

# Factoring, Receivables Finance & ABL

A Study of Legal Environments Across Europe  
2024




Chapter and Page Number

Factoring, Receivables Finance & ABL.....	1
EUF Members and Partners .....	4
Disclaimer .....	5
Introduction .....	6
The Questionnaire .....	8
Country details: EU countries .....	14
AT > Austria.....	15
BE > Belgium.....	28
BU > Bulgaria .....	42
CR > Croatia.....	52
CY > Cyprus (answers from 2021 EUF Legal Study) .....	61
CZ > Czech Republic .....	68
DE > Germany.....	79
DK > Denmark.....	91
EE > Estonia.....	102
ES > Spain .....	109
FI > Finland .....	117
FR > France .....	125
GR > Greece .....	138
HU > Hungary.....	149
IE > Ireland.....	161
IT > Italy.....	171
LT > Lithuania.....	185
LU - Luxembourg.....	193
LV > Latvia .....	200
MT > Malta (answers from 2021 EUF Legal Study).....	207
NL > The Netherlands .....	218
PL > Poland.....	230
PT > Portugal .....	239
RO > Romania.....	248
SE > Sweden.....	260
SK > Slovakia (answers from 2021 EUF Legal Study) .....	269
SL> Slovenia .....	277
Country details: Non EU Countries .....	285
CH > Switzerland.....	286
GB > Great Britain (Parts 1 and 2).....	295
NO > Norway .....	323
RU – Russia (answers from 2021 EUF Legal Study).....	329
TR > Turkey.....	344
US > United States of America.....	362
Summary, conclusion and market sizes .....	382
Summary and Conclusion .....	383
Factoring Turnover by Country 2023 .....	402
Breakdown per question .....	403
Acknowledgements.....	409



## EUF Members and Partners

 <p>Associação Portuguesa de Leasing, Factoring e Renting (ALF) Portugal</p>	 <p>Asociación Española de Factoring (AEF) Spain</p>
 <p>Association Française des Sociétés Financières (ASF) France</p>	 <p>Association Professionnelle Belge des Sociétés de Factoring (APBF-BBF) Belgium</p>
 <p>Associazione Italiana per il Factoring (ASSIFACT) Italy</p>	 <p>Czech Leasing and Finance Association (CLFA) Czech Republic</p>
 <p>Deutscher Factoring-Verband e.V. (DFV) Germany</p>	 <p>Factoring and Asset Based Financing Association Netherlands (FAAN) Netherlands</p>
 <p>FCI</p>	 <p>Finans og Leasing (FL) Denmark</p>
 <p>Österreichischer Factoring - Verband (ÖFV) Austria</p>	 <p>The Hellenic Factors Association (HFA) Greece</p>
 <p>Polski Związek Faktatorów (PZF) Poland</p>	 <p>Finansieringsselskapenes Forening Norway (Partner)</p>
 <p>Croatian Chamber of Economy</p>	 <p>UK Finance United Kingdom (Partner)</p>

## Disclaimer

The EUF (EU Federation for the Factoring & Commercial Finance Industry), its members and all individuals and/or companies who have answered or assisted in answering the questions and collating the answers will have no responsibility whatsoever regarding the correctness, completeness and legal enforceability of any subject contained in this study.

It is strongly recommended to request professional advice from competent parties (legal advisers, auditors, accountants, tax advisers etc.) before planning or carrying out any activities in factoring or receivables finance in any of the countries listed in this study.

## Introduction

Dear readers,

As most of you know, the EU Federation for the Factoring and Commercial Finance Industry (EUF) is the representative body for the European factoring industry. The EUF's members and partners consist of 13 national factoring and commercial finance associations in the EU (in alphabetic order Austria, Belgium, Croatia, Czech Republic, Denmark, France, Germany, Greece, Italy, Netherlands, Poland, Portugal and Spain) as well as the international association FCI-Factoring Chain international, and the national factoring association of UK and Norway that are active in the European market.

The EU Federation is constantly engaged with governments, legislators and supervisory authorities to enhance the availability of finance to businesses, with a particular emphasis on SMEs. It acts as a platform between the factoring industry and the key legislative decision makers across Europe, bringing together national experts to speak with one voice.

The Factoring and Commercial Finance Industry has a valuable role to play in the EU economy, and the EUF works to debate with regulators and legislators to ensure they are fully aware of the benefits that the industry can offer with its financial products and services. It is enough to mention that in the year 2023, the European factoring industry granted 310 billion euro to 300.000 businesses to finance their working capital, and that the assigned receivables reached the amount of 2.444 billion euro (two thirds of the worldwide factoring market), representing more than 11% of the European GDP.

The EUF is an important source of reference and expertise that makes industry information available to legislators and policy makers with a view to ensuring the continued provision of prudent and well-structured financing for businesses across the EU.

This is why in 2011, the EUF decided to launch the project of a legal study, updating a survey started by ABFA (then the UK Factoring Association) and the IFG International Factoring Group (merged into FCI in 2016). Its primary objective was to collate, compare and contrast the various legislative/regulatory models for factoring and receivables financing in different EU jurisdictions and other major countries performing factoring services.

Since then, there have been three revisions to the initial edition (2013, 2017 and 2021) and now, also the 2021 version has been updated and expanded. This latest 2024 version is a unique and comprehensive compendium of the different legal, fiscal and other environments of receivables financing in all EU member states and some important non-EU "benchmark" countries (United Kingdom, Norway, Switzerland, Turkey and the USA).

This study brings together this important information in one place for reference purposes. It consists of fifteen principal questions touching most of the areas of receivable financing and factoring. The questionnaire is reproduced in full, following this introduction.

To compile the necessary information, industry experts have been asked to provide answers to the questions about their own national legal environment. The EUF greatly appreciates the important effort and assistance received from these knowledgeable individuals, their enterprises as well as national associations in the factoring, invoice discounting and receivables financing industry. I thank them all warmly for their incredibly valuable input.

Whilst the responses received are generally comprehensive, it should be noted that with the complexity of some of the topics, there are some instances where responses may be partial. This may be a result of a particular concept not being recognized within a country's legal or regulatory framework. Also, there is unfortunately a small number of countries from which we have been unable to elicit an updated response to the questionnaire in the timescale available. In these cases, we have carried forward the responses from the previous version of 2021 and highlighted the situation accordingly.

All answers to the questions have been given by the experts in good faith and to their best knowledge of the environment of factoring and receivables financing existing in their respective countries. Please also keep in mind that answers were given on the basis of the rules in existence in early to mid-2024, and that any subsequent changes will not be reflected in this document.

This study does not necessarily deal with every important topic or cover every aspect of the topics which it touches upon. It is for information purposes only and the information on tax and legal issues contained

herein is purely indicative. It is not designed to provide legal or other advice whatsoever and cannot be relied upon. Consequently, the study should not be regarded as a guarantee for being legally executable in any competent court or before any taxation authority or similar institutions.

None of the parties involved in the creation of this report (the EUF, its members and their representatives, the contributors to the country reports or consultants/persons assisting in the collation of the responses) make any representation and give no warranty relating to any information contained in this updated study. We hope that all readers will find this comparative analysis helpful and informative. We thank you for your interest in our unique study on a secured financial product that we value very much.

Fausto Galmarini  
EUF Chairman

## The Questionnaire

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☐

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☐

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☐ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (*i.e non-disclosed factoring with or without recourse*)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one- person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☐

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☐ ☐ Anti-money laundering

Please give details

YES NO

☐ ☐ Capital requirements for credit, market and operational risks

Please give details

YES NO

☐ ☐ Data protection

Please give details



YES NO

☐ ☐ Liquidity risk requirements Please give details

YES NO

☐ ☐ IAS / IFRS accounting principles Please give details

YES NO

☐ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

Please give details

YES NO

☐ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Please give details

YES NO

☐ ☐ Contribution to the Deposit Guarantee Scheme. If applicable, what is the basis of the contribution to the DGS for factoring companies?

Please give details

YES NO

☐ ☐ Reporting duties (e.g. AnaCredit, NSFR) Please give details

YES NO

☐ ☐ Rules on payment services following the Payment

Services Directive PSD II Please give details

YES NO

☐ ☐ Rules and regulations on sustainability (environmental, social and governance – ESG)

Which are the local authorities that regulate and discipline the factoring activity (if applicable)? Please give details

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>1</sup>)?

Please describe the physical process for the assignment of receivables.

<sup>1</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Is it possible to assign future receivables by a so called "assignment in advance"?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

### Question 3 EDI

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables? What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's

receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective? Is there any requirement for registration?

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

## Question 7 Security Interests

*For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.*

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

### Question 8 Undisclosed Operations

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

### Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring – Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralise such a financing facility

### Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- |                     |   |
|---------------------|---|
| ▪ Bank-Transfer     | % |
| ▪ Cheque            | % |
| ▪ Bill of Exchange  | % |
| ▪ Other instruments | % |

(please give details, preferably also about similar estimates relating to factoring relations only)

### Question 11 Supplier/ Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

### Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

### Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES NO

☐ ☐

Please give details

Do PA debtors have the right to refuse the assignment?

YES NO

☐ ☐

If so, what consequences does this have?

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

## Country details: EU countries

## AT > Austria

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☒ NO, factoring is not limited to CI/banks ☐

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☐

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

☒ YES ☐ NO ☐

Depends on certain conditions (with regards to the factor's ownership structure)

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

#### **Comment on the first Question:**

Factors of other EEA-countries are allowed to transact business in Austria if they comply with their national regulations and fulfil certain criteria listed in Sec 11 Austrian Banking Act.

#### **Details about the legal requirements to conduct business**

The Austrian Banking Act defines “credit institution” as anyone who is entitled to conduct banking business as defined in Sec 1 Para 1 of the Austrian Banking Act.

Factoring is defined as banking business and therefore subject to licencing/approval by the Austrian Financial Market Authority (FMA; Link: <https://www.fma.gv.at/>).

The products confirming and reverse factoring are classified as factoring products according to common legal opinion. Therefore, the same requirements and provisions apply to them as to the operation of "classic" factoring in Austria.

License according to Sec 1 Para 1 No.16 Austrian Banking Act (factoring – purchase of account receivables arising from delivery of goods or rendering of services, the assumption of the credit risk on such claims – exempt credit insurance- and, in connection therewith, the collection of such receivables); additional licences for lending/credit business (Sec 1 Para 1 No.3 Banking Act) and – if applicable - for guarantee business and FX transactions.

**Remark:** With only a few exceptions (regulated in Sec 3 Para 2a Austrian Banking Act), Regulation (EU) No. 575/2013 is applicable to factoring institutions according to local law (Sec 1a Austrian Banking Act stipulates that Regulation (EU) Nr. 575/2013 (CRR) applies to both credit institutions in the meaning of Art. 4 Para 1 No. 1 CRR and financial institutions in the meaning of Art. 4 Para 1 No. 26 CRR unless specifically exempted according to Austrian Banking Act.)

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

Please give details

Same as for credit institutions in the meaning of Regulation (EU) NO. 2018/843.

**Main legislations:**

- any directly applicable Regulation on EU-level
- Financial Market Money Laundering Law (FM-GwG)
- Business Owners Register Act (WiEReG)
- Various circulars of the Austrian Financial Market Authority on the prevention of money laundering and terrorist financing (FMA; Link: <https://www.fma.gv.at/>).

**PLEASE NOTE:**

KYC)- Requirements have to be fulfilled on **SUPPLIER LEVEL** who is the customer (not on debtor/buyer level).

Attempts to shift application of anti-money laundering legislation from supplier to debtor should be repelled. Lacking a contractual relationship with debtors no legal basis exists for obliging a buyer (debtor) to render any data/confirmations, whatsoever. Any such duty, even if burdened on the factoring client, would have immense negative impact on the attractiveness of factoring.

YES NO

☒ ☐ Capital requirements for credit, market and operational risks

Same as for credit institutions in the meaning of Article 4 Para 1 No. 1 of Regulation (EU) No. 575/2013.

**Main legislation:**

- Regulation (EU) No. 575/2013 (CRR), CRD IV
- Austrian Banking Act (BWG) and any directly applicable Regulations on EU-level

YES NO

☒ ☐ Data protection

Data protection law (GDPR and Austrian Datenschutzgesetz – DSG) also applies to data of companies because, in an extended sense, data of natural persons are also processed (e.g. the data of the managing directors of a factoring client, as well as the data of the beneficial owners, etc.).

Obligation for credit institutions to inform the factoring clients on details of processing of their data in connection anti-money-laundering-measures

YES NO

☐ ☒ Liquidity risk requirements



**Main legislation:**

Sec 3 Para 2a of the Austrian Banking Act exempts factoring institutions from Part 6 (liquidity) of Regulation (EU) 575/2013 once the institution's main business according to its Articles of Association is factoring.

**PLEASE NOTE:** taking deposits and other repayable funds from the public would qualify factoring institutions as credit institutions in the meaning of Article 4 Para 1 No. 1 CRR, hence liquidity risk requirements of CRR would have to be fulfilled. The authority to take deposits from the public would require a banking license for this particular activity.

YES NO

☐ ☒ [IAS / IFRS accounting principles](#)

There is no legal obligation to necessarily apply IAS/IFRS accounting rules. Austrian factoring banks must prepare their accounts in accordance with the Austrian Commercial Code (UGB). All members of Austrian Factoring Association are not applying IAS/IFRS accounting rules.

YES NO

☒ ☐ [Transparency and supplier/seller information for SMEs or corporates \(EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.\) Please give details](#)

Micro-business regulation (simplified VAT regulation): Turnover < EUR 35.000

In Austria, there is the following classification of company size according to the Austrian Chamber of Commerce. However, this classification has no legal implication for disclosure obligations. The disclosure and publication obligations of a company in Austria depend in particular on the choice of legal form of the company:

Micro-Business <10 employees, Turnover ≤ €2M, Balance Sheet ≤ €2M

Small-Business <50 employees, Turnover ≤ €10M, Balance Sheet ≤ €10M

Medium-sized Business <250 employees, Turnover ≤ €50M, Balance Sheet ≤ €43M

Large-scale Business >250 employees, Turnover > €50M, Balance Sheet > €43M

YES NO

☒ ☐ [Risk management \(covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance\)](#)

Factoring is banking business. With only a few exceptions (regulated in Sec 3 Para 2a Austrian Banking Act), factoring institutions have to apply all rules and regulations of credit institutions.

**Exceptions:** Factoring institutions once falling under the definition of Art 4 Para 1 No.26 CRR are exempted from Part 6 and Part 7 of Regulation (EU) Nr. 575/2013.

YES NO

☒ ☐ [Contribution to the Deposit Guarantee Scheme](#)  
[If applicable, what is the basis of the contribution to the DGS for factoring companies?](#)

In Austria, all factoring institutions must be members of a deposit guarantee scheme. The concrete contribution is based on EBA Guidelines on methods for calculating contributions to deposit guarantee schemes. The specific calculation of the sum is based on individual risk assessment that includes capital, liquidity and funds, asset quality, business model (RWAs) and potential loss for the DGS.

YES NO

☐ ☒ [Reporting duties \(e.g. AnaCredit, NSFR\)](#)

All CRR credit institutions are required to report to the Austrian National Bank in accordance with Regulation (EU) 2016/867 (Ana-Credit). However, CRR financial institutions are exempt from the Ana-Credit regulation and therefore do not have to report.

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

If a bank or, more specifically, a factoring bank does not process its own payment transactions, the standards of PSD II do not apply.

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance – ESG)

Sustainable finance is increasingly becoming a mega-topic for the financial industry in Austria as well. The change in social values as well as international initiatives by legislators and regulators are providing decisive impulses for this. Banks can strengthen their competitiveness by positioning themselves early on in the rapidly growing market for sustainable financing and consistently aligning their business models with the criteria for sustainability (ESG). Currently, no legally binding acts have been adopted.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Financial Market Authority (FMA) – [www.fma.gv.at](http://www.fma.gv.at)  
Austrian National Bank (OeNB) – [www.oenb.at](http://www.oenb.at)

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>2</sup>)?

Under Austrian laws the assignment of receivables is governed by the provisions Sec 1392 ff Austrian Civil Code. These provisions cover the conveyance of assets (assignment). In relation to securitised debts and the transfer by way of securitisation, the provision Sec 427 Austrian Civil Code, governing the conveyance by means of signs ("Zeichen"), as well as the provisions on publication (Sec 452 Austrian Civil Code) are of importance. In the case of subrogation ("Einlösung") security interests pass over *ex lege*.

Please describe the physical process for the assignment of receivables.

Under Austrian laws the assignment contract can be concluded informally. The written form is not required for its validity. Generally the assignment does not require any particular deed of conveyance provided that the receivables are not securitised. In case the receivables are securitised ("verbriefte") and the enforcement is dependent on the possession of the deed, the instrument has to be handed over. The requirement of an act in rem ("Modus") pursuant to Sec 427 Austrian Civil Code has to be fulfilled also in case of an ordinary active (undisputed) debt in order to secure the underlying transaction and consequently the assignment contract. In this case is has to be a "sign" ("Zeichen") which can be linked to the property and is able to easily reveal the transfer to each interested party paying appropriate attention.

One exemption concerns the so-called assignment for collateralisation purposes ("Sicherungszession"). Its economic purpose is –similar to the pledging of goods – to provide the creditor with some security when granting a credit the debtor. In this form of assignment, the assignee acquires the position of a proprietor of the assigned claim; however, he is bound by the internal relationship to make use of his rights exclusively for the purpose of securing his claims

<sup>2</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.

against the assignor In contrast to the full assignment the assignment for collateralisation purposes requires a particular legal form. It must be unambiguously transparent to the creditors of the assignor that the claim is separated from his sizable assets. Any kind of legal form ensuring the easy and secure possibility to ascertain fact, assignment, moment and dimension is deemed to be suitable. The written notification to the debtor as well as an annotation in the accounts of the assignor conforms to these requirements.

In contrast to this, factoring implies a full assignment. The factoring contract includes the title and the modus, so no further action is necessary. Notification of the debtor is not necessary for the transfer of the ownership. After having concluded the factoring contract, each receivable directly comes into existence in the ownership of the factor.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

registration

stamp-duty or other documentary taxes

notification (please specify the formal requirements for such notification?)

No.

Not even notification of debtor is necessary to achieve a valid assignment. But in most cases it will be advisable because debtor is allowed to pay to supplier with discharging effect as long as he has not been notified of the assignment.

The factoring agreement as well as the assignment transactions in fulfilment of the agreement are exempt from stamp duty pursuant Sec 33 Austrian Stamp Duty Act 1957. The same applies to loan agreements and assignments for collateralisation purposes in fulfilment of those agreements whereas other assignments are subject to a stamp duty amounting to 0,8 % pursuant Sec 33 Austrian Stamp Duty Act.

Are there any other requirements for a valid assignment?

We refer to the comments given above.

Is it possible to assign future receivables by a so called "assignment in advance"?

Yes, it is legally permitted to assign future claims (which will still arise) to a factor in advance. It is common in Austrian factoring contracts to agree that the factor acquires "all existing and all future claims" of a factor customer under the factoring contract. In this case, the factoring contract acts as the title and the modus in the context of a "global assignment" (Globalzession).

The disposition transaction - i.e. the transfer of the receivables ( Modus) - lies in the "global assignment" (Globalzession). According to the contract models and AFB used in Austria, the disposal transaction, the assignment of the receivables, is carried out at the same time as the conclusion of the obligation transaction. Through the global assignment, all claims covered by the factoring agreement are already "assigned in advance", so that the factor is directly entitled to them when they arise, without the need for any additional (legal) act. The mode necessary for the transfer of the receivables is therefore already set before the receivables come into existence; the entrepreneur thus transfers the future receivables to the factor at the same time as concluding the title transaction. This is legally possible because and insofar as the claims are sufficiently defined. This is because by limiting the claims to be assigned to those arising from the delivery of goods and the performance of services rendered in the course of business, the legal basis is sufficiently specified and the respective debtor can also be determined without further ado.

The "global assignment" (Globalzession) is neither subject to a condition nor to an initial or final date. The occurrence of the effects is only dependent on the emergence of the contractually circumscribed claims. This also means that in the event of competition with other disposition transactions concerning a claim concerned, the rank of the assignment of the claim to the factor is basically determined by the time of the conclusion of the factoring agreement.

In that case, is it sufficient under local law to give notice of the assignment to the debtor only

once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Under Austrian laws the assignment of future claims is generally permitted. However, a necessary requirement for the validity is the concretization and individualization of the claims.

This requirement is met, if e.g. all receivables arising from the business of the assignor are assigned. Whether the prospective debtor is known or not is not relevant as far as determination is possible. On the other hand, the actual assignment cannot happen before the receivable is in legal existence. However, the agreement on the assignment can be made beforehand (global assignment). Whenever these receivables come into existence they are automatically assigned to the assignee without the requirement of any further act. (In case of factoring contracts the receivables come into existence directly in the ownership of the factor.) Generally, this does not apply to the assignment for collateralization purposes.

Is transfer by way of subrogation possible? what are the requirements?

Yes, pursuant Sec 1422 Austrian Civil transfer by way of subrogation is possible, if a third party pays a debt which it is not liable for. Before payment or at least when paying it has to claim assignment of rights. Otherwise the receivable lapses because of the payment.

Is it possible to transfer parts of a receivable or to make conditional transfers?

The assignment of parts of an invoice is generally not common and also not foreseen in factoring transactions in Austria (mostly industries that work a lot with partial invoices will not be offered factoring). A transfer of receivables under conditions precedent is conceivable in principle, but difficult to implement in practice, because the third contracting party must become aware of these conditions precedent.

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

In Austria factoring contracts are treated as purchase contracts, which means that the factor becomes the new owner of the receivables. If the factor regularly provides payments in advance to the purchase price of the receivables, the supplier is entitled to not recognize the receivables sold in its balance sheet if the factor also gains economic ownership of the receivables.

Under this condition under IFRS accounting a true sale will only be recognized in case of non-recourse factoring whereas under UGB (Austrian local GAAP) accounting a true sale will also be possible in case of recourse factoring.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature?

Under Austrian laws a valid assignment of receivables requires a valid agreement between assignor and assignee. Following the provisions of contracts this agreement can be concluded informally, i.e. by means of electronic data exchange. For the transfer by way of security ("Sicherungszession") at least one of the following means is essential and a prerequisite for the effectiveness of the assignment: Either the notification of the debtor or an annotation in the accounts of the assignor.

Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures.

In Austria contracts concluded by means of qualified electronic signature are equated with written contracts. No further requirements are needed.

If notification to the debtor is required to achieve valid assignment (or pledge or alternative

forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Factoring doesn't require notification to the debtor to achieve valid assignment.

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

No answer

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

In the case of factoring, the receivables are assigned against payment. According to the UStG 1994, all services provided by the factoring institution are generally subject to VAT, not only the commissions but also the interest (with the narrow exception that the interest portion is exempt from VAT if there is a separate financing component, e.g. receivables are due at least one year later).

In certain constellations, the tax authorities may consider undisclosed factoring not subject to VAT, especially if the service component completely fades into the background.

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

In Austria non-banks are not allowed to run factoring business. There are no differences in the VAT treatment.

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

No there is no system of split payments for VAT in Austria in place.

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

No, there are no extraordinary tax reporting obligations for factoring banks. Like every company in Austria, factoring banks in Austria are subject to regular (mostly on-site audits) tax audits by the tax authorities.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple

(parallel) assignments of the same receivable raising the issue of third party rights

- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Generally speaking, the third-party debtor may raise any defence which it had against the assignor also against the assignee (factor bank).

If it occurs that the supplier has already assigned all future receivables resulting from his business activities of the factor (blanket assignment) and a supplier delivers under reservation of title, the situation is as follows:

The extended retention of title authorises the supplier to resale on behalf of the pre-supplier but to assign all receivables arising from the resale to the pre-supplier in advance, the latter assignment is effected after the former blanket assignment. Consequently, the factor is entitled to the receivables resulting from the resale (provided that the assignment to the factor is valid).

The extended retention of title is rarely agreed upon in Austria. Under Austrian bankruptcy law – “factored” receivables are free of third-party rights – Insolvency practitioner excludes factored receivables from all other insolvency assets and they remain in the ownership of the factor (Aussonderungsrecht).

Do these rights have to be publicly registered or notified to be valid?

No, the requirement to register only applies to immoveable property. If the supplier stipulates a right of retention of title against a third party in the underlying contract and assigns the receivable in connection with this sale to the factor, the retention of title is also conveyed. Thus the assignee (factor) gains the position of the assignor as owner of the goods.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

None of both. Pursuant Sec 1396a Austrian Civil code a corporate business agreement containing a prohibition of assignment clause only takes binding effect if stipulated in detail in each single case and if the creditor is not grossly discriminated. However the validity and effectiveness of the assignment is not affected by the stipulation of a valid prohibition to assign; the assignor acting in breach of its contractual undertaking may be subject to damages toward the debtor. Upon rightful notification the debtor can only pay to the assignee with discharging effect.

In Austria, an agreed prohibition of assignment between the parties to a contract has only a relative but no absolute legal effect.

What actions are needed to make the prohibition effective?

The prohibition is only valid if stipulated in detail in each single case. A prohibition in General Terms and Conditions is not valid. In Austria, an agreed prohibition of assignment between the parties to a contract has only a relative but no absolute legal effect.

Is there any requirement for registration?



No.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

A fixed charge could be reached in the form of transfer by way of security (“Sicherungsübereignung”) which in fact is some sort of escrow. The Austrian jurisdiction does not accept the transfer by way of security, if and when the principle of the deposit of a collateral security (“Faustpfandprinzip”) established by the Austria Civil Code shall be circumvented, whereas the transfer by way of security is accepted in case it confirms to the requirements of the aforementioned principle, i.e. when the transfer is in conformity with the mandatory requirements of publication. In case of valid transfer for collateralisation purposes the creditor takes the position of a lienor or pledgee.

The pledge of receivables is accepted by the Austrian laws (Sec 448 Austrian civil Code), however as receivables are immaterial goods according to Austrian law, the provisions of the Austrian law of property do not apply to them. The transfer therefore follows the provisions of assignment of goods pursuant Sec 1392 et seqq. Securitised assets can only be pledged by transfer of the respective paper- Accounts receivables can be pledged by annotation in the account books. Other receivables are pledged pursuant to Sec 427 Civil Code. The agreement between pledger and pledgee does not need to meet any formal requirements pursuant Sec 1368 Austrian Civil Code, however the notification of the debtor is required for its validity. The major difference between transfer and pledge of receivables is that in the first case the absolute right (“Vollrecht”) is transferred whereas in case of pledge only a somewhat limited right is granted to the pledgor in respect of the liquidation of the pledged receivables.

No floating charge is possible under Austrian law.

Does a fixed or floating charge have to be publicly registered to be valid?

No.

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

No.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

Agreement that in defined situations factor may disclose. In case of exigent circumstances disclosure may effect without giving prior notice to supplier.

Factor may claim addition securities in case of undisclosed factoring (right to inspect bank accounts, etc.).

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

If "undisclosed factoring" is agreed, the factor bank must not inform the debtors about the receipt of their data. This is because informing the debtors would jeopardise the realisation of the objectives of "undisclosed factoring".

The Austrian Factoring Association may also publish general information on the data processing procedures in factoring, especially for "undisclosed factoring", for general information purposes for the public.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

In case of factoring the purchaser obtains the right to collect the claim and is neither externally nor internally bound to refrain from collection.

In case of assignment to collateralise a financing facility as well as in case of pledge to collateralize such a financing facility the assignee is externally entitled to collect. He is in the position of the former creditor (provided that the assignment was notified to the debtor), internally the assignee is bound to the agreement with the assignor and liable for breach.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

▪ Bank-Transfer	90 %
▪ Cheque	3 %
▪ Bill of Exchange	1 %
▪ Other instruments	6 %

The large majority of payments are made by bank transfer; cheques and bills of exchange are not common any longer (in particular not in domestic business).

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring



- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

Regarding the factoring agreement itself, a clause that would entitle the factor to terminate the contract without further reasons and with immediate effect in case of insolvency of the supplier is null and void pursuant Austrian Insolvency Act. If termination of any contract would endanger continuation of supplier's business, termination within six months after commencement of insolvency proceedings is only admissible if the factor has a solid ground for termination. Pursuant Sec 25a Austrian Insolvency Act neither the bad economic situation of the supplier nor his delay with regard to receivables incurred before commencement of insolvency proceedings are regarded as being solid reasons. If factoring contract is terminated, the assignment of receivables incurring after the termination is void for lack of valid title. All receivables assigned before the commencement of insolvency proceedings are in general irrevocably assigned to the factor.

In the insolvency proceedings of the supplier the factor has a right for segregation ("Aussonderungsrecht") because factoring is seen as sale of receivables (as opposed to a secured financing), i.e. Insolvency practitioner excludes factored receivables from all other insolvency assets.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

It is very atypical to take security once insolvency proceedings have started; also because the factor typically has a right of segregation ("Aussonderungsrecht").

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

In all likelihood, the new directive Restructuring Directive (EU) 2019/1023 will not have/has not any immediate or far-reaching consequences for the factoring business in Austria.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

The factor typically has a right of segregation ("Aussonderungsrecht"), regardless of whether factoring with recourse or factoring without recourse has been agreed.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Regarding late payments Sec 1333 Austrian Civil Code applies. Pursuant this provision any creditor is entitled to claim damages resulting from late payments in addition to interest. This claim comprises all costs emanating from appropriate recovery and enforcement measures out of court as far as such measures are in due proportion to the enforced claim. Furthermore, in case of default interest amounting to 9,2% above the base rate (which currently amounts to 3,88%), thus currently

13,08%, falls due. The base rate is subject to biannual adaption (Sec 352 Austrian Commercial Code)

### Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

No.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

It is common practice in all standard Austrian factoring contracts to agree on the choice of law and the place of jurisdiction Austria, since in particular the Commercial Court of Vienna and also the Supreme Court in Austria already had and have a lot of experience with factoring. For this reason, all Austrian factoring contracts exclude references to other legal norms or the UN Convention on Contracts for the International Sale of Goods. Another, but rare, variant is the choice of an arbitration court, whereby in Austria, if an arbitration court is agreed, the choice usually falls on an arbitration court of the Austrian Federal Economic Chamber.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

No answer.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

It may happen that the public administration negotiates a non-assignment clause with its suppliers (Factor client). As mentioned above, prohibitions of assignment only have a relative effect in Austria, i.e. they can be legally safely assigned despite a prohibition of assignment. Nevertheless, it is advisable to explicitly point out the assignment, especially to debtors of the public administration, in order to avoid inconveniences in any case.

The EU Directive 2010/45/EU on the legal equivalence of electronic invoices with paper invoices, the Tax Amendment Act 2012 and § 5 IKTKonG created the legal basis for the implementation of e-billing to the Austrian federal government.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

## Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

Since the Commercial Court in Vienna and the Supreme Court in Austria have had and still have a lot of experience with factoring, Austria has a relatively high level of legal certainty with regard to factoring. The procedure and settlement in the event of insolvency, the factor's right to separate his receivables (Aussonderungsrecht), are well known to all insolvency administrators in Austria, which is why there are usually no problems in the settlement of insolvency cases. Furthermore, factoring enjoys a positive image among companies in Austria today and is recognised and appreciated as a clever and efficient financing product.

## BE > Belgium

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (*i.e non-disclosed factoring with or without recourse*)
- Structured Financing, including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

In Belgium there are no license requirements with respect to the factoring and commercial finance business, except if the factoring company offers the client protection against third party payment default (debtor risk) through the offering and provision of a credit insurance policy thereto: Insurance intermediaries are specifically regulated in Belgium and the supervision resulting thereof is since 1 April 2011 with the FSMA (the Financial Services and Markets Authority).

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one- person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☒ NO ☐

Prior to any assignment of receivables against any one-person-business/individual entrepreneur with VAT-registration, such one-person-business/individual entrepreneur should be notified and informed on the (general) assignment of receivables (as issued against such person) and of the transfer of (personal) data with respect to such person to the assignee. Such one-person-business/individual entrepreneur shall have the right to oppose to such transfer of (personal) data, in which case assignment of the relevant receivables shall have to be excluded.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☐ ☒ Anti-money laundering

If the only activities of the relevant entity are factoring activities, then it is correct that it is out of scope

of AML regulation. In Belgium, factoring companies and activities are not subject to the Belgian AML act (we are still awaiting for a relevant royal decree to be instituted pursuant to which the Belgian AML-act would also apply to factoring companies/activities).

YES NO

☐ ☒ [Capital requirements for credit, market and operational risks](#)

Only if factoring is offered by a credit institution in the sense of Directive 2013/36/EU of the European Parliament and Council dd. 26th June 2013.

Capital requirements rules may also apply if a factoring company, as a financial institution, is a subsidiary of a credit institution with respect to which capital requirements rules applies (and consolidated figures are published).

YES NO

☒ ☐ [Data protection](#)

Reference is made to the Belgian Act of 30 July 2018, as (it may be) amended from time to time, on the protection of natural persons with regard to the processing of personal data, entered into force on 5 September 2018.

YES NO

☐ ☒ [Liquidity risk requirements](#)

Except if factoring is offered by a credit institution in the sense of Directive 2013/36/EU of the European Parliament and Council dd. 26th June 2013

YES NO

☐ ☒ [IAS / IFRS accounting principles](#)

YES NO

☐ ☒ [Transparency and supplier/seller information for SMEs or corporates \(EU definition on SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.\)](#)

The Belgian act on SME financing dd. 21 December 2013, does not apply to factoring

YES NO

☐ ☒ [Risk management \(covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance\)](#)

YES NO

☐ ☒ [Contribution to the Deposit Guarantee Scheme](#)

YES NO

☐ ☒ [Reporting duties \(e.g. AnaCredit, NSFR\)](#)

With respect to Belgian legal entities, reporting (of outstanding financings) by factoring companies mandatory under the Belgian act March 4<sup>th</sup> 2012 on the Central Corporate Credit Register (CCCR) (incl. royal decree June 15<sup>th</sup> 2012) till 31 December 2021.

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance – ESG)

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

None.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>3</sup>)?

Please describe the physical process for the assignment of receivables.

The assignment of receivables under Belgian law is governed by articles 5.174 et seq. of the new Belgian Civil Code (former articles 1689 e. seq. of the Belgian civil code).

The assignment of receivables between assignor (client) and assignee (factoring company) takes place by mere agreement between both parties (solo consensus), even orally is possible, whereby the validity and enforceability of the assignment towards third parties, other than the relevant debtor, is not subject to any specific formalities to be respected. With respect to the enforceability of the assignment against the client's insolvency receiver, see Question 11 below.

Automatically all ancillary rights to such receivables (amongst others any retention of title, if agreed) are also assigned to the assignee.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

No registration requirements;

No stamp duties or other documentary taxes are required;

Notification: A transfer of receivables governed by Belgian law will be perfected and effective (i) against third parties (other than the debtor) including the supplier's insolvency practitioner and any third-party creditors, by mere agreement between assignor and assignee, and (ii) against the relevant debtor, from the earlier to occur of (a) the date of notification of such debtor and (b) the date of its acknowledgement of the assignment.

Except with respect to a debtor who is a public administration (See Question 14 below thereto), the way such notification has to take place is not subject to specific regulation or formalities. It's recommendable to notify debtors in writing or by means of an assignment text on the client's invoice with regard to the respective receivable.

Are there any other requirements for a valid assignment?

<sup>3</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.

No other requirement needs to be satisfied.

Is it possible to assign future receivables by a so called "assignment in advance"?

Receivables that do not exist at the moment parties conclude a factoring agreement can be made part of the subject matter of such factoring agreement. Therefore in Belgium it is possible to use global assignment wording of "all current and future receivables", however subject to the following conditions: (i) at the moment of entering into such agreement, future receivables and the relevant debtors have to be determinable and identifiable; the legal transfer by assignment of such receivables then takes place automatically as from the moment such a (future) receivable starts to exist, and (ii) at the moment of the transfer of the receivable, the transferor has to have the power to transfer the receivable (i.e. transfer of a future receivable pursuant to a global assignment of all current and future receivables will no longer be possible as from the moment that the transferor has become bankrupt).

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Yes, notice can be provided only once, provided that the notification clearly identifies what receivables are covered by the assignment. In practice, in order to avoid further discussions, it is recommended to notify per receivable (or to notify the assignment of several receivables by one notification letter), insofar it's not an undisclosed factoring.

Is transfer by way of subrogation possible? what are the requirements?

Yes. But even though valid, the structure is different and should for instance ask the factoring company for a payment in full of the full amount of each receivable (enabling the factoring company to enter in all rights in full).

Is it possible to transfer parts of a receivable or to make conditional transfers?

It is possible to transfer only a part of a receivable insofar, such receivable is separable/splittable.

Conditional transfers, in the sense of making the agreement by the assignee to such transfer subject to external events beyond its control being satisfied, would be possible.

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

A factoring company shall consider each assignment as a sale by which the factoring company becomes 100 % owner of the assigned receivables. The true sale character, with respect to the client, is determined based on the take-over by the factoring company (except in the event of gross default, breach of the factoring agreement or gross negligence by the assignor/client) of the relevant debtor risk with respect to assigned receivables, and this without further recourse against the assignor.

The deduction of any factoring fee or factoring discount does not prejudice the true sale character. However, the true sale character of a transfer of receivables will be jeopardised if the transfer of the receivables operates as security for certain liabilities (i.e. if ownership of the receivables is automatically transferred back to the transferor after the secured liabilities have been repaid, for instance). If the transfer of receivables has taken place on this basis, such transfer will be deemed to be an assignment by way of security (providing the assignee with no more rights than a pledge holder over such receivables would have).

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature?

Yes. Since the assignment of receivables is not subject to any formalities, parties are free to use such Electronic Data Exchange messages.

Also digital signature is possible (simple or qualified).

Please give details and state any requirements e.g. for a separate written agreement governing



procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

In reference to the above, the assignment of receivables is not subject to any formalities or requirements. Therefore a separate agreement with regard to an Electronic Data Exchange message is not a requirement.

However, it's recommended to conclude an agreement with regard to the transfer for the purpose of the factoring company being able to provide documented proof of each and any assignment of receivables through EDI and in particular, the exact time and means by which such an assignment shall take place and has taken place.

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

In reference to the above, the assignment of receivables is not subject to any formalities or requirements. Therefore a separate agreement with regard to an Electronic Data Exchange message is not a requirement.

However, it's recommended to conclude an agreement with regard to the transfer for the purpose of the factoring company being able to provide documented proof of each and any assignment of receivables through EDI and in particular, the exact time and means by which such an assignment shall take place and has taken place.

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables? What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

As a principle, Belgian VAT law complies with the decision of the MKG case law (C-305/01) of the European Court of Justice.

On the basis of this decision, factoring (operated on a recourse or non-recourse basis) has to be considered as "debt collection and factoring services". Debt collection and factoring services are excluded from the VAT exemption in accordance with 44, §3, 7° of the Belgian VAT Code. The commission received by the factor in return for these services is therefore subject to Belgian VAT at the standard rate of 21%. However, advances paid by the factoring company to its clients (and the interest charged for these advances) are in principle considered as stand-alone financial (credit) services falling under the VAT exemption of article 44, §3, 5° of the Belgian VAT Code.

