factoring contract, at the highest applicable rate as specified in factoring contract plus 3% per annum.

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

☑ YES □ NO

If YES, what is it called?

THOR

IF YES, who publishes it?

Bank of Thailand (BOT)

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

n.a.

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☑ YES □ NO

If YES,

a) under which circumstances?

In case of the debtor fails to pay the amount due under the invoice relating to the assigned receivable to us.

b) can the factor issue an invoice for such interest to the debtor?

□ YES ☑ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES ☑ NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☑ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☑ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES ☑ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☑ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☑ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES ☑ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☑ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES ☑ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☑ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☑YES □ NO

If YES, please provide the date, title and number of the Law.
The Civil and Commercial Code of Thailand, Section 8

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☑ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.
any and all events, which are beyond the control and is unable to be foreseen, avoided or overcome such as earthquake, typhoon, pandemic, flood, fire and war, etc.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES ☑ NO

If NO, please explain the additional requirements.
Includings, the notification of assignment and the payment instruction to the buyer.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

□ YES ☑ NO

If NO, please explain.
At the present, we do not have this business.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES ☑ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

☑ YES □ NO

TUNISIA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☒ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☒ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☒ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☒ YES ☐ NO

If YES, please explain.
CENTRAL BANK OF TUNISIA - "BCT"

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☒ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☒ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☒ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☒ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☒ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☒ YES ☐ NO

b) Recourse Factoring?

☒ YES ☐ NO

c) Undisclosed Factoring?

☒ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☒ NO

e) Factoring based on order approval?

☐ YES ☒ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☒ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☒ YES ☐ NO

h) Reverse Factoring?

☒ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☒ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☒ YES ☐ NO

k) POM (Purchase Order Management)

☐ YES ☒ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☒ NO

If YES, please provide the date, title and number of the law/regulation.

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b) Anti-Money Laundering?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

law 26-2015 of july 7,2015 and law 09-2019 of January 23, 2019

c) Minimum Capital Requirement?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law 48-2016 ART 32

d) Data Protection?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

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e) GAAP/IAS/IFRS Accounting Principles?

☒ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☒ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☒ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☐ YES ☒ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☒ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

---

b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☒ YES ☐ NO

If YES, please provide the definition.

law 48-216 - Art 08

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☒ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☒ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☒ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☒ YES ☐ NO

If YES,

a) What are those reports?

report on commitments, prudential ratios, unpaids and write-off

b) Are they to be audited?

☒ YES ☐ NO

c) What is the period to be reported?

Monthly for commitements

quaterly for prudential ratios

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☒ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☒ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☒ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☒ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

NO but as factoring is a short-term financing tool, in TLF's internal rules the average time should not exceed 180 days

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Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☒ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☒ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☒ YES ☐ NO

If YES, please explain which ones
RNE (Registre National des Entreprises) and BCT Data system

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☒ YES ☐ NO

If YES, please explain
infos from : TLF's Leasing Dept - other banks-site visits, neighbourhood surveys

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☒ YES ☐ NO

If YES, please provide the date, title and number.

Code des Obligations et Contrats "COC" - Art 323

Question 3-2: Is factoring based on assignment in your country?

☒ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☒ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☒ YES ☐ NO

If YES, please explain.

Assignement of Receivables" - Art 204 of the C.O.C

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☒ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☒ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☒ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☒ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☒ YES ☐ NO

If YES, please explain and refer to the regulation.

COC's Art 205 : notification by certified written document

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☒ YES ☐ NO

If YES, please explain.

If its specified on the contract between supplier and debtor that receivbales can not be sold

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☒ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☒ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☒ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☒ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

an information letter signed and stamped by a legal signatory is required stating that in case of direct payment the factor is entitled to reclaim payment from the debtor even if this payment has already been made to his supplier

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Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☒ YES ☐ NO

b) Non-recourse factoring?

☒ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES ☒ NO

If YES, please provide the reference to the relevant regulation.
there is no regulation but it's a practice related to risk management

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☒ YES ☐ NO

If YES, please provide the reference of the relevant regulation.
Art 224 of the COC

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☒ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☒ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☒ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☒ NO

Question 3-21: Is assignment of part of a receivable possible?

☒ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☒ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☒ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES ☒ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES ☒ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

□ YES ☒ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

□ YES ☒ NO

Question 4-3: Is signature required on an invoice for validity?

□ YES ☒ NO

Question 4-4: Is e-invoicing applicable in your country?

□ YES ☒ NO

If YES, is e-invoicing obligatory for some situations?

□ YES □ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES ☒ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☒ YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☒ YES □ NO

1) If YES, please explain the types and rates of the taxes for each case.

A VAT of 19% is applied on factoring commissions - no taxe on discounting charge

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☒ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

☒ YES ☐ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

☒ YES ☐ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

☐ YES ☒ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

☐ YES ☒ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

☐ YES ☒ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☒ NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

☒ YES □ NO

If YES,

a) what are they and how is the procedure?

for public debtors the Government can make a tax objection and block the debtor's account

---

b) is there any difference in the application depending on the type of factoring?

□ YES ☒ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

☒ YES □ NO

If YES,

a) what are they and how is the procedure?

Governemnt can make a taxe objection on the supplier account open on Factor's book only if the account is creditor ;

b) is there any difference in the application depending on the type of factoring?

□ YES ☒ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☒ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☒ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☒ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☒ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☒ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

☒ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES ☒ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☒ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☒ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☒ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES ☒ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES ☒ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES ☒ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES ☒ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☒ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES ☒ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☒ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☒ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ☒ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

☒ YES □ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ☒ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- ⊗ 0-5 banking days
- O 6-10 banking days
- O 11-20 banking days
- O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

☒ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

☒ YES □ NO

If YES, under which conditions?

if the transfer is made during the period called "suspect period" set by the judge, which is generally a few months before the declaration of insolvency

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

☒ YES □ NO

If YES, under which circumstances?

if the assigement is done during the period called "suspect period"

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ☒ NO

If NO, is it an equal right with the others?

□ YES ☒ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
Q More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- ☒ 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- ☒ 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☒ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☒ YES □ NO

If YES, under which conditions?

if it's stipulated in the contract and agree between the client and the supplier

---

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☒ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☒ YES □ NO

If YES, what is the rate?

maximum bank overdraft rate + 0.5%

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

☒ YES □ NO

If YES, what is it called?

money market rate (called in Tunisia Taux du Marché Monétaire " TMM")

IF YES, who publishes it?

the Central Bank of Tunisie ("BCT")

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

April 2023 - TMM + 1.5% - so, around 9.5%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☒ YES □ NO

If YES,

a) under which circumstances?

when requested by the supplier or when the contract is subject to a litigation

b) can the factor issue an invoice for such interest to the debtor?

☒ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES ☒ NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

☒ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

☒ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

☒ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

☒ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

☒ YES □ NO

If YES, please give the reference.
in respect with the Public Accounting code

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES ☒ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES ☒ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☒ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

☒ YES □ NO

The public Accounting Code specifies that invoices must be paid directly to the supplier

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

☒ YES □ NO

If YES, please list the differences.
the property of public contractors cannot be seized

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☒ YES □ NO

If YES, please provide the date, title and number of the Law.

Art 282 and 283 from the COC (code obligation and contracts)

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☒ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

this will depend on the government's decision

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☒ YES ☐ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☒ YES ☐ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

☐ YES ☒ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

☒ YES ☐ NO

Facilitating Open Account - Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☒ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☒ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☒ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☒ YES ☐ NO

If YES, please explain.

Central Bank of Tunisia BCT

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☒ YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☒ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☒ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☒ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☒ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☒ YES ☐ NO

b) Recourse Factoring?

☒ YES ☐ NO

c) Undisclosed Factoring?

☒ YES ☐ NO

d) Pre-shipment Financing?

☐ YES ☒ NO

e) Factoring based on order approval?

☐ YES ☒ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☒ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☒ YES ☐ NO

h) Reverse Factoring?

☒ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☒ NO

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☒ YES ☐ NO

k) POM (Purchase Order Management)

☐ YES ☒ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☒ NO

If YES, please provide the date, title and number of the law/regulation.

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b) Anti-Money Laundering?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law 26-2015 of July 07, 2015 + Law 09-2019 of January 23, 2019

c) Minimum Capital Requirement?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Law 48-2016, article 32

d) Data Protection?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

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e) GAAP/IAS/IFRS Accounting Principles?

☒ YES ☐ NO

f) **Obligation to publicly disclose yearly financial reports?**

☐ YES ☐ NO

g) **Risk Management that covers monitoring of operation, internal control and risk assessment?**

☒ YES ☐ NO

h) **Reserve Requirements against liquidity risk?**

☐ YES ☒ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☒ NO

If YES,

a) **please provide the name(s) and contact details (website and e-mail).**

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b) **is membership compulsory?**

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☒ YES ☐ NO

If YES, please provide the definition.

Law 48-216 - Art.08

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☒ YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☒ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☒ NO

If YES, please define the relevant Islamic finance instrument.

_____

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☒ YES ☐ NO

If YES,

a) What are those reports?

_____

b) Are they to be audited?

☒ YES ☐ NO

c) What is the period to be reported?

Monthly

_____

_____

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☒ YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☒ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☒ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☒ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

No legal restriction, but in practice the credit perion should not exceed 1 year.

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☒ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☒ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☒ YES ☐ NO

If YES, please explain which ones

Registre National des Entrprises RNE www.registre-entreprises.tn + Data Information System of the BCT markazia.bct.gov.tn

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☒ YES ☐ NO

If YES, please explain

Diffrent records and incidences in available databases: BCT, Company Date records, Client visits

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc...) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☒ YES ☐ NO

If YES, please provide the date, title and number.