Pursuant to the GFKL case law (C-93/10) of the European Court of Justice, when an operator purchases, at its own risk, defaulted debts (or bad debts) at a price below their face value and when the difference between the face value of those debts and their purchase price reflects the actual economic value of the debts at the time of their assignment, the purchase of those defaulted debts do not effect a supply of services for consideration and fall outside the scope of VAT.

A discount granted to a factoring company can either represent:

- Interest paid to the factoring company as a consideration for the supply of stand-alone financial (credit) services (i.e. independent of any debt collection services). Such interests are exempt from VAT in accordance with 44, §3, 5° of the Belgian VAT Code.
- Commissions paid to the factoring company as a consideration for the supply of debt collection services. Such commissions are subject to VAT in accordance with article 44, §3, 7° of the Belgian VAT Code.

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?



No.

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Yes this system exist in relation to certain well defined sectors (such as construction, surveillance (services), meat sector, ready-mixed concrete) and applies for social security arrears as well as tax arrears. This can lead to following split payments:

- 15 % of the receivable (in case of tax arrears);
- 35 % of the receivable (in case of social arrears),

Leading to an additional payment risk of max 50 % of the relevant receivable.

If your client is active in one of the above sectors you have to check whether such split payment applies for such client's debtors. This information is officially published and can be checked by any party on: [www.checkinhoudingsplicht.be](http://www.checkinhoudingsplicht.be) or [www.checkobligationderetenue.be](http://www.checkobligationderetenue.be)

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

No.

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

No.

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's (=client's) receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?
- Pledge over the receivables (notification of debtor/buyer is decisive moment).

Retention of title ('RoT'): A retention of title clause is a contractual clause by which the seller of a good stipulates that the ownership of the good only passes to the buyer once he has paid the purchase price in full.

- the seller of movable assets with retention of title ("Seller") benefits not only from title to the goods sold (seller can claim the unpaid goods back) but also
- to the receivable (the "On-Sale Receivable") arising in case of on-sale of the goods by the purchaser (the "Purchaser") (zakelijke subrogatie / subrogation réelle) (article 70 act on security over movable assets);
- to the fruits borne by the encumbered goods;
- to the relevant goods that have been mixed or processed into new goods.

- If a new good is created by authorised processing, RoT will apply to the newly created good, unless otherwise agreed.
- If processing was not allowed, the RoT on the new good shall be extinguished, unless the value of the original object substantially exceeds the cost of the labour and the materials that have been required for the work. In which case the owner of the original good becomes the owner of the new good and the original shall be liable to compensate the processor (nevertheless subject to enrichment ban/unjustified enrichment). In the other case, the processor shall be liable to pay the original owner a compensation.
- If goods of third parties were used for such processing, and the separation of these goods is either impossible or not economically justifiable, the RoT shall encumber the newly created goods of this is the most important or has the greatest value. In such case the third party has a claim for unjustified enrichment on the debtor. This means that the value of the good must be set off against the value of the claim and that any capital gain must be repaid to the third party.
- The mixing of replaceable goods that have been encumbered in whole or in part with a RoT, shall not affect such RoT; in case of multiple persons having stipulated a RoT, each person may assert its rights to lien on the mixed goods in proportion to its rights;
- The act on security over movable assets (dd. 11 July 2013) provides the Seller with a “super-priority” over a pledgee (article 58 Law on security over movables);
- Pursuant to the on security over movable assets (dd. 11 July 2013), the general principles of retention of title have been incorporated into the Civil Code; this new legislation does not only apply in the event of bankruptcy, but in any situation of collective debt settlement, any concurrence and seizure; and

Conditions to be met in order to have a valid and enforceable retention of title:

- the retention of title clause must be in writing. In the agreement itself or you may have it included in the general terms and conditions (which are usually found on the backside of any offer or quotation) with a reference on the front to the back of the document. If the parties are bound by a framework agreement, the supplier resp. seller must ensure that it refers to the framework agreement at each successive date;
- the buyer must be aware of the retention of tile clause at the latest at the time of delivery of the goods, e.g. in an offer, on an order form or a delivery note.

Privilege of the unpaid seller of movables:

Pursuant to article 20,5° of the mortgage act, the seller of movables which have not yet been paid by the buyer, has a privilege on these goods, provided that they are still in the possession of the buyer-debtor. However, this privilege is no longer applicable when the unpaid movable goods have become immovable goods by intended use or incorporation, except in case of machinery, equipment, tools and other business equipment material, used in industrial, trade or craftman's businesses (in which case the privilege will continue to exist for 5 years after delivery (as proved by the books of the seller, unless proof of the contrary is provided).

Please indicate if there is in this respect any difference between

- [Non-Recourse Factoring](#)
- [Recourse Factoring](#)
- [Invoice Discounting](#)

No.

Do these rights have to be publicly registered or notified to be valid?

- Pledge : notification of the debtor
- Retention obligation: if applicable, this can be checked on the internet ([www.30bis.be](http://www.30bis.be))
- Retention of title: the registration of retention of title in the pledge register is not compulsory, but is possible and sometimes advisable; registration provides protection against movables becoming immovable. However it is required that such a retention of title clause is agreed upon between the parties in writing, prior to any delivery of the respective goods by the supplier/client to the debtor. (see also Belgian Act 11th July 2013).

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country?

Yes. As a general rule, receivables are assignable/capable of being transferred, unless the law or the nature and tendency of such receivable opposes it.

Nevertheless, non-assignment bans/clauses can be agreed upon between parties and such provisions are not unlawful or legally invalid.

What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

According to the new civil code, any assignment of a receivable in violation of a contractual prohibition on assignment is not enforceable against the assigned debtor if the assignee is a third party complicit in the violation of such prohibition.

Which is similar to the Belgian Act of 11th July 2013 stipulating that an assignment made in violation of a non-assignment clause in such receivable will not be null and void subject to the good faith of the purchaser.

A factoring company could be deemed to be a professional in which case it shall have to verify all documentation agreed on between the assignor/client and its debtor. And in case of presence of such ban, assignment should be excluded (or risk is to be assumed). But quid of such obligation to investigate in case of large portfolios?

What actions are needed to make the prohibition effective?

Such provisions should be agreed upon in writing between the parties in a formal agreement between them. If such a provision is stipulated in the general terms and purchase conditions, the relevant debtor shall have to proof that its supplier has gained knowledge and has accepted these general terms and purchase conditions.

Is there any requirement for registration?

No.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No.

## Question 7 Security Interests

*For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.*

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

In Belgium it is possible to obtain a fixed or floating charge by means of a pledge over accounts receivables only (without having to register such pledge).

Does a fixed or floating charge have to be publicly registered to be valid?

For the pledge over receivables no formal or public registration is necessary to have a valid pledge. A pledge over receivables is enforceable vis-à-vis third parties by the mere execution of the pledge agreement. To be enforceable towards the debtor, the receivables pledge should be notified to or acknowledged by such debtor.

However, the ‘Pand op alle ondernemingsgoederen’ (if not excluded expressly, such pledge shall also include commercial receivables) (which is similar to the former ‘pand handelszaak’) does require a formal procedure and registration within the pledge registrar. Registration rights are payable based on the value of the pledged asset(s). Since pledge over receivables are excluded from any registration in the pledge register, a pledge over receivables shall rank priority to such a general pledge over all movable assets.

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

A fixed or floating charge can be foreseen in order to provide the factoring company with security in case the assignment of receivables become null and void, for any reason whatsoever.

But not common practice.

To be mentioned as well; A pledge over receivables is enforceable vis-à-vis third parties by the mere execution of the pledge agreement. To be enforceable towards the debtor, the receivables pledge should be notified to or acknowledged by such debtor.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

- Collection account legally owned by the factoring company;
- Pledge on collection account in favor of the factoring company;
- Sweep mechanisms can be set up;
- Events triggering disclosure (mostly linked to the occurrence of any event of default).

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

Prior to any assignment of receivables against any one-person-business/individual entrepreneur with VAT-registration, such one-person-business/individual entrepreneur should be notified and informed on the (general) assignment of receivables (as issued against such person) and of the transfer of (personal) data (GDPR) with respect to such person to the assignee. Such one-person-business/individual entrepreneur shall have the right to oppose to such transfer of (personal) data, in which case assignment of the relevant receivables shall have to be excluded.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or recourse, Invoice Discounting)

Assignment in fulfilment of a purchase contract of receivables, results in the transfer of the ownership over these receivables whereby the factoring company becomes 100 % owner of these receivables.

In general such transfer is to be considered as a true sale of the respective receivables to the factoring company, however sometimes subject to specific wording thereto in the factoring agreement.

- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)

If receivables are merely assigned as a collateral for financing facilities, the full title of ownership on the relevant receivables is transferred to the factoring company. Nevertheless and notwithstanding what precedes, in such case the rights of the factoring company with regard to these receivables are limited and equal to the rights the beneficiary of a pledge on receivables disposes of in accordance to Belgian law (and which rights are not the same as these a full owner disposes of).

- pledged to collateralize such a financing facility

If a pledge on receivables is granted as collateral for financing facilities, no transfer of title in the receivables is perfected.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer        %
- Cheque                %
- Bill of Exchange    %
- Other instruments    %

(please give details, preferably also about similar estimates relating to factoring relations only) Almost

100 % of all payments are payments by bank transfer.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

As long as the assignment of receivables results in the effective transfer of the title to such receivables whereby the respective receivables vest in the factoring company absolutely, the assignment is and remains enforceable against the bankruptcy liquidator in a bankruptcy procedure.

Since the anteriority of either the assignment or the bankruptcy is decisive, the date of the respective assignment is to be considered as decisive compared to the date of the judgement declaring the relevant company as bankrupt in accordance with Belgian insolvency legislation. Receivables assigned to the factoring company before the opening of such bankruptcy procedure shall not be

included anymore in the suppliers/clients assets whether the respective debtors have been notified or not.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

As a general rule, except (i) for *intuitu personae* agreements or (ii) if the parties contractually agreed that a bankruptcy constitutes an acceleration event, the insolvency (bankruptcy) of the client does not terminate the factoring agreement automatically. According to article XX. 139 §1 of the Belgian code of economic law, it's up to the (insolvency) receiver to decide whether or not the factoring agreement, concluded prior to the bankruptcy, shall continue (insofar it was not deemed terminated automatically as from the date of bankruptcy). If the receiver does not provide the factoring company with an answer, the factoring company may summon the (insolvency) receiver in order to obtain answer within 15 days. Without answer, the factoring agreement shall be deemed terminated as from the expiry of this 15 days period.

Pursuant to the Belgian code of economic law, certain acts may (and sometimes must) be declared unenforceable by the enterprise court if they were performed by the company at a time when it had already ceased its payments (ie during the hardening period). A hardening period, which is the exception and not the rule, can only be put in place by the court when there are clear indications that the debtor has already persistently ceased its payments before the date of the court decision opening the bankruptcy proceeding. The date of cessation of payments can be brought back at maximum six months prior to the bankruptcy judgement, except if a company was wound up more than six months before the bankruptcy order. In that case, the date of cessation of payments can be brought back to the date of the winding-up of the company if the winding-up was done to the prejudice of its creditors.

No security interests may be perfected once a bankruptcy proceeding is opened. As such a(n) (insolvency) receiver may pursue the below avoidance actions with respect to security interests:

- A security interest granted for pre-existing debt during the hardening period, shall be declared unenforceable against the body of creditors;
- A security interest granted during the hardening period can be declared unenforceable if the creditor knew of the cessation of payments;
- Security interests can be declared unenforceable if they were registered during the hardening period and more than 15 days have lapsed between the deed creating the security and the date of registration;
- A security interest, whenever granted and irrespectively if it is granted for pre-existing or new debt, can be declared unenforceable if considered fraudulent;
- Any acts or payments, whenever performed and even outside the hardening period, that are fraudulent may be declared unenforceable ('*actio pauliana*').

If the receiver decides to continue the factoring agreement, claims arising out of the continuation of the factoring agreement from the factoring company against the 'client'/bankruptcy estate/receiver, shall be estate debts (being costs and indebtedness incurred by the receiver during the bankruptcy proceedings), which have highest priority over all claims. In addition, if the receiver has contributed to the realization and enforcement of secured assets, such costs will be paid to the receiver in priority out of the proceeds of the realized assets before distributing the remainder to the secured creditors.

Creditors that hold the benefit of a security interest have a priority right over the secured asset.

After satisfying the claims of secured creditors, the creditors benefiting from a specific lien on certain or all assets will be paid out (e.g., tax claims, claims for social security premiums, etc.) Privileges on specific assets take rank before privileges on all assets of the client.

Once all estate debts and creditors having the benefit of security interests and privileges have been satisfied, the proceeds of the remaining assets will be distributed by the receiver amongst the unsecured creditors who rank *pari passu*.



How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

The Belgian law dd 7 June 2023 transposing the directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019, by which amendments have been made to book XX of the Belgian code of economic law.

This law could have an impact on the collection of assigned receivables (for instance in case of reduction of claims). But finally the factoring company has or a recourse on the seller (recourse factoring) or a claim against any credit insurer (non-recourse factoring).

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt?

Receivables assigned as from the date of bankruptcy without the receiver's consent.

If factoring is based on security vested over receivables; see security interests above. In case of pledge over receivables, such receivables shall never be deemed part of the pledgee's estate and shall always remain part of the insolvency estate of the seller/client.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

In line with European Directive 2011/7/EU of the European Parliament and of the Council a Belgian act on combating late payment in commercial transactions, has been established on 2nd August 2002. This act is applicable on all commercial transactions between enterprises and between enterprises and governmental entities (whereby the governmental entity is debtor).

This act installs a standard payment term of 30 days (by default) upon reception of the invoice or upon delivery (if the invoices precede the delivery). Parties are free to agree on other payment terms (not longer than 60 days, except if allowed for some particular sectors. Longer payment terms shall be deemed null and void).

The creditor may claim, by law and without any notice being necessary, a default interest at a rate of 8 percentage points above the reference interest rate of the European Central Bank. Nevertheless a notice of default remains necessary before any legal collection (and dito proceedings) can take place.

Furthermore a creditor is entitled to a fixed indemnity of 40 EUR for its own collection costs. On top of this fixed amount, a creditor may claim payment of all reasonable costs made in order to collect payment from a debtor exceeding this fixed amount. It may be useful to enter a standard penalty clause in your general terms and conditions to cover such collection costs.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)

Belgium has signed the UNIDROIT Convention on International Factoring, which convention has been ratified by means of the Belgian Act of 21th February 2010.

- The United Nations Convention on the Assignment of Receivables in International trade (2001)

No

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments?

With respect to third-parties other than the buyer-debtor; the third-party effects of the assignment shall be governed by the law of the state on which territory the party who assigned the claim (the assignor) has its habitual residence on the relevant assignment date.

By 'habitual residence' is meant, for a legal entity, the place where such legal entity has its principal place of business (hereby taking into account its administrative centre, as well as its business or activity centre and additionally its registered office).

Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

Assignor and assignee are free to make the factoring agreement (which law shall govern the contractual relationship between assignor and assignee, other than the relationship which results out of the assignment of any claim) subject to the law of their choice (lex contractus).

Seller and buyer also have the right to opt for the law of their choice to govern their underlying agreement.

If no underlying agreement between seller and buyer has been agreed upon and each party has made reference to its own general terms and conditions:

- the contract shall however be concluded (unless if priory or without undue delay after receipt of the acceptance, any party expressly states or declares (thus not by means of its general terms and conditions) not willing to be bound by such contract);

- both general terms and conditions shall apply except with respect to the clauses which are incompatible to each other.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

None.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA?

YES ☐ NO ☒

Act of 17 June 2016 regarding public procurement, entered into force on 30 June 2017:

Any assignment of receivables is not allowed prior to the (if applicable, provisional) acceptance/delivery, unless if it relates to receivables (to be) assigned as security to lenders or credit providers providing loans and advances in relation to the execution of the concerned public contract, in so far such loan or advances are only used as from the date or after the date of notification of such assignment.

The assignment of claims must be notified to the contracting public authority by means of a bailiff's writ. Notification may also be effected by registered letter from the assignee to the contracting public authority. To that end, the contracting authority shall expressly indicate in the public procurement documents the administrative details of the department to which the registered letter is to be addressed. In order to be valid, any notification must be effected no later than at the date the assignee the contracting public authority for payment.



Any assignment of claims will only take effect if (and as from the date) the workers, employees, subcontractors and suppliers who have seized or who have opposed, have been paid.  
Any sums arising out of the above may not be used by the lender or the assignee to cover claims against the assignor arising on any other account (before or during the term of performance of the financed works) as long as the financed works have not been accepted/delivered.

Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

In all phases any communication, exchange of information, submission and acceptance of offers has to be done by means of electronic communication tools, except for some specific cases (for instance if physical models have to be submitted, because of the specialised character of the public contract, etc.).

Electronic invoices have to meet set European standards and technical specifications for e-invoicing EN 16931-1:2017 and CEN/TS 16931-2:2017 (or any future standards and specifications as set in accordance with article 5 of Directive 2014/55/EU).

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

Except if conditions set above are not satisfied

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

None.

## BU > Bulgaria

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

The factor should be a commercial company registered as a joint-stock company, limited liability company or a limited partnership company with share, duly licensed as a credit, financial institution or a bank.

If factoring and commercial finance activity is material for the provider of the services, the provider should obtain a licence as a CI; material is activity that either brings more than 30% of the net revenue compared to the overall revenue or at least 30% of the balance value of the asset attributable to the activity compared to the overall activity. For the purposes of computing the 30% threshold factoring and commercial finance activities are aggregated

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒

☐

Anti-money laundering

Being a non-credit financial institution the factoring company is obliged to:

- identify its clients and verify their identification;

- identify the client's beneficial owner and to take relevant measures to verify its identification in a way providing enough for the respective supervision authorities to accept the identification of the beneficial owner;
- collect information from its clients regarding the purpose and the nature of the relationship that has been established or is to be established with the client;
- monitor on ongoing basis all of its established commercial or professional relations with its clients and to verify all transactions performed within such relations to determine the extent to which these comply with the available information on the clients, their commercial activity and risk profile, including clarification of the origin of the funds when it is required by the Law;
- disclose information on any doubtful transactions and clients.

YES NO



#### Capital requirements for credit, market and operational risks

BGN 1 mln capital required to be made with own resources (e.g. borrowed funds are not permitted) and with transparent and legal origin of funds.

Except for the registration of the company as 'financial institution' by the Bulgarian National Bank (BNB) there are no other requirements for licensing or explicit approval with respect of the companies, their managers or shareholders.

It should be noted that although the law provides for "registration" in fact the BNB's competence allows it not only to check whether or not certain formal requirements are satisfied, but to assess whether or not additional eligibility criteria are met - the registration could be refused in case the managers or the shareholders with qualifying holdings (within the meaning of Regulation (EU) N 575/2013) and beneficiary owners do not meet such criteria. Since the registration of the company depends on a positive assessment of its managers and shareholders the formal act of the BNB seems to be qualifies more as a "license" rather than a "registration".

YES NO



#### Data protection

Being an administrator and/or a data processor the factoring company is obliged:

- to process the personal data in compliance with the applicable legislation and in bona fide manner;
  - to capture the personal data for specific, precisely defined and legal purposes and not to submit them for additional processing in a manner incompatible with such purposes;
  - to process the personal data in a way to be adequate, relevant and not to excessive to the purposes for which they are being processed;
  - to ensure the personal data to be accurate and updated as needed;
  - to destroy and to adjust the personal data when it is found that they are imprecise or disproportional to the purposes for which they are being processed;
  - to maintain the personal data in a form that enables identification of the respective individuals for which such data are being processed for the period of the data storage;
- The personal data may be processed only provided at least one of the following conditions is met:
- processing is necessary in order to comply with an obligation imposed on the personal data administrator by the applicable legislation;
  - the individual to whom such data relate has given his or her explicit consent;
  - processing is necessary for the fulfilment of the obligations under an agreement signed by the individual to whom such data relate, as well as for any activities initiated by the same individual prior to the conclusion of such agreement ;
  - processing is necessary in order to protect the life and health of the individual to whom such data relate;
  - processing is necessary for the performance of a task carried out in the public interest;
  - processing is necessary for the exercise of an official authority vested by law in the administrator or in a third party to whom the data are disclosed;
  - processing is necessary for the realization of the legitimate interests of the personal data administrator or a third party to whom the data are disclosed, except where such interests are overridden by the interests of the individual to whom such data relate.

YES NO

☐ ☒ Liquidity risk requirements

We think that the answer here is no, unless the financial institution is a part of a group of companies that are subject to such requirements on a consolidated basis.

YES NO

☒ ☐ IAS / IFRS accounting principles

On the basis of art.34 of the Accounting Law that reads: (2) (New, SG No. 37/2019, effective 7.05.2019) The following enterprises shall prepare their financial statements in accordance with the International Accounting Standards: 1. credit and financial institutions within the meaning of the Credit Institutions Act;"

YES NO

☐ ☒ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

We have our own definition for business segments [definition under The Law on Small and Medium Size

We have our own definition for business segments [definition under The Law on Small and Medium Size Enterprises]

medium-sized enterprises comprises enterprises that have:

1. an average number of the personnel of less than 250 people on their payroll, and
2. an annual turnover of not more than BGN 97,500,000 and/or a value of the assets of not more than BGN 84,000,000.

small enterprises are the ones that have:

1. an average number of the personnel of less than 50 people, and
2. an annual turnover of not more than BGN 19,500,000 and/or a value of the assets of not more than BGN 19,500,000.

micro enterprises are the ones that have:

1. an average number of the personnel of less than 10 people, and
- Enterprises]

medium-sized enterprises comprises enterprises that have:

1. an average number of the personnel of less than 250 people on their payroll, and
2. an annual turnover of not more than BGN 3,900,000 and/or a value of the assets of not more than BGN 3,900,000.

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Financial institutions should have a clear organisational structure and distribution of responsibilities, effective procedures for organisation and management of the types of activities it is conducting and appropriate mechanisms for internal control, including reliable and effective administrative and accounting procedures.

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

Bulgarian Bank Deposit Guarantee Act transposes the requirements of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes. Each bank - a member of the system for guaranteeing deposits in the Republic of Bulgaria, must make contributions in the Fund for guaranteeing deposits in banks, but there are no express requirements for contribution to the DGS for factoring companies (if they are not banks).

YES NO

☒ ☐ Reporting duties (e.g. AnaCredit, NSFR)

Reporting to Bulgarian National Bank.

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

Applied on a bank level. There are no particular requirements for factoring business.

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance–ESG)

There are no particular requirements for factoring business.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

The Bulgarian National Bank

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>4</sup>)? Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

The factoring transaction has no detailed regulation in Bulgaria Law. There is legal definition of the factoring in Corporate Income Tax Act. Factoring is mentioned as a VAT taxable transaction in Value Added Tax Act and as an activity allowed to be performed by the banks in Credit Institution Act. The regulation of the assignment in Obligation and Contracts Act applies accordingly to the factoring transactions.

There is only one significant decision of the Superior Court of Cassation covering this matter.

A creditor (being the supplier in the factoring transaction) may assign its receivables under particular agreement unless the law, the agreement or the nature of the receivables do not permit such assignment. The assigned receivables shall pass on to the new creditor (being the factor in the factoring transaction) with its privileges, securities and other attributes, including interest arrears, unless otherwise agreed upon. The supplier must notify the debtor of the assignment and hand over to the factor any documents he may hold which verify the receivables, as well as a confirmation in writing that the transfer has taken place. The assignment shall be binding upon third parties and the debtor from the date when the latter is notified by the supplier. If the debtor has agreed to the assignment of the receivables, he may not set off the obligation against his receivables towards the supplier.

If the assignment is for consideration (e.g. in case an advance payment has been made by the factor in

<sup>4</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

favor of the deliverer for the assignment of the payments under one or more invoices), the supplier shall be liable for the existence of the claim at the time of the assignment. He shall not be liable for the debtor's solvency, unless he has assumed such an obligation and then only up to the amount received for the transferred claim.

With respect of the aforementioned legal requirements the standard set of the transfer documents includes:

- factoring agreement;
- notification from the supplier to the debtor for the assignment of all existing receivables of the supplier towards the debtor in favor of the factor;
- confirmation by the supplier that the assignment is made;
- confirmation by the debtor about being notified of the assignment (for evidentiary purposes).

Furthermore, prior to each utilization of advance payments the supplier should deliver to the factor notification for assignment of the receivables under particular invoices together with utilization request.

All documents mentioned above should be signed by the representatives of the respective companies or by proxies duly authorized to sign such documents.

[Both recourse and non-recourse factoring fall within the scope of factoring definition (factoring is defined for tax purposes only) and according to the definition the law considers both types as transfer (as opposed to lending) transactions.

In general, it should be possible to assign future receivables (subject to being unconditional at the moment of transfer). The law does not explicitly require a certain level of minimum determination of those receivables in assignment documents but under the general law a receivable shall be determined or at least determinable. However, there exists a decision of the Supreme Court of Cassation that states that an assignment of future receivables is null and void for as it lacks subject until the receivables comes into existence].

Transfer of the receivables by the way of subrogation is possible only to the extend it is allowed by Law (e.g. the factor shall be subrogated in the rights of the creditor towards the debtor in case the factor has paid off the debt; the insurer shall be subrogated in the rights of the creditor towards the debtor in case the insurer has paid to the creditor compensation under the insurance policy, etc.).

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

An assignment of receivables should be made either in paper or in a form of electronic document under the requirements of the Electronic Document and Electronic Signature Act in order to be accepted as a valid transfer deed by the Courts of Bulgaria. However, it is strongly recommended the set of the transfer documents to be on paper in order to ensure that the court will accept them as an evidence.

[No specific (written) form is required for validity of the assignment but in order to evidence the assignment it should be made in written form (according to the Bulgarian Civil Procedure Code witness testimony shall not be admitted with respect of contracts of value more than BGN 5,000 except for limited number of cases).

The validity of the assignment is not subject to the notification to the debtor. However, the assignment shall be binding upon third parties and the debtor from the date when the latter is notified by the supplier. The notification must be made in writing. The notification should be in a form of a separate document and shall refer to all receivables of the supplier toward the debtor (under specific agreement/all their agreements). The assignment notification in a way of adding language to an e-invoice may not be considered enough to evidence the transfer of the rights. As it was mentioned above the court practice in Bulgaria on the matter is quite insufficient.

The possibility documents to be signed electronically probably is not the most preferable option for signing documents (especially agreements) between the Bulgarian companies however it is not unfamiliar to the Bulgarian business.]

The e-invoicing Directive 2014/55/EU is Implemented on 27.11.2018 with amendments in Public procurement act. Applicable and mandatory for public procurements.



### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

Factoring commission is VAT taxable notwithstanding it is performed by a bank or a non-bank institution. As it is questionable the tax treatment of the separate payments received by the factor under the factoring agreement and there is no unified approach on the matter it is highly recommended a statement of the factoring to be included a statement that the Factor is entitled to receive a commission being a sum of payments.

The usual assignment is not a VAT taxable transaction. Therefore, the respective tax authorities/the court shall assess whether the transaction is a transaction whereby single or periodic monetary claims arising from a supply of goods or a provision of services are transferred, regardless of whether the person who has acquired the claims (the factor) assumes the risk of collection of the said claims in consideration of the payment of a reward, in order to treat it as factoring or not.

Transactions in receivables are VAT-free transactions, except for factoring transactions.

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

No difference in the VAT treatment between banks and non-banks engaged in factoring.

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables?

The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

The position of the factor may be affected if a third party (either a public authority or a private company or an individual) claims receivables towards the debtor due prior to the date on which the debtor is notified for the assignment and the third party has a title for execution of these receivables.

Similar situation may occur in case of recourse factoring if the third party is creditor of the supplier claiming receivables due prior to the date on which a receivable assigned under the factoring agreement is due and the third party has a title for execution of these receivables.

The factoring agreement shall be considered null and void with respect to the bankruptcy creditors, in case is effected after the date of the ruling on institution of bankruptcy proceedings of the supplier.

However, the aforementioned risks should not be considered a comprehensive list of the situations in which the position of the factor may be affected.

### Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

A contractual prohibition against the assignment of receivables is valid in Bulgaria. If this may be the case the factoring agreement shall be null and void.

It is possible to prohibit the assignment of receivables contractually. There are different interpretations of the law with respect of the consequences of a breach of such prohibition: (i) invalidity of transaction qualified as a transaction with impossible subject matter, (ii) inapplicability of the transaction against the debtor, (iii) inapplicability of the transaction against the debtor if the assignee is aware of the prohibition of the assignment, (iv) such prohibition does not affect the assignment.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No.

### Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

Not Applicable

As factoring is generally considered a true sale, the factor cannot have a security interest in its favour over its own assets, namely the receivables it has acquired.

### Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

The company /bank can insure part of the factoring business or may use a two-factor system.

### Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:



- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

In any case the receivables should be owned by the supplier and should not be subject to assignment agreement prior to the date of the factoring agreement and the notification to the debtor. Otherwise the assignment in favour of the factor shall be practically null and void.

The receivables assigned should be free of any burdens and should not be subject of any third party's claims. Otherwise the rights of the factor shall be seriously affected.

Factoring is a true sale, there is no intention for repurchase agreement.

A financial collateral arrangement can be an arrangement for transfer of the title or an arrangement for pledge. The aim is only security and returning the collateral after completion of the financial obligation.

### Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

Information not available.

### Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

The general risk is that the assignment agreement may be null and void or voidable if made by an insolvent transferor during certain suspect periods. In this case the assigned receivables will form part of the bankruptcy estate and the financiers will be an unsecured creditors to the bankruptcy estate for the consideration under the assignment agreement.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

If the receivables assignments are valid, the insolvency of the supplier should not affect them and the factor should have direct rights to seek repayment from the debtors.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring are implemented in legislation in Bulgarian Commerce

Act. No other significant changes relevant to factoring business.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No, it is a true sale and the receivable is no more in supplier assets. The sale is a part of ordinary activities of the seller and is not from the circle of commercial transactions for which a revocation claim is possible in the procedure of insolvency.

### Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Late Payment Directive has been implemented in Bulgarian legislation effective date 01.01.2015. Late payment of assigned receivables or VAT triggers an additional debtor's obligation to pay default interest (base interest rate determined by the BNB for the first semester of the year - the rate in force on 1 January of that year; for the second semester - the rate in force on 1 July of that year. ( plus 10 points). Alternatively, a penalty may be contractually agreed.]

In case of public enforcement – base rate (currently 0%) +10, calculated on the amount due in BGN.

### Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

No to both cases.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

No answer.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

The UNIDROIT model is not implemented in Bulgarian legislation. There is currently no change in our legislation regarding factoring transactions.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

There are no formal requirements apart from the ones, mentioned above.

However, please be informed that the receivables arising from refunding of taxes paid may not be subject of assignment.

Do PA debtors have the right to refuse the assignment?

YES ☐ NO ☐

If so, what consequences does this have?

See answer above.

**Question 15 Any other Matters**

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No.

## CR > Croatia

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐

NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☒ NO ☐

Yes – but only factoring companies. Banks are authorized to do factoring by the Credit Institutions Act.

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

The answer is the same as in 2021:

Croatian Factoring Act defines “factoring” as an activity whereas a service providers purchase (with or without recourse) account receivables (existent or future) towards domestic or foreign buyers (companies). The subject of factoring transactions can be only A/R deriving from the goods delivered or services performed.

Civil Act prescribes regulates the assignments. Based on the provisions of this Act, the buyer has to be notified and the buyer has to pay upon the notification. This Act does not prohibit silent assignments directly, nor it prescribes consequences in case the buyer does not abide the notification and pays directly to supplier’s account.

Yes – for factoring companies. Banks are authorized to do factoring by the Credit Institutions Act.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒
☐

Anti-money laundering

Factors-banks comply to the standard regulation for banking industry and are supervised by the Croatian National Bank.

Factors-companies comply to the regulation for other financing companies and are supervised by the Croatian Financial Services Supervisory Agency.

EU Anti-money laundering regulation is applied.

YES NO

☒
☐

Capital requirements for credit, market and operational risks

Factors-banks comply to the standard regulation for banking industry and are supervised by the Croatian National Bank (Credit Institution Act).

Factors-companies comply to the regulation for other financing companies and are supervised by the Croatian Financial Services Supervisory Agency (Factoring Act).

YES NO

☒
☐

Data protection

Factors-banks comply to the standard regulation for banking industry and are supervised by Croatian National Banks.

Factors-companies comply to the regulation for other financing companies and are supervised by Croatian Financial Services Supervisory Agency.

YES NO

☒
☐

Liquidity risk requirements

Factors-banks comply to the standard regulation for banking industry and are supervised by Croatian National Banks.

Factors-companies comply to the regulation for other financing companies and are supervised by Croatian Financial Services Supervisory Agency.

YES NO

☒
☐

IAS / IFRS accounting principles

Factors-banks comply to the standard regulation for banking industry and are supervised by Croatian National Banks.

Factors-companies comply to the regulation for other financing companies and are supervised by Croatian Financial Services Supervisory Agency (CFSSA).

YES NO

☒
☐

Transparency and supplier/seller information for SMEs or corporates (EU definition of

SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

No detail

YES

☒

NO

☐

Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Factors-banks comply to the standard regulation for banking industry and are supervised by the Croatian National Bank (Credit Institution Act).

Factors-companies comply to the regulation for other financing companies and are supervised by the Croatian Financial Services Supervisory Agency (Factoring Act).

YES

☒

NO

☐

Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

Factors-Banks a part of Deposit Guarantee Scheme according to banking regulations. Factors-companies are not part of Contribution Deposit Guarantee Scheme.

YES

☒

NO

☐

Reporting duties (e.g. AnaCredit, NSFR)

Factoring-Banks do the reporting within according to CNB requirements (which are in line with EU regulation for financing markets). Factoring-companies do the reporting according to CFSSA requirements (based on Factoring Act and other related regulations).

YES

☒

NO

☐

Rules on payment services following the Payment Services Directive PSD II

YES

☒

NO

☐

Rules and regulations on sustainability (environmental, social and governance – ESG)

Based on EU's ESG regulations.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Croatian National Bank (banks-factors) and Croatian Financial Services Supervisory Agency (factoring companies).

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>5</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

<sup>5</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.

Are there any other requirements for a valid assignment?  
 Is it possible to assign future receivables by a so called "assignment in advance"?  
 In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?  
 Is transfer by way of subrogation possible? what are the requirements?  
 Is it possible to transfer parts of a receivable or to make conditional transfers?  
 Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

The answer is the same as in 2021:

Civil Act regulates transfer of receivables. The transfer of receivables is executed by signing the Assignment Agreement btw the Assignor and Assignor. In most cases the Debtor signs the Assignment Agreement as well, but according to Civil Act it is sufficient that the Debtor is notified. It is not possible to assign some rights/claims (f.ex. of the social rights, etc.), rights/claims of strictly personal nature or rights/claims that by their nature are not transferable.

In Croatia does not exist the register of assignments nor any duty/tax has to be paid.

It is possible to assign future receivables and to send to the debtor such general notification. Legal experts advise however, that in addition to the general assignment/notification, the receivable is "identified" once it occurs. It falls under the specific business policy of each service provider. This can be done the assignment clause on the invoice, additional (specific) notification etc. There is no precise and specific regulation (formal rule) on this.

The transfer by way of subrogation is possible. In transfer of receivables by subrogation, it is important that the agreement (btw the new beneficiary and the debtor) is made before or at the payment due date. With the transfer of receivables, entire or part of subsidiary rights are transferred as well. The transfer is made upon the execution of payment.

It is possible to make transfer of parts of receivable. In such cases, the Assignor has to give to the Assignee the proof of the receivable's existence. On the Assignee's request, the Assignor has to give verified document of the receivables transfer (bond, agreement, etc.).

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Civil Act regulates that the assignments can be transferred by agreement. In electronic data exchange and digital signature is still not widely spread, nor the respective regulation and business practice is on the level that service providers can implement them in their operations. E- invoicing regime is mandatory only for public sector.

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller.

Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

VAT has to be charged on factoring commission by any service provider (banks and non-bank entities). Interests are not subject of VAT treatment, while the VAT treatment of discounts is not clearly regulated by existing VAT regulation. The Regulator did not provide clear definition of “the discount” nor the distinction between the discount from the NPL sale and the discount from regular factoring transaction (whereas the discount would equal to the interest charged and collected in advance). Consequently, service providers do not have harmonized practice. However, it prevails that the VAT is not charged on the discount.

In Croatia does not exist split payment mechanism of VAT and factoring service providers are not liable for any tax evasions perpetrated by suppliers. There is no “white lists” of any VAT related reporting duties for factoring service providers.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

The answer is the same as in 2021:

Generally, if there are grounds in the Civil Act and Insolvency Act, or in any other Act, it is possible that third party claims its rights from A/R, but this right has to be proved in Court. Retention of title as it exist in Germany, we do not have it. Third party can rightly claim its right from A/R if it has notified the buyer before any other party. The assignment is valid when the buyer is notified, therefore, whoever notifies it first, and this party has the right. Multiple assignments of the same A/R are not legal. These rules are general and there is no differentiation regarding the product/service/transaction.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective? Is there any requirement for registration?

The answer is the same as in 2021:

It is possible that the supplier and the buyer agree prohibiting against assignments clause and it is legally valid – assignment is not valid if such clause exists or if the buyer's consent for the assignment is not obtained (if such condition is stipulated).

In case some receivables cannot be assigned by some law or by their nature cannot be assigned or they are of strictly personal nature, the Assignment Agreement is not legally valid.



Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance?

No.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

The answer is the same as in 2021:

In Croatia it is most common to take fixed charge over fixed assets (mortgage) as a security for financings or other risk products. If short term asset is taken as a security (f.ex. stock, receivables), it is possible to do it as a floating charge. It can be done only on receivables or stock, or over all assets, depending on what has been agreed. Fixed and floating charges have to be publicly registered if they are done in the form of “pledge”. Receivables can be agreed as a floating charge in the form of general assignment of (future) receivables and this assignment does not (and cannot) be publicly registered. Fixed and/or floating charge security are very rarely taken in addition to the assignment of receivables (in factoring operations).

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

The same answer as in 2021:

The Civil Act does not forbid undisclosed operations or non-notification of the buyer, but it regulates that who first notifies the buyer, gets the right over the A/R. Consequently, if a supplier and a factor sign an assignment agreement, which is not disclosed to a buyer, the buyer can pay to some other party if this party has notified the buyer first.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

The same as in 2021: There are no differences in the legal status if the assignment is made in fulfilment of a purchase contract of these receivables or assigned to collateralise a financing facility. A pledge on receivables, as a collateral of a financing facility is very rarely used.

There are some differences in types of assignments: a part from standard (simple) assignment, that is most commonly used, there is an assignment “instead of fulfilment” and “for fulfilment”. In the case of the assignment “instead of fulfilment”, the debtor’s obligation ceases upon the signature of the assignment (in the value of assigned amount). In the case of the assignment “for fulfilment”, the debtor’s obligation ceases when the assignor collects the assigned amount.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer approx 99% (est.)
- Cheque 0%
- Bill of Exchange less than 1% (est.)
- Other instruments L/C's – less than 1% (est.)

In Croatia payments are mostly done by bank transfer. Bill of Exchange are occasionally (very rarely) used. Cheques or any other payment instruments for domestic payments are not used. In factoring business share of BoE is negligible (less than 0,5%).

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

Non-Recourse Factoring – it should not have any effect except for collection of due interest and fees (possible non-payment risk), for which the financier has to make a decision whether to register its claims within the bankruptcy procedure.