Art 323 and according to the Code of Obligations and Contracts C.O.C

Question 3-2: Is factoring based on assignment in your country?

☒ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☒ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☒ YES ☐ NO

If YES, please explain.

"Assignment of receivables", Art. 204 and according to the Code of Obligations and Contracts C.O.C

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES ☒ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES ☒ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☒ NO

Question 3-6: Is notice to the debtor-necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☒ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☒ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☒ YES ☐ NO

If YES, please explain.

If the debtor is public establisment, the assignment can be refused in reference to the Public Accounting Code

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☒ NO

If YES, how must the acceptance of notification be made in your country?

_____

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☒ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☐ NO

If YES, please explain.

_____

_____

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☒ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

_____

_____

_____

_____

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☒ YES ☐ NO

b) Non-recourse factoring?

☒ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

☐ YES ☒ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☒ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

Code of Obligations and Contracts C.O.C

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☒ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES ☒ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☒ NO

Question 3-21: Is assignment of part of a receivable possible?

☒ YES ☐ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

☒ YES ☐ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☒ YES ☐ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☒ YES ☐ NO

If YES, are they also allowed to split a particular receivable between factors?

☒ YES ☐ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☐ YES ☒ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☐ YES ☒ NO

Question 4-3: Is signature required on an invoice for validity?

☐ YES ☒ NO

Question 4-4: Is e-invoicing applicable in your country?

☐ YES ☒ NO

If YES, is e-invoicing obligatory for some situations?

☐ YES ☐ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☐ YES ☒ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☒ YES ☐ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☒ YES ☐ NO

1) If YES, please explain the types and rates of the taxes for each case.

There is no taxes applied on discounting chare.

2) If NO, is it value added tax?

☒ YES ☐ NO

i) If YES, what is the rate of tax?

19%

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

☐ YES ☒ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

☒ YES ☐ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

☒ YES ☐ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

☐ YES ☒ NO

If YES, please explain.

_____

_____

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

☐ YES ☒ NO

If YES, please explain.

_____

_____

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

☐ YES ☒ NO

If YES, please explain.

_____

_____

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☒ NO

If YES, please explain.

_____

_____

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☒ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES ☒ NO

If YES, please explain.

_____

_____

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

☒ YES ☐ NO

If YES,

a) what are they and how is the procedure?

In case the supplier account is creditor. If the third party is a govermental establishment, the factor must pay within 45 days.

Otherwise, the factor should respect the legal procedures "Code of Civil and Commercial Procedures" Code des Procédures Civiles et C

b) is there any difference in the application depending on the type of factoring?

☐ YES ☒ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☒ YES ☐ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

☐ YES ☒ NO

If YES, please explain the procedure.

Public debtors " Public accounting Code" Code de la Comptabilité Publique

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

☒ YES ☐ NO

If YES, please explain.

" Public accounting Code" Code de la Comptabilité Publique

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☐ YES ☒ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☐ YES ☒ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

☐ YES ☒ NO

d) can a receivable still be factorable under prohibition of assignment?

☒ YES ☐ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

☐ YES ☒ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

☐ YES ☐ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

☐ YES ☒ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☒ YES ☐ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☐ YES ☒ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☐ YES ☒ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☐ YES ☒ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☐ YES ☒ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☒ YES ☐ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

☐ YES ☒ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

☐ YES ☒ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

☐ YES ☐ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☒ YES ☐ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

☐ YES ☒ NO

If YES, please explain.

_____

_____

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

☒ YES ☐ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

☐ YES ☒ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

⊗ 0-5 banking days
○ 6-10 banking days
○ 11-20 banking days
○ More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

☒ YES ☐ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

☐ YES ☒ NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

☒ YES ☐ NO

If YES, under which circumstances?

The administration can make unenforceable for only 1 year.

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☐ YES ☒ NO

If NO, is it an equal right with the others?

☐ YES ☒ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

○ 0- 30 days
○ 31-60 days
○ 61-90 days
○ 91-180 days
⊗ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- ⊗ 0 to 1 year
- ○ 1 to 2 years
- ○ 2 to 3 years
- ○ More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- ⊗ 0 to 1 year
- ○ 1 to 2 years
- ○ 2 to 3 years
- ○ More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☒ YES ☐ NO

If NO, what are the ways of legal settlement of disputes?

_____

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☒ YES ☐ NO

If YES, under which conditions?

In respect of legal procedure

_____

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☒ YES ☐ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☒ YES ☐ NO

If YES, what is the rate?

Maximum Bank Overdraft Rate +0,5% "Taux de Découvert Bancaire maximum + 0,5%"

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

☒ YES ☐ NO

If YES, what is it called?

Taux de Marché Monétaire TMM Money Market Rate TMM

IF YES, who publishes it?

Central Bank of Tunisia BCT Banque Centrale de Tunisie BCT

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

TMM + 1,5% (around 9,5%)

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☒ YES ☐ NO

If YES,

a) **under which circumstances?**

Ligaly, it's possible but in practice this is used when no trade profit is related to this debtor.

b) **can the factor issue an invoice for such interest to the debtor?**

☒ YES ☐ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☐ YES ☒ NO

If YES, please explain referring to the regulation.

No minimum

15 years as a maximum.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

☒ YES ☐ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

☒ YES ☐ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

☒ YES ☐ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

☒ YES ☐ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

☒ YES ☐ NO

If YES, please give the reference.

Public Accounting Code Code de la Comptabilité Publique

Question 14-2: Is e-invoicing acceptable by public administrations?

☐ YES ☒ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☐ YES ☒ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☒ YES ☐ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

☒ YES ☐ NO Public Accounting Code Code de la Comptabilité Publique

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

☐ YES ☒ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☒ YES ☐ NO

If YES, please provide the date, title and number of the Law.

Art. 282 - 283 Code of Obligations and Contracts C.O.C Code des Obligations et des Contrats C.O.C

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

☒ YES ☐ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

Goverment decisions

Lawyer decisions

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☒ YES ☐ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☒ YES ☐ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

☐ YES ☒ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

☒ YES ☐ NO

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☒ YES ☐ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

UAE New Factoring Law (7th December 2021)

Question 1-2-1: Are banks allowed to do factoring in your country?

☒ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☒ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☒ NO

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☐ NO Not applicable

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☐ NO Not applicable

b) Is approval of the shareholders by the governing body required?

☐ YES ☐ NO Not applicable

c) Please provide the title, date and number of the relevant regulation/law.

Not applicable

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☐ YES ☐ NO Not applicable

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☐ YES ☐ NO Not applicable

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☐ YES ☐ NO Not applicable

b) Recourse Factoring?

☐ YES ☐ NO Not applicable

c) Undisclosed Factoring?

☐ YES ☐ NO Not applicable

d) Pre-shipment Financing?

☐ YES ☐ NO Not applicable

e) Factoring based on order approval?

☐ YES ☐ NO Not applicable

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☐ YES ☐ NO Not applicable

g) Two-Factor International Factoring such as with FCI?

☐ YES ☐ NO Not applicable

h) Reverse Factoring?

☐ YES ☐ NO Not applicable

i) Islamic International Factoring?

☐ YES ☐ NO Not applicable

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

☐ YES ☐ NO Not applicable

k) POM (Purchase Order Management)

☐ YES ☐ NO Not applicable

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☐ NO Not applicable

If YES, please provide the date, title and number of the law/regulation.

---

b) Anti-Money Laundering?

☐ YES ☐ NO Not applicable

If YES, please provide the date, title and number of the regulation.

---

c) Minimum Capital Requirement?

☐ YES ☐ NO Not applicable

If YES, please provide the date, title and number of the regulation.

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d) Data Protection?

☐ YES ☐ NO Not applicable

If YES, please provide the date, title and number of the regulation.

---

e) GAAP/IAS/IFRS Accounting Principles?

☐ YES ☐ NO Not applicable

f) Obligation to publicly disclose yearly financial reports?

☐ YES ☐ NO Not applicable

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☐ NO Not applicable

h) Reserve Requirements against liquidity risk?

☐ YES ☐ NO Not applicable

Question 1-8: Are there any local factoring associations?

☐ YES ☐ NO Not applicable

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

☐ YES ☐ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☒ YES ☐ NO

If YES, please provide the definition.

A transaction whereby the Transferor transfers the current and/or future Receivables, to a Transferee; or agrees that the Transferee maintains the records related to the transferred Receivables, collects the same, and provides protection to the Transferee, if the Debtor of the Receivables fails to pay the Receivables.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☒ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☒ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☒ YES ☐ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☒ YES ☐ NO

If YES,

a) What are those reports?

Surveys and past due/ delayed payment reports

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b) Are they to be audited?

☒ YES ☐ NO

c) What is the period to be reported?

depending on the report, reports are audited within an overall process

---

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☒ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☒ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☒ NO

If YES, please explain.
AML Compliance

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☒ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☒ YES ☐ NO

If YES, please provide the name, date and number.
New UAE Factoring Law

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☒ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☒ YES ☐ NO

If YES, please explain which ones

EMCR Registration

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☒ YES ☐ NO

If YES, please explain

KYC, Due Diligence, Credit Worthiness , Collateral/ Security Checks

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☒ YES ☐ NO

If YES, please provide the date, title and number.

UAE New Factoring Law

Question 3-2: Is factoring based on assignment in your country?

☒ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☒ YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☒ YES ☐ NO

If YES, please explain.

Registration of Receivables at EMCR

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☒ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☒ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

EMCR Registration

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☒ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☒ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☒ YES ☐ NO

If YES, please explain and refer to the regulation.

No specific form, but in writing

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☒ NO

If YES, please explain.

Ban of Assignment can be overruled by serving Notice of Assignment (Legal Opinion still outstanding as UAE Factoring Law is still new)

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☒ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☒ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☒ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☒ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

As long as the factor can establish that Notice of Assignment was served on the debtor and receivables were registered at EMCR

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES ☒ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES ☒ NO

b) Non-recourse factoring?

☒ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

☒ YES ☐ NO

If YES, please provide the reference to the relevant regulation.

No specific regulations. Non-recourse Receivables financing is possible on the seller

---

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☒ YES ☐ NO

If YES, please provide the reference of the relevant regulation.

No specific regulation (bank internal policies)

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES ☐ NO not clear

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO not clear

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☒ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☒ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

☒ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES ☒ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

☒ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

☒ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

☒ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☒ YES ☐ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☐ YES ☐ NO There is no prohibition in place

Question 4-3: Is signature required on an invoice for validity?

☒ YES ☐ NO

Question 4-4: Is e-invoicing applicable in your country?

☐ YES ☒ NO

If YES, is e-invoicing obligatory for some situations?

☐ YES ☒ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☒ YES ☐ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

☒ YES ☐ NO Taxes are applicable on commission, not on discounting charges

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

☒ YES ☐ NO

1) If YES, please explain the types and rates of the taxes for each case.

Taxes are applicable on commission, not on discounting charges

Commission : 5%

2) If NO, is it value added tax?

☒ YES ☐ NO

i) If YES, what is the rate of tax?

5%

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

☐ YES ☒ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☒ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES ☒ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES ☒ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☒ NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ☒ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

☒ YES ☐ NO

If YES, please explain.

Same receivable has been collateralized to another lender, however we believe EMCR registration guarantees priority,

---

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

☐ YES ☒ NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

☐ YES ☒ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☒ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES ☒ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

□ YES ☒ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES □ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☒ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

□ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

□ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

□ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

☒ YES ☐ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

☐ YES ☒ NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

☐ YES ☒ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

☐ YES ☒ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

Legal matter

☐ YES ☐ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☒ YES ☐ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☒ YES ☐ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☒ YES ☐ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

☒ YES ☐ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☒ YES ☐ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

☐ YES ☒ NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES ☒ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☒ YES □ NO We believe it can be applicable, council opinion matters

Question 8-9: Are there any exceptions to the answers you have provided above?

☒ YES □ NO

If YES, please explain.

In case Commercial Contract between Seller and Buyer is underlying Oversea law, legal advise has to be obtained on a case by case base

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

☒ YES □ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

☒ YES □ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- O 0-5 banking days
- O 6-10 banking days
- O 11-20 banking days
- O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

☒ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☒ NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ☒ NO

If YES, under which circumstances?

_____

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

☒ YES □ NO

If NO, is it an equal right with the others?

□ YES □ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
O More than 180 days

Verifies on case by case basis, no form timeline given

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

O 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Verifies on case by case basis, no form timeline given

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

O 0 to 1 year
O 1 to 2 years
O 2 to 3 years
O More than 3 years

Verifies on case by case basis, no form timeline given

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☒ YES ☐ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☒ YES ☐ NO

If YES, under which conditions?

Depends on the underlying contract between Buyer and Seller

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☒ YES ☐ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☒ YES ☐ NO

If YES, what is the rate?

2%

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

☒ YES ☐ NO

If YES, what is it called?

SOFR & LIBOR

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☒ YES ☐ NO

If YES,

a) under which circumstances?

Depending on the underlying contract

b) can the factor issue an invoice for such interest to the debtor?

☐ YES ☒ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES ☒ NO Case by case basis

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES ☒ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

☒ YES □ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES ☒ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

☒ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☒ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

□ YES ☒ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

☒ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

□ YES ☒ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☒ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES ☒ NO

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES □ NO not known

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

☐ YES ☒ NO

If NO, please explain the additional requirements.
Invoices should carry the assignment by the EF through Supplier and then submitted to IF

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

☒ YES ☐ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

☒ YES ☐ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

☒ YES ☐ NO

UNITED ARAB EMIRATES

UGANDA

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES **X** NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

✓ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

✓ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

✓ YES ☐ NO

If YES, please explain.

The Central Bank (Bank of Uganda) regulates and/or supervises the activities of factoring companies pursuant to the provisions Financial Institutions Act, 2004 as amended.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES X NO

If YES,

a) Is approval of managers by the governing body required?

✓ YES ☐ NO

b) Is approval of the shareholders by the governing body required?

✓ YES NO

c) Please provide the title, date and number of the relevant regulation/law.

The Financial Institutions Act, 2004, the Financial Institutions Amendment Act, 2016, the Financial Institutions Licensing Regulations, 2005 and the Financial Institutions (Ownership and Control) Regulations, 2005

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

✓ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES X NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

✓ YES ☐ NO

b) Recourse Factoring?

✓ YES ☐ NO

c) Undisclosed Factoring?

✓ YES ☐ NO

d) Pre-shipment Financing?

✓ YES ☐ NO

e) Factoring based on order approval?

✓ YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

✓ YES NO

g) Two-Factor International Factoring such as with FCI?

✓ YES ☐ NO

h) Reverse Factoring?

✓ YES ☐ NO

i) Islamic International Factoring?

✓ YES NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES **X** NO

If YES, please provide the date, title and number of the law/regulation.

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b) Anti-Money Laundering?

✓ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

The Anti-money Laundering Act, 2013 and Amendment 2017, the Financial Institutions (Anti-money Laundering) Regulations, 2010

c) Minimum Capital Requirement?

✓ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

The Financial Institutions (Capital Adequacy Requirements) Regulations, 2005 and the Financial Institutions (Revision of Minimum Capital Requirements) Instrument, 2010

d) Data Protection?

✓ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

The Data Protection and Privacy Act, 2019 and the Data Protection and Privacy Regulations, 2020

e) GAAP/IAS/IFRS Accounting Principles?

✓ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

✓ YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☐ YES ☐ NO

✓

h) Reserve Requirements against liquidity risk?

✓ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES X NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

_____

b) is membership compulsory?

☐ YES X NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES X NO

If YES, please provide the definition.

_____

_____

_____

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES X NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES X NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☐ NO

✓

If YES, please define the relevant Islamic finance instrument.

The Financial Institutions (Islamic Banking) Regulations, 2018

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

✓ YES ☐ NO

If YES,

a) What are those reports?

The annual financial statements, reports to the Credit Reference Bureau on non-performing loans and customers involved in financial malpractices, reports on loans to insiders

b) Are they to be audited?

✓ YES ☐ NO

c) What is the period to be reported?

The Financial Statements – Annually; To The Credit Reference Bureau – Promptly;

Loans to Insiders - Monthly

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES **X** NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☐ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES **X** NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES X NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES X NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

✓ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

✓ YES ☐ NO

If YES, please explain which ones
The Security Interest in Moveable Properties Registry, the Uganda Registration Services Bureau and the Uganda Revenue Authority

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

✓ YES ☐ NO

If YES, please explain
It is prudent for the factor to carry out a corporate and legal due diligence before on-boarding a new Client to avoid legal and credit risk. In addition to that, to ascertainment the legitimacy of the invoices or the contracts to be financed to minimize exposure to default risk.

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

✓ YES NO

If YES, please provide the date, title and number.

The Contracts Act, 2010

Question 3-2: Is factoring based on assignment in your country?

✓ YES NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES **X** NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES **X** NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES **X** NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES X NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

✓ YES ☐ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

✓ YES NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES X NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES X NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

✓ YES NO

If YES, how must the acceptance of notification be made in your country?
In writing

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES X NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES X NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

✓ YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.
1. Demand should be issued to the defaulting debtor
2. Proceed to file an action

It is also important to have all the transactional documents in place.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

✓ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☐ YES X NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

✓ YES ☐ NO

b) Non-recourse factoring?

✓ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

✓ YES ☐ NO

If YES, please provide the reference to the relevant regulation.
Best Accounting practices

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

✓ YES ☐ NO

If YES, please provide the reference of the relevant regulation.
The Contracts Act, 2010

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

✓ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

✓ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

✓ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

✓ YES ☐ NO

Question 3-21: Is assignment of part of a receivable possible?

✓ YES NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

✓ YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

✓ YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

✓ YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

✓ YES □ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

✓ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

✓ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

✓ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

✓ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES X NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

✓ YES NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES X NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES X NO

1) If YES, please explain the types and rates of the taxes for each case.

Factoring commission is not subjected to Value added tax as well as discounting charge revenues.

2) If NO, is it value added tax?

□ YES □ NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

Capital gains tax on any gain arising from the assignment of the receivables in the case of factoring commission.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES X NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES X NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

✓ YES NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES X NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

✓ YES □ NO

If YES, please explain.

Nominal stamp duty on the instruments executed to perfect the transaction.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

✓ YES □ NO

If YES, please explain.

Deed of Assignment, the Factoring Agreement and any Guarantee Deeds if the Parties agree to register the document at the Registry of Companies.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

✓ YES □ NO

If YES, please explain.

A floating charge that has been perfected as security before the factor's right to collect the receivables. If the charge was not registered and stamp duty paid on it.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES X NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES X NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

✓ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES X NO

If YES, please explain the procedure.

_____

_____

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES X NO

If YES, please explain.