Recourse Factoring - In case a formal purchase of receivables has been stipulated in a factoring agreement, the insolvency of the supplier should not deteriorate the financier's position if it can collect receivables from the buyer. Otherwise, it surely weakens its position.

Invoice Discounting is not present in Croatia; Structured Financing, Guarantees, Protection against default – these services, if they are structure within “factoring” transaction, than the supplier/seller should have little impact since these service would be based on the buyer's creditworthiness. Otherwise, the financier would have to register its claims within the bankruptcy proceeding (within which, such claims would not be prioritized over possible workers and State's claims & other banks' collateralized claims)

Cross Border – the same position as with above explained for non-recourse/recourse factoring.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

In case of insolvency proceedings, the appointed administrator decides about the continuance of business operations, the continuance with outstanding contracts and proposes how to repay the creditors. Creditors who have fixed or floating charges that are publically registered have the priority in repayment. In case there is no pledge on assignments publically registered (which practice is extremely rare) and only the assignment is signed (as a collateral), there is no priority in repayments. Only in case the creditor received the payment from the factor, based on the assignment, the factor retains the repayment right from the debtor.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

The Restructuring Directive 2019/1023 is not yet implemented nor it is in the process of implementation. There are now new insolvency laws or significant changes related to the insolvency process nor those ones related to Covid-19 pandemic.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt?

In case of receivables purchased through a regular factoring agreement it shouldn't be deemed as part of the insolvency assets unless insolvency administrator finds a solid ground for a dispute of the respective transfer of the ownership title

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

The creditor has the right to charge penalty interests to the debtor. The legal penalty interest rate is in the amount of the National Reference Rate + 8 bp. It can be agreed lower penalty interest rate, but not higher than the legal penalty interest rate valid on the contract day. The Croatian National Bank establishes the National Reference Rate 2 times per year. Any contract stipulation with which the creditor waives this right is null and void. We have implemented norms as per EU Late Payment directive 2011/7/EU. We do not have legal confirmation that these norms are stricter than EU Directive.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Croatia did not ratify UNIDROIT nor UN Convention nor such ratifications are planned in the near future.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

It is possible to stipulate which law (of which country) will be applied, in case of international agreements. In case it is stipulated Croatian Law, the Civil Act regulates the assignments.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

Since Croatia hasn't ratify UNIDROIT Convention, the adoption of the Model Law on Factoring has little / no relevance in a sense that some bureaucratic mechanism is triggered. However in case and when the Factoring Act is going to be under the revision, the Model Law should represent solid reference point.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

The same as in 2021:

There is no difference in assignment of debts against PA or B2B. Croatia has implemented e-invoicing Directive 2014/55/EU, which is in power since December 1<sup>st</sup> 2018.

Do PA debtors have the right to refuse the assignment?

YES NO

☒ ☐

If so, what consequences does this have?

The same as in 2021:

If there is a ban of assignment, the assignment of receivable is null and void.

## Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

Assignment of receivables is used often in business and in factoring operations. In Croatia, it is a widespread practice that assignments are signed by debtors, so the dispute risk is next to zero. The interesting fact is that our Civil Act, in the Article 84, stipulates that the debtor can raise against the Assignee only those claims he could have raised until the notification date (in addition to other claims he might have against the Assignee).

## CY > Cyprus (answers from 2021 EUF Legal Study)

### Question 1 Legal requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐

NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☒ NO ☐

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (*i.e non-disclosed factoring with or without recourse*)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

No legal requirements to conduct business in receivables finance, unless a banking or finance institution that falls under the relevant laws and regulations.

Other entities should comply to the laws and regulations as per their memorandum of association.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

All anti-money laundering laws and regulations of international bodies/authorities applicable to banking and finance institutions

YES NO

☒ ☐ Capital requirements for credit, market and operational risks

For Banks and Financial Institutions

YES NO

☒ ☐ Data protection

All

YES NO

☒ ☐ Liquidity risk requirements

For Banks and Financial Institutions

YES NO

☒ ☐ IAS / IFRS accounting principles

Yes depending on the kind of the legal entity (SME, Corporate, public etc)

YES NO

☒ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

All

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

For Banks and financial institutions

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme

Not applicable

YES NO

☐ ☒ Reporting duties (e.g. AnaCredit, NSFR)

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

YES NO

☒ ☐ Rules and regulations on sustainability (environmental, social and governance – ESG)

Subject to related legislation/regulation applicable at any time

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

The Central Bank for Banks and Financial Institutions and the Ministry of finance and related bodies and authorities for other enterprises

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>6</sup>)?

No specific laws regarding the above exist.

Please describe the physical process for the assignment of receivables.

An agreement is signed between the factoring company and the supplier. Debtors are notified both by factors and suppliers about the agreement and the debtor's obligation to pay the factoring company

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Signing of agreement with stamp-duties and notification to the debtor

Are there any other requirements for a valid assignment?

No

Is it possible to assign future receivables by a so called "assignment in advance"?

No

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is sufficient, if the notice of the assignment clearly states that.

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

N/A or limited information for a reply

## Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or

<sup>6</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.

alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Receivables can be assigned electronically, subject to the contract having the proper provisions and describing the accepted and agreed methods. No requirement from Debtors to accept any assignment, notice is enough.

Cannot answer e-invoice-regime questions.

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

No

What is the VAT treatment of factoring commission/ service charge?

Chargeable at standard rate.

What is the VAT treatment of discount or interest?

Chargeable ONLY if service (collection, sales ledger administration etc) is provided.

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

No

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Not used

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

No (there is a VAT legislation)

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

No

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?



Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

N/A

### Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

The existence of a contractual agreement specifically referring to factoring - prohibition of assignment can be valid or not, depending on how this is put in the agreement.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance?

No.

### Question 7 Security Interests

*For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.*

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Can only be applicable on all assets.

Does a fixed or floating charge have to be publicly registered to be valid?

Must be registered to the registrar of Companies.

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

No, but can.

### Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

Mitigation actions depend to the factoring provider and the risk associated with the client.

Client audits, reconciliations, use of trustee accounts for collections etc

No GDPR effect since individual clients/debtors are excluded, unless there is written consent as provided by relevant legislation

### Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

No differences.

### Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- |   |                   |     |
|---|-------------------|-----|
| ▪ | Bank-Transfer     | 50% |
| ▪ | Cheque            | 45% |
| ▪ | Bill of Exchange  | 0%  |
| ▪ | Other instruments | 5%  |

(please give details, preferably also about similar estimates relating to factoring relations only)

No answer

### Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

Financier is the sole owner of the debts purchased in all the above cases

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

No impact

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring

(including changes made in response to the Covid-19-pandemic, which may be temporary)?

No answer

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No

### Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

No, late payment directive is followed

### Question 13 International Conventions

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

N/A

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

No Answer

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

A Factoring Law is under negotiation and final approval by the Ministry of Finance for enactment

## CZ > Czech Republic

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☐ NO ☒

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e. non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Generally, there are no obstacles and no special requirements for offering any of the a/m solutions.

At present, there is no definition or special legislation defining the issue of factoring. It is a contractual relationship, based on an innominate contract. We can partly rely on the Civil Code (Act No. 89/2012 Coll.), which regulates the assignment of receivables and defines general provisions on obligations.

B2C-factoring is not offered.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES ☒ NO ☐ Anti-money laundering

Factoring companies in the Czech Republic are subject to rules and requirements in the area of anti-money laundering, see Section 2 of Act No. 253/2008 Coll. on Certain Measures against the Legalization of Proceeds of Crime and Terrorist Financing (AML Act). Supervision of compliance with AML rules is carried

out by the financial regulatory authority FAU (Financial Analytical Office).

YES NO

☐
☒

Capital requirements for credit, market and operational risks

If the factoring company is part of a banking group, the rules within the banking group apply. It means for all group credit, market and OpRisk standards.

For CI/banks providing factoring, the capital requirements resulting from Basel III and the corresponding EU-legislation (Capital Requirements Regulation CRR and Capital Requirements Directive CRD) apply.

YES NO

☒
☐

Data protection

General requirements valid for any entity.  
The EU GDPR regulation applies in Czech Republic

YES NO

☐
☒

Liquidity risk requirements

If the factoring company is part of a banking group, the rules within the banking group apply. It means for all group accounting standards.

For CI/banks providing factoring, the liquidity requirements resulting from Basel III and the corresponding EU-legislation (Capital Requirements Regulation CRR and Capital Requirements Directive CRD) apply.

YES NO

☐
☒

IAS / IFRS accounting principles

There is no legal obligation to necessarily apply IAS/IFRS accounting rules.

If the factoring company is part of a banking group, the rules within the banking group apply. It means for all group accounting standards.

YES NO

☐
☒

Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

If the factoring company is part of a banking group, the rules within the banking group apply. It means for group clients segmentation standards. The limits / thresholds could be a bit different  
e.g. SME definition: Turnover between €3,75 - €75M or exposure min €2M.

YES NO

☐
☒

Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

If the factoring company is part of a banking group, the rules within the banking group apply. It means for all risk management standards

YES NO

☐
☒

Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

YES NO

☐
☒

Reporting duties (e.g. AnaCredit, NSFR)

The AnaCredit and as well NSFR reporting agents are banks and foreign bank branches that are resident in a reporting member state – i.e. in Czech Rep. If the factoring company is part of a banking group is the reporting done via the parent bank within the consolidation on the group level.

YES NO

☐
☒

Rules on payment services following the Payment Services Directive PSD II

Factoring is generally not considered as a payment service following the national implementation of PSD II. Factoring and commercial/receivables finance activity doesn't require a license.

YES NO

☐
☒

Rules and regulations on sustainability (environmental, social and governance – ESG)

If the factoring company is part of a banking group, the rules within the banking group apply. It means for all ESG standards.

Sustainable finance is increasingly becoming a mega-topic for the financial industry in Czech Republic as well. The change in social values as well as international initiatives by legislators and regulators are providing decisive impulses for this. Currently, no legally binding acts have been adopted.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

**Financial Analytical Office** for AML area. <https://fau.gov.cz/en>

**Czech National Bank** for bank institution <https://www.cnb.cz/en/>

**The Ministry of Finance** bears the general responsibility for the legislation regulating the financial markets, in which, nevertheless, factoring is not directly defined. <https://www.mfcr.cz/en/>

**Personal Data Protection Office** - for the protection of personal data <https://uoou.gov.cz/en>

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>7</sup>)? Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called "assignment in advance"?

<sup>7</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?  
Is transfer by way of subrogation possible? what are the requirements?  
Is it possible to transfer parts of a receivable or to make conditional transfers?  
Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

Transfer of ownership of receivables is governed by § 1879 et seq Act No. 89/2012 Coll., the Civil Code. By a contract, a creditor may, as an assignor, assign the entire receivables or part thereof to another person (an assignee) even without the consent of the debtor. By assigning of receivables, an assignee shall also acquire the accessories and rights associated with the receivable, including the security for the claim (receivable). According to Section 1881 It is possible to assign a receivable which may be alienated, unless excluded by a stipulation between the debtor and creditor. Until an assignor informs the debtor or the assignee proves the assignment of the receivable to the debtor, the debtor may be released from his duty by discharging his debt in favour of the assignor or making another settlement with him. If an assignor has assigned the same receivable to several persons, the assignment of which the debtor became aware first is effective against the debtor.

It is possible to assign also future receivables, they should be specified at least by stipulating of the legal title under which the receivables arise or the period during which the receivables arise. According to Section 1887 of the Civil Code, it is also possible to assign a set of claims, whether present or future, if such a set of claims is sufficiently determined, in particular with respect to claims of a certain kind created at a particular time, or various claims arising from the same legal cause. The assignment is valid between the assignor and assignee as of the moment agreed by the parties, however the debtor is bound by the assignment only after having been notified by the assignor or after assignee proving the assignment to the debtor.

As mentioned, future receivables can be assigned and the process of notification is not specified, but is an established practice to place a notice of assignment of receivable in the form of a special clause or supplement for each issued invoice relating to an assignment of receivable.

Subrogation exists in the Czech legislation. Up to now no connection or interference with factoring practice has been registered.

There are no specific requirements for assignment in Czech Republic to qualify as a true sale, usually the process offered by the factoring provider has to be accepted by the client's auditor.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?  
Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Theoretically valid assignment can be done via EDI and can be reached using electronic signature. Anyhow, according to available information, the leading factoring companies have not started to use such electronic processes up to now.

Directive 2014/55/EU of 16 April 2014 is mandatory for specific contractual situations on electronic invoicing in public procurement (i.e. only in the government/public sector). For usual factoring business is not relevant.

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?  
What is the VAT treatment of factoring commission/ service charge?  
What is the VAT treatment of discount or interest?



Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

There are no issues related to VAT and assignment of receivables. In standard way the factoring commission/fee and interest are subject to VAT. In exceptional cases (balance account factoring) can be interest charged to client considered as financial income to which VAT is not applied. If the factoring provider uses a discount similar way of charging (combining interest and commission in one item), VAT has to be applied. There are no differences in the VAT treatment between banks and non-banks.

The split payment mechanism is not directive in place in CZ. The factoring company is liable in the second degree after the seller (i.e. the seller's VAT is not paid) only in case that factoring paid for assignment of receivable to unreliable payor of VAT or to an "unpublished" bank account. The split payment mechanism is using only as an information about when is subject "unreliable payor of VAT" or its bank account is not published (registration in database of Ministry of Finance). For both information there are in Czech Republic the official web side of Ministry of Finance and the electronic pages for automatic control of this data. Factoring companies usually automatically verified this both information before every payment to their client / seller / assignors of receivables.

In case when the client / seller / assignors of receivables will not meet these rules, factoring company will probably terminate factoring agreement with this client.

In Czech Republic doesn't exist other "white lists" but exist regular "VAT reporting" which is sent by electronic way to Ministry of Finance specifically tax department. There are those "VAT reporting's" cross-check against each other.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables?

The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

The following third-party rights could affect the position of a factor regarding its rights to the supplier's receivables:

- if the supplier charges/pledges the receivables. If such charge/pledge has been registered in the registry of charges maintained by the notarial chamber, it is effective towards everyone and does not need to be notified or proven to the debtor.
- charge/pledge created by decision of financial authority as a security for tax or other fiscal claims.
- in case of multiple assignment of the same receivable by the supplier, the assignment that is first notified or proven to the debtor is effective towards the debtor.

Retention of title exists in Czech legislation but has no implications to factoring practice (in fact it is not used in daily business at all).



There are no significant differences in Non-Recourse and Recourse Factoring in this respect, but the factoring providers are using two different accounting schemes:

- financing as partial payment for assignment or
- financing as advance (in fact credit) granted against assignment.

Each of these two ways has its advantages (and, of course, disadvantages) and requires different approach in case of client's insolvency.

Generally, the use of invoice discounting is very limited in Czech Republic.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

The Czech Civil Code enables a contractual agreement between the parties prohibiting assignment of receivables arising in relations covered by the respective contract. It is not possible to assign a receivable which is extinguished upon death or the contents of which would change upon a change of the creditor to the detriment of the debtor. There are no differences between various types of the factoring products and there is no possibility to register the prohibition.

The Czech Civil Code does not stipulate effects of the breach of the contractual prohibition of assignment. There is an ongoing debate as to whether the breach of contractual prohibition results in absolute or relative invalidity of the assignment or whether the assignment stays valid, and the debtor has contractual claims against the assignor.

In practice, the assignments in such cases are apparently currently treated by factoring companies as null and void.

It will all depend on the decisions of the courts and the new case law (a precedent).

27 ICdo 30/2022, dated 27. 4. 2023 (Judgement) - The Supreme Court dealt with the legal consequences of a violation of the prohibition on assignment of a receivable in the case of an unwilling assignee, i.e. an assignee who knew about the prohibition (or restriction) of assignment, where it concluded that an assignment of a receivable made in violation of the prohibition or restriction agreed by the debtor with the creditor, of which the assignee was aware, is (temporarily) ineffective - namely until the debtor consents to the assignment of the receivable (even implicitly).

It can then be inferred from the Supreme Court's reasoning that in the case of a bona fide assignee, the protection of its interests would override the interests of the debtor. Thus, in such a case, an assignment of a receivable made in violation of a prohibition or restriction agreed by the debtor with the creditor, of which the assignor was not aware (and could not have been aware by exercising ordinary care), would be effective and would therefore also give rise to the substantive effects of the assignment of the receivable.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

Czech law allows for charge over a pool of receivables which may resemble floating charge, however it is untested and its treatment in insolvency is unclear. Such charge cannot be publicly registered.

Fixed charge under which the supplier/borrower is unable to deal with an asset is not provided for by Czech law. It is possible to create a negative pledge over the charged receivables which has to be registered in the registry of charges maintained by the notarial chamber. The negative pledge however only prevents the supplier/borrower to create further charges over the receivables.

Czech law provides for a charge over enterprise which encompasses all assets of the charger. The charge of enterprise has to be registered in the registry of charges maintained by the notarial chamber. It is not usually taken in factoring transactions.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

Funds collected by the supplier/borrower from the debtors will form part of insolvency estate of the supplier/borrower.

Creating security over the collection account(s) of the borrower/supplier could be an option how to lower the risk to some extent. However, there are not any specific risk minimisation or security options to facilitate undisclosed invoice finance operations.

See also our response to question 5 re multiple assignments.

General requirements for GDPR valid for any entity. Do the fact, that B2C-factoring is not offered, have the GDPR no impact to usual factoring business.

Undisclosed factoring is / can be also affected by the Act. No. 340/2015 Coll., the Contracts Register Act. however, this applies to situations where you deal with public entities, or this law applies to you.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

In case of factoring the purchaser obtains the right to collect the claim and is neither externally nor internally bound to refrain from collection.

In case of assignment to collateralise a financing facility as well as in case of pledge to collateralize such a financing facility the assignee is externally entitled to collect.

Funds collected by the supplier/borrower from the debtors will form part of insolvency estate of the supplier/borrower.

Creating security over the collection account(s) of the borrower/supplier could be an option how to lower the risk to some extent. However, there are not any specific risk minimisation or security options to facilitate undisclosed invoice finance operations.

See also our response to question 5 re multiple assignments.

General requirements for GDPR valid for any entity. Do the fact, that B2C-factoring is not offered, have the GDPR no impact to usual factoring business.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer 97%
- Cheque 0.1%
- Bill of Exchange 0.9%
- Other instruments 2%

(please give details, preferably also about similar estimates relating to factoring relations only)

In domestic transaction nearly 100% are paid by bank transfer, the other instruments are used only in export transactions.

in corporate business:

- Bank-Transfer
- Chequevery
- Bill of Exchange
- Other instruments

in majority for corp.business  
limited in export factoring  
very limited in export finance  
L/C in export finance

In Factoring

- Bank-Transfer
- Cheque

close to 100%  
very limited in export factoring

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

The rights of the financier and any possible threats and/or pitfalls will depend on, among other things, the method of resolution of insolvency of the supplier. The two main methods are bankruptcy and reorganization. Below we discuss the bankruptcy which, unlike reorganization, leads to winding up of the business.

Until the debtor has been notified of the assignment of receivables by the supplier to the financier, the debtor will have validly discharged its debt by paying to the supplier or, upon declaration of bankruptcy, to the insolvency administrator. Funds paid by the debtor in such situation will form a part of insolvency estate of the supplier and the financier will have a claim against the supplier for the handing out of the funds which will need to be registered in the insolvency proceedings and will have a ranking of unsecured claim.

Some of the effects of the decision that the insolvency of the supplier will be resolved by bankruptcy include:

the insolvency administrator may refuse to perform contracts for mutual performance that have not been performed in full by the supplier or the financier;

the right to collect the funds in respect of receivables that have been provided by the supplier as security passes from the supplier to the insolvency administrator (it passes from the financier to the supplier when the proceedings have commenced in case supplier applied for its own insolvency or later upon declaration of insolvency of supplier in case a creditor of supplier filed the insolvency petition);

it is not possible to set off receivables against the debtor where the conditions for the set off have not been satisfied prior to the resolution;

secured creditors have the right to satisfy their claims from the sale of the asset provided as security subject to certain mandatory deductions such as, among other things, the costs of the sale of the asset and remuneration of the insolvency administrator;

In case of cross border financings, the effects of the insolvency of supplier may be different under the EU Insolvency Regulation.

Non-Recourse Factoring and Recourse Factoring:

There are no differences, more important is the legal and accounting framework. If the financing is declared as partial payment for the assignment, there is right to collect up to the percentage of advance. If the financing is declared as advance (credit), the factoring provider has to set-off his financing against receivables in the same value to have unchallenged title to them.

Structured Financing, guarantees to third parties, protection against third party default: these products are not in the standard offer of factoring companies.

[Should insolvency proceedings be conducted, what is the impact of taking a charge a\) in terms of keeping the business under administration trading to complete outstanding contracts and b\) in terms of priority? \(see Q 7\)](#)

See our responses to question 11 above.

[How is your country implementing the Restructuring Directive \(EU\) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring \(including changes made in response to the Covid-19-pandemic, which may be temporary\)?](#)

Since 2017, 9 new laws on the Bankruptcy Act and Ways of Resolving It (Insolvency Act) have been adopted in the Czech Republic.

In response to the current situation regarding the spread of the Covid-19 disease, the Ministry of Justice has prepared a set of measures to mitigate the effects of the epidemic in context with the insolvency law.

The set of new measures, the so-called lex covid justice II, expands the range of facts important for not cancelling the approved debt relief, or prolongs the possibility of suspending the implementation of the reorganization plan without the threat of turning the reorganization into bankruptcy.

[Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.](#)

Yes, it is possible a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller.

It is not possible to determine unambiguously, and it will depend on a number of circumstances, such as the contractual conditions of the factoring company (reasons for withdrawal from the contract on assignment of receivables, liability for the recoverability of assigned receivables, etc.)

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

EU Late Payment directive has been implemented. The implementation has not influenced the behaviours in the daily business and has practically no implications. Charging of delay interest is mostly a commercial decision of the supplier.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

These Conventions have not been ratified yet and it is not expected that it should happen in the near future.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

Yes, it is possible a (contractual) choice of law possible between an assignor and an assignee. Governing law for assignment and transfer.

For the law governing the assignment of receivables and the contractual relation, article 14 (1) and (2) of the Rome I Regulation applies (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations).

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

This is soft law. We are currently analysing it.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☒ NO ☐

Czech law provides that all civil law contracts entered into by public administrations must be, subject to certain exemptions, registered and published in the so called "contracts' registry". As of 1 July 2017, contracts that must be registered and published, will only become effective when published and will be terminated by operation of law if not published within three months from the date it has been entered into.

In addition, the contracts that are subject to the above-mentioned publication must be entered into in writing.

Directive 2014/55/EU of 16 April 2014 mandatory for specific contractual situations on electronic invoicing in public procurement.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

Please see the answer to question 6 above as regards the breach of contractual prohibition of assignment.

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No other matters.

## DE > Germany

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐  
NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☒ NO ☐

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Factoring is defined by the German Banking Act (Kreditwesengesetz - KWG) as a financial service which comprises “the continuous purchase of receivables on the basis of a framework agreement, with or without recourse” (cf. § 1 para. 1a no. 9 KWG). This definition of factoring comprises all kinds of factoring as long as there is an ongoing purchase or acquisition of receivables based on a framework agreement which serves a financing purpose. This generally includes factoring with and without recourse, non-disclosed factoring and also cross-border factoring. In the area of financial supervisory requirements, no distinction is made with regards to B2B and B2C factoring; both kinds of factoring are offered in Germany, with mainly consumer and data protection laws having a particular effect on B2C factoring. However, some kinds of factoring (e.g. maturity factoring) are considered not to serve a financing purpose and are hence not included in the scope of the legal definition in the KWG. For further details, please consult the information on factoring provided by the BaFin on its website [www.bafin.de](http://www.bafin.de) (e.g. the leaflet on factoring dated January 5, 2009: “Merkblatt Factoring”).

As a financial service (“Finanzdienstleistung”) in the meaning of the KWG, factoring is subject to financial regulation. Therefore, factoring companies require a license from the German financial regulatory authority BaFin (“Bundesanstalt für Finanzdienstleistungsaufsicht”). Providing factoring services within the meaning of § 1 para. 1a no. 9 KWG without such a license constitutes a criminal offence.



Financing products based on lending against collateral are considered banking business and therefore require a banking license in accordance with German Banking Act. The same applies to banking services such as deposit transactions and issuing guarantees or sureties. The service of protection against third party payment default provided as a (commercial) credit insurance is considered an insurance service and therefore requires a license under the German Insurance Act (Versicherungsaufsichtsgesetz – VAG).

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☒ NO ☐

Since the beginning of 2024, factoring companies which want to be licensed as “Finanzdienstleistungsinstitut” (cf. § 1 para. 1a no. 9 KWG and above) need to have at least two managing directors according to § 33 para. 1 no. 5 KWG.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES ☒ NO ☐

Anti-money laundering

Factoring companies in Germany (both CI/banks as well as financial service institutions („Finanzdienstleistungsinstitute“) are subject to rules and requirements in the area of anti-money laundering, cf. § 2 para. 1 no. 2 GwG (AML Act) and § 1 para. 1a sentence 2 no. 9 KWG (Banking Act). Compliance with AML rules is supervised by the financial regulatory authority BaFin.

Due to several changes to the GwG over the last years (also to implement EU directives), the BaFin issued/updated guidelines (general part) on how to interpret the amended/new GwG in 2021 and 2024:

[https://www.bafin.de/DE/Aufsicht/Geldwaeschepraevention/Rechtsquellen/BaFin\\_Vorgaben/BaFin\\_Vorgaben\\_node.html](https://www.bafin.de/DE/Aufsicht/Geldwaeschepraevention/Rechtsquellen/BaFin_Vorgaben/BaFin_Vorgaben_node.html).

The factoring-specific guidelines with explanations and examples on how certain AML rules apply to factoring which were approved by BaFin and published in 2012 have not been updated since, but are still available online: [https://www.bafin.de/SharedDocs/Downloads/DE/Auslegungsentscheidung/dl\\_ae\\_auas\\_factoring.html](https://www.bafin.de/SharedDocs/Downloads/DE/Auslegungsentscheidung/dl_ae_auas_factoring.html). There are currently no plans for an update of these guidelines as a factoring specific addendum to the BaFin guidelines, but the latest BaFin guidelines (general part) also contain factoring-specific elaborations.

YES ☐ NO ☒

Capital requirements for credit, market and operational risks

For CI/banks providing factoring, the capital requirements resulting from Basel III and the corresponding EU-legislation (Capital Requirements Regulation CRR and Capital Requirements Directive CRD) apply.

For financial service institutions („Finanzdienstleistungsinstitute“) providing factoring, § 2 para. 7a KWG establishes explicit exemptions from the aforementioned capital and liquidity requirements.

However, all factoring companies have to fulfill minimum requirements on risk management as issued by the financial regulatory authority BaFin („Mindestanforderungen an das Risikomanagement – MaRisk“). These also include certain fundamental and general requirements with regard to e.g. capital adequacy.

YES ☒ NO ☐

Data protection



As soon as factoring companies handle data of natural persons (in contrast to legal persons), such personal data falls within the scope of in particular the German data protection law (BDSG) and since mid-2018 also under the European General Data Protection Regulation, to which German data protection laws have been adapted. Please note that arguably data protection rules also apply to sole traders and, particularly, partnerships and not only to consumers.

YES NO

☐ ☒ [Liquidity risk requirements](#)

For CI/banks providing factoring, the liquidity requirements resulting from Basel III and the corresponding EU-legislation (Capital Requirements Regulation CRR and Capital Requirements Directive CRD) apply.

For financial service institutions („Finanzdienstleistungsinstitute“) providing factoring, § 2 para. 7a KWG establishes explicit exemptions from the aforementioned capital and liquidity requirements.

However, all factoring companies have to fulfil minimum requirements on risk management as issued by the financial regulatory authority BaFin („Mindestanforderungen an das Risikomanagement – MaRisk“). These also include certain fundamental and general requirements with regard to e.g. liquidity.

YES NO

☐ ☒ [IAS / IFRS accounting principles](#)

There is no general applicability of IAS/IFRS accounting rules for German factoring companies; rather, national GAAP (according to the German Commercial Code HGB) apply. However, GAAP applies to many factoring companies in accordance with general principles.

YES NO

☐ ☒ [Transparency and supplier/seller information for SMEs or corporates \(EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.\)](#)

Other than certain transparency requirements based on the German AML Act (cf. above), factoring companies are not subject to specific transparency and supplier/seller information for SMEs or corporates. Depending on the factoring company's size, ESG reporting and transparency requirements (e.g. from the CSRD or the German corporate sustainability due diligence act Lieferkettensorgfaltspflichtengesetz – LkSG) may apply at least for upstream contractual relationships.

YES NO

☒ ☐ [Risk management \(covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance\)](#)

All factoring companies have to fulfill minimum requirements on risk management as issued by the financial regulatory authority BaFin („Mindestanforderungen an das Risikomanagement – MaRisk“). These include, inter alia, general rules and requirements for business operations and internal controls, management of certain risk types such as operational risk, internal auditing, outsourcing.

For certain specific issues, special laws, regulations and guidelines exist, e.g. regulatory requirements for IT in banks (BAIT, which will soon be replaced by requirements resulting from the DORA regulation due to German legislator's "goldplating" implementation of DORA regulation).

YES NO

☐☒

## Contribution to the Deposit Guarantee Scheme

If applicable, what is the basis of the contribution to the DGS for factoring companies

Contributions to the Deposit Guarantee Scheme(s) only need to be made by deposit taking credit institutions; therefore, this does generally not affect factoring companies.

YES NO

☒☐

## Reporting duties (e.g. AnaCredit, NSFR)

For CI/banks providing factoring, a larger number of reporting duties incl. , AnaCredit, NSFR, large exposures, reporting duties on e.g. changes in the institution's management, etc. apply. For financial service institutions ("Finanzdienstleistungsinstitute") providing factoring, the exemptions contained in § 2 para. 7a KWG entail a limited number of reporting duties, comprising inter alia reporting of exposures exceeding 1 million Euro ("Millionenkreditmeldungen") as well as reporting duties on e.g. changes in the institution's management.

Depending on the factoring company's size, ESG reporting and transparency requirements (e.g. from the CSRD or the German corporate sustainability due diligence act Lieferkettensorgfaltspflichtengesetz – LkSG) may apply at least for upstream contractual relationships.

YES NO

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## Rules on payment services following the Payment Services

Directive PSD II

Factoring is generally not considered as a payment service following the national implementation of PSD II ("Zahlungsdiensteaufsichtsgesetz – ZAG"), although there can be grey areas where a distinction needs to be made based on the merits of the individual case. Payment service providers with a license under the ZAG do not need a separate license under the Banking Act KWG to provide factoring services (§ 32 para. 6 KWG).

YES NO

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## Rules and regulations on sustainability (environmental, social and governance – ESG)

In late 2019, the BaFin issued non-binding guidelines on handling risks related to sustainability issues ("BaFin-Merkblatt zum Umgang mit Nachhaltigkeitsrisiken") which were to complement the minimum requirements on risk management as issued by the financial regulatory authority BaFin („Mindestanforderungen an das Risikomanagement – MaRisk“). In 2023, these MaRisk were updated to include binding requirements on handling ESG-related risks.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) and Deutsche Bundesbank together regulate factoring companies (financial regulatory authorities). For large/systemic relevant banks/CI (including banking groups), the ECB is the competent financial regulatory authority.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>8</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

§§ 398 ff. and 453 German Civil Code (Bürgerliches Gesetzbuch – BGB) govern the sale and transfer of receivables by assignment, § 354a German Commercial Code (Handelsgesetzbuch – HGB) contains specifications on the validity of prohibitions of assignment in commercial/B2B- transactions.

Factoring in Germany is based on an assignment subject to the purchase of the receivable, so in addition to the agreement on the assignment, the parties need to agree on the purchase of the receivable which, however, can occur in the same contract. This is commonly done by either sending the invoices to the factor or transmitting invoice data electronically to the factor. For the assignment, no particular physical process is necessary; the parties have to agree on which specific receivables are to be assigned. In the case of an assignment in advance, the assigned receivables must at least be determinable with regard to its legal basis, its object, its amount and debtor.

With the agreement between the assignor and the assignee, the transfer of ownership is completed. As regards the assignment of future receivables, the assignment will become effective when such future receivables come into existence.

## Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures.

If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country?)

Is the e-invoicing-regime mandatory for specific contractual situations?).

A receivable can be validly assigned using an Electronic Data Exchange message. There are no other requirements; such agreements are even valid when entered into orally only.

The e-invoicing Directive was implemented into German law in November 2018, in particular by changes to the Act on E-Government (“E-Government-Gesetz”) and a corresponding regulation (E-Rechnungs-Verordnung). Since the end of November 2020, e-invoicing is mandatory for all invoices sent to public authorities, including state-owned companies. In

<sup>8</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

B2B-relationships, e-invoicing will become mandatory gradually between the beginning of 2025 and the end of 2027.

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

§ 13 c of the German VAT Act (Umsatzsteuergesetz – UStG) establishes a contingent liability of the assignee for the VAT obligation of the assignor arising from the assigned receivables to the extent the receivables comprise German VAT: If the assignor does not fulfill his duty to pay VAT on the assigned receivable, the assignee can be held liable instead if and to the extent the assignee collects such receivables. There are ways for factoring companies to mitigate this liability; the most frequently used solution offered by the VAT administrative instructions/implementing standards (Umsatzsteuer-Anwendungserlass - UStAE) was disputed between the tax authorities and the German Federal Fiscal Court. In 2017, changes to the wording of § 13c UStG were made in order to clarify that no secondary VAT liability should arise if and to the extent a consideration in cash is paid by the factor/assignee to the assignor, thereby turning the decisive part of the aforementioned solution from the UStAE into a formal law.

In case the servicing is not retained by the assignor, the service provided by the factor which is subject to VAT is the debt collection plus (in the case of factoring without recourse) the default protection. The factor's base for levying VAT is the difference between the nominal value of the assigned receivables and the amount the factor pays his client as purchase price for these receivables, including any factoring fee but minus the VAT-amount contained in the difference. Therefore, in the end the factoring fee is subject to VAT.

If the factor does not take over the debt collection, then the assignment is an exempt service (cf. § 4 nr. 8 lit. c UStG) and the client's debt collection is not subject to VAT as it is considered either not as a service by the client for the factor or as an ancillary service to the VAT exempt service. In this case, German tax authorities consider that the factor pays the purchase price for the receivable and in addition to that grants a loan/credit while the client in return assigns the receivable. The granting of the credit is exempt from VAT (cf. § 4 nr. 8 lit. a UStG) as is the client's assignment, but there is an option to submit this to VAT for B2B-relations (cf. § 9 para. 1 UStG).

There are no differences in the VAT treatment between banks and non-banks engaged in receivables financing. Factoring is subject to the same VAT-rules regardless of whether banks/credit institutions or non-banks/non-credit institutions provide the factoring services.

Split payment mechanisms, "white lists" and other VAT-related reporting duties do not exist for factoring companies in Germany.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables?

The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in

advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights

- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

German law recognizes the advance assignment of receivables. "Blanket assignments" ("Globalzession") are often used as collateral for bank loans. Furthermore, the extended retention of title ("verlängerter Eigentumsvorbehalt") is commonly used in trade transactions. This often leads to the question of which assignment is valid. Generally, this is decided by the temporal priority of one assignment over the other. However, there is case law from the German Federal Court of Justice (Bundesgerichtshof) on the question of if and when the factoring assignment takes precedence over a chronologically previous assignment: The extended or prolonged retention of title contains an advance assignment of future receivables which come into existence when the merchandise is sold onwards; if the prolonged retention of title also contains an authorisation for the buyer to administrate and collect the receivables from onward sales on behalf of the pre-supplier (which is the common practice in Germany) a decision of the Federal Court of Justice dated 1978 states that the chronologically later non-recourse assignment to the factoring company is nevertheless valid as the authority of administrating and collecting the account receivables entails such an assignment within a non-recourse factoring agreement, as long as the advances of the purchase price to be paid by the factor to the client are in excess of the pre-supplier's claim, which means that the client must be in the position to pay the pre-supplier with the money he receives from the factor. This is however only the case with non-recourse factoring; if a receivable is assigned on a recourse basis to a factor after it has already been assigned to the pre-supplier, then the chronological priority principle is applicable. In case of staff hire or temporary employment businesses, the social security contributions have priority, even if the receivables have been assigned to a factor. These (third party) rights do not have to be publicly registered or notified to be valid.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country?

What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Yes, pursuant to § 399 German Civil Code (BGB), contractual bans on assignments can be agreed upon between the original creditor and the debtor. However, there is a special rule for the assignment of receivables from commercial/B2B-transactions in § 354a German Commercial Code (HGB) according to which the assignment is nevertheless valid. However, the debtor can choose whom to pay: payment to the assignor will discharge the debtor just as much as payment to the assignee, regardless of the debtor's knowledge of the

assignment. Likewise, the debtor will have all rights of set-off against the factor that are available to him against the assignor.

Generally, only an agreement between assignor and debtor is needed to make the prohibition effective. There are no requirements for registration.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

In some cases, suppliers of the factoring client have a clause in their terms and conditions that does not explicitly forbid the factoring client from entering a factoring agreement but contains certain requirements which the factoring client has to fulfil vis-à-vis the supplier (e.g. notification, permission). Some of these clauses are close to bans on assignments or do at least hinder factoring. It is currently not clear what legal consequences such a clause can have on a factoring agreement that is concluded and followed through despite and in violation of such a clause.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

There are no floating charges under German law. “Blanket assignments” (“Globalzession”) are often used as collateral for bank loans and can therefore collide with the assignment of receivables to factoring companies (cf. above).

As for existing and future receivables, they may be assigned by way of security to a creditor. Such assignments are valid to the extent that no supplier has or will have a prolonged retention of title relating to the receivables.

A fixed charge does not have to be publicly registered to be valid.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

One of the main risks with undisclosed/non-notification factoring (in Germany often referred to as “silent factoring”) is the risk of the factoring client receiving the payments due from the debtor and not forwarding them to the factoring company (forwarding risk or commingling risk). Security options to minimise this risk can inter alia include granting the factoring company control over the bank account into which payments are made by the debtors, either through the factoring company being the (only or second) account holder or through pledging the account in question to the factoring company or through a trustee relationship, with the factoring company as trustor.

Any laws requiring or leading to the (indirect) disclosure of non-notification factoring can present a problem in this regard. This includes e.g. the GDPR, but the impact has so far been limited as the GDPR only applies to personal data from natural persons, not enterprises, and non-notification factoring is generally B2B factoring.



## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

Generally, only non-recourse factoring is considered a purchase and leads to transfer of ownership according to e.g. German Tax Law.

Assignments by way of security will be considered as collaterals securing a credit; Such assignments are valid (subject to the non-existence of prolonged retention of title rights). In the case of borrower's insolvency, however, the insolvency practitioner/liquidator will collect, and will keep a 9% share for the estate while paying out the rest to the lender.