_____

c) Can a prior prohibition/ban of assignment invalidate an assignment?

✓ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

✓ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

✓ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES X NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES X NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES X NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

✓ YES □ NO

If YES, please explain.
If there were prior security interests created over the same pool of receivables by the Supplier, this may affect the possibility of factoring operation.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

✓ YES NO

If NO, please explain.
Generally, such a power of attorney would need to be notarized for it to be deemed authentic abroad.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

✓ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

✓ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

✓ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

✓ YES □ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

✓ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES X NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES X NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

✓ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

✓ YES □ NO

If YES, please explain.

If the dispute resolution mechanism is arbitration and the seat of arbitration is in the seller's country.

The Courts of law in Uganda endeavor not to interfere with the capacity to contract of the Parties. So, if the contract strictly prescribes the Courts of the seller's country, the Courts in Uganda shall not decide on the matter.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES X NO

If NO, what is the most common payment structure?

Wire transfer through the bank

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES X NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- ✓ 0-5 banking days
- ○ 6-10 banking days
- ○ 11-20 banking days
- ○ More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

✓ YES □ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

✓ YES □ NO

If YES, under which conditions?

If the assignment was given the year preceding the insolvency of the Company.

If the factor was aware of the insolvent nature of the supplier before remitting money to it.

If the contract is illegal.

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES X NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES X NO

If NO, is it an equal right with the others?

□ YES X NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

○ 0- 30 days
✓ 31-60 days
○ 61-90 days
○ 91-180 days
○ More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

○ 0 to 1 year
✓ 1 to 2 years
○ 2 to 3 years
○ More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

○ 0 to 1 year
✓ 1 to 2 years
○ 2 to 3 years
○ More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

✓ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

✓ YES □ NO

If YES, under which conditions?

If the provisions of the arbitration agreement or clause were strictly adhered to.
If the award is given under the New York Convention or the ICSID Convention.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

✓ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES X NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES X NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

2.5%

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

✓ YES NO

If YES,

a) under which circumstances?

If the late payment interest is provided for in the contract.

---

b) can the factor issue an invoice for such interest to the debtor?

✓ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

✓ YES □ NO

If YES, please explain referring to the regulation.

According to the Limitation Act, Cap. 80, actions in contract are limited to six (6) years from the date when the cause of action arose.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES X NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES X NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

✓ YES □ NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

✓ YES □ NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES X NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

✓ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

✓ YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

✓ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

✓ YES □ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES X NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES X NO

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

✓ YES □ NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

- If the force majeure event occurred after the contract was entered into.

- If it is so fundamental as to be regarded by the law both as striking at the route of the contract and as entirely beyond what was contemplated by the parties when they entered the contract.
- If it is not due to the fault of either party.
- Renders further performance impossible, illegal or makes it radically different from what was contemplated by the parties at the time of the contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES X NO

If NO, please explain the additional requirements.
The Deed of Assignment should be signed between the Debtor and the Factor to be given enforceability. In order to perfect the assignment, the Parties should have it registered with the Uganda Registration Services Bureau.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

✓ YES □ NO

If NO, please explain.

_____

_____

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

✓ YES NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES X NO

UKRAINE

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES X NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

X YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

X YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

X YES ☐ NO

If YES, please explain.
The National Bank of Ukraine (the central bank, the regulator)

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

X YES ☐ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES **X** NO

b) Is approval of the shareholders by the governing body required?

X YES ☐ NO

c) Please provide the title, date and number of the relevant regulation/law.

Resolution of the National Bank of Ukraine about the requirements of structure of ownership for financing services providers, #30, dd April 14, 2021

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

X YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

X YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

X YES ☐ NO

b) Recourse Factoring?

X YES ☐ NO

c) Undisclosed Factoring?

X YES ☐ NO

d) Pre-shipment Financing?

X YES ☐ NO

e) Factoring based on order approval?

X YES ☐ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

X YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

X YES ☐ NO

h) Reverse Factoring?

X YES ☐ NO

i) Islamic International Factoring?

☐ YES ☐ NO Information unknown, this kind of factoring is unknown on our market, but there are no restrictions to use it. So the answer may be "Yes"

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES **X** NO

If YES, please provide the date, title and number of the law/regulation.

---

b) Anti-Money Laundering?

X YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Law of Ukraine "On Preventing and Counteracting to Legalization (Laundering) of the Proceeds of Crime, Terrorism Financing, and Financing Proliferation of Weapons of Mass Destruction", #361-IX dd December, 06, 2021
Law on Financial Services and State Regulation of Financial Service Markets, #2664-III, dd July, 12, 2001

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c) Minimum Capital Requirement?

X YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Law on Financial Services and State Regulation of Financial Service Markets, #2664-III, dd July, 12, 2001

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d) Data Protection?

X YES ☐ NO

If YES, please provide the date, title and number of the regulation.
Law on Financial Services and State Regulation of Financial Service Markets, #2664-III, dd July, 12, 2001

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e) GAAP/IAS/IFRS Accounting Principles?

☐ YES X NO it is expected to introduce international principles in accounting

f) Obligation to publicly disclose yearly financial reports?

X YES ☐ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

X YES ☐ NO

h) Reserve Requirements against liquidity risk?

X YES ☐ NO

Question 1-8: Are there any local factoring associations?

X YES ☐ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

UATFF (Ukrainian Alliance for Trade Finance and Factoring) is under setting up
uatff.org@gmail.com

b) is membership compulsory?

☐ YES X NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

X YES ☐ NO

If YES, please provide the definition.
Under the factoring agreement (financing under the assignment of accounts receivable) one party (factor) transfers or undertakes to transfer funds to the other party (client) for a fee (in any manner provided by the contract), and the client assign or undertakes assign to the factor his accounts receivable against a third party (debtor).

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

X YES ☐ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES X NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES **X** NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☐ YES **X** NO

If YES,

a) What are those reports?

---

b) Are they to be audited?

☐ YES ☐ NO

c) What is the period to be reported?

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

X YES ☐ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

X YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

X YES ☐ NO

If YES, please explain.
Restrictions in accordance with Money Laundering and Ecology legislation

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES X NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES X NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

X YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

X YES ☐ NO

If YES, please explain which ones
Tax register, court decision register, company register

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

X YES ☐ NO

If YES, please explain
Credit solvency analyses

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☐ YES X NO

If YES, please provide the date, title and number.

Question 3-2: Is factoring based on assignment in your country?

X YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

X YES ☐ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☐ YES X NO

If YES, please explain.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☐ YES X NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☐ YES X NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES X NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

X YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES X NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES X NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

X YES ☐ NO

If YES, how must the acceptance of notification be made in your country?
In written form

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES X NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES X NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

X YES ☐ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.
According to the factor procedures

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

X YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

X YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☐ YES X NO

b) Non-recourse factoring?

☐ YES X NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in <u>non-recourse</u> factoring?

☐ YES X NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES X NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☐ YES X NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☐ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☐ YES X NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES X NO

Question 3-21: Is assignment of part of a receivable possible?

□ YES X NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

X YES □ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

X YES □ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

X YES □ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES X NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

X YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

X YES □ NO

Question 4-3: Is signature required on an invoice for validity?

X YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

X YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES X NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

□ YES X NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

X YES □ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES X NO

1) If YES, please explain the types and rates of the taxes for each case.

2) If NO, is it value added tax?

X YES □ NO

i) If YES, what is the rate of tax?

20%

ii) If it is not VAT, please explain.

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES X NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES X NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

□ YES X NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES X NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES X NO

If YES, please explain.

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES X NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES X NO

If YES, please explain.

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES X NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES X NO

If YES,

a) what are they and how is the procedure?

---

b) is there any difference in the application depending on the type of factoring?

□ YES □ NO

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

X YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES X NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES X NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

X YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

X YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

X YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

□ YES X NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES X NO

If YES, please explain.

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES □ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

X YES □ NO

If YES, please explain.
Barter transactions
Mutual settlements
Return of goods
Exceeding maturity date (regular basis)

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

X YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

□ YES X NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

□ YES X NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

□ YES X NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES X NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

□ YES X NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

□ YES X NO

If YES, please refer to the regulation (title, date, number).

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

□ YES X NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

□ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

X YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

X YES □ NO

If YES, please explain.
It is impossible to execute the functions of EF due to restrictions of local regulation – according to such regulation the local supplier is not allowed to receive the proceeds (finance) under sales agreement from the local (resident) entity (EF).

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES X NO

If NO, what is the most common payment structure?
Bank transfers

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES □ NO cheques are not used

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

- O 0-5 banking days
- O 6-10 banking days
- O 11-20 banking days
- O More than 20 banking days cheques are not used

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES □ NO cheques are not used

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES X NO

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES X NO

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES X NO

If NO, is it an equal right with the others?

□ YES X NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

- O 0- 30 days
- O 31-60 days
- O 61-90 days
- X 91-180 days
- O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

X it depends on the case

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

X it depends on the case

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

X YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

X YES □ NO

If YES, under which conditions?
If it is a provision in the contract

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

X YES, may be □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

□ YES X NO

If YES, what is the rate?

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES X NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
12-13% per year in local currency

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

□ YES X NO

If YES,

a) **under which circumstances?**

---

b) **can the factor issue an invoice for such interest to the debtor?**

□ YES □ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

□ YES X NO

If YES, please explain referring to the regulation.