Pledges of receivables have to be notified to the debtor to be valid, and are unlikely to be used in most cases.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

No exact percentages available. The predominant form of payment for corporate businesses is bank transfer.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

Non-recourse factoring enables the factor to continue collecting the receivables outside the insolvency proceedings. As owner of the receivable, the factor is entitled to segregation of the assigned receivables. From a practical point of view, it is decisive whether the debtors pay into accounts of the factor or the seller. In the latter case, there is a risk that such monies are commingled with the assets of the seller and, accordingly, form part of the insolvency estate. With recourse factoring, collection will be with the insolvency practitioner/liquidator, who has to pay out 91% of the proceeds to the factor. Due to (in some cases) wide interpretations of the requirements for contestations of wilfully disadvantageous transactions according to insolvency law (insolvenzrechtliche Vorsatzanfechtung) by courts (especially the Federal High Court of Justice – Bundesgerichtshof), such contestation proceedings have over the last years been frequently initiated by insolvency practitioners against factoring companies, even though the transactions could not be considered wilfully disadvantageous at first sight. In 2017, changes to the relevant laws (in particular to § 133 Insolvency Code –

Insolvenzordnung) have been made and it currently seems that these changes have effectively curtailed the number of (successful) contestations at least somewhat.

Inventory finance will allow the lender to claim 91% of the proceeds of inventory from the insolvency practitioner/liquidator who has the right of sale.

Guarantees to third parties are subject to banking supervision. In case of the insolvency of the client, payment may be demanded from the guarantor.

Protection against third party payment default provided as a (commercial) credit insurance is considered insurance and subject to licensing and supervision. In case of insolvency of the client, such agreements are likely to end.

Direct cross border and 2 Factor Cross Border factoring issues depend on the law governing the receivable. Experience shows, however, a certain reluctance of insolvency practitioners/liquidators to get deeply involved with conflict of law rules; they may wish to simply use German rules even if another law would apply.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

If a contract imposing mutual obligations has not been completely fulfilled yet, the insolvency practitioner has the right of choice according to § 103 Insolvency Act (Insolvenzordnung). Certain creditors are treated preferentially, e.g. owner/proprietors of goods or rights, cf. §§ 47 ff. InsO.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

The Restructuring Directive was implemented into German law by introducing a Restructuring Act (Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen – StaRUG) which was passed very speedily in the 4th quarter of 2020 and entered into force on January 1st, 2021. It introduced a completely new procedure outside of the traditional insolvency laws. The StaRUG and its procedures have not been widely used so far, with 22 procedures in 2021, 27 procedures in 2022 and 56 procedures in 2023. Despite expectations to the contrary, no (major negative) effects on factoring have been noticeable so far.

During the Covid19-crisis, the German legislature passed several laws and regulations to mitigate the negative economic effects of the crisis. This includes e.g. the temporary suspension of the legal requirement to file for insolvency in case of overindebtedness or illiquidity. This temporary suspension was altered and extended several times since March 2020, and finally ended in mid-2021. Since then, the number of business insolvencies has increased, but even though the number of business insolvencies in 2024 is substantially larger than before the Covid19-crisis started, the increase is still not as dramatic as originally expected and has not reached the 2015-level.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

Non-recourse factoring enables the factor to continue collecting the receivables outside the insolvency proceedings. As owner of the receivable, the factor is treated preferentially in comparison to other creditors and is entitled to segregation of the assigned receivables, cf. §§ 47 ff. InsO.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?



The EU Late Payment Directive was implemented into German law in 2014, also by introducing some new boundaries to contractual terms of payment/payment targets which were not foreseen in the EU directive (i.e. stricter implementation/"gold-plating"). Late payment interest for payment claims from B2B-transactions is 9 % above base interest rate which since January 2024 amounts to 3.62%; for consumers, it is 5 % above base interest rate.

### Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

The UNIDROIT Convention on International Factoring (1988): Yes

The United Nations Convention on the Assignment of Receivables in International trade (2001): No

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

There is no clear rule on this in the German rules on conflict of laws, but the predominant view seems to be that the law of the assigned receivable is applicable.

A contractual choice of law is possible. In the case of conflicting and contradictory terms and conditions, any contradiction is solved by referring to the general legal rules, while non-contradictory terms and conditions continue to apply alongside each other.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

Given that the German Banking Act (KWG) contains a definition as well as supervisory requirements for factoring and that the German civil/contract law contains rules which also cover and regulate factoring, the UNIDROIT Model Law on Factoring up to date has no relevance.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☒ NO ☐

An assignment of tax receivables must be notified to the competent tax authorities (Section 46 of the Tax Code/Abgabenverordnung).

The e-invoicing Directive was implemented into German law in November 2018, in particular by changes to the Act on E-Government ("E-Government-Gesetz") and a corresponding regulation (E-Rechnungs-Verordnung). Since the end of November 2020, e-invoicing is mandatory for all invoices sent to public authorities, including state-owned companies.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

**Question 15 Any other Matters**

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

The turnover of the members of the German factoring association (Deutscher Factoring-Verband e.V.) increased by 3.1% to over 384 billion Euro in 2023. In 2023, 106,400 clients were using the advantages of factoring as an alternative method of financing, especially in the medium-sized businesses. Hence, the factoring ratio, i.e. the ratio between the volume of purchased receivables (according to the turnover of the members of the German factoring association) and the gross domestic product (GDP), reached 9.3% in 2023. There is still room for growth in factoring, but the increase in turnover was rather modest in 2023, most likely due to the post-pandemic economic crisis with e.g. growing inflation rates, and international conflicts.

## DK > Denmark

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐  
 NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

We note, that collection of debt on behalf of others requires an authorisation, cf. the Danish Act on Debt Collection, i.e. an authorisation is required when receivables are pledged and the financiers do not purchase the invoices.

The provision of guarantees to third parties for obligations of the supplier constitutes suretyship insurance (in Danish: kautionsforsikring) which is a regulated activity that requires an insurance or banking licence, cf. the Danish Financial Business Act.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

No answer.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES ☒ NO ☐ Anti-money laundering

The Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism ("AML Act") applies, inter alia, to undertakings that commercially carry out factoring through a company or branch in Denmark, see Section 1(1), no. 12, cf. Annex 1, no. 2, to the AML Act. The AML Act does not apply to foreign undertakings that carry out factoring on a cross-border basis into Denmark.

YES NO

☐
☒

Capital requirements for credit, market and operational risks

No answer.

YES NO

☒
☐

Data protection

No answer.

YES NO

☐
☒

Liquidity risk requirements

No answer.

YES NO

☒
☐

IAS / IFRS accounting principles

IAS/IFRS are not parallel with the Danish accounting rules for SMV's. ANSWER FROM 2021

YES NO

☐
☒

Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

No answer.

YES NO

☐
☒

Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

No answer.

YES NO

☐
☒

Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

No answer.

YES NO

☐
☒

Reporting duties (e.g. AnaCredit, NSFR)

No answer.

YES NO

☐ ☒  
 Directive PSD II

Rules on payment services following the Payment Services

Please give details

No answer.

YES NO

☐ ☒  
 and governance – ESG)

Rules and regulations on sustainability (environmental, social

No answer.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

In Denmark there is no demand for a license to operate as factoring company. On the other hand FSA is concerned about different aspects of factoring when it comes to bank owned factoring companies and capital requirement.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>9</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

### Transfer of receivables

The transfer of ownership of receivables in relation to factoring may be done through a sale or a pledge. In Denmark, a pledge is normally used in relation to factoring.

Receivables may either be pledged by way of i) a separate assignment or ii) a floating charge.

Separate assignment:

Perfectured by notification of the assignment of receivables to the debtor, cf. the Danish Debt Instruments Act. The notice is normally printed on each invoice.

Future receivables may be assigned separately if the receivables can be described with sufficient clarity. This is generally the case, when the receivable relates to a contract creating reciprocal obligations. However, on the basis of Danish case law there is a risk that such security may be voidable in a later bankruptcy proceeding.

When the receivable can be described with the necessary clarity, the debtor may be notified of the assignment before the claim arises, e.g. when the contract is entered into. Such prior

<sup>9</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

notification is sufficient under the Danish Debt Instruments Act, i.e. the notification process does not need to be repeated when the (future) receivable comes to existence.

Floating charge:

Trade receivables may be assigned by way of a general floating charge. Perfection requires digital registration of the owner's mortgage in the Danish Personal Register and digital registration of the mortgage (in Danish: "underpantsætning") hereof to the financier, cf. the Danish Land Registration Act.

Trade receivables may also be assigned by way of a receivables floating charge which is perfected by digital registration of the mortgage (letter of indemnity) (in Danish: "skadesløsbrev") in the Danish Personal Registry.

In both cases, the registration does not need to be repeated each time a (future) receivable comes to existence but the registration must be renewed every 10 years.

The registration fee is 1.5% of the secured amount plus a fixed fee of DKK 1,660.

A mortgagor cannot use/register a general floating charge and a receivables floating charge at the same time.

Subrogation is possible under Danish law.

In regards to part/conditional transfer probably no.

"True sale"

In a true sale, the right of ownership is transferred from the supplier to the financier. Danish law operates on a principle of substance over form and in order for the sale to be considered a true sale (in Danish: overdragelse til eje), the purpose of the agreement must be to transfer ownership in the receivables to the purchaser.

Under Danish law, it is a specific assessment whether a receivables assignment can be qualified as a true sale. As the main criteria, the transfer must be secured against third party rights. However, even when the transfer has been perfected there is a risk that the transfer may be reclassified or of "see-through".

The following circumstances may be taken into consideration:

- The purpose of the transfer: The parties' characterisation of the transfer as a sale may be set aside if it is the intention that the transfer shall only have effect if the supplier does not repay the loan or becomes insolvent.
- Communication to third parties: It points towards a true sale if third parties have been notified of the transfer to the financier and the financier will handle all contact going forward.

Ownership rights: The characterisation as a true sale may be supported by the fact that the financier can sell or assign the transferred receivables.

- The supplier's control over the receivables: It speaks against a true sale if the supplier still has control over the assets. Generally, recourse finance, where the supplier must buy back receivables that the factor cannot collect payment on, will not be characterised as a true sale.
- The financier's interest in the asset: It must be considered whether the financier has a separate interest in the transferred assets, e.g. has the economic benefit of the asset.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor? Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

It is very common to make an electronic assignment via different standards, e.g. OIO format. It is mandatory to public debtors and many larger debtors, both locally and outside Denmark communicates via EDI or similar format.

An assignment text is added to the standard format and documentation is to be kept at the factoring company that the assignment text was included in the transfer

If electronical communication is demanded, however not possible, this can easily be arranged by a three party agreement and mail with assignment text when new assigned invoices.

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

Assignment of receivables is subject to VAT. The VAT basis is the difference between the price that the factoring company is paying for the receivable and the actual value of the receivable at the time of the assignment.

According to the Danish VAT Act, a seller has the right to deduct 80% of the VAT on irrevocable debts. When a receivable has been assigned, the new owner of the receivable succeeds in rights and obligations related to the receivable. However, the new owner does not have the right to deduct 80 % of the VAT on the irrevocable debt.

The commission for factoring is liable to VAT as it is considered collection of receivables. Interests are VAT exempted. The VAT treatment of discounts depends on whether the discount is conditional or not. Unconditional discounts are discounts provided at the time of delivery and these are not liable to VAT.

A conditional discount can be deducted from the VAT basis if (i) the discount must be executed before deduction from the VAT basis and (ii) a credit note with the discount and the VAT amount has been issued. The credit note must be sent to the buyer.

There are no difference between the VAT treatment between banks and non-banks engaged in receivables financing as the VAT treatment depends on the transaction itself and not the one performing the transaction.

For other questions, not applicable in Denmark

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

### Registered negative pledge

A negative pledge may be digitally registered in the Danish Personal Register. A registered negative pledge prevents registration of a general floating charge or a receivables floating



charge on a company's assets in the Danish Personal Register without the prior approval of the beneficiary of the negative pledge. It must be specified if the negative pledge should include assignment by way of a receivables floating charge. As mentioned under Question 2 above, a mortgagor cannot use/register both a general floating charge and a receivables floating.

A negative pledge does not preclude separate assignment. Please also see the answer to Question 6 below.

### **Third party creditor**

A registered general floating charge must observe attachment by a creditor of the receivable for execution purposes if the creditor notifies the financier of the attachment at the latest three weekdays after the attachment.

### **Objections or counterclaims from the debtor**

Generally, the financier does not have better legal rights against the debtor than the company that transfers the receivables.

Objections against the existence or validity of the receivable and connected counter claims which the debtor are entitled to raise against the supplier may also be enforced against the financier.

Unconnected counter claims can only be raised against the financier, if the counter claim is acquired before the debtor became, or ought to have become aware of the transfer to the financier and provided that the counter claim fell due no later than the factoring invoice.

Despite an agreement between seller and buyer of a prohibition of assignment this is not valid, as assignment of receivables is legally accepted anyway. Practically an assignment will not take place if agreed, as this can cause a termination of the commercial agreements between the parties, however it is legally not possible to establish a ban of assignment.

## **Question 6 Prohibitions against Assignments**

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

### **Registration of negative pledge**

A negative pledge may be registered in the Danish Personal Register or the Danish Personal Register, cf. the Danish Land Registration Act.

The negative pledge must specify who is entitled to take proceedings and in that way grant exemptions or deregister the negative pledge. A negative pledge only prevents assignment by way of a general floating charge and a receivables floating charge.

The registration costs are DKK 1,660 for registration in the Danish Personal Register.

The registered negative pledge prevents that a general floating charge or a receivables floating charge can be registered in the Danish Personal Registry and accordingly such security over the receivables cannot be perfected. When the negative pledge includes security that is already perfected later changes to the security cannot be registered without the prior approval of the beneficiary of the negative pledge, e.g. in relation to an increase in the security or a transfer of the security to a new pledgee.

### **Contractual prohibition**

A prohibition against separate assignment may be set out in the terms of the contract and is effective if it is agreed in compliance with general Danish contract law.



The contractual prohibition against separate assignment means that the debtor can pay the supplier with discharging effect despite the assignment of the receivable.

Despite an agreement between seller and buyer of a prohibition of assignment this is not valid, as assignment of receivables is legally accepted anyway. Practically an assignment will not take place if agreed, as this can cause a termination of the commercial agreements between the parties, however it is legally not possible to establish a ban of assignment.

Please also refer to answer under Q 5 for the discussion concerning floating charge.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

Under a general floating charge and a receivables floating charge, trade receivables are generally not allowed to be pledged or sold to another party without the factor's consent, cf. the Danish Land registration Act. However, the receivables remain payable to the supplier. A general floating charge and a receivables floating charge may be obtained on all trade receivables only.

Both a general floating charge and a receivables floating charge must be registered in the Danish Personal Registry to be valid. Please see the answer to Question 2 above.

A floating charge is taken as an alternative to separate assignment of receivables. The registration fee of 1.5% of the amount secured plus a fixed fee of DKK 1,850 makes a floating charge more expensive than separate assignment and Danish factoring setups most often use separate assignment and not a floating charge.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

Pledge of trade receivables need not be disclosed to debtors if it is done by way of a general floating charge or a receivables floating charge. Please see our answer to Question 2 above.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

No, there is no difference in the legal status of the assignment. Assignment can be done by way of a general floating charge, a receivables floating charge or separate assignment (i.e. notice to each debtor).

### Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

We are not aware of any statistics on these matters.

It can be mentioned that Danish banks have terminated the collaboration regarding cheques from 1 January 2017. Thereby, the separate banks are not obligated to accept cheques issued by other banks as a form of payment.

### Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

Danish insolvency law has two different types of insolvency proceedings, both governed by the Danish Bankruptcy Act. Either formal restructuring proceedings can be commenced or the company can be declared bankrupt.

#### Restructuring

Formal restructuring proceedings are commenced at the request of the debtor himself or of a creditor if the debtor is insolvent. Once the proceedings have been opened, the petition cannot be withdrawn. Restructuring proceedings may be discontinued only i) if the restructuring process is completed, ii) if the supplier's solvency has been restored, or iii) the restructuring proceedings are replaced by bankruptcy proceedings.

A restructuring administrator assesses whether the supplier's business, viewed in isolation, can be continued as a viable entity and draws up a restructuring plan and a restructuring proposal. The restructuring proposal must be considered at a meeting in the bankruptcy court no later than six months after the meeting at which the restructuring plan was presented and must include either a proposal for transfer of the assets or part of the assets to a third party, or a proposal for a compulsory composition.

A compulsory composition does not cover secured claims to the extent of the security granted. However, the factor is bound by the compulsory composition in respect of any unsecured part of the claim. The bankruptcy court can determine the value of a pledged asset and such valuation is binding in connection with the calculation of the financier's claim. Certain restrictions apply to the right to enforce security over the supplier's assets during restructuring proceedings. However, the right to satisfaction of claims secured by way of a pledge, including separate assignment, general floating charges on trade receivables and receivables floating charges is not affected by the restructuring proceedings.

**Bankruptcy**

In bankruptcy proceedings, the supplier's assets are realised and the proceeds distributed among the creditors as prescribed in the Danish Bankruptcy Act. Creditors that are not fully secured are allowed to recommend a trustee to act on behalf of the estate.

Generally, the assets of the estate (including pledged assets) will be administered by the trustee and the creditors' right to enforce their claims – including secured claims – individually against the supplier will cease once the bankruptcy order is issued. As such, the bankruptcy imposes a general ban on the enforcement of security, however subject to certain relevant exemptions, see below.

The right to satisfaction of claims secured by way of a pledge, including separate assignment, general floating charges on trade receivables and receivables floating charges is not affected by the bankruptcy of the supplier. In this relation, the bankruptcy of the supplier only entails that requests for payment and other notices also must be directed to the estate and that the estate is entitled to obtain a valuation of the pledged assets. If the estate wishes to take control over the receivables the estate must repay the factor.

Receivable assignments made less than three months prior to the date of the bankruptcy order are voidable if the assignments were not perfected without undue delay after the time of the assignment or the assignments constituted security for pre-existing debts. As such, security provided in the last three months prior to a bankruptcy is voidable to the extent that it exceeds the incurrence of debts in the same period.

When the supplier is declared bankrupt, the financier can terminate the factoring agreement as bankruptcy constitutes a fundamental breach of contract. The bankruptcy estate is not entitled to subrogate in the factoring agreement due to the legal nature of the relationship as an unfulfilled loan offer. Accordingly, there will be no further performance under the agreement and the financier must refer to his security.

**Pitfalls**

In relation to non-disclosed factoring, the debtor may pay in full satisfaction of the debt to the supplier. If the security is not perfected, i.e. registered in the Danish Personal Registry as a general floating charge or a receivables floating charge, the financier will not be able to claim the payment from the bankruptcy estate. Instead, the payment will be part of the assets of the bankruptcy estate and the financier will receive satisfaction in line with other unsecured creditors of the supplier.

Further, when the factoring agreement terminates with the commencement of bankruptcy proceedings the supplier is no longer obligated to buy back receivables that the financier cannot collect payment on under a recourse factoring agreement.

[Should insolvency proceedings be conducted, what is the impact of taking a charge a\) in terms of keeping the business under administration trading to complete outstanding contracts and b\) in terms of priority? \(see Q 7\)](#)

This is a matter of the (bankruptcy) estate to decide after dialogue with the creditors.

[How is your country implementing the Restructuring Directive \(EU\) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring \(including changes made in response to the Covid-19-pandemic, which may be temporary\)?](#)

Denmark has implemented 2019/1023 Restructuring Directive but it did not have effect on factoring companies.

[Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.](#)

If the receivables are pledged the portfolio is a part of the estates assets, however marked as pledged, normally to a factoring company or a bank (floating charge). If sold not a part of the estate.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Along with The Danish Ministry of Industry, Business and Financial Affairs and several other organizations, Finance & Leasing in early 2022 entered an agreement on the strengthening of a healthy payment culture in Denmark. The members of Finance & Leasing's factoring sector have played a very active role in making this code, which consists of five principles:

- 1) Businesses must keep supply chains sustainable, especially by acting responsibly with regards to obeying the law and keeping the terms of business agreements.
- 2) Payment agreements must be fair. As a general rule, the payment deadline is 30 days, but the parties are free to agree on other deadlines.
- 3) If a business, after agreeing on a specific payment deadline, experiences difficulty in keeping the agreement, the business must without delay make contact to the other party in order to alter the terms of their agreement.
- 4) In case of a dispute, a bilateral solution between two parties must be sought, in order to achieve a speedy resolution.
- 5) In addition, an assessment must be made on an ongoing basis of whether best practices can be used, for example those disseminated via the European Commission's Late Payment Observatory, the use of new payment methods, such as e-factoring, or the use of intermediate financing or other credit, for example. Factoring, debtor financing or Supply Chain Financing.

Link to The Danish Ministry of Industry, Business and Financial Affairs where the code can be viewed in its entirety: <https://godbetalingsskik.dk/>. The code was up for revision in 2023, but the revision resulted in no changes as there is a general acceptance of the code.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

No. We are not aware of any plans for Denmark to ratify the conventions.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

No answer.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

No answer.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the

PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

Same legal environment so if valid assigned and assignment text if forwarded to the PA no other specifications to look into. Same legal environment so if valid assigned and assignment text if forwarded to the PA no other specifications to look into.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No Answer.

## EE > Estonia

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☐ NO ☒

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (*i.e non-disclosed factoring with or without recourse*)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

No special requirements

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

Standard banking regulations (as factoring business is offered by commercial banks, all EU regulations are applied).

YES NO

☒ ☐ Capital requirements for credit, market and operational risks

Standard banking regulations (as factoring business is offered by commercial banks, all EU regulations are applied).

YES NO

☒ ☐ Data protection

Standard banking regulations (as factoring business is offered by commercial banks, all EU regulations are applied).

YES NO

☒ ☐ Liquidity risk requirements

Standard banking regulations (as factoring business is offered by commercial banks, all EU regulations are applied).

YES NO

☒ ☐ IAS / IFRS accounting principles

Standard banking regulations (as factoring business is offered by commercial banks, all EU regulations are applied).

YES NO

☐ ☒ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme

YES NO

Reporting duties (e.g. AnaCredit, NSFR)

☒ ☐

Reporting to NSFR.

YES NO

☒ ☐ Rules on payment services following the Payment Services Directive PSD II

YES NO

☒ ☐ Rules and regulations on sustainability (environmental, social and governance – ESG)

☒ ☐

The responding factoring company has defined their role as thought leader, active developer and committed member of the sustainability topics in Estonia. They have adopted the ESG principles and defined the commitment areas.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Bank of Estonia (Eesti Pank), Financial Supervision Authority (FI)

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>10</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

Law governing transfer of receivables is Law of Obligations Act.

Assignment is subject to contract between assignor (client in factoring) and assignee (factor). Valid for debtor (obligor in factoring) if notified about assignment (no formal requirements).

Assignment of future receivables is possible, this is essence of factoring business. According to Law of Obligations Act § 165- future claims and contingent claims may also be assigned if they are sufficiently defined at the time of the assignment.

Legally one time notification is sufficient, in practice transfer clause is written on every invoice also.

“True sale” is more concept of accounting principles and should be evaluated in context with certain assignment contract content. No specific requirements as such.

## Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the

<sup>10</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.



debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Assignment contract form is not specified in law. In practice, most contracts are in written form signed digitally.

Notification form to debtor is not regulated by law therefore such mark on e-invoice is theoretically ok. In practice, prior notification is done as many debtors (especially those using e-invoices) pay invoices automatically, therefore enter new receiver (e.g. Factoring company) and new account number into accounting system is essential. EDI invoices can be validly assigned.

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing? The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

Interest is VAT free, to commissions/service charges VAT is added (if service provider is VAT obligant).

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

The claims arising from the sales contract against obligor have been assigned by the client (obligee) before assignment to the factor to a third party and the factor has not been notified thereof. According to Law of Obligations Act § 164 subsection 3 if an obligee assigns one and the same claim more than once, the earliest assignment is deemed to be valid.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective? Is

there any requirement for registration?

Prohibition can be agreed, but not valid for third parties. Agreement between parties doesn't restrict assignment by law.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance?

No, not to our knowledge

## Question 7 Security Interests

*For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.*

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

We are not familiar with this concept.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

In practice, undisclosed financing is not common.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

Only exception is “commercial pledge” concept, where company assets are pledged to some credit facility under commercial pledge contract. Commercial pledge extends to receivables as well.

### Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer        %
- Cheque                %
- Bill of Exchange    %
- Other instruments    %

(please give details, preferably also about similar estimates relating to factoring relations only)

Bank-Transfer 100% - in relation to factoring.

### Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

In factoring buyers receivables are assigned to financier, financier is entitled to those receivables, they are excluded from bankruptcy estate. In case of financier have took risk of buyer (non-recourse factoring), financier have similar rights as other creditors.

In inventory financing certain goods are pledged to financier, financier have the right to sell those goods.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

We are not familiar with this Q 7 concept.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

No effect on factoring has been identified to our best knowledge.

No significant changes due to COVID-19-pandemic i relation to insolvency laws.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No.

### Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Yes- contractual penalties, penalty for late payment.

### Question 13 International Conventions and Models Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

No, not to our knowledge

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

Law of Obligations Act.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

No answer.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No answer.

## ES > Spain

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐

Anti-money laundering

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for money laundering or the financing of terrorism, and amending the Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Directive 2005/60/EC of the European Parliament and of the Council and Directive 2006/70/EC of the Commission are repealed.

YES NO

☒ ☐

Capital requirements for credit, market and operational risks

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 relevant text for the purposes of the EEA and Royal Decree 309/2020, of February 11, on the legal regime of financial credit establishments and which approves the Regulations of the Commercial Registry, approved by the Royal

Decree 1784/1996, of July 19, and Royal Decree 84/2015, of February 13, which develops Law 10/2014, of June 26, on management, supervision and solvency of credit institutions.

YES NO

☒ ☐ Data protection

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and the free circulation of these data. This text includes the correction of errors published in the OJEU of May 23, 2018.

YES NO

☒ ☐ Liquidity risk requirements

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and Commission Delegated Regulation (EU) 2015/61 supplementing Regulation (EU) No 575/2013 in regarding the liquidity coverage requirement applicable to credit institutions

YES NO

☒ ☐ IAS / IFRS accounting principles

Royal Decree 1/2021, of January 12, which modifies the General Accounting Plan approved by Royal Decree 1514/2007, of November 16; the General Accounting Plan for Small and Medium Enterprises approved by Royal Decree 1515/2007, of November 16; the Standards for the Formulation of Consolidated Annual Accounts approved by Royal Decree 1159/2010, of September 17; and the rules for adapting the General Accounting Plan to non-profit entities approved by Royal Decree 1491/2011, of October 24.

YES NO

☐ ☒ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Royal Decree 309/2020, of February 11, on the legal regime of financial credit establishments and which approves the Regulations of the Commercial Registry, approved by Royal Decree 1784/1996, of July 19, and the Royal Decree 84/2015, of February 13, which develops Law 10/2014, of June 26, on management, supervision and solvency of credit institutions.

YES NO

☒ ☐ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

If there are, only Banks on reimbursable funds.

YES NO

☒ ☐ Reporting duties (e.g. AnaCredit, NSFR)

Royal Decree 309/2020, of February 11, on the legal regime of financial credit establishments and which approves the Regulations of the Commercial Registry, approved by Royal Decree 1784/1996, of July 19, and the

Royal Decree 84/2015, of February 13, which develops Law 10/2014, of June 26, on management, supervision and solvency of credit institutions.

YES NO

☒ ☐ Rules on payment services following the Payment Services Directive PSD II

Royal Decree-Law 19/2018, of November 23, on payment services and other urgent measures in financial matters.

YES NO

☐ ☐ Rules and regulations on sustainability (environmental, social and governance – ESG)

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Bank of Spain.

## Question 2 Transfer of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge?<sup>11</sup>)

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such

notification Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

- Registration: No, there is no formal registry therefore not necessary to register.
- Stamp-duty or other documentary taxes: Assignments are not taxed.
- Notification should be made in a way that there is proof of delivery. For public debtors, the Law requests a reliable notification, through public notary or burofax (administrative post).
- That the invoice is true, legitimate and enforceable.
- Yes, it is possible to assign future receivables by a so called “assignment in advance”. In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence? It can be notified a single time but a reminder in the invoice is advisable.

The transfer by way of subrogation is not possible, only for mortgages.

Partial assignments are possible only under syndicated factoring agreements.

<sup>11</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.



### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

A valid assignment can be done in any electronic or paper-based form. If probatory form is needed, as explained above, it can only be achieved if the document is undersigned and sent through a Public Notary.

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

In a situation where all parties are Spanish residents, there is no VAT. However, the commission or fee, is subject to a 21% VAT whilst purchase price or interest rate are not. VAT has the same treatment if factor is a bank or a private factoring company.

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

There is no difference between products.

There are multiple factors where third-party rights may affect the position of a factor.

Some examples are the following: If the credits were not assignable, the assignment may not be enforceable against the debtor. Likewise, if the receivables were validly promised at the time they were assigned, the assignment would not be valid or the promise would prevail. If the assignment is not notarized, a bona fide third-party buyer would validly acquire the seller's receivables. If the debtor is not notified of the assignment, he can claim setoff against the buyer even if the debtor's claims arose after the assignment.

If a true sale has occurred, the insolvency of the seller would not affect the rights of the buyer.

There are also other situations that may frustrate the expectation of collection of the Factor, such as claims from third party subcontractors against the main debtor (1597 of the Civil Code), or any exception to the payment raised by the debtor as a consequence of a breach of the obligations of the assignor.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Yes, the prohibition of assignment is possible in the field of civil law and stems from the commercial agreement between seller and debtor. The effect is a null assignment. There are no registration requirements.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

N/A

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

The only existing charge that can be created in Spain is a pledge on the rights. From a legal standpoint, this would be a fixed charge. However, if the pledge is not notified to the debtor, the promisee can, in practice, continue to deal with the property as usual.

A promise can be created on the whole ledger or on only on certain receivables. There are mainly two different promises, an ordinary promise that is not necessary to register, or a promise without delivery of the possession (which must be registered).

In Spain there is no possibility of pledging all assets. Pledging assets in addition to the assignment of invoices although might be legally done, is not a market practice in Spain.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

There are operative solutions. No legal constrains.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

Invoices can be assigned, in which case their ownership is transferred to a third party, in this case the Factor, or they can be constituted as collateral for a main obligation through a pledge of rights. In the latter, there is no transfer of ownership, but the debtor should be notified, as it happens in Factoring, after the coming into existence of the pledge, an account should be designated to make payments on those pledged invoices.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer 53,0% - 71% in factoring
- Cheque 29,5% - 28% usually for perishable products
- Bill of Exchange 1% - 0,15%
- Other instruments 16,5% - none

(please give details, preferably also about similar estimates relating to factoring relations only)

No answer.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

In all cases, in case of insolvency of the debtor, the factoring company is the legal creditor and has the right to directly collect debt from the debtor.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

In the event of a debtor's insolvency, the factoring company has no right to participate in the administration of the company or require it to complete outstanding contracts. Additionally, the factoring company cannot terminate factoring agreements solely due to the debtor's insolvency.

Regarding priority, if the factoring company has created a pledge on a specific asset of the supplier, the factoring company will be a secured creditor and will have priority to recover the amounts owed to it from the proceeds of the foreclosure of the asset on the one in which the guarantee has been created.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

Royal Decree 1/2020, of May 5, which approves the consolidated text of the Bankruptcy Law.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt?

Yes. If the debtor does not recognize the invoice, or it has paid it to the assignor, the Factor will have a credit against the creditor of the credit, which will be recognized in the insolvency process as a contingent credit, if it has not yet expired, or as an ordinary credit, if it has expired and has been unpaid for any reason. In short, factors have the possibility of appearing as creditors in the Bankruptcy of Factoring clients.

### Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

There are no rules that imposes sanctions for failing to comply with payment deadlines in commercial operations.

### Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Spain has not adopted it or ratified neither.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

In civil law, the choice of the jurisdiction chosen by the parties takes precedence.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

No answer.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☒ NO ☐

Law 9/2017 on Public Sector contracts. It requires that the notification to the debtor be reliable and does not allow the assignment of credit rights, but rather collection rights, that means only those invoice that are already recognized as certain can be assigned, and future credits cannot be assigned by public administrations.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

It will be required by law to make a second payment.

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No answer.

## FI > Finland

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐

NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (*i.e non-disclosed factoring with or without recourse*)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

A finance company may offer factoring services without a licence to act as credit institution as provided in the Finnish Act on Credit Institutions (610/2014).

Only if the activities of the finance company are financed by accepting deposits from the public, a licence under the Act on Credit Institutions is required. The biggest factoring service providers in Finland are credit institutions having a licence. It should also be noted that practising debt collection activities requires registration in the State Administrative Agency for Southern Finland, if the entity is not an authorised supervised entity in accordance to the Act on Financial Supervisory Authority (878/2008).

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

Act on Detecting and Preventing Money Laundering and Terrorist Financing (444/2017) applicable e.g. to FSA supervised entities, branches of foreign supervised entities, entities providing services without establishing a branch and corporates providing financial services.

YES NO

☒ ☐ Capital requirements for credit, market and operational risks

Credit institutions subject to Act on Credit Institutions (610/2014).

YES NO

☒ ☐ Data protection

The General Data Protection Regulation (EU 2016/679) and Data Protection Act (1050/2018)

YES NO

☒ ☐ Liquidity risk requirements

Credit institutions subject to Act on Credit Institutions (610/2014).

YES NO

☒ ☐ IAS / IFRS accounting principles

In accordance with the Finnish Accounting Act (1336/1997), a reporting entity which has issued securities admitted to trading in a regulated market in the European Economic Area, shall prepare its consolidated financial statements in accordance with the IAS. Such entity may prepare its individual financial statements in accordance with IAS. However, if such entity is not required to prepare consolidated financial statements, its individual financial statements shall be prepared in accordance with IAS.

Any other reporting entity may prepare its financial statements or consolidated financial statements in accordance with IAS, if the financial records, financial statements and management report and governance of the reporting entity are subject to an audit in accordance with the Finnish Auditing Act (1141/2015, as amended).

YES NO

☐ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

No answer.

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Credit institutions subject to Act on Credit Institutions (610/2014).

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?



Only deposit banks under the Act on Credit Institutions must contribute to Deposit Guarantee Scheme.

YES NO

☐ ☐ Reporting duties (e.g. AnaCredit, NSFR)

No answer.

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

Only if payment services are provided, the Act on Payment Services (290/2010) and the Act on Payment Institutions (297/2010) should be applied, but that is not usually the case.

YES NO

☒ ☐ Rules and regulations on sustainability (environmental, social and governance – ESG)

Accounting Act (1997/1336) defines which companies are subject to sustainability reporting and the content of such reporting. Corporate Sustainability Reporting Directive (EU) 2022/2464 has been transposed into the Finnish Accounting Act.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Financial Supervisory Authority, if the factoring service provider has a credit institution licence.  
Regional State Administrative Agency for Southern Finland, if the factoring service provider is a registered debt collector.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>12</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

Assignment of receivables and pledging of receivables are governed by Finnish Act on Promissory Notes (622/1947 as amended) 26-31 §.

An assignment (or pledge) of receivables does not bind the assignor's creditors unless the assignor or the assignee has notified the debtor of the assignment. An assignment is binding between the assignor and the assignee already on the basis of the assignment agreement. There

<sup>12</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

are no formal requirements for the notification, but it must be specific, identify the assigned receivable and the assignee and indicate that the assignment has taken place. Notification of assignment is usually given in a frame agreement as well as on the original invoice.

Assignment of future receivables is not generally binding in the insolvency of the assignor, and upon the commencement of the insolvency proceedings any unearned receivables would thus belong to the assignor. The assignment of future receivables is binding between the assignor and the assignee, and such assignment becomes effective when the receivable is earned, but only up to the commencement of the insolvency proceedings of the assignor. A notice of assignment regarding such receivables can be given just once if the notice is clear and accurate enough, but it is advisable to repeat the notification process in relation to each receivable in each invoice, especially if the specific payment instructions have not been provided in the first notification.

Whether the assignment qualifies as true sale is dependent on the receivable being sufficiently separated from the assets of the assignor. This typically requires a fully perfected sale and valid and effective transfer of title to the receivables so that the assignee enjoys protection against the assignor's creditors and bankruptcy receiver.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Yes, a receivable can be assigned (or pledged) using an Electronic Data Exchange message. There is no form required by law for the assignment. However, the assignment (or pledge) does not bind creditors of the assignor if the debtor has not been notified of the assignment. Notification of assignment can be and usually is added to the invoice/e-invoice.

E-invoicing Directive has been implemented with the E invoicing Act (241/2019).

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

The VAT treatment of factoring changed in 2013 as the Finnish Supreme Administrative Court ruled that factoring is not a financial service but collection and subject to VAT.

As financial services are exempt from VAT, the interest is not subject to VAT. However, the definition of "factoring" for Finnish VAT purposes and the calculation of the tax base are matters subject to interpretation, and there is currently only limited court practice relating thereto. Hence, factoring arrangements (and arrangements that could potentially be interpreted as factoring) with a link to Finland should be carefully analysed on a case-by-case basis.

Split payment mechanism is not applicable in Finland. There is no joint liability for the factoring company on the seller's VAT according to the VAT regulations.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

There are certain receivables of public nature, which cannot be assigned or pledged, such as social security dues.

Any rights created to a receivable prior to the assignment (or pledge) to the factor, affect the rights of the factor. Buyer's right to set off and withhold the payment due to supplier's default affect the rights of the factor.

No registrations or public notifications are required.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Yes, a prohibition against assignment is valid inter parties but there is some ambiguity whether it is valid towards an assignee, especially if the assignee is in good faith. There is no registration requirement for such prohibition.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No answer.

## Question 7 Security Interests

For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

It is possible to obtain a floating charge in accordance with the Finnish Act on Business Mortgage (634/1984), which cannot be obtained to receivables only, but covers all assets of an entrepreneur. A floating charge is registered in the Finnish Patent and registration Office. The security becomes effective after handing over the possession to the registered business mortgage notes. The floating charge covers also receivables, if the receivables are not separately pledged or assigned. Receivables may be separately assigned (or pledged) even if there is a floating charge, both before and after the registration of a floating charge.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

As an assignment (or pledge) of receivables does not bind the assignor's creditors unless the assignor or the assignee has notified the debtor of the assignment, non disclosed factoring is not generally used in Finland. The risk might be mitigated by e.g. pledging the account for the debtors payments to the factor.

In accordance with the Finnish Consumer Protection Act (38/1978), the consumer shall, as a main rule, be notified if the credit agreement or the rights of the creditor thereunder are transferred to a third party. Notification obligation is, however, not applicable where the original creditor continues to act as the agent of the transferee's towards the consumer. The consumer retains the right to plead against the transferee any defence which was available against the original creditor.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralize a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

No differences.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

Bank transfers 100 %.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

The financier has a right to receive payments from the buyers if the notification of assignment has been properly made. The buyer may dispute the receivable due to default in the seller's performance and, as the factor may never get better rights towards the buyer than the seller had, refuse to make the payment. The buyer may set off the receivable with counterclaims.

If the receivable has not been earned by the time of the bankruptcy of the supplier, the financier may lose all rights to such receivables.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

If the receivable has not been earned by the time of the bankruptcy of the supplier, the financier may lose all rights to such receivables.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

The Restructuring Directive (EU) 2019/1023 has been implemented by amending the Restructuring of Enterprises Act (47/1993), which e.g. introduces the possibility to so called early restructuring procedure.

There were some temporary Covid-19 related regulations to alleviate the situation of companies in financial difficulties e.g. temporary amendment to the Act on Collection of Receivables (513/1999) limiting the debt collection measures and the costs arising from them. The validity of those temporary amendments were first extended and then later on made permanent.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

That should not be the case if there has been a valid sale of earned receivable, which has been notified to the debtor.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

The supplier and the buyer are entitled to agree on applicable overdue interest, otherwise it will be determined by the Interest Act (1982/633)

The Finnish Act on Collection of Receivables (513/1999, as amended) includes provisions relating to, inter alia, the fees that may be charged in connection with the collection of consumer debts, and also for other debts than consumer debts.

### Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

The UNIDROIT Convention on International Factoring (1988) is ratified.

The United Nations Convention on the Assignment of Receivables in International trade (2001) is not ratified.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

There are no regulations or otherwise clearly established rules of private international law in Finland as to which country's law applies to third party relations.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

No answer.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

E invoicing Act (241/2019) applies not only to public administration but also to private companies

Do PA debtors have the right to refuse the assignment?

YES ☒ NO ☐

If so, what consequences does this have?

The Supplier and the buyer may have agreed that the receivables cannot be assigned (or pledged). Please see Question 6.

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No.

## FR > France

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☒ NO ☐

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

To operate any of these regulated activities in France, the factor needs to (i) be a CI or financing company (*société de financement*) (FC) duly licensed and supervised by the ECB or ACPR (Autorité de Contrôle Prudentiel et de Résolution - Banque de France, the supervisory Authority of French CIs and FCs) or (ii) be a CI or financial institution (FI, within the meaning of Directive 2013/36/EU) licensed in another member State of the European Union either providing services on a cross border basis from its home member State or from a branch established in France, in each case in accordance with Directive 2013/36/EU and the French rules implementing the freedom of establishment and the freedom to provide services in France.

CRR rules, currently in process of transposition, will not change this regime.

It may also be noted that certain funds are also allowed to purchase unmatured receivables (such as for example *fonds commun de titrisation* and certain other alternative investment funds subject to certain conditions being met) or to provide credit protection and that, under certain conditions, certain services listed above may be provided by insurance companies. This remains of little importance today in France and factoring has until now been considered as a credit operation.

In France, factoring is traditionally reserved for Bto B operations. If a receivable is issued on a natural person not acting for professional purposes, it is not qualified as commercial receivable but as civil receivable, involving consumer protection, in particular civil over-indebtedness proceedings. This is maybe the reason why credit insurers are reluctant to cover such receivables.



Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ [Anti-money laundering](#)

According to French Monetary and Financial Code (*Code monétaire et financier*), CIs and FCs are bound by obligations of due diligence towards their customers and of declaration of transactions which are illegal or appear suspect from an anti-money laundering or terrorist financing point of view; they must comply with procedures of risk assessment of money laundering and terrorist financing and have specific procedures (art L561-1 → 561-50 of Monetary and Financial Code and implementing regulations). Specifications concerning the required organisation, the assessment of risks, internal procedures and systems of control are given in Arrêté of 6 January 2021 and arrêté of 25 of February 2021 concerning internal control for AML of banking sector companies, payment services and investment services subject to ACPR supervision.

YES NO

☒ ☐ [Capital requirements for credit, market and operational risks](#)

CIs are subject to CRD 4/CRR. FIs are subject to requirements close to CRD 4 as far as solvency ratio is concerned; they are subject to a specific French ratio for liquidity risk, but are exempt of leverage ratio. As almost all factors having the status of FI are part of a banking group, they are de facto submitted to CRD 4. So, more than 90% of the factoring market is subject to banking regulation.

YES NO

☒ ☐ [Data protection](#)

Factors are notably subject to the European regulation (Regulation EU 2016/679 of 27 April 2018) and to the French Data Protection Law ("*Loi informatique et libertés*") of 6 January 1978, as amended. An independent authority, named Commission Nationale Informatique et Libertés (CNIL) is competent. In addition, CIs and FCs are bound by banking secrecy in accordance with articles 511-33 – 511-34 of the Monetary and Financial Code

YES NO

☒ ☐ [Liquidity risk requirements](#)

CIs are submitted to LCR and to NSFR. FIs are submitted to a French specific liquidity ratio (and to LCR and NSFR at a consolidated level if they belong to a banking group).

YES NO

☒ ☐ [IAS / IFRS accounting principles](#)

IFRS does not apply to factors on a solo basis, i.e., for their corporate accounts, factors use French GAAP and not IFRS. However, French factors belonging to banking groups (the majority of them) must apply IFRS as part of their contribution to the banking group's consolidated accounts

YES NO

☒ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

No answer.

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

According to the Order of 3 November 2014, French factors, be they regulated as CIs or as FIs, are subject to all these requirements.

YES NO

☒ ☐ Contribution to the Deposit Guarantee Scheme.

If applicable, what is the basis of the contribution to the DGS for factoring companies?

The balance of CIs factoring operations now covered by the deposit guarantee are collections on Only CIs are subject to the DGS. Before 2019, amounts guaranteed, as far as factoring is concerned, are those at client's account in counterpart of a factoring operation and also deposits once they become available to clients (see art 2 of the Order of 27 October 2015 relating to the implementation of the deposit guarantee scheme, the compensation ceiling and the rules for the application of Article L. 312-4-1 of the Monetary and Financial Code ).  
The framework was reformed by the Order of 18 February 2019.  
remittances left in the account, less drawings and commissions due.

YES NO

☒ ☐ Reporting duties (e.g. AnaCredit, NSFR)

CIs are subject to AnaCredit.  
CIs and FCs which are members of a banking group are subject to NSFR reporting.

YES NO

☒ ☐ Rules on payment services following the Payment Services Directive PSD II

As FC or CI, factors are subject to the corresponding regulation, but in practice factoring operations are not in the scope.

YES NO

☒ ☐ Rules and regulations on sustainability (environmental, social and governance – ESG)

Factors are submitted just as FC and CI. Orientations in the matter are subject to Groups' policies.

France has gradually developed a legislative and regulatory framework to take account of corporate social responsibility.

The PACTE Act of 22 May 2019 strengthened corporate social responsibility by amending Article 1833 of the Civil Code so that the corporate purpose of all companies includes consideration of social and environmental issues.

The Climate Energy Act adopted on 8 November 2019 requires financial players to publish the climate and biodiversity impacts of their portfolios and report on their vulnerability. It applies to all players whose assets exceed €500 million (article 29 of the law)

The Green Industry Act of 23 March 2023 provides for the introduction of a Climate indicator, separate from the Banque de France's FIBEN ratings for solvency and management. It measures a company's exposure to transition and physical risks, and assesses the company's maturity with regard to climate risk issues. The indicator will be rolled out progressively between now and 2027 to 20 000 companies (100,000 for physical risk). For the time being, the approach is aimed at companies with a turnover in excess of €7.5m.

The indicator will be open, under the same conditions as the Banque de France's FIBEN file at present, to institutions issuing credit.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Autorité de Contrôle Prudentiel et de Résolution, Banque de France (National Central Bank), Ministry of Finance and Economy

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>13</sup>)?

The usual transfer methods used so far have been the “subrogation” arising from the French Civil Code (art 1346 ) and the “cession Dailly” (ie “Dailly assignment” - see below). A new regime of assignment has been introduced and henceforth co-exists with the two ones quoted above (art 1321 of French Civil Code). According to this new regime, transfer between the parties is immediate, as well as enforceability against third parties, as at the date of the instrument. Future assignment is possible under the Dailly regime and the new civil assignment regime. Conflicts in case of multiple assignments are usually resolved in favour of the 1st one.

Please describe the physical process for the assignment of receivables.

In the case of subrogation, the factor pays the face value of the relevant receivables (usually by crediting the client's current account maintained by the factor), whereupon the client signs a subrogation receipt (unless a permanent subrogation receipt capturing all transfers was signed) and usually remits the related invoices. Each invoice (except in the case of undisclosed factoring) usually contains a statement of subrogation according to the model provided by the Factor.

In the case of Dailly assignment, transfer is made by way of delivery by the seller of a Dailly transfer deed identifying the assigned receivables and including other mandatory provisions imposed by French law. Likewise, in case of notification of the debtors, the notification letter has to contain mandatory provisions. For the new regime of civil assignment (see above), no specific formalism is required, provided that the assignment agreement should be in writing and that the receivables are determined or can be determined.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

registration

stamp-duty or other documentary taxes

<sup>13</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

notification (please specify the formal requirements for such notification?)

No formalities are necessary for the purposes of enforceability against third parties (including insolvency officials), although the enforceability of the assignment of future receivables against third parties is subject to certain limits and reservations.

For example, in the case of an assignment of future receivables under the new civil assignment regime provided by the Civil Code, future receivables are only transferred as of the date on which they arise, meaning that an assignment of future receivables is challengeable in the event the seller becomes insolvent or is subject to insolvency proceedings before the relevant receivables come into existence. As far as enforceability against the debtor is concerned, note that the debtor will only be obliged to pay its debts to the assignee if the assignment has been duly notified to it.

Are there any other requirements for a valid assignment?

Provided that the receivables are freely assignable, no additional steps are required.

Is it possible to assign future receivables by a so called "assignment in advance"?

The assignment of future receivables is not possible by way of subrogation.

It is possible under the Dailly regime but such regime is quite cumbersome (requirements for very specific mentions on the assignment deed, notably – see above) and therefore rarely used.

It is also possible to assign future receivables under the new civil law regime, (subject to the reservation mentioned above in case of insolvency of the seller).

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

It is sufficient to give notice of the assignment to the debtor only once. Note that, as mentioned above, the notification is not necessary in order for the assignment to be valid, but rather to oblige the debtor to pay the receivables to the assignee.

Is transfer by way of subrogation possible? what are the requirements?

Yes, see above.

Is it possible to transfer parts of a receivable or to make conditional transfers?

It seems possible to make conditional transfers but in practice there is no occurrence in France. The transfers of parts of receivable are used in the context of syndications between factors.

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

In this context, a "true sale" is a sale which is valid and enforceable against third parties, including in case of insolvency of the seller following the sale. Such matters are discussed above. But, when consulted, French factors did not consider that the notion was used in French law.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive

2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Yes, by transmission of invoice file.

According to the industry, a receivable can validly be assigned electronically if a permanent subrogation receipt has been put in place as well as a convention of proofs.

There is no requirement of notification to the debtor to achieve valid assignment.

A receivable can also validly be assigned electronically by a digital signature.

The e-invoicing Directive 2014/55/EU has been incorporated into French law, by Ordonnance 2014-697 of 26 June 2014 and its application texts, in particular Instruction of 22 February 2017: electronic invoicing is compulsory for the payment of services provided by companies under public contracts. The obligations come into force gradually, depending on the size of the company, between 2017 and 2020.

Electronic invoices must be filed, transmitted and received exclusively on the internet platform made available to users by the State, under penalty of rejection : the "Chorus Pro" portal, managed by the State Financial IT Agency (AIFE). The Pacte Act ("Loi Pacte") of 22 May 2019 abrogated ordinance of 26 June 2014 and took over this system by naming it the "Portail Public de Facturation" (Public Invoicing Portal) (Code de la Commande Publique, art. L 2192-5 to L 2192-7; art. L 3133-6 to L 3133-8).

The Ordonnance of 15 September 2021 introduced electronic invoicing for all transactions between VAT taxable persons, as did the Decree and Order of 7 October 2022, while the Act of 16 August 2022 provided for the system to come into force on a deferred and gradual basis between 2024 and 2026. Decree no. 2022-1299 of 7 October 2022 sets out the terms and conditions for implementing the obligations to issue, transmit and receive electronic invoices and to transmit invoicing and payment data to the Directorate General of Public Finances (DGFIP Direction Générale des Finances Publiques). To this end, it defines the tasks performed by the public invoicing portal managed by the AIFE, the minimum functionalities required of partner dematerialisation platforms - PDP (private exchange platforms), the procedure for registering these platforms and the data to be transmitted to the administration.

The Order of 7 October 2022 deals in particular with obtaining the status of partner dematerialisation platform and the conditions for publishing the list of platforms.

The order details the technical procedures for transmitting electronic invoices (including exchange standards, formats and semantic standards), the data contained in an electronic invoice and the checks carried out by the platforms on an electronic invoice. It also details the technical procedures for transmitting transaction data and payment data (in particular format and frequency).

In 2023, the timetable was postponed by article 91 of the Finance Act for 2024, supplemented by decree 2024-266 of 25 March 2024..

The entry into force of the "e-invoicing" and "e-reporting" obligations (relating to transactions with individuals or foreign companies) has been postponed:

-E-invoicing :

- Obligation to receive electronic invoices: 1 September 2026 for all businesses,
- Obligation to issue electronic invoices: 1 September 2026 for large companies and ETIs and 1 September 2027 for SMEs,

-E-reporting : same deadlines as for the obligation to issue invoices.

These two dates may be further extended by decree to 1 December 2026 and 1 December 2027 respectively.

On the sidelines of the postponement of the entry into force, on 18 January 2024, the Directorate General of Public Finances (DGFIP) published the list of companies that have applied to the dedicated department for the status of partner dematerialisation platforms (PDP) (see above).

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

The assignment of receivables is based on tax included invoices. The VAT should not be seen as a risk for the factor, because it can be recovered in the event of loss via a debit to the client's current account.

Factoring is considered by the French tax administration as VAT free, but the factors can choose on option to collect VAT which is the general choice. This option concerns factoring commissions and financing commissions as well.

In France, a Factor needs to be a financial institution or a credit institution (incl banks); French banks are used not to collect VAT on banking services.

The "Split payment" mechanism is not implemented in France.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights

Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

A number of third party rights may affect the receivables, including notably:

- rights of the subcontractors of the seller against the debtors
- rights of set-off of the debtors if amounts are due by the seller to such debtor
- retention right of the carrier
- retention of title of the supplier
- rights of other assignees in case of multiple (parallel) assignments.

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

There is no difference between these contracts.

Do these rights have to be publicly registered or notified to be valid?

Not in France

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country?

It is generally not legally valid in France.

What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

None

Is there any requirement for registration?

No

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No answer.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

In any form of factoring, and whatever be its legal basis, ownership of the receivables is transferred to the factor and no charge is taken over the receivables.

Does a fixed or floating charge have to be publicly registered to be valid?

No. As far as we know, the factor has always the ownership of the receivables. Which means that there is no factoring based on pledge of receivables.

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to



the assignment of receivables?

No. See above.

### Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

Specific risk mitigation techniques are used within the industry. They concern the quality of the receivable, of the seller's business, the controls to be put in place.

Such techniques usually focus on the control of collections (opening of a specific separated account aimed at receiving collected amounts, pledge of the collection account ...). They may also rely on unfunded assignments of future receivables (hence providing overcollateralisation to the factor).

Information concerning the follow-up by permanent control of non-disclosed operations must be forwarded to internal bodies in charge of risk supervision.

Decision and risk-taking procedures for undisclosed operations must be set by the executive body. These procedures must emphasize the risks effectively taken and the measures of protection required. The deliberating body must receive an information on the exposure of factors on these operations. An annual report on risk supervision and measurement must also contain this information.

The above elements come from specific Recommendations within the industry.

For the time being, no specific impact of GPDR on undisclosed factoring has been identified.

### Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

No, the factor has always the ownership of the receivables.

### Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

Bank-Transfer %

Cheque %

Bill of Exchange%

Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

Bank transfers are highly predominant (in number of operations and in amount).

### Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any

possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

We assume that this question actually relates to the client (as assignor of the receivables). As mentioned above, French factoring transactions rely on outright assignments of receivables. Regarding the robustness of the assignment in case of insolvency of the seller, please see the above discussion regarding enforceability against third parties.

In the case of a disclosed assignment, the receivables are managed and collected by the factor. No specific steps will need to be taken towards the assigned debtors and the factor will continue to manage and collect the receivables following the insolvency of the assignor.

In the case of an undisclosed assignment, the factor has to notify the debtors.

According to the recommendations on invoice discounting elaborated within the industry, for undisclosed factoring, payments are systematically made on a dedicated account.

Note that collections received by the client and not transferred to the factor will be commingled into the insolvency estate of the client and will be an unsecured claim of the factor. The factor will have to file such claim with the relevant insolvency officials.

Nevertheless, at the start of the safeguard proceedings and during the suspect period, the amounts held in the customer's bank account can be transferred to the factor (see below)

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

French factors usually do not take charges/security interests on the receivables other than the ownership of the receivables since the receivables are transferred by way of outright assignment (as opposed to an assignment by way of security). As owners of the receivables, in case of insolvency proceedings, they keep on collecting payments from debtors.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

The PACTE Act of 22 May 2019 provided for the reform by ordinance of insolvency law in order to transpose the European Directive on restructuring and insolvency proceedings of 20 June 2019, and of the law on securities (as it relates to insolvency law).

With regard to the law on sureties, the Chancery has carried out an in-depth overhaul of the provisions of the Civil Code relating to all sureties. These include ;

- a rewrite of the provisions on guarantees in the Civil Code ;
- simplification of the rules relating to guarantees, which are now all set out in the Civil Code, and more flexible rules on handwritten endorsements ;
- the dematerialisation of all sureties with the widespread use of electronic signatures;
- linking surety law with insolvency law ;

- the extension of the possibility of raising exceptions in relation to guarantees, retention of title clauses, rights of retention and pledges of receivables, and the extension of the duty to warn.

The order relating to the law on securities was published on 15 September 2021. It came into force on 1 January 2022.

The Directive on restructuring and insolvency proceedings of 20 June 2019 was transposed into the provisions of the Commercial Code relating to insolvency proceedings by an order of 15 September 2021, which came into force on 1 October 2021.

In addition to extending the protection afforded to individual guarantors in legal proceedings, the order also prohibits any reduction in the basis of assets at the start of the safeguard proceedings and during the suspect period. The aim of this is to secure the transfer to the factor of amounts held in the assignor's bank account and allocated to buyer payments in delegated factoring management.

In response to the supposed reluctance of companies to opt for a legal redress given the publicity surrounding this procedure and the fear of transfer to a third party, a "simplified receivership" has been proposed on a temporary basis as an exception to the ordinary law governing companies in difficulty for all applications made between 2 June 2021 and 2 June 2023, with an extension between 21 November 2023 and 21 November 2025. The procedure, which is at the sole initiative of the debtor, provides for the appointment of a single trustee and the drawing up of a list of claims by the debtor himself. The procedure applies to insolvent companies with fewer than 20 employees and liabilities of less than €3 million that have funds available to pay employee claims and are likely to draw up a debt restructuring plan within 3 months.

[Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.](#)

The assignee has the ownership of the purchased receivables after the assignment. Nevertheless, in practice, the factoring companies declare to the bankruptcy proceeding the purchased receivables through non-recourse (or with recourse) factoring.

## Question 12 Late Payments

[Are there any penalties \(and if so of what kind\) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?](#)

In France, late payments are regulated by Law of modernization of the economy (LME) of 4 August 2008.

Sanctions for late payments apply, as well as interests for the delayed payments and a lump sum of 40 € to cover collection expenses.

In the event that the contractual payment terms exceed the maximum legal payment terms, criminal sanctions have been replaced by administrative sanctions, which can amount up to 75 K € for natural persons and up to 2 M € (or 4 M in certain circumstances) for legal persons.

Mandatory maximum payment terms are the following:

- Businesses: 30 days with the maximum of 60 days from the issuance of the invoice (or, if specifically agreed, at the end of the month after 45 days)
- State and local public entities: 30 days
- Public health sector: 50 days
- Other public undertakings: 60 days

Specific payment terms apply to a number of specific sectors such as car renting (for which a 30 day payment term applies), ...

(To be compared to:

- 60 calendar days for transactions between undertakings, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor
- 30 days for public sector with a possibility of lengthening up to 60 days for public authorities carrying economic activities of an industrial or commercial nature and public entities providing healthcare.

See art 4.3 and 4.4 of directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions).

### Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Yes (UNIDROIT) and No (UNCITRAL)

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

In France, according to case law, the law applicable to third party effects on assignments is the law of the place of establishment of the assigned debtor.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

Article 9 of the Model Law on Factoring requires the assignment to be entered in a register to ensure that it can be relied on. This is a cumbersome formality, and one that is particularly ill-suited to confidential factoring.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☒ NO ☐

No acceptance of the assignment by the PA is required. The factor must notify the right Administration for the notification to be effective.

In case of assignments in the context of public procurements, the notification needs to attach a unique exemplary (exemplaire unique) or assignability certificate (certificat de cessibilité) issued by the relevant public administration. Works are ongoing to digitalize the unique exemplary and the assignability certificate.

In practice, it seems that our members have only recourse to Daily assignment as far as public procurements are concerned.

Concerning national implementation of e-invoicing Directive 2014/55/EU with regard to invoices for public authorities, see Q 3.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

Additional exemptions to the French banking monopoly have been introduced by Sapin 2 law of 9 December 2016 which allows additional funds/entities to purchase unmatured receivables.

## GR > Greece

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☒ NO ☐

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Non-Recourse Factoring, Recourse Factoring, Invoice Discounting, Direct cross border factoring, and 2Factor Cross-Border Factoring services can be operated in Greece only through Banking Institutions and special purpose factoring companies that must have at least a quarter of the minimum share capital required for Banking Institutions, i.e. € 4,500,000 in order to obtain the necessary authorization by the Bank of Greece. The legal form of these special purpose factoring companies is that of a Société Anonyme. There is no special requirement about enlistment of the special purpose factoring companies in the stock market.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

Factoring companies are subject to the provisions of

- Greek Law 4557/30.7.2018 as amended by L. 4701/2020, 4734/2020, 4816/2021, 4920/2022, 4941/2022, 5000/2022, 5072/2023, 5090/2024 which is the basis of the Greek institutional framework on preventing and combating money laundering and terrorist financing,
- The Bank of Greece's Decision of Banking and Credit Matters Committee 281/17.03.2009 "Prevention of the use of credit and financial institutions under Bank of Greece supervision for money laundering and terrorist financing", as well as
- Bank of Greece Governor's Act no. 2652/29.02.2012 "Amendment to Banking and Credit Matters Committee Decision 281/5/17.3.2009 and of Banking and Credit Matters Committee Decision 285/6/9.7.2009" and
- Meeting 300/28.7.2010: Amendment of the Banking and Credit Committee Decisions: 281/5/17.3.2009 "on the Prevention of the use of credit and financial institutions supervised by the Bank of Greece for the purpose of money laundering and terrorist financing" and 290/12/11.11.2009 "on the Framework governing the imposition of administrative sanctions on institutions supervised by the Bank of Greece and
- Bank of Greece's Executive Committee Act no. 172/2/29.5.2020 "Terms and conditions for remote electronic identification of natural persons in the initiation of a business relationship with credit institutions and financial institutions supervised by the Bank of Greece" which further amended Decision no. 281/5/17.3.2009.

YES NO

☒ ☐ Capital requirements for credit, market and operational risks

To the extent factoring companies fall within the provisions of Greek law 4261/2014 (governing credit and financial institutions), which transposed into Greek law EU Directive 2013/36 (i.e. Basel III/CRD IV), any obligatory financial covenants applying to credit institutions are applicable to banking institutions providing factoring activities as well. EU Regulation 575/2013 (i.e. CRR) is also applicable. Generally, credit institutions, in order to obtain authorization to commence their activity, should have an initial share capital of € 18,000,000.

Additionally, Bank of Greece Governor's Act no. 2622/21.12.2009 ("Requirements for licensing and operation and rules regarding supervision of a) leasing companies, b) credit companies, and c) factoring companies") is applicable to special purpose factoring companies (i.e. Basel II). Factoring companies, in order to obtain authorization to commence their activity, must have an initial share capital of € 4,500,000.

YES NO

☒ ☐ Data protection

The legislation on the protection of personal data includes the General Data Protection Regulation (EU) 2016/679 (GDPR), Law 4624/2019, Law 2472/1997 (repealed with certain exceptions – see under "Personal Data Legislation") as well as Law 3471/2006 in the field of electronic communications. In particular, the GDPR was implemented as from 25/5/2018, in accordance with Article 99(2) thereof. According to Article 288 of the Treaty on the Functioning of the European Union, the GDPR is directly applicable to all Member States, which are required to take the necessary measures to adapt their national legislation.

By Law 4624/2019 (Government Gazette A137), measures are laid down for the implementation of the GDPR and Directive (EU) 2016/680 is incorporated into national legislation. Law 2472/1997 was repealed, except for the provisions specifically mentioned in article 84 of Law 4624/2019.

Law 3471/2006, which incorporates Directive 2002/58/EC (E-Privacy Directive), as amended by Directive 2006/136/EC, is complementary and specific to the institutional framework for the protection of personal data in the field of electronic communications.

European legislation on the protection of personal data include Article F of the Treaty on European Union, Article 8 of the Charter of Fundamental Rights of the European Union, Article 8 of the European



Convention on Human Rights, Convention 108 of the Council of Europe and its modernization.

YES NO

☒ ☐ Liquidity risk requirements

To the extent factoring companies fall within the provisions of Greek law 4261/2014 (governing credit and financial institutions), which transposed into Greek law EU Directive 2013/36 (i.e. Basel III/CRD IV), any obligatory financial covenants regarding liquidity risks applying to credit institutions by the said law, in conjunction with the relevant Bank of Greece Governor's Acts, are applicable to banking institutions providing factoring activities as well. EU Regulation 575/2013 (i.e. CRR) is also applicable. Additionally, with respect to special purpose factoring companies, the obligatory financial covenants regarding liquidity risks are provided in Bank of Greece Governor's Act no. 2622/21.12.2009 ("Requirements for licensing and operation and rules regarding supervision of a) leasing companies, b) credit companies, and c) factoring companies"). Factoring companies follow the Basel II requirements on solo basis and, in case they are subsidiaries of a Bank, the Basel III/CRDIV/CRR on consolidated basis for the risks they undertake.

YES NO

☒ ☐ IAS / IFRS accounting principles

According to Greek Law 4308/2014 factoring companies are obliged to prepare their financial statements in accordance with the IFRS9 principles as these have been adopted by the European Union.

Receivables are classified following the staging process (stage 1,2,3 Individual-collective assessment)

YES NO

☐ ☒ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

Not Applicable

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Bank of Greece regulates through Governor's Acts the factoring companies and stipulates the internal control procedures. In case the factoring company is a subsidiary of a significant bank supervised by the ECB (SSM), CRDIV/CRR and all relevant EU Regulations and EBA guidelines apply at the consolidated level.

As regards banking institutions, the above issues are governed by Greek law 4261/2014, the Code of Conduct introduced by the Bank of Greece (i.e. Decision of the Credit and Insurance Committee no. 195/1/29.7.2016, which repealed Decision 116/25.08.2014 as amended by Decision no. 129/2/16.2.2015 and by Decision 148/1/5.10.2015, with the exception of the definition of cooperative borrower according to Article 99 of Law 4389/2016), the relevant Bank of Greece Governor's Acts and the CRR, to the extent applicable.

With respect to special purpose factoring companies, the above issues are governed by the Bank of Greece Governor's Acts no. 2622/21.12.2009 and no. 2577/9.3.2006 (Framework of operational principles and criteria for the evaluation of the organization and Internal Control Systems of credit and financial institutions and relevant powers of their management bodies), as amended by Governor's Acts 2597/31.10.2007 and 2650/19.01.2012 and by the Act of the Executive Committee of the Bank of Greece 178/5/2.10.2020, and, to the extent applicable, by Greek law 4706/2020 "Corporate governance of Sociétés Anonymes, modern capital market, transposition into Greek Law of Directive (EU) 2017/828 of the European Parliament and of the Council, measures for the implementation of Regulation (EU) 2017/1131 and other provisions".

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme

If applicable, what is the basis of the contribution to the DGS for factoring companies?

As regards banking institutions, the basis of contribution to the DGS is provided in Greek law 4370/2016 (TEKE) and subsequent amendments (L. 4438/2016, Art. 48 A' 220 2. 07.06.2017 L. 4474/2017, art. 19 A' 80 3. 14.02.2020 L. 4664/2020, art. 4 A' 32 4. 30.06.2020 L. 4701/2020, art.25 A' 128), which transposed into Greek law EU Directive 2014/49.

There is no such obligation as regards special purpose factoring companies.

YES NO

☒ ☐ Reporting duties (e.g. AnaCredit, NSFR)

Since 2018 the Greek banking sector fully adheres to the mandatory for Eurozone countries Anacredit Regulation in its latest format (EU2016/867) on the collection of granular credit and credit risk data (ECB/2016/13). For standalone factoring subsidiaries of Banks Anacredit will be in force from 01.07.2024 for the reporting period of December 2023 and onwards according to Bank of Greece Governor's Act 2692/30.06.2023 (Government Gazette B '4337/07.07.2023).

YES NO

☒ ☐ Rules on payment services following the Payment Services Directive PSD II

PSD II was incorporated in Greek legal framework in 2018 (L. 4537/2018)

YES NO

☒ ☐ Rules and regulations on sustainability (environmental, social and governance – ESG)

Banks in Greece (and their subsidiaries incl. Factors) mostly comply with the ESG framework set by the EU (EU Sustainable Finance Regulation) and supranational institutions such as IFC and EBRD due to their minority participations in Greek banks (ESMS Environmental and Social Risk assessment) . Moreover Banks are voluntary signatories of related treaties such as UNEP FI Principles for Responsible Banking and TCFD Recommendations on climate-related financial disclosures

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Bank of Greece (Central Bank)

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>14</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

<sup>14</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

According to Article 1 par. 1 of 1905/1990 Law, the transfer of ownership of the receivables requires a written assignment agreement. Articles 455-470 of the civil code apply accordingly as far as they complement the provisions of Law 1905/1990.

The notification of assignment to the debtor in writing (it is advisable to be for proof reasons serviced by a court bailiff) is required to validate a legal assignment. However, Law 1905/1990 expressly provides that if the debtor pays the factor prior to the formal notification, this payment is valid and the debt is released.

According to Law 2844/2000, the assignment of receivables may be registered. After such registration, the priority between multiple assignees follows the sequence of registrations. However such a procedure is not followed basically because of the high cost (7,75/000 on the secured amount). Due to high costs and inability to calculate future claims, registration is not used.

There are special provisions for the notification of assignment to debtors being legal entities of public law (State and all other public law entities).

A single notification of assignment of all future receivables is sufficient under Art. 1 par. 2 of Law 1905/1990 and Art. 12 of Law 2844/2000.

An assignment of future receivables by a so called “assignment in advance” is possible. In this case, it is sufficient under local law to give notice of the assignment to the debtor only once provided that the receivable can be and is defined/determined.

There is no special subrogation process of assignment procedure. However, where the Greek legal order provides for the subrogation (absorption/merger of companies), this may include the transfer of receivables as well.

“True sale” is considered as factoring without recourse. There are no specific requirements for such an assignment.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

E-Invoice: The presidential decree no. 131/2003, which has transposed the Directive 2000/31/EC on electronic commerce (E-Commerce Directive), allows the conclusion of agreements through electronic means. Such agreements qualify as written agreements for the purposes of the form provisions, provided that they bear valid electronic signatures in accordance with Law 4727/2020.

The Greek government is currently developing a system that will allow not only the electronic invoicing

exchange for B2G transactions, but also the authorization and payment of those invoices. In 2019, Greece passed Law 4601/2019 to regulate the electronic B2G invoicing in implementation of 2014/55/EU directive. On Sept.2022 Greece published Law 4972/2022 which includes a mandate on the use of e-invoicing for all sales made to the government. There are no clear implementation deadlines other than those stipulated in the EU guidelines.

Electronic Signature: According to Law 4727/2020 a qualified electronic signature has the equivalent legal effect of a handwritten signature. For the provision of trust services the Hellenic Telecommunications & Post Commission has issued Regulation 837/IB/2017 (Govt Gazette no 4396b/14.12.2017). The legal framework that supports the use of e-signature is based on the so called eIDAS (Electronic Identification, Authentication & Trust Services) regulation (EU Regulation 910/2014). Electronic signature can only be provided by EU trusted providers (Qualified Trust Service Providers).

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

There is no issue in terms of V.A.T. in Greece, given the fact that receivables are assigned inclusive of V.A.T. and are financed as such.

V.A.T. is always charged on factoring commission, as well as on all other types of charges, with the exception of the AFCs' commission, which is excluded from V.A.T. charge.

V.A.T. on interest is also charged and there is no difference in the VAT treatment between Banking Institutions or factoring companies with regard to the factoring services.

(Greek law 2859/2000, i.e. Code on V.A.T. is applicable to V.A.T. issues).

Split VAT payments are not applicable in Greece.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring

- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

Once the transfer is completed, the assignee becomes the owner of the receivable. Therefore, third parties or any other creditors of the assignor cannot enforce their claims against the assignee, except for specific special occasions (e.g. fraudulent conveyance; recession of transfers in case of bankruptcy, transactions during the suspected period, etc).

A pledge put up on a claim before its assignment, follows the claim even after the assignment.

According to Law 2844/2000, if the assignment concerns the proceeds of a further disposal by the assignor of goods that the assignee had supplied on credit to him, the right of the supplier to such proceeds prevails even over prior rights upon it. The same preference applies, irrespective of registration, to the claims of the supplier who lost ownership by way of union, amalgamation, elaboration or transformation.

However, the assignment of receivables against debtors of the public sector, is subject to deduction of taxes and debts to social security owed by the assignor (Greek law 2065/1992, as in force and art. 83 of the Greek Code of Revenue Collection) regardless of the factoring form (non-recourse factoring, recourse factoring and invoice discounting).

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

As a rule, a contractual prohibition against the assignment of receivables is valid. According to Art. 466 of the Greek Civil Code, "A receivable cannot be assigned, when the creditor and the debtor have agreed on its non-assignability". However, if the assignee has acquired the receivable having relied on a document which did not contain a term as to non-assignability, the debtor is not entitled to invoke the agreement on non assignability against the assignee. Nevertheless, according to Art. 2 of Law 1905/1990, the factoring agreement prevails over any agreement between the client and the debtor on non-assignability of the receivables.

An exception may be valid concerning the receivables against public sector buyers, where the prohibition of assignment is effective provided that such prohibition is provided in a Law or a regulatory administrative act.

The service provided is of no importance and there is no requirement for registration

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

See above comments

## Question 7 Security Interests

For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as

its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

It is possible to obtain a fixed or a floating charge on certain receivables. In order to be valid, it must be publicly registered. Yes, such fixed and/ or floating charge security interests are taken in addition to the assignment of receivables, whenever it is required, but it is not commonly used.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

Credit risk may be mitigated by pledging the Supplier's bank account where the debtor pays for the receivables. This account however may be changed without prior notice. This practice does not provide by any means any security against claims legally announced/ disclosed or forced actions. Undisclosed factoring in Greece means that the assignment is not legally perfected.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

There is only one form of factoring assignment in Greece, irrespective of the purpose.

The most valid way to effect a pledge on receivables as collateral to a Bank facility involving factoring is to pledge directly the receivables and assign them to factoring for the collection process. The three part agreement must be duly notified in writing to the debtor.

Some may decide to pledge the factoring contract instead of the receivables. This bears the risk of pledging in fact the proceeds of the receivables and not the receivables themselves. If for some reason, the receivables fail to be paid there is no legal ground to claim their payment in court.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer    %
- Cheque            %
- Bill of Exchange %
- Other instruments    %

(please give details, preferably also about similar estimates relating to factoring relations only)



- Bank-Transfer NOT AVAILABLE
- Cheque NOT AVAILABLE

Pursuant to recent legislative developments in Greece certain measures, *inter alia*, promoting the use of electronic means of payment in order to combat concealment of income were introduced by Greek law 4446/2016.

### Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

Once the assignment has taken place and the notification is sent to the debtors, the assigned receivables are not included in the supplier's (insolvency) assets and thus, do not form part of the liquidation process.

For all other cases where assignment has not taken place and provided that all conditions provided in the relevant and applicable laws are met, the financier may announce its claims in order for them to be verified by the insolvency trustee and (possibly) satisfied by the insolvency assets in accordance with the Greek Bankruptcy Code

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

The whole procedure is subject to the provisions of the Greek Bankruptcy Code (Greek Law 3588/2007, as repeatedly amended). A thorough revision of the Bankruptcy Code (new law No. 4738/2020) will enter into force gradually until June 2021 emphasizing on the notion of "second chance" (See next question).

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

Greek Law No. 4738/2020 (Government Gazette A' 207/27.10.2020) titled "Debt settlement and second chance arrangement and other provisions" introduces procedures in harmonization with the provisions of the Directive (EU) 2019/1023 "on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency)", while at the same time radically reforms the context for the treatment of financial inability, collective satisfaction of creditors and discharge of debts for any individual, natural person or legal entity, carrying out financial activity, regardless whether such activity is business or not.



Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

The overdue interest penalty with regard to the Banking Institutions and Factoring Companies is regulated by the Bank of Greece and today is 2.5% above the contractual agreement.

As regards to interest rates, non-bank interest rate and default interest rate are also applicable as the case may be.

Pursuant to article 293 of the Greek Civil Code and article 3 par. 2 of the Greek law 2842/2000, the maximum contractual interest rate is capped to 5% annually higher than the interest rate periodically set by the European Central Bank, while the default interest rate is capped to 2% higher than the maximum contractual interest rate<sup>15</sup> (i.e. the default interest rate is capped to 7% annually higher than the interest rate set by the European Central Bank). Any agreed interest rate in excess to the above maximum limit, is null and void as per the excessive amount<sup>16</sup>. By virtue of Greek law 4152/2013 Greece has transposed Directive 2011/7/EU (Combating Late Payments in Commercial Transactions) according to which the applicable interest rate is the aggregate of the reference rate (ECB rate) plus 8%, applicable to transactions effected after 16.3.2013. As regards to public sector, i.e. State, regional or local authorities and bodies governed by public law, as defined in Directives 2014/25/EU and 2014/24/EU such interest rate is lower with regard to debts that do not fall under the scope of Directive 2011/7/EU.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Greece has ratified neither the Unidroit Convention on International Factoring nor the Uncintral Convention on the Assignment of Receivables in International Trade, as repeatedly amended.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

In the absence of a specific provision and of relevant case-law the issue is discussed controversially in Greek legal theory. The applicable law with regard to contractual obligations (but not necessarily with regard to the proprietary aspects thereof, because of the distinction between the assignment contract and the contractual agreement which relates to the transaction underlying the assignment) is determined by Article 25 of the Greek Civil Code. According to this provision, contractual obligations are governed by the law chosen by the parties; Where no such choice has taken place, contractual obligations are governed by the proper law of the contract, i.e. the law which, having regard to the circumstances, suits to the contract. Because this would offer no solution in cases of multiple assignments (as shown in ECJ judgment in case C-548/18) there is a general discussion as to the pros and cons of the several options, i.e. the Law of the habitual residence of the assignor; the Law of the original claim; the Law of the assignment contract; and the Law of the habitual residence of the assignee.

<sup>15</sup> Cabinet Act No. 1/2000, par. B.

<sup>16</sup> Greek Civil Code article 295.

'Battle of the forms' is also discussed controversially in Greek legal theory; there is no case-law as yet. Considered are mainly the last shot doctrine and the knock-out doctrine. The Greek Civil Code, which adopts for the conclusion of contracts the 'mirror-image' rule, provides noteworthy arguments for the knock-out doctrine in the sense of knocking-out of conflicting standard terms that concern *essentialia negotii*, while the rest of the agreement containing the *essentialia negotii* remains valid.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

There is a specific Law on Factoring in Greece since the inception of the product in the early 90s. Most of the provisions of recent UNIDROIT Model Law have long been part of the Greek Factoring Law.

#### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☒ NO ☐

There are special provisions for the notification of assignment to debtors being legal entities of public law, (State and all other public law entities). For e-invoicing please refer to comments on question 3.

Do PA debtors have the right to refuse the assignment?

YES ☒ NO ☐

If so, what consequences does this have?

Such an assignment will not be valid as long as the restriction regarding assignment is introduced by virtue of law or a regulatory administrative act.

#### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No.

## HU > Hungary

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☒ NO ☐

The Hungarian regulatory framework for the financial sector consists of both institution or activity-specific regulations and regulations applying to the sector as a whole. The main general regulations are the:

- Act V of 2013 on the Civil Code
- Act CCXXXVII of 2013 on credit institutions and financial enterprises (Banking Act)
- Act CXXXIX of 2013 on the National Bank of Hungary

In Hungary the most important regulations regarding the banking sector and financial institution is Act CCXXXVII of 2013 on credit institutions and financial enterprises (Banking Act). The license of financial services is required in accordance with Banking Act regulation.

The financial market is exclusively supervised by the Hungarian National Bank (HNB), which operation is regulated by Act CXXXIX of 2013 on the National Bank of Hungary (Central Bank Act). The factoring activity itself can only be performed with a permission issued by the Hungarian National Bank.

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

A financial services licence is required in accordance with Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (the “Banking Act”). The services listed may be provided by CIs and banks but also by regulated financial undertakings which are not banks. Providing protection against third party payment default may qualify as an investment service (as opposed to a financial service) and thus may require an investment services license in accordance with the MiFID rules (as locally implemented).

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☒ NO ☐

Only an Ltd or Plc might provide such services, though such Ltd might have sole proprietor.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐

Anti-money laundering

Act LIII of 2017 on the Prevention and Combatting of Money Laundering and Terrorist Financing (the "AML Act").

Act LII of 2017 on the Implementation of Restrictive Measures imposed by the EU and the United Nations Security Council relating to liquid assets and other financial interests (the "Restrictive Measures Act").

Decree No. 21/2017 (VIII. 3.) of the Minister of the National Economy on the Mandatory Content of the Internal Policy to be Adopted under Act LIII of 2017 on the Prevention and Combatting of Money Laundering and Terrorist Financing and Act LII of 2017 on the Implementation of Restrictive Measures imposed by the EU and the United Nations Security Council relating to liquid assets and other financial interests.

YES NO

☒ ☐

Capital requirements for credit, market and operational risks

Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises.

Laws and regulations adopted in Hungary in the field of prudential regulation including the implementation of the provisions of the CRD IV/CRR.

YES NO

☒ ☐

Data protection

The Act CXII of 2011 is comprehensive in scope, as it is applicable to all data processing operations

Based on constitutional provision, the Act CXII of 2011 on the right to informational self-determination and on the freedom of information (hereinafter "the Act CXII of 2011"), which entered into force on 1 January 2012, established the Authority and regulated its operation in detail.

The National Authority for Data Protection and Freedom of Information (hereinafter "the Authority" or "the NAIH") is responsible for monitoring and promoting the enforcement of two fundamental rights: the right to the protection of personal data and the right to freedom of information (access to data of public interest and data accessible on public interest grounds) in Hungary, as well as promoting the free movement of personal data within the European Union.

undertaken in Hungary regardless of the public or private legal status of those performing such operations, including also law enforcement, national security and defence sectors, together with activities which relate to the data of a natural person, as well as data in the public interest and data made public on the grounds of being in the public interest

YES NO

☒ ☐

Liquidity risk requirements

The regulation has been significantly changed in connection with the liquidity management practices of the credit institutions and investment firms, based on the accepting of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EU) No 648/2012 Regulation (CRR).

Hungarian laws:

- 2013 CCXXXVII. Act on Credit Institutions and Financial Enterprises. In connection with liquidity, several paragraphs should be taken into account in the Credit Institutions Act, which contain the CRD implementation of liquidity-related parts.

- CXXXVIII of 2007 Act on Investment Firms and Commodity Exchange Service Providers, and the rules of the activities they may carry out.

YES NO

☒ ☐ IAS / IFRS accounting principles

Hungarian law: 2015 CLXXVIII. law amending the laws related to the introduction of International Financial Reporting Standards for domestic reporting purposes and certain financial laws.

("Accounting Act")

From 1 January 2016 significant changes took place in accounting regulations in Hungary. Firstly, certain articles of the Accounting Act were also significantly be amended, and secondly, with its No. 1387/2015 resolution the Government allowed the application of reports prepared according to the International Financial Reporting Standards (IFRS) for individual accounting purposes in Hungary.

YES NO

☒ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

Regulation in Hungary: Act XXXIV of 2004 on small and medium-sized enterprises and the support provided to such ("Act on SME")

Based on the Act on SME an enterprise is classified as an SME, which employs fewer than 250 persons and which has an annual turnover not exceeding the forint equivalent of EUR 50 million and/or an annual balance sheet total not exceeding the forint equivalent of EUR 43 million.

- An enterprise is classified as a small enterprise within SME which employs fewer than 50 persons and whose annual turnover and/or balance sheet total does not exceed the forint equivalent of EUR 10 million.
- An enterprise is classified as a micro-enterprise within SME which employs fewer than 10 persons and whose annual turnover and/or a balance sheet does not exceed the forint equivalent of EUR 2 million.

Any enterprise in which the share held by the State or any municipal government, either directly or indirectly and either solely or jointly, reaches or exceeds 25 per cent of the capital or voting rights, shall not be classified as an SME.

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

The regulatory environment:

In 2013, "Banking Act" was renamed unchanged, but significantly revised with renewed content ( Act CCXXXVII of 2013 on credit institutions and financial enterprises (Banking Act)

- implementation of the Basel III recommendations and new EU directives transposing them
- compliance with the CRR rules applicable from 1 January 2014 has been established
- a significant part of the prudential rules has been removed from the Banking Act, which rules were then already contained in EU regulations.

The Basel III rules have been implemented by the European Union in CRD IV Directive (Directive 2013/36) and the CRR Regulation (575/2013).

- It was included in the new Banking Act implementation of CRD IV in Hungary.
- The CRR is also directly valid in Hungary.

In Hungary, the accounting regulations are contained in Act C of 2000.

The legislative rules are formulated in compliance with EU laws. A number of guidance is also published by the local regulator in this area.

YES NO

☐ ☒ [Contribution to the Deposit Guarantee Scheme](#)  
 If applicable, what is the basis of the contribution to the DGS for factoring companies?

In nutshell the local deposit guarantee scheme is relevant only in respect of deposits (i.e. from the perspective of a factoring it has no relevance).

YES NO

☒ ☐ [Reporting duties \(e.g. AnaCredit, NSFR\)](#)

The Hungarian National Bank joined the AnaCredit system, the AnaCredit's requirements have already been incorporated into the data collection of the new central bank credit register, enabling data suppliers to also take into account these requirements during the HITREG developments. In Hungary, so-called "HITREG" data provision: From 2020, a unified central bank credit register containing individual credit information was introduced by HNB.

The way in which current factoring transactions are reported differs depending on whether it is recourse or without recourse. In case of a non-recourse transaction (receivable purchase), the client is the "Buyer". In case of recourse, the client is the "Seller".

A factored claim is not collateral; however, the related collaterals (e.g. guarantee, insurance policy, etc.) should be reported. The collaterals with no value should also be reported (if the collateral of any loan claim is a receivable of the counterparty, it should not be reported as a factoring transaction, rather on the appropriate instrument, with counterparty claim as collateral).

HNB Decrees: MNB Decree 35/2018 (XI.13.) on the data reporting obligations to the central bank's information system in respect of certain data of credit transactions (effective from 1 December 2019); NSFR - net stable funding ratio: At EU level, compliance with the relevant NSFR regulation, which will enter into force in June 2021, would already be almost complete. Most Hungarian banks, with the exception of a few smaller institutions and mortgage banks, already meet the 100% minimum requirement. Based on this, the introduction of the regulation is not expected to entail a significant need for adaptation.

YES NO

☒ ☐ [Rules on payment services following the Payment Services Directive PSD II](#)

On 31 October 2017, the Hungarian Parliament passed the legislative package that implemented Directive 2015/2366 on payment services in the internal market ("PSD2") into Hungarian law. The majority of the relevant provisions of the legislative package ("Amendment Act") entered into force on 13 January 2018, in line with the requirements of PSD2.

At the end of 2020, banks and card acceptors gradually switched to the new confirmation method, so until 1 January 2021, different confirmation methods could occur for different transactions, depending on the preparedness of each player. However, the regulation came into full force in Hungary on 1 January 2021.

YES NO

☒ ☐ [Rules and regulations on sustainability \(environmental, social and governance – ESG\)](#)

Act CVIII of 2023 on the Provisions for Corporate Social Responsibility Taking into Account Environmental, Economic and Social Considerations Aiming to Foster Sustainable Financing and a Single Corporate Responsibility Regime and on the Amendment of Other Related Regulations (ESG law) has provisions on due diligence and supply chain finance from ESG point of view. The Act defines also reporting standards on the ESG status of the company. Nevertheless the scope of the Act is restrictive and for the time being its substantive rules does not effective on any financial or capital market service providers: Though generally large and medium sized companies are obliged to apply the rules (gradual implementation is needed from 2024 till 2026), companies supervised by the National Bank are exempt because an EU regulation is under preparation for them and therefore the local legislator only issued obligatory ESG supplement rules to the annual reporting, but as to the supply chain finance (and other financial activities) no mandatory law exist from this point of view. Green bond (so-called "Green Finance") is the most popular ESG or impact type of investment



instrument, currently one of the fastest growing segments of the global bond market. The National Bank of Hungary has launched its Green Program early 2019 to mitigate the risks associated with climate change and other environmental problems, to expand green financial services in Hungary, to widen the related knowledge base in Hungary and abroad, and to reduce financial market participants' and its own ecological footprint.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Parliament as a legislator and Hungarian National Bank

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>17</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called "assignment in advance"?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

The transfer of receivables is regulated by the Civil Code, and the rules on assignment apply also to the transfer of receivables in the course of securitisation.

The new Civil Code (Act V. of 2013) entered into force on March 15, 2014, containing significant changes. The most important change in the new Civil Code was that contracts, such as factoring, franchise or trust, which were used by parties of the economic life, would be named and regulated. The Civil Code regulates different legal titles for the transfer of receivables. The two most relevant legal titles are sale and purchase and factoring:

- In case of a sale and purchase agreement, the seller assigns the receivables for consideration permanently.
- In case of recourse factoring, the receivables are transferred merely as security. The factor provides a loan to the assignor, and accepts that repayment of the loan will primarily take place by the payment of the debtors of the assigned receivables, provided that if the debtors of the assigned receivables fail to pay, the assignor will be obliged to repay the loan.

Although the legal title is different, the method by which the receivables are transferred is the same (assignment). Assignment is regulated as a contract in the Civil Code, the purpose of which is to fulfil the obligation arising from the agreement which serves as the legal title of the transfer (mainly sale and purchase agreement or factoring agreement). The receivable is transferred to the assignee by the mere agreement of the assignor and the assignee.

Hungarian judicial practice generally classifies a factoring contract as an assignment.

With regard to the content of the assignment, the Hungarian judicial practice is not uniform: according to some judgments, the assignment also covers interest rates, and according to other decisions, it does not. The assignment does not change the content of the original legal relationship, it cannot make the debtor's situation more burdensome, nor does it grant the assignee additional rights. In the absence of a debt assumption, the assignee may be held liable for the assignee's debt only up to the amount transferred.

Notification of the debtor is not necessary to transfer the receivables. However, following from the principle of debtor protection, the assignment in itself does not have any effect on the obligations of the debtor. To make the transfer effective against the debtor, the debtor must be notified of the

<sup>17</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.



assignment. After the debtor is notified of the assignment, the amendment of the contract between the debtor and the assignor are not effective vis-à-vis the assignee. A further consequence of notification is that the debtor can only raise any defence against the assignee and can set-off any counterclaim which already existed at the time of receiving the notice. Notice, in itself, does not amend the debtor's obligation to pay to the original creditor, i.e. the assignor. For this, a payment instruction is necessary, which contains the information necessary for the debtor to pay in accordance with the instructions of the assignee.

**Valid assignment:** There are no other requirements for a valid assignment.

**Registration:** In case of sale and purchase transactions, there is no registration. However, if the receivables are transferred in a factoring transaction, the factoring agreement has to be registered in the online securities registry. Lack of registration does not affect the validity of the contract, but the receivables will not transfer to the factor: the factor will obtain a mere in personam right against the debtor.

A factoring contract is valid against third parties if it was entered in the "pledge register" system when the factoring contract was concluded.

**What claims can be transferred:** Claims are transferable, unless they, by their nature, are tied to a specific person or the transfer is prohibited by law. This means that the receivables usually transferred by way of securitisation (e.g. loans, trade receivables) can be securitised under Hungarian law as well.

**Future receivables can also be transferred.** It is possible to assign future receivables by a so called "assignment in advance". Notice required depends on the nature of the receivables and the content of the transfer. If the future receivables are capable of being specified adequately, one notification may be sufficient. In practice, however, the case is usually that a general notice is delivered on day 1 informing the debtor that future receivables will be transferred and at the time such future receivable arises, a subsequent notice is sent (e.g. on the invoice).

The only requirement is that the legal basis from which the receivable will arise (in case of receivables arising from contracts, the contract) already exists at the time of the assignment. This does not render a sale and purchase agreement or a factoring agreement, which provides for the obligation to transfer receivables even if the legal basis does not exist, invalid. Such agreement creates a legal obligation to assign receivables in the future, but the assignment itself cannot take place and the receivable will not transfer to the assignee. This can make securitisation burdensome in cases where the receivables to be transferred by the originator do not arise from long term contracts.

**Transfer by way of subrogation is possible;** the same requirements apply as in case of assignment.

**For a true sale,** apart from the above, the transfer shall be unconditional and receivables must be kept in the books of the transferee.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

In Hungary, in 2004, with the amendment of the Accounting Act, the concept of an electronic document was introduced, from which time an electronic invoice can be issued. Electronic invoices are accepted by the National Tax and Customs Board in accordance with the legislation in force, and it has been made mandatory to receive and manage them in certain administrative areas (eg electronic invoice for electronic reports).

Hungary's Electronic Signature Act (ESA) became effective in 2001 and provides for legal recognition of electronic signatures (e-signatures) and electronic documents.

In addition relevant national legislation: Act V of 2013 on the Civil Code, EU eIDAS Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the “eIDAS Regulation”) came into force on 1 July 2016. The eIDAS Regulation is technology neutral and defines three types of electronic signature (SES, AES, QES). So the electronic signatures are available in the Hungarian legal and digital infrastructure. Under Hungarian law, a written signature is not necessarily required for a valid contract - contracts are generally valid if legally competent parties reach an agreement, whether they agree verbally, electronically or in a physical paper document (Section 6:63 of the Hungarian Civil Code). Many service providers (for example AVDH, e-ID, Netlock, Microsec, Didgitoll, Trustchain) offer digital solutions for the adoption of legally binding documents in Hungary. The notice of assignment is one of the use cases where an electronic signature other than SES may be required include. (Digital Signature, AES, QES). (AES, QES, or advanced electronic seal + qualified electronic time stamp - notification of assignment of a debt to the debtor (6:197(1) of the Civil Code)). The assignment agreement may also be concluded in writing, orally and by implied conduct; this also applies to the factoring contract. However, everyday practice uses simple writing for reasons of expediency and provability. Since the form of notification to the debtor is not carved in stone by legislation, an e-invoice containing the notice could be feasible.

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there “white lists” or any other VAT-related reporting duties for factoring companies?

In connection with the assessment of the assignment in the VAT system, it is necessary to examine the reason for the assignment. Act CXXVII of 2007 on Value Added Tax. pursuant to Section 13 (3) (b) of the VAT Act (VAT Act), in the event of an assignment in which the assignee merely takes over the assignor's claim (ie purchases the claim from him), but on the final purchase of the claim in addition, if no other service is used as a basis for the payment of fees between the parties, the transaction subject to VAT between the parties will not be performed, so no VAT liability will arise.

In principle there are no problems, apart from where another service is included in the purchase price of the receivables, in which case VAT issues may need to be dealt with.

Depending on the structure VAT may apply to factoring commission/ service charge.

In principle, no VAT applies to discount or interest.

In principle, there are no differences between treatment for banks and non-banks.

If a receivable that has been issued outside the EU is guaranteed, the statement of the Tax Authority is sent to the factor company seated outside the EU to avoid dual taxation.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

No difference. As in Germany the reservation of title is applicable in Hungary

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

A contractual limitation of assignability does not result in the assignment becoming invalid. The breach of limitation or restriction will be a breach as between the original parties of the legal relationship but following the notice of assignment and payment instruction received by the debtor it will still need to discharge its debt to the assignee.

Factoring is a fact to be recorded only in the Collateral Register.

Civil Code Section 6:195 - Disallowing assignment

- Any term excluding the assignment of a claim shall be null and void in respect of third parties.
- The provision contained in Subsection (1) shall not affect the assignor's liability for any breach of the term excluding assignment. Any contract term that allows the right to terminate or stipulates the payment of a contractual penalty for non-performance shall be null and void.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

According to the provisions of the Civil Code on assignment, personal claims and claims expressly excluded by law cannot be assigned.

## Question 7 Security Interests

For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

Hungarian law recognises both fixed charges and asset pool charges (floating charges) but the differentiating factors are different from the ones described above. Restriction on dealing with receivables could be contractual only, i.e. it is very difficult to constitute an in rem restrictions which is effective vis-à-vis third parties. A fixed charge is charge which encumbers a well described specific

asset (or more of them, provided that each of them are so specified). An asset pool charge is an encumbrance which covers all or parts of the assets of the chargor by way of a general description (e.g. all cars of the chargor, all receivables of the chargor). A third person acting in good faith and purchasing the encumbered assets for good consideration will be a valid purchaser of the assets free of encumbrances in each case.

A fixed or floating charge must be publicly registered to be valid.

The use of additional security depends on the transaction structure. There are examples for both scenarios.

### Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

Credit insurance, Deposit on the client's account, involvement of seller's ownership guarantee  
On 17 July 2018, the Parliament adopted Act CXII of 2011 on Informational Self-Determination and Freedom of Information ("Privacy Act") amending Act T/ 623 in connection with the data protection reform of the European Union and other related laws and its summary amendment proposal.

### Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

No, but if the purpose of the purchase of receivables is not financing the seller, then it will not qualify as factoring but as a simple assignment or sale of receivables (neither of which requires registration as opposed to factoring).

- **Assigned in fulfilment of a purchase contract of these receivables:** if the claim is registered in the collateral securities system, the ownership right exists. If the claim is not registered, it is still valid, but only collateral purposes, which ranks last in the order as unqualified collateral.
- **Assigned to collateralise a financing facility:** prohibited by the law.
- **Pledged to collateralize such a financing facility:** Based on the new Hungarian Civil Code, each non-possessory pledge which is not subject to registration in a special register (such as e.g. the land register or the company register) must be registered in the collateral securities system in order to come into existence. Pledge valid only if registration is done.

### Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

Almost only Bank-Transfer occurs, effectively 100%.

### Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

The question is interesting from the point of view of the essence of factoring: does the Factor bear the risk of recoverability of the claim, in this case it is a "non-recourse" service, or the opposite is "recourse" factoring, when the repurchase right is unenforceable.

- • Non-Recourse: If the supplier is insolvent only the expenses can be requested from the Client, the remaining amount is requested from the Buyer.
- • Recourse: Primary the Buyer and then the Client is obliged to repay the amount.
- • Protection against third party payment default: Buyer, rather than the credit insurer is obliged to pay
- • Direct cross border factoring: Buyer, rather than the credit insurer is obliged to pay, and at the end the Client if the credit insurer rejects to pay.
- • 2-Factor Cross-Border Factoring: Buyer and then the credit insurer (in case of import)

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

The chargee is a secured creditor in insolvency, with priority ranking position regarding its secured claim.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

The Insolvency Code (Act XLIX of 1991) and the European Regulation on Insolvency Proceedings (2015/848) are the primary pieces of legislation governing insolvency proceedings. There are two types of insolvency proceedings: bankruptcy (reorganisation) and liquidation (winding-up). Both procedures can be requested by submitting a petition to the court. While only the debtor may petition for bankruptcy, the court may open a liquidation procedure at the request of either the debtor or a creditor.

Hungary has implemented Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

The new law – in line with the Directive - requires the establishment of pre-insolvency procedures to rescue viable debtors who are not yet insolvent but are in financial difficulties, thus providing a rapid, transparent procedural solution for their survival. Theoretically there are two type of procedure: i) the public one (all creditors are restricted) and ii) private (only the creditors determined by the Debtor are restricted). In fact the legal institution hardly works only a few cases was initiated so no practical experience exist.

Impact of pandemic: 249/2020, effective from 29 May 2020. (V. 28.) amended for a transitional period certain provisions of Act XLIX of 1991 on liquidation proceedings, which regulate the assessment of an application for the establishment of the debtor's insolvency and the ordering of liquidation proceedings.

40/2020 on the declaration of a coronavirus emergency situation. (III. 11.) during a period of emergency pursuant to Government Decree (Emergency Decree), the creditor may submit an

application for the commencement of liquidation proceedings if, in case of pursuant to Section 27 of the Insolvency Code, additional time allowed to the debtor to pay his debt in the payment order sent to the debtor; pursuant to paragraph 3 of the Act and an additional period of 75 days have also expired without effect.

The transitional provisions delay the creditor in the proceedings initiated to establish the debtor's insolvency.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

Theoretically not: if the receivable has already transferred before the insolvency procedure it shall not be part of the insolvency estate.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Yes, the statutory payment terms are specified in the Hungarian Civil Code, which are based on the rules set forth in EU Directive 2011/7/EU on combating late payments in commercial transactions. The Hungarian provisions transposing the Directive entered into force on 1 July 2013. According to the law, the "at least forty euros" value shall be understood like that the amount of the flat-rate collection costs in their contract may be set at an amount equal or higher than forty euros. Excluding the flat rate of collection costs or the flat rate of collection cost less than EUR 40, this contractual clause is void based on Civil Code. 6: 155. § (2).

Late default interest, and other penalties can be agreed by the parties.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

UNIDROIT: Yes, Act LXXXV of 1997

UNCITRAL: No

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

Contractual choice of law is always allowed. If the law of the basic legal relationship (supplier-purchaser) and the law of the assignment (supplier-factor) differs then it is just a quasi collision because the assignment does not change the legal position of the purchaser, i.e. the assignee shall have the same rights against the purchaser under the same law to collect the monies as the supplier had before.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

For the time being there was no impact.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of



debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

The Hungarian Public Procurement Act was modified as of 18 April 2019, in order to comply with the provisions of the Directive 2014/55/EU of the European Parliament and of the Council of on electronic invoicing in public procurement. According to the new provisions, in public procurement procedures contracting authorities are obliged to receive and process electronic invoices upon certain conditions. Those electronic invoices should be processed by the contracting authorities which comply with the European standard on electronic invoicing (i.e. EN 16931-1:2017) and with any of the syntaxes on the list published in the Official Journal of the European Union. In practical terms, this means that if a company submits a tender in a public procurement procedure, it may choose to use electronic invoicing and the contracting authorities must ensure the receipt and processing of invoices electronically. This modification can be seen as a new step in the promotion of electronic administrative procedures in Hungary.

The amendment also affects previous contracts, meaning that even in cases where the contracting authority did not give its written consent, it should accept electronic invoices. In addition, the obligation of the contracting party to prepare annual statistical reports has ceased.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

In principle claims against PA arising from tax relation cannot be transferred. Exceptions apply

## Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No answer



## IE > Ireland

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ✓

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ✓

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES ✓ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e. non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

There are also other legal requirements that would need to be adhered to e.g. anti money laundering

In general, a license/authorisation is not required from the Central Bank of Ireland for the provision of invoice finance (factoring, invoice discounting either recourse or non-recourse) and stock finance. However, authorisation may be required where the finance arrangement also includes a ‘cash loan’ to a natural person or individuals.

Where a lender is an Irish or EEA regulated financial services provider e.g. an authorised credit institution, its invoice finance activities may be subject to general Irish financial services regulatory codes, such as the SME Regulations. Currently, such regulations only apply to regulated entities, but reference to factoring / invoice finance is increasingly contained within such regulation.

Providing guarantees to third parties or providing protection against third party credit default may constitute the carrying on of insurance business (e.g. credit insurance) which would also require authorisation.

/ terrorist financing requirements. Additionally, GDPR and the adherence to data protection rules would need to be adhered to e.g. the transfer of receivables may include the transfer of personal data.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ✓ NO ☐

Data Protection Regulation  
Consumer Protection Act

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

✓

☐

Anti-money laundering

Both anti-money laundering ('AML') and the countering of the financing of terrorism ('CFT') is governed by the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended by part 2 of the Criminal Justice Act 2013. This Act transposes EU Law on AML and CFT (the Third Money Laundering Directive (2005/60/EC) and its implementing Directive (2006/70/EC)) into Irish law. Subsequent amendments to the law have also been introduced via the EU's Fourth Money Laundering Directive.

YES NO

✓

Capital requirements for credit, market and operational risks

Yes, in respect of regulated entities such as Banks, but not applicable to unregulated entities.

YES NO

✓

☐

Data protection

The main body of applicable regulation is within the EU General Data Protection Regulation (EU 2016/679).

Data protection obligations apply to each 'data controller' (a person/entity who either alone or with others controls the contents and use of personal data) and each 'data processor' (a person/entity, other than an employee, who processes personal data on behalf of a data controller).

YES NO

✓

☐

Liquidity risk requirements

Yes, in respect of regulated entities such as Banks, but not applicable to unregulated entities.

YES NO

✓

☐

IAS / IFRS accounting principles

As per the EU's IAS Regulation No. 1606/2002, the consolidated financial statements of companies with debt or equity securities listed on a regulated EU market e.g. the Irish Stock Exchange, are required to be prepared in accordance with EU endorsed IFRS. For all other financial statements of Irish companies, the Companies Act 2014 allows a choice to prepare statements either in accordance with UK and Irish GAAP or IFRS financial statements.

YES NO

☐

✓

Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

YES NO

☐

✓

Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Noting that EU Regulation re Definition of Default does apply.

YES NO

☐ ✓ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

YES NO

☐ ✓ Reporting duties (e.g. AnaCredit, NSFR)

YES NO

☐ ✓ Rules on payment services following the Payment Services Directive PSD II

YES NO

☐ ✓ Rules and regulations on sustainability (environmental, social and governance – ESG)

No, however Bank owned invoice finance providers are increasingly encouraged to provide funding within sustainable sectors.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

The Central Bank of Ireland and this only applies to Regulated Entities.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>18</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

There are no specific laws governing the transfer of ownership of receivables. General common law and equitable principles relating to contracts and property rights apply.

Irish law recognises the possibility of transferring a receivable by way of equitable assignment. This means that a beneficial ownership interest in a receivable is transferred without notifying the underlying debtor and the assignor continues to make collections, as agent, on behalf of the assignee.

The assignment of receivables will be governed by a contract made between the receivables seller and the financier. Often these contracts will be ‘whole turnover’ agreements that effectively assign all existing trade receivables and all future trade receivables.

A second type of agreement; a facultative agreement, requires the receivables seller to offer

<sup>18</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

receivables for sale to the financier from time to time, and the financier must accept the offers to complete the sale. Individual invoices are notified to the financier, accompanied by a signed statement offering the applicable receivables for sale.

In either case, the notification of trade receivables can be electronic or in paper form, depending on the contractual agreement.

For commercial reasons, a debtor is typically not notified of the assignment. However, a financier would typically retain the right to notify a debtor either generally during the course of the agreement or following the occurrence of a pre-defined default event.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Yes, EDI and extractor software applications are commonly used for the assignment of invoices, digital signatures are also accepted.

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

The assignment of debts re invoice finance is disregarded for VAT purposes. The Revenue Commissioners of Ireland's position is outlined in their VAT Information Leaflet, issued in November 2013.

Bad debt relief for VAT purposes is not available where a debt has been assigned without recourse to the assignor. This is because it is a condition of such relief that the loss has to be suffered, written off in the accounts of and tax deductible for the person who paid the VAT to the Revenue i.e. the originator.

Therefore, assignment agreements should include specific VAT provisions, so that if the customer defaults, the assignor would be required to re-purchase the receivable and thereby enable the assignor to recover the VAT element.

No known difference between Bank owned and non-bank owned providers re VAT treatment.

Services charges, admin fees, ledger management fees etc. are subject to VAT at the standard rate.

Discount (interest) charges for advances drawn are regarded as VAT exempt charges for the provision of credit.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- **Contract:** e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- **Law:** e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

**Prohibition of Assignment:** The contract between the assignor and the debtor may restrict the right of the assignor to assign the receivable. This would usually prevent the sale of the receivable unless the consent of the debtor is obtained.

**Third Party Security:** A receivable/s may be subject to a charge or security interest in favour of a company's other lenders / Banks. A waiver or consent form from the security holder is needed to facilitate the sale of the receivable. Clean title over book debts is required, although a debenture is not a necessity in the lender gaining title over the assigned debt.

**Set & Counterclaim:** A debtor may be entitled to set-off amounts owed by it with respect to receivables against amounts owed to the debtor, either as a matter of contract, a dispute or counterclaim regarding the goods supplied or services provided.

**Taxes:** In certain industries e.g. construction, relevant contracts tax 'RCT' may be deducted from payments to a supplier. The obligation to pay RCT may override a financiers' right/interest in a debt for the percentage of the debt that related to RCT. In the provision of certain services to a government body, the government body may be required to deduct professional services withholding tax; 'PSWT', from payments to a supplier, again this may override a financier's interest in the debt.

**Interest Withholding Tax:** If the receivable includes an amount in respect of interest, interest withholding tax may be required to be deducted from the payment to a supplier.

**Attachment:** Where a company has defaulted on its obligation to pay certain taxes, the Revenue may serve a notice of attachment on a debtor of that company in relation to the tax liabilities.

**Retention of Title ('RoT'):** If an RoT clause exists the original supplier may have the right to claim back the goods from the assignor's debtor if the original supplier has not been paid. Some RoT clauses provide that they extend to include the proceeds of sale, which may be registrable charge. However, failure to register the charge within a prescribed time period renders the charge unenforceable against a liquidator or other creditors. Recent case law indicates that suppliers rarely register such charges.

The above issues relate whether the invoice finance is by way of ID, factoring, with or without recourse. Regarding registration or notification, please see below:

**Prohibition of Assignment:** No registration or notification is required, however consent to assign from specific debtors may apply.

**Third Party Security:** Yes, most types of third party security should be registered to be valid.

**Set-off & Counterclaim:** No

**RCT:** No

**PSWT:** No

**Interest Withholding Tax:** No

**Attachment:** No

**RoT:** Yes, registration is required if the arrangement is characterised as a registrable charge.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Yes. A purported assignment in breach of a contractual restriction would not be effective to give the assignee an ownership interest in the receivable or direct rights to claim against the debtor. However, it should be effective to give the assignee a claim against the assignor with respect to the collections, once they are received by the assignor. The same general principle applies to the 3 types of commercial financing mentioned above. As an alternative to an assignment, depending on the wording of the contractual restriction, it may be possible for the finance provider to obtain a proprietary entitlement to the receivable by using a trust arrangement.

The prohibition or restriction on assignment must be provided for in the contract creating the receivable between debtor and the purported assignor. There is no requirement for registration.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance?

No, most barriers to providing ID or factoring are contained within the answers within Question 5.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

Yes, it is possible to take either a fixed or floating charge over receivables only. In the case of a fixed charge, however, certain contractual restrictions must be put in place and observed in practice as regards the receivables and the related collection accounts before it would constitute a fixed charge.

Yes, most charges created by an Irish company must be registered in order to be valid. Details of such charges must be registered in the Irish Companies Registration Office within 21 days of creation (where the chargor is incorporated under Irish law or has established a branch in Ireland). Charges over certain types of assets can potentially avail of an exemption from the registration obligation, but this will depend on the precise nature of the assets which are subject to security and the terms of the relevant security document. Where a charge constitutes a fixed charge over book debts, a notification should also be made to the Revenue Commissioners of Ireland to mitigate the risk that tax liabilities of the chargor could take priority over such charge.

This will depend on the treatment which the parties wish to give to the arrangements, the practice of the finance providers and whether there are other financing arrangements between the company and finance provider. In most cases, no security registrations are made. In certain limited cases where an arrangement is established as recourse factoring or invoice discounting, the relevant provider may elect to register security (including to mitigate the risk of recharacterisation as a secured loan). If an invoice discount facility is provided to company that has other secured borrowings with the finance provider, it would be common for the finance provider to include the invoice finance facilities in the overall security package. Where a “true sale” / non-recourse treatment is sought for accounting or commercial reasons, it is unlikely that the arrangement would be registered as a charge or security, unless supplemental security is taken as part of the overall arrangement (e.g. a charge over a bank account).

### Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

The principal means of mitigating against the disadvantages of an equitable assignment is for the invoice finance documentation to provide the financier with the right to give notice to the debtor in order to perfect the assignment. Such a right could either be exercisable at any time at the discretion of the financier or, in a more negotiated transaction, on the occurrence of certain pre-defined trigger events. In addition, it would be common to impose contractual obligations on the assignor to deal with the sold receivables in a manner which protects the assignee’s rights.

GDPR law has not materially impacted the existing ID industry despite the additional regulatory requirements in this regard.

### Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

Where the receivables are purchased and constitute a “true sale” (as opposed to security), an ownership interest in the receivables transfers to the purchaser. In order for legal (and not only beneficial) ownership to transfer, the assignment must constitute a legal assignment.

Where the receivables are assigned by way of security for a credit facility, the receivables remain the property of the assignor and the security assignment is subject to an equity of redemption in favour of the assignor (i.e. the assignor can reclaim the receivable at any time by paying the amount secured pursuant to the security assignment). An assignment of receivables by way of security would typically be a registerable security interest.

Pledges are not typically used as a form of security in Ireland for commercial finance transactions. Under Irish law a ‘pledge’ is a form of possessory security for moveable assets.

### Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)



Bank Transfer 95%, Cheque 5%

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

In circumstances where the receivable has been effectively sold to the financier (i.e. there has been a “true sale” rather than a security arrangement), a financier should be in a position to uphold its proprietary ownership interest in the relevant receivables as against the relevant insolvency official. Any such receivables would be outside the insolvency estate of the relevant company. A sale of receivables prior to insolvency could potentially be subject to “claw-back” and challenged under rules relating to improper/fraudulent transfer and unfair preference. In addition, an insolvency official could potentially seek to re-characterise a receivables sale transaction as a secured loan which is void for failure to register it as a security interest.

Where a financier has taken security over the receivables, rather than obtaining an ownership interest in them, the financier’s right to the receivables will depend on the nature of the security (fixed or floating) and will be subject to the statutory priorities of payments in an insolvency. In general, a floating charge is more vulnerable to preferential claims than a fixed charge.

If the company goes into “examinership” (an Irish court rescue scheme for businesses in financial difficulties), there is a moratorium on taking enforcement action with respect to security or legal proceedings (save with leave of the court) against the company during the period of examinership, this is typically between 70-90 days.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

Administration is not a general insolvency process under Irish law. The commencement of winding-up or examinership (see above) proceedings will not, of itself, impact on the validity of any charges which have been taken prior to commencement of those proceedings, subject to usual insolvency “claw-back” risks. A fixed charge holder takes priority over the holder of a floating charge. In general, a floating charge is more vulnerable to preferential claims, including claims in relation to taxation and employee related liabilities. In the case of an examinership, the examiner would be expected to continue trading during the period of examinership and in practice most ID/Factoring providers work with the appointed Examiner to continue to support the borrower during the examinership process.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

Unaware of implications/introduction of Restructuring Directive.

No regulatory changes implemented, re Covid-19, that impacted on ID/Factoring from a security perspective.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

Unknown

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

The usual practice is for the contract that creates the debt to specify the rate of interest applicable in respect of a late payment. In addition, the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (which transpose the EU Directive 2011/7/EU) provide that interest will become payable if payments for commercial transactions are not made within 30 days, unless otherwise specified in a contract or agreement. While there are differences in how the Irish Regulations and the EU Directive are drafted (in many cases, out of necessity to fill in the mechanisms contemplated, but not prescribed by the Directive), the Irish Regulations should not present more strict criteria for the application of interest for late payments.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Not known.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

Not known.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

Not known.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

There is no general principle of Irish law which prohibits the assignment of debts owing by public bodies. However, the term of the relevant contract and the relevant statutes/rules in respect of each relevant public body should be checked on a transaction by transaction basis.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

See the above response. There is no general principle prohibiting assignment and each case will depend on the terms of the contract and the relevant statutes/rules in respect of the relevant public body.

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

The common law legal system in Ireland and the local tax treatment is supportive of receivables financing. Many English law concepts have an equivalent under Irish law. For example, trusts are a feature of Irish law and can be used in structured transactions to overcome restrictions on assignment. Irish special purpose companies are frequently used for larger scale receivables transactions, including for pan-European receivables financings and asset-backed commercial paper conduits.

## IT > Italy

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☒ NO ☐

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

The Italian banking and financial regulation is mainly based on the Legislative Decree 385 of 1 September 1993 (Testo Unico Bancario - Consolidated Law on Banking) which states the requirements necessary for doing financial business (factoring included). Pursuant to the Consolidated Law on Banking, the granting of loans on a public basis in whatever form (including purchase of trade receivables) is restricted to banks and financial intermediaries entered into a specific register held by the Bank of Italy; the admission into the register is subject to some conditions:

- a) legal form of a public limited company;
- b) registered office and general management office located in Italy
- c) paid-up share capital of not less than that determined by the Bank of Italy in relation to the kind of activity;
- d) presentation of a program of the initial activity and organizational structure, together with the certificate of incorporation and the statute;
- e) owners of holdings and corporate officers satisfying experience, integrity and independence requirements;
- e-bis) the administration, direction and control are conducted by adequate persons with specific requirements;
- f) no presence, among financial intermediaries or entities of the membership group and other stakeholders, of close ties preventing the effective exercise of supervisory functions;
- g) financial activity as unique corporate purpose (for factors, the corporate purpose should include the purchase of credits).
- The Bank of Italy may deny approval to conduct activities where, from verification of the indicated conditions, it is not ensured the sound and prudent management.
- The Bank of Italy shall issue legislation concerning capital adequacy and the limitation of risk in its various forms as well as administrative and accounting procedures and internal control mechanisms, as well as disclosure in such areas.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☒ NO ☐

There's nothing factoring specific, but increased privacy and transparency standards apply when the client is "retail", including one-person-businesses. Please refer also to answers below regarding "Data protection" and "Transparency".

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

Banks and financial intermediaries are subject to the Italian anti-money laundering regulations which is in line with the EU anti-money laundering directive. The main features are:

- Know your customer rules
- Obligations of registration of information in a specific register
- Reporting obligations on suspicious transactions
- Beneficial ownership information
- Limitation on the use of cash

YES NO

☒ ☐ Capital requirements for credit, market and operational risks

Banks and financial intermediaries are required to comply respectively with full CRR (banks) and an adjusted CRR (financial intermediaries). Adjustments for financial intermediaries are made on the basis of the proportionality principle and regards, in general, lower capital and governance requirements as well as the possibility to weight exposures on the debtor also for recourse operations even in the standardized approach.