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

□ YES X NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES X NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES X NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES X NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES X NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

X YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

X YES □ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

X YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES X NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES X NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

□ YES X NO

If YES, please provide the date, title and number of the Law.

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES X NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES □ NO

We did not conduct two-factor international factoring transactions

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

X YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

X YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

X YES □ NO

SECTION 17 ANY OTHER SUBJECTS

Question 19-1: Are there any other subjects that you think are important in conducting factoring operations with your country?

X YES □ NO

If YES, please explain.
Separate legislation on factoring
e-invoicing register setting up
Factoring association creation

Thank you.

VIETNAM

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

YES x NO …

If YES, please give the date, number, if any, and title of the Law or Regulation.

Circular No. 02/2017 / TT-NHNN: On May 18, 2017 to stipulate regulations on factoring of credit institutions and foreign bank branches. (effect from Sept. 30, 2017)

Question 1-2-1: Are banks allowed to do factoring in your country?

YES x NO …

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors

YES x NO …

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

YES x NO …

If YES, please explain.
There is a Banking Inspector – Supervisor of SBV to ensure safe and sound factoring activities of Credit Institutions and foreign bank branches.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

YES … NO x

If YES,

a) Is approval of managers by the governing body required?

YES … NO …

b) Is approval of the shareholders by the governing body required?

YES … NO …

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs are allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

YES x NO …

If NO, please refer to the relevant regulation (title, date, number)

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

YES … NO … we have no idea about it. It depends on NBFI registration.

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring

YES … NO x

b) Recourse Factoring

YES x NO …

c) Undisclosed Factoring

YES x NO …

d) Pre-shipment Financing

YES x NO …

e) Factoring based on order approval

YES x NO …

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)

YES x NO …

g) 2-Factor International Factoring such as with FCI

YES x NO …

h) Reverse Factoring

YES x NO …

i) Islamic International Factoring

YES … NO x

j) RESCUE (Receive Extra Support for Collection of Unpaid Exports)

YES … NO x

k) POM (Purchase Order Management)

YES x NO …

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules

YES x NO …

If YES, please provide the date, title and number of the law/regulation
Decree No: 35/2020/ND-CP issued March 24, 2020 (Effective date: May 15, 2020)

b) Anti-Money Laundering

YES x NO …

If YES, please provide the date, title and number of the regulation
Circular 40/VBHN-NHNN issued Nov.29, 2019

c) Minimum Capital Requirement

YES … NO x

If YES, please provide the date, title and number of the regulation

d) Data Protection

YES x NO …

If YES, please provide the date, title and number of the regulation
Decree No: 117/2018/ND-CP issued Sep.11, 2018

e) GAAP/IAS/IFRS Accounting Principles

YES … NO x

f) Obligation to publicly disclose yearly financial reports

YES x NO …

g) Risk Management that covers monitoring of operation, internal control and risk assessment.

YES x NO …

h) Reserve Requirements against liquidity risk

YES x NO …

Question 1-8: Are there any local factoring associations?

YES … NO x

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

YES … NO …

Question 1-9: Is there a legal definition of factoring / factoring contract?

YES x NO …

If YES, please provide the definition.

Factoring requested by seller means that a factor purchases accounts receivable in the form of recourse factoring from the client being the seller by giving an advance to receive rights and legitimate interests relating to the accounts receivable as agreed. (Art 3/9)

Factoring agreement means agreement entered into by a factor and a client on establishment, change or termination of rights and obligation of parties in factoring.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

YES x NO …

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

YES … NO x

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

YES … NO x

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

YES x NO …

If YES,

a) What are those reports?

Factoring activity of Credit Institutions and foreign bank branches report.

b) Are they to be audited?

YES x NO …

c) What is the period to be reported?

Quarterly

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

YES x NO …

If YES,
a) Are only receivables that arise from provision of goods and/or services factored?

YES … NO …

b) Are there also some restrictions in terms of goods and/services involved?

YES x NO …

If YES, please explain
Accounts arising from a goo or services contract forbidden by applicable law or a term that rights and obligations in the contract may not assign

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

YES x NO …

If YES, please explain and refer to the relevant regulation (title, date, number)
Circular No. 02/2017/TT-NHNN on May 18,2017, effective date: Sep.30, 2017

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

YES … NO x

If YES, please provide the name, date and number

SECTION 2 – FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to know different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

YES x NO …

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

YES … NO x

If YES, please explain which ones

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

YES … NO x

If YES, please explain

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult the lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

YES x NO …

If YES, please provide the date, title and number.
Circular No. 20/2017/TT-NHNN effective date: Feb 12, 2018

Question 3-2: Is factoring based on assignment in your country?

YES x NO …

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

YES x NO …

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

YES x NO …

If YES, please explain.
Once we agree the assignment, we must register these A/R assignment to the National Registration Agency for secured transactions to complete the assignment.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee

YES x NO …

Question 3-5-2: Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor

YES x NO …

If YES, can you provide a brief description of the type of receivables registry that exists in your country. (registration authority, process, timing, cost, duration and renewal...)
Nirast, secured transactions, contracts, notice of property distraits, judgement

---

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

YES x NO …

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

YES … NO x

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

YES … NO x

If YES, please explain and refer to the regulation

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

YES … NO x

If YES, please explain

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

YES … NO x

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

YES … NO x

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

YES … NO x

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

YES … NO x

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

YES x NO …

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

YES x NO …

b) Non-recourse factoring?

YES … NO x

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

YES … NO x

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

YES … NO …

If YES, please provide the reference of the relevant regulation.
We do not provide non-recourse factoring services.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

YES … NO x

If YES, is extended retention (effective in subsequent sales) of title also possible?

YES … NO …

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

YES … NO x

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

YES x NO …

Question 3-21: Is assignment of part of a receivable possible?

YES x NO …

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

YES x NO …

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

YES x NO …

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

YES x NO …

If YES, are they also allowed to split a particular receivable between factors?

YES x NO …

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic ways in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

YES x NO …

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

YES x NO …

Question 4-3: Is signature required on an invoice for validity?

YES x NO …

Question 4-4: Is e-invoicing applicable in your country?

YES x NO …

If YES, is e-invoicing obligatory for some situations?

YES … NO x

If YES, please explain the criteria

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

YES x NO …

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

YES x NO …

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

YES … NO x

1) If YES, please explain the types and rates of the taxes for each case.

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2) If NO, is it value added tax?

YES x NO …

i) If YES, what is the rate of tax?

10% of value

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ii) If it is not VAT, please explain

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

YES … NO x

If YES, please explain

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

YES x NO …

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

YES x NO …

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

YES … NO x

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

YES … NO x

If YES, please explain.

Question 5-7: Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

YES … NO x

If YES, please explain

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1: Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

YES … NO x

If YES, please explain

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

YES … NO x

If YES,

a) what are they and how is the procedure?

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b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

YES … NO x

If YES,

a) what are they and how is the procedure?

---

b) Is there any difference in the application depending on the type of factoring?

YES … NO …

If YES, please explain.

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

YES x NO …

A - If YES,

a) Does prohibition of assignment have to be registered?

YES … NO x

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

YES … NO x

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

YES x NO …

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

YES x NO …

(ii) can assignments be valid again if the debtor pays once to the assignee?

YES … NO x

d) Can a receivable be still factorable under prohibition of assignment?

YES … NO x

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

YES … NO x

If YES, please explain.

B- If NO, if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?
YES … NO …

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

YES x NO …

If YES, please explain

Following Vietnamese laws, receivables cannot be factored in case of contract of providing financial/banking/insurance services or providing services prohibited by laws or contract to grant other debt responsibility

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

YES x NO …

If NO, please explain

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

YES x NO …

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

YES x NO …

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

YES x NO …

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

YES x NO …

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

YES x NO …

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

YES x NO …

If YES, please refer to the regulation (title, date, number)

In this case the factoring company need to show the reason of that transaction which is legitimate according to Decree No. 70/2014/ND and Ordinance of Foreign Exchange 2005.

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

YES … NO x

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

YES … NO …

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

YES … NO x

Question 8-9: Are there any exceptions to the answers you have provided above?

YES … NO x

If YES, please explain

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

YES … NO x

If NO, what is the most common payment structure.
Cash, bank transfer, D/P, D/A, L/C,…

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

YES x NO …

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

a) 0-5 banking days. X
b) 6-10 banking days
c) 11-20 banking days
d) More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

YES x NO …

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

YES … NO x

If YES, under which conditions?

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

YES … NO x

If YES, under which circumstances?

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?
YES … NO x

If NO, is it an equal right with the others?

YES x NO …

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

a) 0- 30 days
b) 31-60 days. X (45 days after decision of bankruptcy proceedings)
c) 61-90 days
d) 91-180 days
e) More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

a) 0 to 1 year
b) 1 to 2 years. X
c) 2 to 3 years
d) More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

a) 0 to 1 year. X
b) 1 to 2 years
c) 2 to 3 years
d) More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

YES x NO …

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

YES x NO …

If YES, under which conditions?
Having branch or subsidiary in Vietnam and operating under Arbitrage Law of Vietnam.

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

YES x NO …

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest rate that is used for late payments?

YES x NO …

If YES, what is the rate?
Depending on the agreement between the parties

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

YES x NO …

If YES, what is it called?
Vnibor

IF YES who publishes it?
State Bank of Vietnam

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?
Depending on CCY. 4% for VND

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

YES x NO …

If YES,

a) Under which circumstances?