YES NO

☒ ☐ Data protection

The Regulation (Eu) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulations - GDPR) has come into force in Italy in May 2018.

According to art. 1 of GDPR the regulation only applies to natural person's personal data (This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.); the companies' data are not protected by the GDPR regulations.

Nonetheless, companies' information may constitute personal data if this information allows the identification of a natural person.

The GDPR regulation also apply to all personal data relating to natural person in the course of a professional activity, such as the employees of a company, such as company email addresses or the company telephone numbers of employees.

Moreover, GDPR regulation must be applied to all the personal data processed by companies.

The GDPR requires the personal data need to be processed basing on a legitimate purpose and in fair and transparent manner. This means that companies process personal data must inform data subjects about the processing activities on their personal data and takes responsibility and do not process data for any purpose other than the legitimate purposes.

The companies are expected to limit the processing, collect only that data which is necessary, and not keep personal data once the processing purpose is completed.

GDPR has introduced some other principles such as:

- Storage limitation: it is possible only store personally identifying data for as long as necessary for the specified purpose
- Integrity and confidentiality: processing must be done in such a way as to ensure appropriate security, integrity, and confidentiality (e.g. by using encryption)
- Privacy by design and by default: this means you must consider the data protection principles in the design of any new product or activity

It is possible processed personal data (except the specific cases provided by law) only if a clear and explicit consent has been asked from the data subject. Once collected, this consent must be documented, and the data subject is allowed to withdraw his consent at any moment.

There are strict new rules about what constitutes consent from a data subject to process their information:

- Consent must be “freely given, specific, informed and unambiguous.”
- Requests for consent must be “clearly distinguishable from the other matters” and presented in “clear and plain language.”
- Data subjects can withdraw previously given consent whenever they want.
- It is necessary keep a documentary evidence of consent.

The GDPR recognizes new privacy rights for data subjects, which aim to give individuals more control over the data they loan to organizations.

Data subjects' privacy rights:

- The right to be informed
- The right of access
- The right to rectification
- The right to erasure
- The right to restrict processing
- The right to data portability
- The right to object
- Rights in relation to automated decision making and profiling.

According by GDPR the data controller must maintain a Personal Data Breach Register and, based on severity, the regulator and data subject should be informed of identifying the breach.

The controller of personal data has the accountability to ensure that personal data is protected and GDPR requirements respected, even if processing is being done by a third party. This means controllers have the obligation to ensure the protection and privacy of personal data when that data is being transferred outside the company, to a third party and / or other entity within the same company.

YES NO



Liquidity risk requirements

Banks are subject to liquidity risk requirements at consolidated level. Individual non bank financial intermediaries are not subject to solo liquidity requirements but contribute to the consolidated requirements.

YES NO

☒ ☐ IAS / IFRS accounting principles

Since 2006 all banks and financial intermediaries apply IAS/IFRS accounting even at solo level.

YES NO

☒ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

Transparency rules apply to banking products, such as current accounts, loans, payment services, etc.; factoring is a banking product and is subject to transparency rules. Transparency rules apply in any stage of the relationship with the client: the pre-contractual stage which comes before the signing of the contract, the signing of the contract and the post-contractual stage which relates to the relationship between the intermediary and the client.

Pursuant to the Consolidated Law on Banking, transparency rules apply to the offer of banking products made by banks (Italian, UE and extra UE) and financial intermediaries, even if the offer is made non in site (offerta fuori sede) or through distance communication techniques (tecniche di comunicazione a distanza) such as internet. In order to assure the observance of the rules, the law gives to the Bank of Italy the power to monitor and sanction the intermediaries which violate such rules. The provisions on transparency protect all type of client. However, some provisions apply only to the relationship with consumers or Clienti al Dettaglio. "Consumer" is the natural person which acts for purposes unrelated to professional or commercial activities; "Clienti al Dettaglio" are consumers, natural persons which act for professional or commercial purposes, no-profit organizations, enterprises with less than 10 employees and an annual volume of sales no greater than euro 2 million.

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Regulation provides for many risk management, internal control, compliance and audit requirements, slightly reduced for financial intermediaries.

YES NO

☒ ☐ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

A DGS, created and recognised in Italy, is a guarantee system which a credit institution must adhere to. According to the DGS, a person holding an eligible deposit with a credit institution may obtain, under specific circumstances (i.e. the insolvency of the relevant credit institution), the repayment of a maximum of €100,000. Deposits up to €100,000, which are protected under the deposit guarantee scheme, are expressly excluded from bail-in.

This does not apply to non deposit taking institutions.

YES NO

☒ ☐ Reporting duties (e.g. AnaCredit, NSFR)

Banks are subject (by definition) to all reporting requirements from EBA, ECB and Bank of Italy, including FINREP, COREP, Anacredit, and other statistical information. Financial intermediaries are subject to the same, if slightly reduced, requirements.



YES NO

☒ ☐ Rules on payment services following the Payment Services Directive PSD II

The Payment Services Directive PSD II applies to factoring companies if they provide payment services.

YES NO

☒ ☐ Rules and regulations on sustainability (environmental, social and governance – ESG)

Companies with more than 500 employees must prepare a non-financial and diversity information (2014/95/EU), transposed in Italy by the Legislative Decree no. 254 of December 30, 2016. In any case, companies with less than 500 employees can do it voluntarily.

At the moment of writing, ESG topics are getting more and more considered into prudential regulation. The ECB and the Bank of Italy issued guidelines and Supervisory expectations on how to integrate environmental and climate risks into business models, strategies, governance and risk management.

Further ESG-related regulation (not only) in banking is currently under discussion.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Banca d'Italia.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>19</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

### Law 52/1991

The main specific law which regulates the transfer of ownership is Law 52/1991 (Discipline of the assignment of business debts) which is made only of 7 articles and they can be summarised as follows:

#### 1) Sphere of application

The assignment of pecuniary debts against payment of their purchase price is disciplined by this law whenever are present all the following conditions:

- a) the assignor is an entrepreneur;
- b) the assigned debts arise from contracts made by the assignor when operating under the business activity of its firm;
- c) the assignee is a bank or a financial intermediary subject to banking laws and whose statute includes

<sup>19</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

the purchase of business debts or a legal entity which is not a financial intermediary, incorporated as a limited company, which conducts the activity of purchase of debts only within its group (purchasing only debts owed to third parties by legal entities belonging to same group of the purchaser or debts owed by third parties to legal entities belonging to the same group of the purchaser), without prejudice for the provisions of the banking laws.

2. The Civil Code will continue to govern all the assignments which do not fall within the above mentioned conditions.

## **2) Registry of companies active on the assignment of debts**

(This article has been abrogated by Law 385/1993 providing for interim application of these rules)

## **3) Assignment of future debts and bulk assignment**

1. The debts can be assigned even earlier than the signing of the contracts from which they will arise.

2. The existing or future debts can be assigned also in bulk.

3. The bulk assignment of future debts can be made only for those debts which will arise from contracts to be stipulated within a period of time not exceeding 24 months.

4. The bulk assignment of debts is considered to have a determined object, even with reference to future debts, if the assigned debtor is indicated, except as prescribed in paragraph 3.

## **4) Assignment with recourse**

1. The assignor guarantees, within the limits of the agreed purchase price, the solvency of the debtor, unless the assignee waives, in whole or in part, the guarantee.

## **5) Effectiveness of the assignment with respect to third parties.**

1. When the assignee has paid the whole or part of the purchase price of the assigned debts and such payment bears certainty of date then the assignment is effective:

a) against the creditors of the assignor whose title has not been made effective towards third parties before the date of such payment;

b) against the creditor of the assignor having seized the debt after the date of such payment,

c) against the bankruptcy estate of the assignor which has been declared after the date of such payment except for the provisions of article 7, point 1.

1-bis. For the purpose of obtaining the payment certainty of date, the annotation of the payment made on the bank account of the assignor is enough.

2) The assignee can still make the assignment effective against third parties in accordance with the terms of the Civil Code.

3) Payments made by the debtor to third parties will discharge its obligations in accordance with the terms of the Civil Code.

## **6) Clawback action of payments made by the bankrupt assigned debtor.**

1. The payment made by the assigned debtor to the assignee is not subject to the clawback action set by the Bankruptcy Law. However such action can be exercised against the assignor to the extent that the Trustee proves that the assignor knew of the insolvency of the assigned debtor at the time of the payment to the assignee.

2. The assignor has still recourse to the assignee to the extent that the latter has waived the guarantee set in article 4.

## **7) Bankruptcy of the assignor.**

1. The effectiveness of the assignment against third parties provided for in Article 5, paragraph 1, is not enforceable against the bankruptcy estate of the assignor if the Trustee proves that the assignee was aware of the assignor's state of insolvency when the payment was made and provided that the assignee's payment to the assignor was made within the year prior to the bankruptcy declaration and before the assigned debt's due date.

2) The Trustee of the bankruptcy estate of the assignor can withdraw from the assignments made by the assignor only with respect to those debts which have not yet arisen at the date of the bankruptcy.

3) In case of such withdraw the Trustee must pay back to the assignee the purchase price paid by the assignee to the assignor with regard to the assignments indicated in point 2 of this article.

Resuming, the main points are:

- the possibility to assign future accounts receivable, also "in bulk", deriving from contracts to be stipulated within 24 months;

- the standard assignment is with recourse (as opposed to the Civil Code that provides normally for an assignment without recourse, unless agreed to the contrary);

- a new element for the enforceability of the assignments to third parties, in addition of the two elements provided by the Civil Code (notification of the assignment, and acceptance by the debtor, with certain date, of the assignment). The new, third element is the payment, even partial, by the Factor to the assignor of the price of the assignment: this payment must bear certainty of date;
- In the event of the assigned debtor's bankruptcy, if the bankruptcy trustee wishes to file a legal claim to declare null and void the payments made by the debtor to the Factor before the bankruptcy date, the claim must be directed at the assignor, not the Factor. However, for non-recourse assignments made by the assignor to the Factor, the assignor may later, if required to return any amounts to the bankruptcy estate, seek recovery of those same amounts from the Factor.

### **The Civil Code**

The general discipline of the assignment of debts is to be found in the Civil Code, articles 1260 to 1267, 1248 and 2914.

Hereinafter a summary:

#### **Art. 1260, Assignability of debts**

The creditor can transfer, also for free, its debt even without the consent of the debtor provided that such debt is not strictly personal or that such transfer is forbidden by law.

The parties may exclude the assignability of the debts; however, the agreement is not enforceable against the assignee unless it is proven that the assignee was aware of it at the time of the assignment.

#### **Art. 1261, Assignments not allowed**

Some categories of persons (such as Judges, Clerks of Courts, Lawyers, Notary Public etc.) are not allowed to receive in assignment some kind of debts.

#### **Art. 1262, Documents proving the debts**

The assignor must give to the assignee the documents supporting the debt which are in its possession. In case of partial assignment the assignor must give a certified copy of the documents to the assignee.

#### **Art. 1263, Accessories of the debt.**

By virtue of the assignment the debt is transferred to the assignee with the privileges, the personal and real guarantees and other accessories.

The assignor cannot transfer to the assignee, without the consent of the person who gave the pledge, the possession of things received and subject to the pledge; in case of disagreement the assignor is appointed as official receiver of the pledge.

Except as agreed to the contrary the assignment doesn't include the fruits which have expired.

#### **Art. 1264, Effectiveness of the assignment towards the assigned debtor**

The assignment is effective towards the assigned debtor when the same has accepted it or when the assignment has been notified to it.

In any case if the assigned debtor has paid the assignor before such notification it will not discharge its obligations if the assignee proves that the assigned debtor was aware of the assignment having been made.

#### **Art. 1265, Effectiveness of the assignment against third parties**

If the same debt has been assigned multiple times to different parties, priority will be given to the assignment that was first notified to the debtor or the assignment that was first accepted by the debtor by mean of a document bearing certainty of date, even though such assignment may have a later date. The same rule will apply when the debt has been made subject of usufruct or pledge.

#### **Art. 1266, Obligation of the assignor for the guarantee**

Whenever the assignment is made on an onerous basis then the assignor must guarantee the existence of the debt at the time of the assignment. The parties may agree to exclude such guarantee but in any case the assignor shall still be bound by the personal liabilities it may have incurred.

Where the assignment is made for free the guarantee is given only in those cases and in the limits set by law for the donor in case of eviction.

#### **Art. 1267, Warranty of the solvency of the assigned debtor.**

The assignor does not warrant the solvency of the assigned debtor except where it has accepted such guarantee. Under these circumstances the assignor is liable to the extent of what it has received; moreover it must pay the interest, the costs of the assignment and all expenses incurred by the

assignee in pursuing the debtor and shall get compensation for damages. All stipulations aimed at overburdening the liability of the assignor are null and void.

When the assignor has warranted the solvability of the debtor the warranty is lifted whenever the assigned debt would not be collected owing to the insolvency of the debtor depending from the negligence of the assignee as to the starting or getting on with actions against the debtor.

#### **Art. 1248, Ineffectiveness of rights of set off.**

In case the debtor has accepted without reserves the assignment of the debt made by its creditor to a third party then it cannot raise against the assignee set off rights which it could have availed itself with respect to the assignor.

The assignment which has not been accepted by the debtor and which has been notified to it forbids the set off of those rights which have arisen after the notification.

#### **Art. 2914, Transfers made before seizure**

The seizing creditors will not be affected by [...]:

2) the assignments of debts which have been notified to the assigned debtor or which have been accepted by the same after the seizure, even when such assignments were made before the seizure.

The transfer by way of subrogation is possible under Italian law. Anyway, it is not commonly used for the transfer of receivables.

A "true sale" is achieved if the contract that regulates the assignment of receivables contains clauses that provide for the substantial transfer of the risk associated to the receivables from the assignor to the assignee.

### **Question 3 EDI, e-invoicing, etc.**

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Yes, it can be done but specific requirements on the use of digital signature and certified electronic mail (*posta elettronica certificata*) must be satisfied.

Since 2019, Italy has introduced the obligation to use e-invoicing in any B2PA, B2B or B2C transaction (excluding only certain particular categories). The system accepts e-invoices issued in compliance with both the European standards and the previous standards for B2PA transactions (Fattura PA).

### **Question 4 Value Added Tax**

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

If (i) the transfer qualifies for VAT purposes as a financial transaction (qualification to be verified on the basis of the terms and conditions regulating the transfer, in particular the amount of the consideration paid, if any) it would fall within the scope of Italian VAT but would be exempt from the payment of the tax; (ii) the transfer does not qualify for VAT purposes as a financial transaction or falls

out of the VAT scope it would be subject to VAT at the ordinary 22 per cent rate or, alternatively, to Italian registration taxes at 0.5% rate.

Interests are not subject to VAT.

Under paragraph (i) above, commission charges are generally not subject to VAT to the extent that they are considered ancillary costs under an agreement that has financial purposes, provided that the services do not qualify as "debt collection" services (*attività di recupero crediti*).

If the transaction is carried out by banks, there are valid arguments to sustain that the transfer is carried out in the context and for the purpose of a financial transaction. In case of non banks, case by case analysis is required.

Italy has introduced a split payment system as of 1 January 2015 for value added tax (VAT) payment and invoicing requirements for supplies of goods and services made to public authorities. In February 2017, Italy expanded the scope of the split payment application to supplies of goods and services to companies controlled by central and local public authorities and to a list of companies listed to the stock exchange. Starting from 1 January 2018, the split-payment regime has been extended to supplies of goods and services rendered to additional categories of public bodies (such as public economic bodies, special companies, foundations, etc.) and of their subsidiaries.

As per the design of the system, suppliers continue to charge Italian VAT on goods and services supplied to Italian public authorities. These customers then 'split' the payment of the invoice: they pay the taxable amount to the suppliers, and the VAT to an allocated VAT bank account of the Treasury. Such a measure is combined with the electronic invoicing obligation for purchases made by public administrations (according to which all suppliers of a public administration should issue electronic invoices to it).

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

The right to collect the assigned receivable by another assignee or by third-party creditors, or the property right (in the case of conditional sales), are among the third-party rights that can impact the assigned receivables. In the case of receivables owed by the Italian public administration, unpaid taxes by the assignor could affect the factor's rights to collect the receivables. The reservation of title after the assignment remains valid, just as it was before: the rights of third-party creditors remain unchanged even after the assignment. Therefore, all third-party creditors' rights concerning the goods subject to retention of title can be invoked against the factor.

Regarding multiple assignment, Law 52/91 (see Question 2) provides the requirements in order to make the assignment valid against third party rights, including other assignees.

Except for specific situations, generally there are no differences for Non-Recourse Factoring, Recourse Factoring or Invoice Discounting. In any case, the notification to the debtor is important to protect the factor's rights from third party rights.

Except for some kind of machinery, these rights have not to be registered or notified. It's sufficient they are set in a contract having certainty of date.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

The Italian Civil Code states that the parties can exclude the transferability of the receivables (art. 1260-1261 cc). Only if the debtor is able to prove that the factor was aware of the prohibition against the assignment, it can pay to the supplier with discharging effect. Except for specific situations, generally there are no differences for Non-Recourse Factoring, Recourse Factoring or Invoice Discounting.

The prohibition is effective when the debtor can show that the assignee knew about the non-transferability of the debts at the time of the assignment of the same to the factor (art. 1260 cc). The assignment, however, remains valid between the parties (assignor and assignee).

There is no need for registration (except for the assignment of PA debt, see above).

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No answer.

## Question 7 Security Interests

For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

Ordinarily, security expressed to be created over receivables assume the form of a "fixed charge". It must be noted that, according to a legislation enacted in Italy, also a "floating charge" ("*pegno non possessorio*") may be created over such type of assets.

Fixed charge: please see the answer under section no. 2 above

Floating charge: registration with the relevant companies' register is required (relevant implantation regulation hasn't been enacted)

Such charges are not normally taken in addition to the assignment.



## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

If appropriate, the bank account of the assignor where the payments from the undisclosed debtors are made is secured in favour of the factoring company.

Undisclosed factoring is covered by the exemption under paragraph 5, letter b), art. 14 of the GDPR.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

In all the listed operations, the assignor loses the asset availability. However there can be differences with respect to the bankruptcy of the client, as under the bankruptcy law a pledge can be declared void under stricter terms than the purchase of debts

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

Data from debtors' payments of 2021 collected by a sample of factoring companies.

Bank-Transfer	79,5%
Ri.Ba.	7,5%
SDD	3,5%
Other instruments	9,5%

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

### Scenario A: bankruptcy of the supplier

Pursuant to Article 1265 of the Italian Civil Code and pursuant to Articles 5(1)(c) and 7(1) of Law 52/1991, once the factor (hereinafter, the "Assignee") pays, totally or partially, the purchase price of the assigned debts – and provided that such payment is given the so-called "date certain" (data certa)



– the assignment is also effective and enforceable vis-à-vis the bankruptcy estate of the supplier (hereinafter, the "Assignor"), which was declared bankrupt after the payment date.

However, in the event of a default of the Assignor, the assignment is not enforceable vis-à-vis the bankruptcy estate of the Assignor, depending on when the payment of the purchase price occurred. In particular a claw back applies in cases where:

- i) the receiver successfully proves that the Assignee was aware that the Assignor was insolvent at the time when the Assignee paid the Assignor; and
- ii) the payment by the Assignee to the Assignor occurred (x) within one year before the date of the declaration of bankruptcy and (y) before the assigned debt fell due.

Against this background, in the event of the Assignor's default, the bankruptcy estate can recede from assignments of debts formerly stipulated with the Assignee by the Assignor only for those debts which have not yet arisen by the date of the bankruptcy declaration; if this occurs, the receiver must pay back to the Assignee the purchase price paid by the Assignee for those debts.

### Scenario B: bankruptcy of the debtor

In the event of bankruptcy of the assigned debtor, the payment made by the assigned debtor to the Assignee is not subject to claw back pursuant to Article 67 of the Italian Insolvency Act (as of today pursuant to Article 166 of the new Code of corporate crisis and insolvency (Codice della Crisi di Impresa e dell'insolvenza)).

However, the receiver can consider the opportunity to exercise such action against the Assignor if the receiver successfully demonstrates that the Assignor was aware of the insolvency of the assigned debtor at the time of the payment (made by the debtor) to the Assignee.

Please, consider that in the event of the foregoing, the Assignor has still recourse to the Assignee if they stipulated a Recourse Factoring.

#### Arrangements with creditors

In general, the bankruptcy law establishes the following rules: when a client (i.e. the Assignor) falls in status of crisis, he can propose to his financiers an arrangement with creditors based on a plan proposed to creditors. In particular he can stipulate a debt restructuring agreement with his creditors. If the client (i.e. the Assignor) becomes insolvent, the creditor can promote a petition in bankruptcy, and then, if the debtor is declared bankrupt by the Court, a bankruptcy proceeding starts, and the creditors can create a committee which take part in the insolvent firm's management.

Code of corporate crisis and insolvency (Codice della Crisi di Impresa e dell'insolvenza)

Notwithstanding the above, on 15 July 2022 the new Code of corporate crisis and insolvency (Codice della Crisi di Impresa e dell'insolvenza) entered in force. The new code aims at a comprehensive reform of the Italian insolvency law, in particular (i) to allow early awareness of financial distress of a business and (ii) to safeguard the business' entrepreneurial potential during a crisis.

The most important changes are the following:

- replacement of the term insolvency with the expression "judicial liquidation" (liquidazione giudiziale) similar to other European countries, like France or Spain, in order to avoid the personal discredit which has historically been caused by the word "bankrupt";
- introduction of a definition of "state of crisis" (stato di crisi), being referred to as the likelihood of future insolvency, and of "center of main interest" (COMI), corresponding to the definition of the current EU Regulation;
- implementation of alert mechanisms to provide for prompt identification of a situation of distress; companies are encouraged to introduce adequate measures in order to cope with the crisis in a timely manner;
- prioritization of solutions that allow the crisis to be overcome with business continuity;
- simplification of all the various procedures regulated by the Italian insolvency law;
- reduction of the cost and the length of insolvency procedures;
- creation of a register under the authority of the Ministry of Justice, enrolling people and firms with the necessary expertise and requirements which, on appointment by the court, will be in charge of management and control tasks within the procedures regulated by the Italian insolvency law;
- harmonisation of the procedures with employment safeguarding schemes;
- introduction of changes to the Italian Civil Code and, in particular, the lowering of the threshold for the appointment of the statutory auditor(s);
- introduction of rules in group insolvencies.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

No answer.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

No answer.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No answer.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

The Legislative Decree n. 231/2002, art. 4 introduced the “automatic” maturity of delay interests starting from the day after the expiry date of the debts, without the need for a constitutional delay as provided for by Article 1282 (Civil code). The same article sets the expiry date for those debts for which the due date is not determined in the contract. The interest rate to be used is the one deliberated by the BCE, increased of seven percentage points. The Italian Government has already adopted (DL 192/2012) the updated Directive against late payments which introduces a higher interest rate for delay (BCE + 8 points) and some other charges for the debtor to refund the creditor of the cost borne for the collection, as well as specific rules for the trade debt payable by PA units (in particular, it sets a fixed maximum term of 30 days – 60 in particular cases).

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

UNIDROIT: Yes

UNCITRAL: No

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party (“battle of forms”) in this regard?

The supplier/seller and the assignee of the receivables can contractually choose the law applicable to the contract of assignment. The law applicable to the receivables is the law applicable to third parties.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

Italy already has a robust legal framework for the assignment of debts arising under the conduction of business activity (even though it doesn't mention factoring expressly), so the relevance of the UNIDROIT Model Law on Factoring appears, at this stage, moderate.

For the time being no consequence of it is visible in Italy.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☒ NO ☐

To assign debts arising from public contract works and other kind of debts against public sector, the assignment must be stipulated as a formal public contract or a notarized private contract. The assignment must be registered and notified to the debtor (public administrations) by a public functionary (or in a way that certifies the delivery) and not rejected by the debtor within 30 days from its notification (art. 120 and Annex II.14 L.D. n. 36/2023). During 2012, some new regulations introduced an electronic platform (<http://www.mef.gov.it/crediticommerciali>) which allows public administrations debtors to certify that a debt is certain, liquid and enforceable: such a certification includes also the acceptance of the future assignment of that debt. The assignor and the assignee can perform the assignment of that debt and use the platform to inform the debtor: such a notification fulfils all the requirements of form and notification. The Italian Government approved instruments to simplify and improve the assignment of certified debts (with L.D. n. 66/2014). Also, the assignment of debts already certified through the electronic platform can be performed by private deed with authorised banks or financial intermediaries. Such assignment of certified debts is effective from the date of communication to the administrations via electronic platform (and definitive if the public administration does not reject it within 7 days from the receipt of the communication).

In 2020 (Law 77/2020, art. 117), a new rule has been set for the entities of the national healthcare system under which the assignment is valid against those debtors only if they explicitly approve it.

Since 2014, all invoices stemming from B2PA transactions must be issued in electronic form and dispatched through the centralized "Sistema di Interscambio".

Do PA debtors have the right to refuse the assignment

YES ☒ NO ☐

If so, what consequences does this have?

In case of public contract, the PA debtor can refuse the assignment within 30 days from notification. According to the law, if the PA debtor does not refuse within the term above, the assignment is considered accepted. However, the assignment remains valid between the factor and the client.

For entities of the national healthcare system since 2020 an express approval of the assignment is required.

## Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No.

## LT > Lithuania

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☒ NO, factoring is not limited to CI/banks ☐

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES ☐ NO ☒

The respondent works only with Lithuanian customers and does not have information about other companies in the market.

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

According to the Law of the Republic of Lithuania all above mentioned products except for “Giving guarantees to third parties for obligations of supplier/seller” may be provided by financial institutions only and no special license is required for provision of these services.

For Giving guarantees there is a requirement of banking license granted by the The Bank of Lithuania.

YES ☐ NO ☒

No special requirements

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

No answer.

YES NO

☒ ☐ Capital requirements for credit, market and operational risks

No answer.

YES NO

☒ ☐ Data protection

No answer.

YES NO

☒ ☐ Liquidity risk requirements

No answer.

YES NO

☒ ☐ IAS / IFRS accounting principles

No answer.

YES NO

☒ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

No answer.

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

No answer.

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

No answer.

YES NO

☒ ☐ Reporting duties (e.g. AnaCredit, NSFR)

No answer.

YES NO

☒ ☐ Rules on payment services following the Payment Services Directive PSD II

No answer.

YES NO



ESG)

Rules and regulations on sustainability (environmental, social and governance –

No answer.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Bank of Lithuania

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>20</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

Law governing transfer of receivables is Civil Code of the Republic of Lithuania.

The assignment text must be placed on an invoice or the seller may send the buyer a letter informing on the assignment of the future or existing receivables under invoices issued already.

The debtor must be notified about the assignment of receivables.

The assignment shall be valid if the client has the right to assign such receivables and the circumstances due to which the debtor would have the right not to satisfy the claim, are unknown at the moment of the assignment.

According to Civil Code of Republic of Lithuania by assignment of the future receivables it is recognised that such assignment has passed to financier upon arising of the right to claim from the debtor the amount established in the agreement. If the assignment of receivables is related to a certain event, the assignment shall be recognised as having occurred upon occurrence of such event. In such cases no additional formalisation of the assignment shall be required.

One notification of the assignment is legally sufficient, in practice assignment notification is written on each invoice.

Subrogation is possible in cases where the factoring has insurance and within the procedure of recourse the rights of the creditor connected with the debtor responsible for the insurance event are transferred to an insurance company.

It is possible to transfer parts of a receivable or to make conditional transfers.

We don't have any specific requirements for a receivables assignment to qualify as a “true sale”.

## Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

<sup>20</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

The assignment agreement may be concluded using electronic signature.  
There is no separate law on requirements for separate written agreement governing the procedures. Requirements for electronic signature are defined in Law of the Republic of Lithuania on electronic identification and reliability services for electronic operations, which came in force on 8 May 2018. According to Civil Code of Republic of Lithuania, the client or the financier has to submit a written notification about assignment of the monetary claim to the financier and the notification has to specify the monetary claim and the financier for whom the obligation should be performed. Such written notification may be placed on the invoice or sent as a separate document.  
The e-invoicing Directive 2014/55/EU has been implemented in Lithuania and the e-invoicing is used in practice. The e-invoicing-regime is mandatory in public procurement contracts.

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?  
What is the VAT treatment of factoring commission/ service charge?  
What is the VAT treatment of discount or interest?  
Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?  
The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?  
Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?  
Are there "white lists" or any other VAT-related reporting duties for factoring companies?

There are no VAT issues or problems in Lithuania concerning the assignment of receivables.  
Factoring commission is subject to 21 per cent VAT.  
Factoring interest income is subject to 21 per cent VAT.  
There are no differences in the VAT treatment between banks and non-banks engaged in receivables financing.  
In some business sectors (such as agriculture), debtors are required to pay VAT separately. In such cases, the bank factorizes the invoices excluding VAT. The bank factoring is not affected in any way by such VAT splitting.  
The bank is not aware of any measures to ensure that the seller's VAT is paid. The bank is not responsible for ensuring that the seller pays VAT properly. The State Tax Authority controls the payment of VAT.  
There are no "white lists" or any other VAT-related reporting duties for factoring companies.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables?  
The factor's rights can perhaps be affected pursuant to contract or under mandatory law:  
Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights  
Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?



No specific third party right can affect an assigned receivable.

While the only instrument recognized by the law of the Republic of Lithuania is factoring in general, no differences can be identified.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Prohibition can be agreed, but not valid for third parties. Agreement between parties doesn't restrict assignment by law. According to Civil Code of the Republic of Lithuania the assignment of the monetary claim to the financier shall be also valid in cases when the agreement made between the client and the debtor prohibits or limits such action.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No other contractual barriers or practices.

## Question 7 Security Interests

For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

"Fixed charge" and "Floating charge" are contractual provisions and can be defined in the contract only. So it depends on the consensus of the parties.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

No specific regulation or options.

In practice, undisclosed factoring is used very rarely.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

There may be differences depending on the purpose of the transfer:

- If the financing of the client under the factoring agreement asserts itself in the purchase of the assigned receivable from the client, the financier having purchased such receivable shall acquire the right to all the amounts received from the debtor when the latter performs the demand and the client shall be liable against the financier if the latter receives less from the debtor than he has paid to the client for the purchased claim, unless otherwise established in the agreement. Also, a debtor is not allowed to off-set assigned receivables with the client after he was notified about the assignment. The payment from the debtor to any other party than the factor does not constitute a valid discharge of the debt.
- If receivables are assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees), the parties sign pledge agreement. Parties are not obliged to register it in any register. The object of the pledge must be transferred to the pledgee. The procedure of collecting from pledged receivables in a case of default is very fast and simple. Though there is a danger that receivables can be pledged by notarial certified bond and then legal dispute is inevitable.
- If receivables are pledged to collateralize such a financing facility, pledge is made by a notarial certified bond, which must be registered in the public Register of Contracts and Restrictions of Rights of the Republic of Lithuania. Transfer of the object of the pledge to the pledgee is optional. The pledgee has a priority right to the pledged receivables and none of the third parties can claim for it without pledgee's permission. The procedure of collecting from pledged receivables in a case of default is quite long and complicated.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer      %
- Cheque              %
- Bill of Exchange    %
- Other instruments    %

(please give details, preferably also about similar estimates relating to factoring relations only)

Bank-Transfer ca 100 %

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

Usually, the bank provides recourse factoring and in case of debtor's insolvency, the bank submits a claim to the client (seller) to pay the debt. So, there are no major threats and/or pitfalls.

In case of financier have took risk of buyer (non-recourse factoring), financier have similar rights as other creditors.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

No answer.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

In accordance with the above-mentioned directive, Lithuania has approved the Law of insolvency of legal entities, which is applicable to all areas of activity and to all legal entities (applies not only to factoring). It doesn't have the effect on factoring.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

As far as we are aware, this is hardly possible.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

It depends on provisions of the contract. For example, in case of late payments debtors bank has the right to charge with penalties (approx. 10 % per annum) for each overdue date. In accordance with the above-mentioned directive Lithuania has approved the Prevention of late payments in commercial transactions act, which applies to all areas of activity and to all legal entities (not only to factoring).

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

As far as we are aware, no.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

The law indicated in agreement between seller and the buyer would be applied if the financier would have to claim the buyer. The law indicated in the agreement between financier and client would be applied if the claim is against the client.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

We cannot provide any input on the relevance of this model at this moment.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

There are no specific requirements, unless provided for in public procurement. When participating in public procurement, invoices must be submitted via the e-invoicing system.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No answer.

## LU - Luxembourg

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

No answer.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO  
☒ ☐ Anti-money laundering

No answer.

YES NO  
☐ ☒ Capital requirements for credit, market and operational risks

No answer.

YES NO

☒ ☐ Data protection

No answer.

YES NO

☐ ☒ Liquidity risk requirements

No answer.

YES NO

☒ ☐ IAS / IFRS accounting principles

No answer.

YES NO

☐ ☒ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

No answer.

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

No answer.

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

No answer.

YES NO

☐ ☒ Reporting duties (e.g. AnaCredit, NSFR)

No answer.

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

No answer.

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance – ESG)

No answer.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

No answer.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>21</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

The ownership of a receivable can be transferred by assignment (art.1689 and following of the Civil Code).

If no notification of the assignment (art.1690 Civil Code) has been done, the debtor will be discharged by paying the seller.

There are no formal requirements for the notification.

The notification can also be done for future receivables, as long as these are determined or determinable.

There are no stamp duties or other documentary taxes and there is no registration requirement.

Receivables can also be transferred by way of subrogation (art. 1249 and following of the Civil Code) or novation (art. 1271 and following of the Civil Code) .

## Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

e-invoice-regime is applicable.

The law of 16/05/2019 requires electronic invoicing in public procurement and concession contracts.

<sup>21</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.



## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

There no VAT issues or problems concerning the assignment of receivables.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

Not applicable

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

A contractual prohibition against the assignment of receivables is valid but has no impact on the transfer of the receivables.

If there is a breach by the seller of the contractual prohibition and the debtor can proof he has a loss by this breach of contract than the seller (and the factor if not acting in good faith) can be liable for that loss.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

Security interests over receivables are governed by the Law of 5/8/2005 on financial collateral arrangements and are created by a pledge agreement (fixed charge) that doesn’t need to be registered

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

The risk of undisclosed factoring can be mitigated by taking a pledge on the collection bank account owned by the seller. This pledge is governed by the above-mentioned Law on financial collateral arrangements.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

No.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

95% Bank Transfer, 5% other instruments

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

As long as the assignment of the receivables results in the effective transfer of the title to such accounts receivable whereby the respective accounts receivable vest in the factor absolutely, the transfer of the accounts receivable is and remains opposable to the receivership under the bankruptcy procedure.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

No answer.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

No answer.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

The EU Late Payment directive 2011/7/EU was implemented.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)

Neither signed nor ratified.

- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Signed on June 12th 2002, but not ratified.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

Luxemburg courts apply the Rome I Regulations.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

The UNIDROIT Model Law has no consequences in Luxembourg.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

None.

## LV > Latvia

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

No special legal requirements.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

No special legal requirements as far as the person is considered a legal person and not a consumer.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO  
☒ ☐ Anti-money laundering

According to the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing

YES NO  
☐ ☒ Capital requirements for credit, market and operational risks

No answer.

YES NO  
☒ ☐ Data protection

In line with General Data Protection Regulation

YES NO

☐ ☒ Liquidity risk requirements

No answer.

YES NO

☐ ☒ IAS / IFRS accounting principles

No answer.

YES NO

☐ ☒ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

No answer.

YES NO

☐ ☒ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

No answer.

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

No answer.

YES NO

☐ ☒ Reporting duties (e.g. AnaCredit, NSFR)

No answer.

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

No answer.

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance – ESG)

No answer.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Factoring activity is under monitoring of State Revenue Service.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>22</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

Laws governing the transfer of ownership of receivables:

1. Civil law – Chapter 9 (Cession of Right to Claim)
2. Commercial Law – Chapter 6 (Factoring contract)
3. Law on Commercial pledge – Section 34 (Requires a written consent of the commercial pledgee in case the debt of debtors is part of a commercial pledge)

Physical process for the assignment of receivables:

1. Sales agreement between the Seller and the Buyer
2. Factoring agreement between the Seller and the Factor
3. Introductory letter from the Seller to the Buyer
4. Assignment clause on the Invoice

In order for the assignment to be valid, it must be made in written form, i.e. the Assignment clause on the Invoice and/or the Introductory letter satisfy this requirement. There is no registration required and there are no stamp-duties.

In case the debt of debtors is part of a commercial pledge, a written consent of the commercial pledgee is necessary.

The debt of debtors can be pledged as a commercial pledge in favour of the Factor, then this commercial pledge is registered in public register and bears a stamp-duty.

The Seller is entitled to transfer to the Factor such money claims, the fulfilment of commitments of which has already set in, as well as such claims, which will arise in the future (future claims).

## Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

The receivable can be validly assigned using a digital signature, i.e. the qualified electronic signature issued by the relevant authorities. The e-invoicing Directive 2014/55/EU regime can be used but it is not mandatory.

It is planned that the use of e-invoices will be mandatory in circulation between merchants (B2B), as well as between merchants and state and local government institutions (B2G), and these requirements will apply to domestic transactions from January 1, 2025.

<sup>22</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.



## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

The general VAT Tax rate of 21% is applied to factoring commission and service charge. VAT is not applied to interest.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

In case the debt of debtors is part of a commercial pledge (Publicly registered), pledgee is the only holder of all rights to receivables.

In all other cases the third parties can only demand from the Factor the factoring balance after the receivables have been paid.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

No answer.

Is there any requirement for registration?

According to the Commercial Law, an agreement entered into by and between the Seller and the Debtor, according to which the transfer of the Seller's receivables to a third person is prohibited or restricted, shall not be valid in respect of the transfer of receivables to such person who provides

factoring services.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

It is possible but not mandatory to put a fixed or floating charge on receivables as a commercial pledge in favour of the Factor. Such commercial pledge is registered publicly.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

Undisclosed factoring is rarely performed in Latvia, but in case this is performed, the Debtor has an obligation to fulfil the commitment complying with a claim by making a payment in favour of the Factor, if the Debtor has received a notice from the Seller or the Factor regarding the transfer of this claim to the Factor.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

No differences.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

100% Bank Transfer.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

In case of the insolvency of the Seller, the financier must notify the insolvency administrator within time period specified by the insolvency administrator in the public announcement. In case the receivables have been assigned to the Factor, the insolvency administrator can claim from the Factor the factoring balance after the receivables have been paid. In case of recourse and non-notification factoring, the insolvency administrator can claim the receivables from the Debtors and the financier will be together with other creditors for the proceeds.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

In case the receivables have been pledged in favour of the Factor as a public commercial pledge, then the Factor will have priority over other creditors that are not secured by pledge.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

No effect.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

In case the receivables have been assigned to the Factor, the insolvency administrator can claim from the Factor the factoring balance after the receivables have been paid.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

If it is stated in the Factoring contract, the Factor may demand penalties from the Seller. If the Factoring contract does not contain penalties, the Factor can apply the interest stipulated in the Civil law, i.e. 6% p.a. The Factor can demand penalties from the Buyer if there is an agreement between the Factor and the Buyer, otherwise the Factor can demand only such penalties that are included in the contract between the Seller and the Buyer and assigned to the Factor.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)

- The United Nations Convention on the Assignment of Receivables in International trade (2001)

The UNIDROIT Convention on International Factoring (1988): Yes

The United Nations Convention on the Assignment of Receivables in International trade (2001): No

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

The contractual choice of law can be applied.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

No consequences up to date.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

No answer.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

No answer.