If debtor acknowledges the assignment and the factor and debtor have agreement about late payment interest.

b) Can the factor issue an invoice for such interest to the debtor?

YES … NO x (not necessary)

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

YES … NO x

If YES, please explain referring to the regulation

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified a same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)

YES … NO x

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)

YES … NO x

c) United Nations Convention on Contracts for the International Sale of Goods (1980)

YES … NO x

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

YES … NO x

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

YES … NO x

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

YES x NO …

Question 14-3: Is e-signatures acceptable in the formal transactions with public administrations?

YES x NO …

Question 14-4: Can a public administration legally refuse the assignment of a debt?

YES x NO …

If YES, Is there any law that prohibits the assignment of Government receivables?

YES … NO x

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

YES … NO x

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

YES x NO …

If YES, please provide the date, title and number of the Law.
Civil Law 2015 (Article 156)

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

YES x NO …

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

Following Civil Law 2015, a force majeure is an event that occurs objectively, which can't be foreseen and can't be remedied even though all necessary measures have been taken in their ability.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct 2-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

YES x NO …

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

YES x NO …

If NO, please explain

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

YES x NO …

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

YES … NO x

ZIMBABWE

Facilitating Open Account – Receivables Finance

FCI LEGAL STUDY QUESTIONS

INTRODUCTION

This questionnaire has been prepared to conduct FCI Legal Study for the entire factoring industry in the World. FCI Legal Study is intended to cover an important requirement for financial or other institutions in order to understand the relevant legal rules and regulations in a country they deal with or are going to deal with.

The questionnaire has been separated into different thematical sections. It can hardly be said that all the questions can be answered by only one person from the responding company/association as they may need different qualifications and information to answer. Contribution of lawyers and/or accountants may be needed for most of the questions.

One of the most crucial parts of this study is that the answers are intended to be accurate and referrable whenever necessary for the details. Questions have been formulated having YES/NO answers to facilitate comparison between countries. For extraordinary answers, the reader will be able to consult the country page for details.

FCI recognises and is grateful in advance for the co-operation, efforts, trusted answers and important contribution of the respondent to this Legal Study that is, we think, very important for the entire finance industry.

SECTION 1- LOCAL REGULATIONS

This section is related to the Laws, rules and regulations that affect the establishment and operations of factoring/invoice finance institutions in the respondent's country.

Question 1-1: Is there a special Law/ regulation to govern factoring operations in your country?

☐ YES ☒ NO

If YES, please give the date, number, if any, and title of the Law or Regulation.

Question 1-2-1: Are banks allowed to do factoring in your country?

☒ YES ☐ NO

Question 1-2-2: Can Non-Bank Financial Institutions (NBFI) operate as factors?

☒ YES ☐ NO

Question 1-3: Is there any local authority that regulates and/or supervises the activities of factoring companies?

☐ YES ☒ NO

If YES, please explain.

Question 1-4-1: Is there a special license requirement for non-bank financial institutions (NBFI) to operate as a factoring company in your country?

☐ YES ☒ NO

If YES,

a) Is approval of managers by the governing body required?

☐ YES ☒ NO

b) Is approval of the shareholders by the governing body required?

☐ YES ☒ NO

c) Please provide the title, date and number of the relevant regulation/law.

Question 1-4-2: Are NBFIs allowed to provide factoring services against foreign currency denominated receivables and receivables payable by foreign debtors?

☒ YES ☐ NO

If NO, please refer to the relevant regulation (title, date, number).

Question 1-5: Are factoring companies (as NBFIs) allowed to conduct operations other than factoring?

☒ YES ☐ NO

Question 1-6: Are the following operations legally possible for factoring companies (as NBFIs) in your country?

a) Non-recourse Factoring?

☒ YES ☐ NO

b) Recourse Factoring?

☒ YES ☐ NO

c) Undisclosed Factoring?

☒ YES ☐ NO

d) Pre-shipment Financing?

☒ YES ☐ NO

e) Factoring based on order approval?

☐ YES ☒ NO

f) Direct International Factoring (Open Account Cross-Border Factoring without correspondent factor)?

☒ YES ☐ NO

g) Two-Factor International Factoring such as with FCI?

☒ YES ☐ NO

h) Reverse Factoring?

☒ YES ☐ NO

i) Islamic International Factoring?

☐ YES ☒ NO

Question 1-7: Are factoring companies subject to laws/regulations in your country, covering the following matters?

a) Competition Rules?

☐ YES ☒ NO

If YES, please provide the date, title and number of the law/regulation.

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b) Anti-Money Laundering?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Money Laundering and Proceeds of Crime Act [Chapter 9:24]; Bank Use Promotion Act [Cap24:24]

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c) Minimum Capital Requirement?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Basel II & III: RESERVE BANK OF ZIMBABWE BANK LICENSING, SUPERVISION & SURVEILLANCE Guideline No: 1-2011/BSD-Technical Guidance on the Implementation of the Revised Capital Adequacy Framework in Zimbabwe

d) Data Protection?

☒ YES ☐ NO

If YES, please provide the date, title and number of the regulation.

Section 57 of the Constitution of Zimbabwe Amendment 20 of 2013;
Freedom of Information Act (No. 1 of 2020)

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e) GAAP/IAS/IFRS Accounting Principles?

☒ YES ☐ NO

f) Obligation to publicly disclose yearly financial reports?

☐ YES ☒ NO

g) Risk Management that covers monitoring of operation, internal control and risk assessment?

☒ YES ☐ NO

h) Reserve Requirements against liquidity risk?

☒ YES ☐ NO

Question 1-8: Are there any local factoring associations?

☐ YES ☒ NO

If YES,

a) please provide the name(s) and contact details (website and e-mail).

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b) is membership compulsory?

☐ YES ☒ NO

Question 1-9: Is there a legal definition of factoring / factoring contract?

☐ YES ☒ NO

If YES, please provide the definition.

Question 1-10: Is there any prohibition against factoring the receivables that arise from B2C sales in your country?

☐ YES ☒ NO

Question 1-11: Are there any different regulations applicable to the factoring of one-person-business/individual entrepreneur/ sole proprietor supply receivables?

☐ YES ☒ NO

Question 1-12: Is Islamic factoring under Murabaha, Commodity Murabaha (Tawarruq), Bay-Al Dayn, or otherwise applicable in your country?

☐ YES ☒ NO

If YES, please define the relevant Islamic finance instrument.

Question 1-13: Are there any forms/types of reporting required by supervising authorities?

☒ YES ☐ NO

If YES,

a) What are those reports?

Annual Returns

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b) Are they to be audited?

☒ YES ☐ NO

c) What is the period to be reported?

Annually

Question 1-14: Are there any restrictions on the origin of receivables that can be factored? (Any kind of receivables vs receivables arising only from provision of goods and/or services)

☐ YES ☒ NO

If YES,

a) Are only receivables that arise from provision of goods and/or services factored?

☒ YES ☐ NO

b) Are there also some restrictions in terms of goods and/services involved?

☐ YES ☒ NO

If YES, please explain.

Question 1-15: Are there any restrictions on the credit periods for receivables that may be factored?

☐ YES ☒ NO

If YES, please explain and refer to the relevant regulation (title, date, number).

Question 1-16: Is there a specific regulation that governs accounting of factoring operations in your country?

☐ YES ☒ NO

If YES, please provide the name, date and number.

SECTION 2 - FACTORING SUPPLIER RISK MITIGATION

Supplier risk is also an important subject in international factoring. This section intends to identify different supplier risk mitigation methods that are used in different countries.

Question 2-1: Is creditworthiness of a new client evaluated before signing factoring agreement with them?

☒ YES ☐ NO

Question 2-2: Does the factoring company check registries for the security interests in relation to a new client?

☒ YES ☐ NO

If YES, please explain which ones

Collateral Registry- Reserve Bank of Zimbabwe

Question 2-3: Are there other steps that a factor in your country usually take before onboarding a new client?

☒ YES ☐ NO

If YES, please explain

Client due diligence and Client credit rating

SECTION 3 - TRANSFER OF RECEIVABLES

This section has been prepared to cover the details of transactions that constitute a transfer of receivables to a factor or another financial institution in general. Since transfer of a receivable may happen in different ways (assignment, subrogation or pledge, etc…) depending on the country, "assignment" has been chosen as the common word for such types of transfer for the facility of comparison. It is suggested to consult your lawyers for details.

Question 3-1: Is there a Law governing transfer of receivables in your country?

☒ YES ☐ NO

If YES, please provide the date, title and number.

Movable Property Security Interests Act [Chapter 14:35] (2017)

Question 3-2: Is factoring based on assignment in your country?

☒ YES ☐ NO

Question 3-3: Is factoring based on subrogation (referred to as "assignment" in the following questions) in your country?

☐ YES ☒ NO

Question 3-4: Is there any legal procedure other than assignment and subrogation (that will be referred as "assignment" in following questions) that is used in your factoring operations to transfer the receivables?

☒ YES ☐ NO

If YES, please explain.

Under Zimbabwean law, rights or claims are transferred using cession.Transfer of the receivables is done through an outright cession of the rights in the receivables being sold. The only substantive requirement is that there must be an intention by both cedent and cessionary to enter into the agreement.
It need not be in writing unless required in legislation or where it is agreed upon between the parties that writing is a prerequisite for validity.third party debtors do not need to be notified of the cession, neither is their consent required.

Question 3-5-1: Is registration necessary for the validity of the assignment between the assignor and the assignee?

☒ YES ☐ NO

Question 3-5-2 Is registration obligatory for the perfection of the assignment between the assignee and any third party or between the assignee and the insolvency practitioner of the assignor?

☒ YES ☐ NO

If YES, can you provide a brief description of the type of receivables registry that exists in your country? (registration authority, process, timing, cost, duration and renewal...)
RBZ Collateral Registry

Question 3-5-3: Does registration of an assignment provide priority to the assignee over other creditors?

☐ YES ☒ NO

Question 3-6: Is notice to the debtor necessary so that an assignment is valid? (Only for validity, not the payment obligation by the debtor to the assignee)

☒ YES ☐ NO

Question 3-7: Is there a special legal form of the notification of assignment to the debtor so that it is enforceable for payment to the assignee by the debtor? (in writing, by email, by certified post, etc.)

☐ YES ☒ NO

If YES, please explain and refer to the regulation.

Question 3-8: Except in the cases of a prohibition/ban of assignment or a dispute (defence, counterclaim or claim of set-off) are there any other grounds upon which the debtor can refuse to pay to the assignee?

☐ YES ☒ NO

If YES, please explain.

Question 3-9: Is acceptance of the assignment by the debtor necessary so that the assignment is enforceable?

☐ YES ☒ NO

If YES, how must the acceptance of notification be made in your country?

Question 3-10: Must an assignment be certified by a notary public for it to be valid/enforceable against the debtor?

☐ YES ☒ NO

Question 3-11: Are there any other specific requirements not listed above that are required in your country so that the assignment is valid and enforceable against the debtor?

☐ YES ☒ NO

If YES, please explain.

Question 3-12: Is suing the debtor for a second payment (debtor's payment again to the final owner of the receivable in the event of unjust payment of the debtor to the first creditor) possible for indirect payments?

☐ YES ☒ NO

If YES, please list the steps that an export factor must take as minimum requirements for a successful case.

Question 3-13: Under non-recourse factoring agreements, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

If NO, please explain the procedure.

Question 3-14: Under a recourse factoring agreement, is the ownership of the receivable transferred to the factor by assignment?

☒ YES ☐ NO

Question 3-15: Does the factoring company recognise the assigned receivable to it by the supplier in its balance sheet (both in assets as an Account Receivable from the debtor or the Import Factor, and liabilities as an Account Payable to the supplier) upon assignment under;

a) Recourse Factoring?

☒ YES ☐ NO

b) Non-recourse factoring?

☒ YES ☐ NO

Question 3-16: Is a prepayment, if any, considered and booked as a receivable from the supplier in non-recourse factoring?

☐ YES ☒ NO

If YES, please provide the reference to the relevant regulation.

Question 3-17: Under a non-recourse factoring agreement, is assigned receivable to the factor considered as a collateral of the credit that the supplier gets from the factor as prepayment?

☐ YES ☒ NO

If YES, please provide the reference of the relevant regulation.

Question 3-18: Is retention/reservation of title by the supplier possible in your country?

☒ YES ☐ NO

If YES, is extended retention (effective in subsequent sales) of title also possible?

☐ YES ☒ NO

Question 3-19: Can future (not born under an existing non-performed contract) receivables be assigned in advance?

☒ YES ☐ NO

Question 3-20: Can future (not born under an existing non-performed contract) receivables be factored (assigned and financed) before the relevant receivable arises?

☐ YES ☒ NO

Question 3-21: Is assignment of part of a receivable possible?

☒ YES □ NO

Question 3-22: Does the Law governing the assignment, if any, allow debtors to raise any dispute also to the subsequent assignees of the relevant receivables?

□ YES ☒ NO

Question 3-23: Can a supplier sign contracts with different factors specified for various debtors?

□ YES ☒ NO

If YES, are suppliers allowed to have different factoring contracts with different factors for the same debtor?

□ YES ☒ NO

If YES, are they also allowed to split a particular receivable between factors?

□ YES ☒ NO

SECTION 4 - ELECTRONIC COMMUNICATION, INVOICING AND SIGNATURES

Technological improvements make it easier to use electronic means in communication and agreements. This section investigates the possibility of using electronic signature and/or documentation within your country's legal system.

Question 4-1: Are electronic signatures accepted/valid in your country under your jurisdiction?

☒ YES □ NO

Question 4-2: Can assignment of a receivable be made electronically in your jurisdiction?

☒ YES □ NO

Question 4-3: Is signature required on an invoice for validity?

☒ YES □ NO

Question 4-4: Is e-invoicing applicable in your country?

☒ YES □ NO

If YES, is e-invoicing obligatory for some situations?

□ YES ☒ NO

If YES, please explain the criteria.

Question 4-5: Is an electronically issued bill of lading (EBL) considered valid in your country?

☒ YES □ NO

SECTION 5 - TAXATION

It is known that there are different applications of taxation in different countries in relation to factoring transactions and receivables that may have different effects in international factoring operations. This section is intended to highlight such different tax applications on the receivables involved, their assignment and on the invoices issued by factoring institutions.

Question 5-1: Are there any taxes applied over the invoices of factoring commission or charges?

□ YES ☒ NO

If YES, Is there a difference on taxation against factoring commission and discounting charge revenues for factoring companies?

□ YES ☒ NO

1) If YES, please explain the types and rates of the taxes for each case.

2) If NO, is it value added tax?

□ YES ☒ NO

i) If YES, what is the rate of tax?

ii) If it is not VAT, please explain.

No specific taxes apply to factored invoices (on Commission or charges)

Question 5-2: Are there different tax rates applied to factoring revenues in banks and non-banks?

□ YES ☒ NO

If YES, please explain.

Question 5-3: Is there a tax exemption for invoices of export factoring commission and charges?

□ YES ☒ NO

Question 5-4: Can VAT of unpaid supplier invoices be reclaimed from the government in your country?

☒ YES □ NO

Question 5-5: Is there any liability of a factoring company in relation to unpaid VAT by the supplier after assignment?

□ YES □ NO

If YES, please explain.

Question 5-6: Is there a special documentary tax, for example stamp duty, that is applied to assignments?

□ YES ☒ NO

If YES, please explain.
N/A

Question 5-7 Is there any stamp duty requirement for some documents prepared in relation to factoring transactions?

□ YES ☒ NO

If YES, please explain.

SECTION 6 - THIRD PARTY RIGHTS

This section deals with other parties' rights that may affect the validity, enforceability or payability of a receivable or its assignment within the framework of factoring. Lawyers' contribution may be needed.

Question 6-1 Are there any security interests in your country that may compete with the factor's right to collect the receivable and keep the proceeds? (e.g. fixed or floating charges, preferential rights of sub-contractors of client)

□ YES ☒ NO

If YES, please explain.
N/A

Question 6-2: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim invalidates the assignment?

□ YES ☒ NO

If YES,

a) what are they and how is the procedure?

b) is there any difference in the application depending on the type of factoring?

□ YES ☒ NO

If YES, please explain.

Question 6-3: Is there any kind of receivable (like taxes, or any governmental payments) that relevant third party's claim obliges the factor to pay the purchase price of the receivable to such third party instead of the supplier?

□ YES ☒ NO

If YES,

a) what are they and how is the procedure?

_____

_____

b) is there any difference in the application depending on the type of factoring?

□ YES ☒ NO

If YES, please explain.

_____

_____

SECTION 7 - PROHIBITION AGAINST ASSIGNMENTS

In most jurisdictions, debtors are allowed to prohibit the assignment of their debt to third parties. The validity and effect of this prohibition (ban) differs from country to country. This section investigates the validity of a prohibition of assignment in your country, and in the cases where it is valid, the effect of it to factoring transactions.

Question 7-1: Is a contractual prohibition of assignment of receivables legally valid in your country?

☒ YES □ NO

A. If YES,

a) Does prohibition of assignment have to be registered?

□ YES ☒ NO

If YES, please explain the procedure.

---

b) Is there a public way in your country for third parties to discover that a particular debtor generally prohibits assignments of its debts?

□ YES ☒ NO

If YES, please explain.

---

c) Can a prior prohibition/ban of assignment invalidate an assignment?

☒ YES □ NO

If YES,

(i) can assignments be valid again if the debtor grants an acceptance/waiver by a further written notice?

☒ YES □ NO

(ii) can assignments be valid again if the debtor pays once to the assignee?

☒ YES □ NO

d) can a receivable still be factorable under prohibition of assignment?

☒ YES □ NO

e) Is there any difference in the effects of prohibition of assignment under different types of factoring (with recourse, without recourse, etc.)?

□ YES ☒ NO

If YES, please explain.
×

B. If NO on the question 7-1 (on the previous page), if the assignment is still valid, can the debtor prefer to pay directly to the suppler and be relieved from its payment responsibility?

□ YES ☒ NO

Question 7-2: Are there any other contractual barriers that may affect the possibility of factoring operations?

□ YES ☒ NO

If YES, please explain.

Question 7-3: Can a power of attorney granted in your jurisdiction to a foreign entity (e.g. Import Factor) to collect a receivable be used in other countries (in accordance with your country's laws)?

☒ YES □ NO

If NO, please explain.

SECTION 8 - INTERNATIONAL TRANSACTIONS

Although globalisation has affected almost all the countries, there is still much to learn about countries' foreign exchange regulations that differ widely. Questions in this section are related to regulations governing foreign currency transactions in your country.

Question 8-1: Can a factoring company in your jurisdiction sign factoring contracts with a supplier located outside your jurisdiction?

☒ YES □ NO

Question 8-2: Can a factoring company approve a foreign debtor for credit risk?

☒ YES □ NO

Question 8-3: Can a factoring company be the assignee of a receivable from a foreign debtor on a recourse basis?

☒ YES □ NO

Question 8-4: Can a factoring company in your jurisdiction accept the bad debt credit risk under a receivable from a debtor located in a foreign jurisdiction?

□ YES ☒ NO

Question 8-5: Can a factoring company prepay its local supplier in the invoice currency of international sale (when the invoice is denominated in a foreign currency)?

☒ YES □ NO

Question 8-6: Is there a restriction for a factoring company to buy foreign currency and transfer it abroad by itself for the debts of any other local entity?

☒ YES □ NO

If YES, please refer to the regulation (title, date, number).

Exchange Control Act [Chapter 22:05]; Exchange Control Regulations S.I 109 of 1996

Question 8-7: Is there an obligation in your country for the exporters to bring (collect and convert to the local currency) any foreign denominated receivable?

☒ YES □ NO

If YES, is a factoring company (EF) equally responsible with the supplier to bring foreign currency into the country within the prescribed time under your jurisdiction's exchange regulations?

☒ YES □ NO

Question 8-8: Can a factoring company (IF) based in your country obtain a judgement enforceable in your country against the local debtor even if the sales contract clearly states that the applicable law is the seller's country?

☒ YES □ NO

Question 8-9: Are there any exceptions to the answers you have provided above?

□ YES ☒ NO

If YES, please explain.

SECTION 9 - PAYMENT

There may be different payment habits in different countries from mailing a cheque for payment to paying in cash and bank transfers. Any payment style may have a direct effect on the time of receipt of the proceeds by the creditor. The questions in this section are in relation to such payment styles and can easily be answered by practitioners.

Question 9-1: Is payment by cheque the most common practice in your country?

□ YES ☒ NO

If NO, what is the most common payment structure?

Question 9-2: Do banks generally credit immediately the account of a factoring company for value upon receipt of a local debtor's cheque for payment from a factor?

□ YES ☒ NO

Question 9-3: What is the average time period for a bank to clear a local debtor's cheque after the date of its deposit by the factor?

☒ 0-5 banking days
O 6-10 banking days
O 11-20 banking days
O More than 20 banking days

Question 9-4: Can post-dated cheques be used in payment of debts?

□ YES ☒ NO

SECTION 10: INSOLVENCY OF SUPPLIERS OR DEBTORS

This section deals with insolvency cases in relation to both the supplier and the debtor with respect to the decisions to be made by the official administrators and their effect on the existing assignments. Your lawyer's contribution may be necessary.

Question 10-1: Could an assignment of a receivable that is made before the insolvency of the supplier be declared unenforceable by the insolvent estate of the supplier?

□ YES ☒ NO

If YES, under which conditions?

_____

_____

Question 10-2: Is it possible for an administrator to invalidate (make unenforceable) a prior assignment by a supplier to a factor of a debt of the insolvent debtor?

□ YES ☒ NO

If YES, under which circumstances?

_____

_____

Question 10-3: Can the assignee of a receivable have a priority over other creditors in case of insolvency of a debtor?

□ YES ☒ NO

If NO, is it an equal right with the others?

□ YES ☒ NO

Question 10-4. How long in average does it take for an administrator in insolvency to confirm the debts of an insolvent debtor?

O 0- 30 days
O 31-60 days
O 61-90 days
O 91-180 days
O More than 180 days

SECTION 11 - DISPUTES

Settlement of disputes is one of the most important parts of factoring transactions. The answers to the questions in this section will have a very important effect in the future rules for international factoring transactions in relation to disputes, whenever necessary.

Question 11-1: How long does it take on average for a legal settlement of a dispute to be settled in a lower court?

- ☒ 0 to 1 year
- O 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-2: How long does it take on average for an appeal court to decide an appealed disputed case?

- O 0 to 1 year
- ☒ 1 to 2 years
- O 2 to 3 years
- O More than 3 years

Question 11-3: Is arbitration a way to legally settle commercial disputes in your country?

☒ YES □ NO

If NO, what are the ways of legal settlement of disputes?

Question 11-4: Can dispute settlement by a foreign arbitration tribunal be enforceable in your jurisdiction?

☒ YES □ NO

If YES, under which conditions?

Parties must have legal capacity to ontract under the governing law, party against whom enforcement is sought must have adequate notice of appointment of the arbitrator,arbitrator must not exceed jurisdiction the award must be binding on the parties and must not have been set aside or suspended under the governing law

Question 11-5: Is mediation used in a way to settle commercial disputes in your country?

☒ YES □ NO

SECTION 12- LATE PAYMENTS

This section tries to find a universal way to replace late payment charges based on LIBOR that is going to disappear in the near future. For the purpose of this section the word "interest" also covers any late payment penalty/charge/amount/fee as may be used in different countries.

Question 12-1: Is there an official rate of penalty interest that is used for late payments?

☒ YES □ NO

If YES, what is the rate?

5%

Question 12-2: Is there a risk-free interest rate used in interbank financing, defined for your currency?

□ YES □ NO

If YES, what is it called?

IF YES, who publishes it?

Question 12-3: How much is the lowest borrowing rate of interest for a factoring company in your country as at the time of your answer?

3% per 30 days

Question 12-4: Can a factoring company claim from the debtor a late payment interest for a receivable assigned to it?

☒ YES □ NO

If YES,

a) under which circumstances?

b) can the factor issue an invoice for such interest to the debtor?

□ YES ☒ NO

Question 12-5: Is there a minimum/maximum time limit to start legal action against a debtor who delayed payment of a receivable in your jurisdiction?

☒ YES □ NO

If YES, please explain referring to the regulation.

Prescription Act [Chapter 8:11], Section 13

SECTION 13 - INTERNATIONAL CONVENTIONS

United Nations and Unidroit try to establish common legal rules to cover international transactions. These common rules are subject to ratification by countries that adopt and are ready to apply them. Therefore, knowing that another country has ratified athe same international convention as yours did, will mean that the same rules in your country on such subject will apply also in the other country.

Question 13-1: Has your country made the following Conventions/ Agreements part of its law?

a) The UNIDROIT Convention on International Factoring (1988)?

☒ YES □ NO

b) The United Nations Convention on the Assignment of Receivables in International Trade (2001)?

□ YES ☒ NO

c) United Nations Convention on Contracts for the International Sale of Goods (1980)?

□ YES ☒NO

Question 13-2: Is your country a member of Organisation of Islamic Cooperation?

□ YES ☒NO

SECTION 14 - RECEIVABLES FROM PUBLIC ADMINISTRATIONS

Private companies and public administrations in a country may have different regulations in terms of receivables and collection priorities. This section tries to highlight such differences, if any. Your lawyer's consultancy may be needed.

Question 14-1: Are there any special formal rules applicable to the assignments of receivables from public administrations? (If they are different than ordinary B2B assignments)

□ YES ☒ NO

If YES, please give the reference.

Question 14-2: Is e-invoicing acceptable by public administrations?

☒ YES □ NO

Question 14-3: Are e-signatures acceptable in the formal transactions with public administrations?

□ YES ☒ NO

Question 14-4: Can a public administration legally refuse the assignment of a debt?

☒ YES □ NO

If YES, Is there any law that prohibits the assignment of Government receivables?

□ YES ☒ NO

Question 14-5: Is there any formal difference between legal actions against a public administration and those against ordinary entities in terms of debt collection?

□ YES ☒ NO

If YES, please list the differences.

SECTION 15 - FORCE MAJEURE

Covid-19 pandemic made the business environment understand the importance of "force majeure" clause in contracts and its applicability. This section has questions to identify different applications in relation to "force majeure" in different countries. Your lawyer's involvement may be needed.

Question 15-1: Is there a law that governs cases of force majeure in your jurisdiction?

☒YES □ NO

If YES, please provide the date, title and number of the Law.
Common Law application

Question 15-2: Can force majeure be applicable in your country, when force majeure has not been provided for in the contract?

□ YES ☒NO

If YES, please list the legal requirements so that the extraordinary event is considered as force majeure applicable to a contract even if it is not provided in such contract.

SECTION 16 – INTERNATIONAL TWO-FACTOR TRANSACTIONS

This section is exclusively for FCI members who conduct two-factor international factoring transactions. Still, your lawyer's or accountant's help may be needed depending on the question.

Question 16-1: Are Message 9 and the Article 11 of edifactoring.com Rules sufficient for enforceability of the assignment in your country?

□ YES □ NO

If NO, please explain the additional requirements.

Question 16-2: Can an import factor act as an agent of the foreign export factor or supplier in the collection of a local receivable?

□ YES □ NO

If NO, please explain.

Question 16-3: Does an import factor sign an import factoring contract with a debtor when it approves that debtor?

□ YES □ NO

Question 16-4: Does the import factor recognise the receivable assigned by the Export Factor in its balance sheet (in Assets as an account receivable from the debtor and a in Liabilities as an account payable to the EF)?

□ YES □ NO



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