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No answer.

## MT > Malta (answers from 2021 EUF Legal Study)

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☒ NO ☐

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (*i.e non-disclosed factoring with or without recourse*)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

The above activities carried out in or from Malta would, subject to limited exception normally applicable within a group context, be licensable activities in terms of the Financial Institutions Act (Chapter 376 of the Laws of Malta) unless carried out by a credit institution licenced under the Banking Act (Chapter 371 of the Laws of Malta).

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one- person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

The activities listed under the relevant laws, may only be transacted by a company that is in possession of a licence granted by the competent authority.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

Financial Institutions are subject to the provisions of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta); Prevention of Money Laundering and Funding of Terrorism Regulations (Subsidiary Legislation 373.01 of the Laws of Malta); and the relevant EU directives, regulations and guidelines issued thereunder.

YES NO

☒ ☐ Capital requirements for credit, market and operational risks

Financial Institutions are generally subject to the Solvency Ratio Directive, EU Credit Requirements Regulation (CRR) and Credit Requirements Directive, as implemented by the Malta Financial Services Authority (MFSA) including in terms of the Banking Rules issued under the Banking Act (Chapter 371 of the Laws of Malta).

YES NO

☒ ☐ [Data protection](#)

Malta has enacted the Data Protection Act (Chapter 586 of the Laws of Malta) which implements and further specifies the relevant provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

YES NO

☒ ☐ [Liquidity risk requirements](#)

The Liquidity Rules issued under the Banking Act (Chapter 371 of the Laws of Malta) and applicable to credit institutions is not generally applicable to financial institutions. The regulator is however empowered to apply continuous liquidity requirements as defined in the Liquidity Rule as it may deem appropriate, to financial institutions undertaking particular activities.

YES NO

☒ ☐ [IAS / IFRS accounting principles](#)

Financial institutions are exempt from applying the provisions of the Third and Fourth Schedules of the Companies Act 1995 (Chapter 386 of the Laws of Malta) relative to the applicable standards for the publication of annual accounts. However it requires financial institutions to follow any Banking Rules and Financial Institutions Rules issued by the authority under the Banking Act (Chapter 371 of the Laws of Malta) and the Financial Institutions Act (Chapter 376 of the Laws of Malta), respectively, in relation to the form and content of their annual accounts and any other Rules issued by the MFSA in this regard. In this respect, the MFSA has determined that financial institutions are bound to follow the Rule on Publication of Audited Financial Statements issued in terms of the Banking Act (Chapter 371 of the Laws of Malta) as may be applicable and in a manner which is proportionate to the financial institution's legal status. This notwithstanding, the aforementioned Banking Rule requires credit institutions (and therefore financial institutions by reference) to prepare their annual accounts, both on a solo and consolidated basis, in accordance with IFRS as adopted by the EU, and to file these with the MFSA within four months from the end of their financial year.

YES NO

☒ ☐ [Transparency and supplier/seller information for SMEs or corporates \(EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.\)](#)

Licensed financial institutions are bound to follow the Rule on Publication of Audited Financial Statements issued in terms of the Banking Act (Chapter 371 of the Laws of Malta) as may be applicable and in a manner which is proportionate to the financial institution's legal status. Such entities are bound to prepare their annual accounts in terms of IFRS and file the same with the MFSA. The requirements in this regard (and therefore the application of the proportionality principle) are stipulated by the MFSA upon issue of the financial institution's licence, such that the reporting requirements in respect of microbusinesses (or indeed small or medium sized businesses) undertaking factoring activities would be determined by the MFSA on a holistic basis taking into account the other activities and circumstances of the entity. Additionally, the General Accounting Principles for Small and Medium-Sized Entities have been enacted by Subsidiary Legislation 281.05 to prescribe the general accounting principles that shall be adhered to by small and medium-sized entities complying with all the criteria stipulated therein.

YES NO

☒ ☐ [Risk management \(covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance\)](#)

The Financial Institutions Rules issued by the MFSA impose requirements relative to the prudent conduct of business by financial institutions. It provides, amongst others, that every person who is a director, controller, partner or any other officer of the institution must be a fit and proper person to hold that particular position, and to ensure that business is carried out with integrity and skill. Financial institutions are required to abide by the rules and regulations applicable to them, monitor recoverability of loans and other advances, abide by the Banking Rules relative to the Management of Credit Risk, and Credit and Country Risk Provisioning. They are required to maintain adequate accounting records on an ongoing basis and to prepare accounts in terms of IFRS as well as submit the same to the MFSA. Financial Institutions are subject to Large Exposure Rules applicable to credit institutions (subject to the principle of proportionality), are required to abide by the Own Fund Rules applicable to credit institutions, as well as the Solvency Ratio Directive, Liquidity Rule so as to ensure that they have sufficient assets to cover their liabilities and to be able to meet their obligations as and when they fall due. Rules applicable to credit institutions with respect to outsourcing are also applicable to financial

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme

If applicable, what is the basis of the contribution to the DGS for factoring companies?

The regulations implementing Directive 2014/49/EU on Deposit Guarantee Schemes apply to credit institutions and not financial institutions, such that entities licenced to provide factoring services in terms of the Financial Institutions Act, which are not therefore credit institutions, are not subject to the same.

YES NO

☒ ☐ Reporting duties (e.g. AnaCredit, NSFR)

information in terms of the reporting requirements (BR/05, BR/06, FINREP, COREP, Central Credit Register Credit institutions, groups of credit institutions and financial institutions licensed under the Banking Act and the Financial Institutions Act respectively, shall report to the Bank statistical and Anacredit among others). The obligations of reporting imposed upon such financial institutions and banks primarily derive from the EU directives/regulations themselves or are transposed through the Malta Financial Services Authority (MFSA) circulars and rules.

YES NO

☒ ☐ Rules on payment services following the Payment Services Directive PSD II

The Payment Services Directive PSD II has been transposed by the Central Bank of Malta under the Central Bank of Malta Act through the CBM Directive No. 1 on the Provision and Use of Payment Services.

YES NO

☐ ☐ Rules and regulations on sustainability (environmental, social and governance – ESG)

Whilst the rules and regulations on sustainability (environmental, social and governance – ESG) is still a developing area and have not yet been articulated, it is expected that such would be adopted as core elements of a company's operations and development. That said, all entities whose equity securities are admitted to listing on the Maltese Regulated Market are bound to comply by the Code of Principles of Good Corporate Governance which was introduced by the Malta Stock Exchange for the purpose of enhancing the legal, institutional and regulatory framework for good governance in the Maltese corporate sector. These principles provide for (1) the more transparent governance structures and improved relations within the market which should enhance market integrity and confidence; (2) the proper transparency and disclosure of all dealings or transactions involving the Board, any Director, senior managers or Officers in a position of trust or other related party; and (3) the protection of shareholders from the potential abuse of those entrusted with the direction and management of the Company by the setting up of structures that improve accountability to them.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?



The competent authority for the purposes of the Banking Act (Chapter 371 of the Laws of Malta) and the Financial Institutions Act (Chapter 376 of the Laws of Malta) is the Malta Financial Services Authority.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>23</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification? Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

Factoring is regulated by Sub-title VII (Of the Assignment of Debts and Other Rights) of Title VI of Part II of Book Second of the Civil Code (Chapter 16 of the Laws of Malta), as stipulated in Article 1484A thereof. For the purposes of the above provisions of the Civil Code, factoring is described as an assignment of one or more debts where (a) the assignor is a trader; (b) the debts being assigned arise out of or in connection with the trade or business being carried out by the trader; and (c) the assignee is a person licensed to carry out the business of banking or the business of factoring under the applicable laws of Malta, or the equivalent laws in a jurisdiction recognised by the competent authority appointed in terms of the Banking Act.

A factoring agreement must be entered into in writing between the trader as assignor and the financial institution providing the factoring services (as assignee). Financial institutions providing factoring services will be expected to have their standard forms of agreement to cater for the different forms of factoring services provided. Before the assignee can exercise its rights against the debtor whose debt is assigned, notice of the assignment, evidenced in writing “by any means” must be sent to the debtor. A notice sent to the debtor together with the document evidencing the debt is sufficient, and the notice need not be signed by either the assignor or the assignee.

The validity of the assignment is not dependent on registration in any public register, and no stamp duty is payable in respect of the assignment of trade receivables. The exercise by the factor of the rights assigned to it against the debtor is dependent on the debtor having received notice as stated above.

The Civil Code provides that, with respect to factoring, it is possible to assign future debts or classes thereof provided that the debtor and the latest date by which the future debts shall come into existence are identified in the contract of assignment. In such cases, no additional assignment will be required when the debt comes into existence, and provided the initial notice of assignment has been provided as above, no further notice will be required to be given to the debtor once the future debt comes into existence.

General principles of Maltese Civil Law do provide for payment by subrogation, such that a person paying the debt of another can be subrogated in the rights of the creditor subject to the parties entering into a specific agreement in this regard providing also for subrogation to occur simultaneously with payment. No special provisions have however been introduced under this institute to cater specifically for subrogation within a

<sup>23</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

factoring context.

Maltese law does not elucidate on the possible assignment of part of a receivable or conditional transfer thereof.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

An assignment under Maltese law is not valid unless made in writing. Therefore, the contract of assignment needs to be in writing and signed by both parties. The Electronic Commerce Act (Chapter 426 of the Laws of Malta) provides that a transaction is not deemed to be invalid merely because it took place wholly or partly by means of one or more electronic communications, such that an assignment agreement may be entered into in electronic form.

The enforcement of the assignment against the debtor requires that the debtor has first been given notice of such assignment. Such needs to include the document evidencing the debt, but it need not be signed by either the assignor or the assignee. Notice in electronic format is therefore not excluded. However, whilst the Electronic Commerce Act provides that where a person is required or permitted to give information in writing, that requirement shall be deemed to have been satisfied if the person gives the information by means of an electronic communication, where the information (including the giving, sending or serving of a notification) is required to be given to a person who is neither a public body nor acting on behalf of a public body, then the person to whom the information is required to be given must consent to the information being given by means of an electronic notification.

Therefore, to the extent that the debtor has not, in the original contractual obligations entered into with the assignor, agreed to electronic notification, notice of the assignment would have to be given in physical form.

It is further noted that notwithstanding the Electronic Commerce Act, it is not normal practice that assignment agreements be entered into solely in electronic form.

Certain provisions of Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement were transposed in national legislation through Subsidiary Legislation 601.10, which regulation applies to electronic invoices issued as a result of the performance of contracts to which the Public Procurement of Contracting Authorities or Entities in specific fields. Any electronic invoices which comply with the European standard on electronic invoicing must be received and processed accordingly by the contracting authorities and entities. That said, these regulations are without prejudice to the right of the sender of the invoice to choose between submitting the invoice in accordance with the European standard on electronic invoicing or in paper format. These regulations are applicable to the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and other specific entities.

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

Maltese financial institutions providing factoring services will only charge VAT in respect of factoring services provided to business establishments or fixed establishments in Malta.

The charging of VAT or otherwise in respect of factoring transactions is not dependent on the service provider but on the type of service being provided and the place where the business establishment or fixed establishment of the recipient of the service is located.

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights

Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

A valid assignment of debts transfers all rights existing in respect of such debts to the assignee, subject however that the enforcement of the rights of the assignee against third parties is dependent on the third party debtor having received proper notice of such assignment. In terms of Maltese Law, the assignment of a debt includes every security, privilege or hypothec attached to the debt and every other thing accessory to it.

Unless the assignee has renounced to such warranty in whole or in part, the assignor is answerable for the solvency, whether present or future, of the debtor, to the extent of the price of the assignment. There is distinction between Non-Recourse Factoring, Recourse Factoring, and Invoice Discounting.

The validity of assignments of debts is not subject to any other registration or notification requirements.

### Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring

- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

The provisions of the Civil Code (Chapter 16 of the Laws of Malta) do not specifically refer to the prohibition or other of assignments of receivables. On the basis of general principles of freedom of contract, a creditor and a debtor can agree that the relevant receivable and the rights under the contractual arrangement generally are not subject to assignment. The party assigning his rights in terms of a contract which is not subject to assignment would be acting in breach of the original contract with respect to the original counterparty, who, in turn, would be entitled to take action so as to enforce the original agreement.

In addition, if original debts are not assignable, the factor to whom the same have been purportedly assigned would have a right of action against the assignor for damages, and potentially breach of warranty.

Contracts constitute the law between the parties thereto, are only operative as agreed between such parties, and are generally not of prejudice or advantage to third parties except in the cases established by law. The validity of agreements including clauses prohibiting the assignment of debts is not subject to any registration or notification requirements.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance?

A case by case basis must be taken as conflicting laws of different jurisdictions could potentially offer a hindrance from a structural perspective.

## Question 7 Security Interests

*For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.*

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

A fixed charge, in the form of a pledge over receivables, can be obtained in respect of a specific receivable or class of receivables. A floating charge, in the form of a general hypothec, can be obtained over the entirety of the assets, present and future, of the party against whom it is registered.

General hypothecs are entered into by public deed, and the validity of a general hypothec as against third parties is dependent on registration in the public registry.

A fixed charge over receivables, in the form of a pledge over the same, is not subject to registration.

Additional security provided by the assignor of a debt to the factor may also take the form of (i) a special hypothec or special privilege (a fixed charge) over a specific immovable, in which case the contract would be entered into by public deed and be subject to registration; (ii) a fixed charge, in the form of pledge, over bank accounts, debts, movable assets, securities (amongst others). Pledges over securities of limited liability companies are subject to registration with the Registrar of Companies where the company the securities of which are pledged is registered in terms of Maltese Law. Other forms of pledges are not subject to registration, but are subject to the delivery of the movable pledge or the document conferring right to the disposal thereof, to the pledgee or third party selected by the parties to the contract. A pledge of a debt requires notification to be sent to the third party debtor of the debt pledge.

The requirement imposed by the factor on the assignor of the provision of additional security is normally dependent on the risk which the factor assigns to the transaction, the perceived financial stability of the assignor, amongst others, and will be agreed to between the parties as part of the commercial negotiation process.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

The factor can require that the assignor provide additional security in the form of a special hypothec over business immovable, if these exist, or the pledging of business bank accounts. Please refer further to our comments at Question 7 above.

We have seen no impact of the GDPR in this respect due to the limited level of Personal Data involved in such respect and the measures which the all institutions must adhere to pursuant to the same GDPR.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

An assignment of receivables constitutes an outright transfer of ownership in the receivable to the factor, who would be entitled to enforce the same as owner.

An assignment by way of collateral is regulated by the provisions of the Civil Code (Chapter 16 of the Laws of Malta) governing security by title transfer, whereby a debtor transfers or assigns a movable so as to secure a present or future obligation, to a creditor or security trustee for the benefit of the creditor. In such cases, the creditor to whom the property has been transferred is considered to be the absolute owner of the property so transferred, subject however that the transferee in such case shall be considered as having acquired title and possession as a fiduciary for the sole purposes of (a) retaining the title and, if so agreed, possession of property as security for the performance of the secured obligations, (b) of applying such property or its value in settlement of the secured obligations in case of default; and (c) of returning the property, or its equivalent in case of fungible property, on performance of the secured obligations or of returning any excess in value to the transferor in case of enforcement.

A pledge of receivables does not transfer title over the receivable pledged to the factor, but only provides the factor as pledgee the right to obtain payment out of the thing pledged with privilege over other creditors of the pledgor. Subject to certain limitations depending on the assets subject to the pledge, pledge agreements generally grant the pledgee the right to appropriate, or sell (or apply for a judicial sale of) the movable pledged upon a default of the creditor, thereby enabling the pledgee to obtain satisfaction of the obligations due to it by obtaining payment out of the proceeds of any such appropriation or sale.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

No answer.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

The Civil Code (Chapter 16 of the Laws of Malta) does not make special arrangements for insolvency or post insolvency events affecting the supplier in a factoring scenario, save for providing that in the event of insolvency or bankruptcy of the assignor, the assignment of future debts which have not yet come into existence on the date of winding-up or bankruptcy order is made by a Court, may be rescinded by the liquidator or the curator of the assignor.

The right of rescission of the assignment of future debts is conditional on the refund of any consideration paid by the assignee to the assignor for such future debts.

The manner in which pre and post insolvency transactions are treated as a matter of Maltese Law will also depend on the status of the supplier as an individual trader, limited liability company or otherwise. In the case of limited liability companies, for example, every privilege, hypothec or other charge, or transfer or other disposal of property or rights, and any payment, execution or other act relating to property or rights made or done by or against a company, and any obligation incurred by the company within six months before the dissolution of the company is deemed to be a fraudulent preference against its creditors whether it is of a gratuitous nature or an onerous nature if it constitutes a transaction at an undervalue or if a preference is given, unless the person in whose favour it is made, done or incurred, proves that he did not know and did not have reason to believe that the company was likely to be dissolved by reason of insolvency, and in the event of the company being so dissolved every such fraudulent preference is deemed void.

Where the trader is not a corporate entity, and the provisions of the Commercial Code (Chapter 13 of the Laws of Malta) with respect to bankruptcy apply, every act transferring property of any nature, including any renunciation of any succession whatsoever or of an acquired prescription, and every obligation incurred or other act made by the bankrupt under a gratuitous title for the purpose of defrauding his creditors, is deemed null and void as regards the body of creditors, of whatever kind they may be, even though the parties interested be in good faith. Every such act, and every obligation, act or payment made or incurred under an onerous title can be annulled if there is fraud also on the part of the party interested. Furthermore, any such acquisition, obligation, act or payment is deemed to be fraudulent as regards the party interested, if it is proved that such party knew of the bankruptcy or of the existence of circumstances giving rise to a declaration of bankruptcy.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

Saving the provisions relative to fraudulent trading both in respect of companies and traders as described above, security provided by the supplier prior to bankruptcy will, upon bankruptcy, be enforceable and shall rank, in terms of priority, in accordance with law. No new security can be provided following the commencement of bankruptcy or insolvency proceedings, and the liquidator of a company or curator in bankruptcy of the trader as relevant, would, subject to court approval in certain instances, only be allowed to



continue trading only for the purposes of completion of the liquidation process in the case of a company, or where this is conducive to the re-establishment of the trader's affairs or increasing the bankrupt's assets for the benefit of his creditors, and with court sanction.

Creditors will rank in terms of law, with secured creditors ranking ahead of the pool of unsecured creditors. The pledgor will, with respect to the thing pledged, rank ahead of other creditors. Hypothecs rank as from date of registration in the public registry, and entitle the creditor to priority over other non-secured or creditors with later registered security. Hypothecs registered on the same day grant creditors equal ranking.

Where security by title transfer has been provided, this is enforceable in accordance with the terms of the agreement and the applicable provisions of the Civil Code (Chapter 16 of the Laws of Malta) notwithstanding the bankruptcy or insolvency of the debtor of the debt or the grantor of security by title transfer or the commencement or continuation of any insolvency or winding up proceedings or re-organisation measures.

[How is your country implementing the Restructuring Directive \(EU\) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring \(including changes made in response to the Covid-19-pandemic, which may be temporary\)?](#)

Directive (EU) 2019/1023 of the European Parliament and of the Council of June 20, 2019, on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2014/1132 has not yet been implemented into the Laws of Malta. That said, this should be implemented by not later than July 2021.

There have been no changes to the insolvency laws since 2017.

[Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt?](#)

As explained earlier, it could be the case that the purchase or acquisition of a receivable through non-recourse factoring which was made within six months before the dissolution of the company is deemed to be a fraudulent preference against its creditors if it constitutes a transaction at an undervalue or if a preference is given, unless the person in whose favour it is made, done or incurred, proves that he did not know and did not have reason to believe that the company was likely to be dissolved by reason of insolvency, and in the event of the company being so dissolved every such fraudulent preference is deemed void.

Provided that the formalities required for perfection of a sale of receivables have been adhered to in accordance with the Civil Code (Chapter 16 of the Laws of Malta) and the debt existed before the time of the winding up of the supplier/seller, such assignment of receivable shall still be valid and effective. However, the Civil Code states that in the event of insolvency or bankruptcy of the assignor, the assignment of future debts which have not yet come into existence on the date a winding-up or bankruptcy order is made by a Court, may be rescinded by the liquidator or the curator of the assignor. The right of rescission of the assignment of future debts shall be conditional on the refund of any consideration paid by the assignee to the assignor for such future debts.

The Civil Code highlights that the assignor shall be answerable for the solvency, whether present or future, of the debtor, to the extent of the price of the assignment, unless the assignee renounces to such warranty in whole or in part

## Question 12 Late Payments

[Are there any penalties \(and if so of what kind\) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?](#)

The Civil Code (Chapter 16 of the Laws of Malta) provides that in case of an obligation for payment of a determinate sum, the damages arising from the delay in the performance thereof shall only consist in the interests on the sum due at a given rate per annum.

The EU Late Payment Directive has been implemented into Maltese Law in virtue Sub-Title 1A (Of Late Payments in Commercial Transactions) of Title II of Part I of the Commercial Code (Chapter 13 of the Laws



of Malta), which provides for legal interest for late payment as simple interest at a rate equal to the reference rate applied by the European Central Bank, and at least 8%.

### Question 13 International Conventions

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Malta is not a party to and has not ratified the UNIDROIT Convention on International Factoring (1988) or the United Nations Convention on the Assignment of Receivables in International trade (2001).

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

Where the rights of the creditor under a credit agreement are assigned to a third party, the assignee is entitled to raise against that third party any defence available to it against the original creditor. It will therefore be subject to the laws of the contract governing the agreement unless an agreement is made with the relevant party that another law be applicable, and also depending on the grounds for which an action may be brought in the event of a default on the relevant agreement.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

Do PA debtors have the right to refuse the

assignment YES ☒ NO ☐

If so, what consequences does this have?

There are no special requirements in relation to public administrations.

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No further comments.

## NL > The Netherlands

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of  
Non-Recourse Factoring

Recourse Factoring

Invoice Discounting (i.e non-disclosed factoring with or without recourse)

Structured Financing , including Inventory Financing

Giving guarantees to third parties for obligations of supplier/seller

Protection against third party payment default Direct cross border factoring

2-Factor cross-border factoring

B2B-/B2C-factoring

No specific regulatory requirements apply to any of the above-mentioned receivables finance activities in The Netherlands, except in case "the operation of granting protection against third party payment default" would constitute (credit) insurance activities for Dutch regulatory purposes. In that case such activities would be subject to licensing requirements and regulatory supervision in The Netherlands. Whether this would be the case, depends on the way the relevant activities are structured.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

No. However, certain stipulations (for example, in relation to termination or set-off rights) contained in an agreement between a business and a natural person not acting in the exercise of his professional capacity or business, may be considered unreasonably onerous and may be (declared) void on the basis of article 6:248 (2) Dutch Civil Code.

This fits into a larger trend of professional financial institutions being held to an expanding 'duty of care', on the basis of which they are to use due process, and give proper consideration to clients' rights and interests when interacting with consumers and SME's.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO  
☒ ☐

Anti-money laundering

Banks and other financial companies (including factoring companies) fall under the scope of the *Wet ter voorkoming van witwassen en financieren van terrorisme ('Wwft')*, which is the implementation of the European Anti-Money Laundering Directive.

YES NO

☒ ☒ Capital requirements for credit, market and operational risks

The answer to this question depends on the situation: Capital requirements only apply to factoring providers that are also financial institutions, or that are subsidiaries of financial institutions, but not to factoring providers that act on a “stand-alone basis”.

YES NO

☒ ☐ Data protection

Next to relevant EU legislation, the “*Uitvoeringswet Algemene Verordening Gegevensbescherming*” (UAVG) applies. The GDPR and the UAVG are both enforced by the Dutch data protection authority, the *Autoriteit Persoonsgegevens*.

YES NO

☒ ☒ Liquidity risk requirements

The answer to this question depends on the situation: liquidity requirements only apply to factoring providers that are also financial institutions, or that are subsidiaries of financial institutions, but not to factoring providers that act on a “stand-alone basis”.

YES NO

☐ ☒ IAS / IFRS accounting principles

This is at the discretion of the factoring provider and its accountant. Please note, however, that IFRS will apply in accordance with the EU Accounting Regulation for the consolidated financial statements of all European companies whose debt or equity securities trade in a regulated market in the Netherlands.

YES NO

☐ ☒ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

There are no specific requirements on how the information needs to be presented to microbusinesses/small/medium/corporate businesses. However, the way the information is provided may play a role in case of a dispute in relation to the interpretation of the parties' obligations and expectations under a factoring contract. Being transparent and providing information in an easy-to-understand manner is also part of the ‘duty of care’ of financial institutions (which also applies to ‘stand-alone’ institutions).

YES NO

☒ ☒ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

The answer to this question depends on the situation: requirements in this respect only apply to factoring providers that are also financial institutions, or that are subsidiaries of financial institutions, but not to factoring providers that act on a “stand-alone basis”.

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

Not applicable

YES NO

☐ ☒ Reporting duties (e.g. AnaCredit, NSFR)

Not applicable

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

Receivables financing does not generally fall under payment services.

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance – ESG)

There are no mandatory rules specific for receivables financing. The Equator Principles are generally adopted in the industry.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

In the event of factoring provided on a “stand-alone basis”, this is not applicable. Factoring companies that are part of a financial institution are regulated by the Dutch or European Central Bank.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>24</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier’s/seller’s insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

Both a transfer of ownership by way of assignment and a security interest by way of a pledge are possible in The Netherlands. The requirements for both instruments are comparable:

- a bilateral written agreement (*‘akte’*, or deed); and either
- registration (at no costs) with the relevant tax authorities in case of a non-disclosed transfer or pledge; or
- notification to the underlying debtor in case of a disclosed transfer or pledge. No formal requirements apply to notification, e.g. an invoice footer suffices.

<sup>24</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

The purpose of a transfer and a pledge differs: in case of a transfer of ownership, the parties' intent to transfer ownership is expressed in the relevant assignment agreement, and payment risk on the debtor under the transferred receivable and related to that debtor's inability to pay is assumed by the transferee ("true sale assignment", "limited recourse structure"). A pledge over a receivable, on the other hand, only serves security purposes for the pledgee (no intent to transfer ownership, "full recourse structure").

True sale assignment/limited recourse structures are more and more used in The Netherlands by mid corporate and corporate clients to achieve off-balance treatment for their receivables, for which purpose a true sale assignment is instrumental.

Please note that a transfer of receivables by way of security is not valid under Dutch law (article 3:84(3) Dutch Civil Code). If the parties' intent is to provide security, a pledge should be used.

A transfer of ownership by way of subrogation is possible in The Netherlands (on the basis of an agreement between the debtor and a third party acquiring the receivable subject to consent to that effect by the original owner of the receivable to be transferred), but this structure is not commonly applied.

Conditional receivables transfers are possible in The Netherlands (for example: a stipulation in a factoring contract to the effect that transfer of a receivable shall be subject to such receivable meeting certain pre-agreed and clearly defined eligibility criteria).

A partial receivables transfer is possible in The Netherlands. Please note however, that it would be rather unusual to apply that type of structure in a Dutch market setting. In case of a club-deal setting (being a scenario in which a partial assignment might come up), the factoring companies typically choose to apply a structure in which one of them (the agent) acquires full legal title to all receivables that are being purchased under the programme, whilst the other factoring companies (the participants) have a contractual claim to share proceeds against the agent, based on a funded or unfunded (the former would be typical) risk participation agreement.

Dutch law contains no "hard and fast" rules for a transfer of receivables to qualify as a true sale. It is important to express the parties' intent to transfer ownership, and to that effect the take-over of debtor risk by the factor is of interest. A **deferred purchase price mechanism** (whereby on the purchase date only a part of the purchase price is being paid and where payment of the remaining part is dependent on receipt of payment in full by the debtor) does not affect the legal title transfer analysis under Dutch law in general.

No stamp duty or other documentary taxes apply to a transfer of ownership of or pledge over receivables in The Netherlands.

A non-disclosed assignment or pledge is possible in relation to existing receivables and receivables which result directly from an existing legal relationship. It is not possible to assign or pledge on a non-disclosed basis **future receivables which do not result directly from an existing legal relationship in advance in The Netherlands**, so on every relevant (purchase or pledge) date, a supplemental assignment or pledge agreement needs to be executed and registered (in case of a non-disclosed assignment or pledge).

It is common practice in the Netherlands for professional pledgee to register daily a 'catch-all' supplemental pledge and assignment agreement ('*verzamel- en cessieakte*'). This agreement is signed by the pledgee on behalf of both the pledgor and pledgee on the basis of a power of attorney given by the pledgor.

If a disclosed assignment or pledge is used, it is possible to assign or pledge future receivables, including those which do not result directly from an existing legal relationship.

The assignment or pledge agreement (and any notification to the debtor) needs to contain information that makes it possible to identify all the receivables that are transferred or pledged thereunder to the assignee/pledgee. It is sufficient that the receivables can be identified on the basis of the pledgee's administration.

The assignment or pledge of receivables that have not yet come into existence upon the institution of

insolvency proceedings against the assignor or pledgor will not be effective and will not come into existence during the insolvency proceedings.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Yes, a receivable can be validly assigned using electronic data exchange.

In order to qualify for the same legal protection as a hardcopy/wet ink agreement (which is required to validly transfer receivables under Dutch law), the following criteria must be met: (i) each party to the contract must be able to save a signed copy of the electronic document in a manner that will retain its integrity for as long as required considering the nature of the agreement; and (ii) the electronic document must be signed with an electronic signature that is sufficiently trustworthy, considering the nature of the agreement.

Advanced electronic signatures have been used in the market, however, some scholars believe that an assignment agreement ('akte') can only be validly executed with a qualified electronic signature. Currently, overall market practice is to use wet ink signatures.

Registration of an assignment agreement cannot be effected electronically (yet), whereas this is a requirement in case of a non-disclosed assignment (please see the answer to Question 2).

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

VAT applies to those components of the factor's remuneration that qualify as a factoring fee.

There is no split payment mechanism for VAT in place in The Netherlands, nor do other regulations apply to factoring companies to ensure that the seller's VAT is paid. There are, therefore, no "white lists" or any other VAT-related reporting duties for factoring companies either.

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?



Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

For the purpose of this question, it is our understanding that “supplier” means “assignor” or “pledgor” as the case may be (see question 2). If that understanding is correct:

- an earlier assignment would have the effect that the assignment to the factor does not take place. An earlier pledge would have the effect that the holder of the earlier pledge would continue to have the benefit of such earlier security right in priority over the factor and could collect the affected receivables;
- set-off by a debtor under an assigned or pledged receivable based on a valid counter claim may affect the factor’s position. Assignment of the claim does not affect the right of set-off of the debtor. That counterclaim can be based on a number of grounds, including commercial disputes or a vicarious tax liability system that applies in The Netherlands for certain industries (mainly: seconded labor for taxes or social premiums that were due but remain unpaid, and industries which are subject to excise duty which was due but remains unpaid such as oil and gas, alcoholic beverages) or vicarious liability by a debtor for minimum wages.

Dutch law does not include a prolonged retention of title concept, as a security assignment is not allowed (as indicated in the example). Valid non-Dutch law retention of title clauses (e.g. by a German supplier of the assignor/pledgor) may retain some of their effect in The Netherlands as the security assignment may be assimilated to a right of pledge, thus possibly affecting the position of the factor under its assignment/pledge.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Under Dutch law, contractual prohibitions on assignment/pledge are binding. A prohibition on assignment automatically includes a prohibition on pledge (see the following court case: ECLI:NL:HR:2022:984), unless explicitly stated otherwise. No registration is required, for the effectiveness of the prohibition it suffices that it has been agreed upon between the parties (for instance included in applicable GT&Cs of the relevant debtor under an assigned/pledged receivable).

A prohibition can have either a purely contractual effect (*‘verbintenisrechtelijke werking’*) or it can have an “in rem” effect (*‘goederenrechtelijke werking’*), depending on the language of the prohibition. Language aimed at the capacity of parties, such as a clause indicating a prohibition for a party to assign/pledge, is an indication for purely contractual effect. Language aimed at the nature of the receivable, such as a clause indicating non-transferability of/impossibility to pledge a receivable, is an indication for an “in rem” effect. A reference to the relevant clause in the Dutch Civil Code (article 3:84(3) DCC) is also a strong indication of an “in rem” effect.

A breach of a non-assignment/pledge clause with only contractual consequences would result in a valid transfer/pledge and also in a breach of contract by the assignor/pledgor. A non-assignment clause with “in rem” consequences renders any transfer or pledge null and void and makes it impossible to transfer/pledge the relevant receivable. In the latter case, only a waiver by the relevant



debtor under the assigned/pledged receivable can lift the effect of the prohibition.

At the moment of writing, legislation is being debated in the Dutch parliament on the prohibition of prohibition of assignment clauses. Please see question 15 for more information on this topic.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

From time to time, in the absence of a(n 'in rem') pledge/assignment restriction, buyers under a commercial contract (mainly: large corporate retail companies) include a substantial fine in that commercial contract which will be due by the supplier (the assignor/pledgor of a receivable) in case of an assignment or pledge of receivables against that buyer without the buyer's prior consent. This fine, which sometimes is stipulated to be the exact amount of the claim that is assigned or pledged, is then set-off against the receivable, thus resulting in the buyer to 'escape' its payment obligation.

It is not clear whether such a fine would be upheld in legal proceedings. A debtor of such a fine has a legal right to request a court to moderate the fine. Although the Dutch Supreme Court has ruled that moderation of a fine should be used with a large amount of restraint, lower courts seem to take a more liberal approach to this topic.

In addition, this right to request moderation of the fine most likely does not extend to the pledgee, which would make the pledgee reliant on the client (or its bankruptcy trustee) to request the courts to moderate the fine.

As such, in practice this type of stipulation constitutes a deterrent for the supplier to assign or pledge without the buyer's consent.

## Question 7 Security Interests

For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

We refer to our answer to question 2 and question 8. Please note that floating charges over all assets are not possible under Dutch law (e.g. pledges over collection accounts that may be used in connection with receivables' transactions).

In addition to assignment of or pledge over receivables, a pledge over the collection account can be created. The supplier/borrower is generally allowed to use the collection account without restrictions until the factor notifies the account bank otherwise (for example, upon the occurrence of a pre-defined trigger event).

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

The most secure risk minimisation for the factor is obtained by having "cash dominion" in respect of debtor payments, i.e. by having debtors pay on a collection account in the name of the factor. In that

case, debtor payments are kept bankruptcy remote (in case an assignor/pledgor goes insolvent). This can still be on an undisclosed basis vis-à-vis the debtor under an assigned/pledged receivable, as the collection account can be a so called “inzake-rekening” (in the name of the factor, but for the benefit (‘inzake’) of the assignor/pledgor). The bank statements of the relevant debtor in that case only mentions the name of its original creditor (i.e. the assignor/pledgor). As an alternative (mainly in case of mid-corporate or corporate clients of the factor) a collection account pledge for the benefit of the factor is also commonly applied in The Netherlands. A collection account pledge is a feasible alternative in case cash dominion is not possible, but it is not deemed as secure as cash dominion from the factor’s perspective: in case of a pledgor’s insolvency, certain constraints/boundaries apply. Payments of debtor on the pledged collection account will extinguish the right of pledge of the factor on the relevant receivable. The factor will have a preferred claim on the incoming payment, but will have to participate in the costs of the insolvency, thus (severely) reducing its ‘take home’ cut. The same applies to a cash sweep over the collection account, as an alternative for “cash dominion”.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

We refer to our answer to question 2.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

Our estimate is that bank transfers form the largest “part of the cake” by far. Direct debit transactions play an increasing role, cheques and bills of exchange play a rather minor role.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

For the purpose of this question, it is our understanding that “supplier” means “assignor” or “pledgor” as the case may be (we refer to our answer to question 2). If that understanding is correct, both ownership of an assigned receivable and a (first ranking) right of pledge over a receivable provide strong comfort to the factor under Dutch law in an insolvency scenario:

- If the factor is the owner of a receivable (tested at 0.00 hrs of the day on which the assignor is declared insolvent, meaning that the bankruptcy has retroactive effect), it can completely bypass the bankruptcy estate, as the receivable no longer is part of that estate;

- A (first ranking) right of pledge (tested at 0.00 hrs of the day on which the assignor is declared insolvent) over a receivable also gives the factor a very strong position vis-à-vis the bankruptcy estate (the pledgee has a separatist position, and it has a right of direct enforcement).

Under Dutch law, notification of a debtor under an assigned/pledged receivable can also take place post-insolvency of the assignor/pledgor.

The most important threats/pitfalls are:

- set-off by debtors under assigned/pledged receivables, including set-off based on vicarious liability of a debtor (cfr our answer to question 5);
- fraudulent creditors' conveyance ("actio Pauliana") which may give rise to nullification of the assignment/pledge by the bankruptcy receiver (however, please note that under Dutch law nullification will be difficult to achieve in case the assignment/pledge is based on a contractual positive pledge undertaking/obligation to assign);
- assignment/pledge prohibitions with "in rem" effect (cfr our answer to question 6) which make assignments/pledges in violation thereof void;
- restrictions in the Dutch law system to transfer/pledge future receivables in advance: the relevant receivable must have come into existence prior to the date of insolvency (cfr our answer to question 2);
- collections received by a pledgor/assignor in a collection account in its name and pledged for the benefit of the pledgee/assignee post-insolvency of the former, will not be "caught" by the pledge over the collection account (we refer to our answer to question 8).

In general, a factor as pledgee wants the debtor to pay into their account.

- Payment by the debtor before notification of the pledge will have a liberating effect for the debtor. The factor will have a right of preference over the paid amount but will have to participate in the costs of the bankruptcy, which can severely affect the value of the claim.
- Payment by the debtor after notification of the pledge will not have a liberating effect for the debtor. The factor, as pledgee, can claim payment from the debtor.
- 

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

We refer to our answer to question 2, and to our answer to the first part of question 11 directly above. Furthermore, please note that in The Netherlands secured creditors are not in a position to keep the business under administration trading to complete outstanding contracts (as this will require the cooperation of the insolvency administrator).

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

As per 1st January 2021, the "*Wet Homologatie Onderhands Akkoord*" has come into effect in The Netherlands, introducing an English law type of Scheme of Arrangements under Dutch law in a pre-insolvency phase. The position of a factoring company may be impacted.

In general under this Scheme a B2B client who is (in short) faced with too much debts but who still has a positive cash flow and economic prospects, can request the court for protection under this Scheme in order to prevent a bankruptcy. The intention of this Scheme is to restructure the client's debts by means of a court approved composition. This usually results in creditors being obliged to accept a discount on their outstanding claims depending on their rank, priority and securities.

The client can draft a restructuring plan himself, or with the help of external experts. Also the court can appoint a restructuring specialist.

An 'absolute priority rule' applies, so the composition has to give secured creditors a restructuring payment in accordance with their priority and the value of its securities. The payment each creditor gets under the Scheme may never be lower than the expected pay out under a bankruptcy. This means

a correct valuation of existing securities, such as receivables, is vital.

The creditors are divided in classes of creditors with a similar position: unsecured creditors (suppliers), tax authorities, preferential creditors and secured creditors. If a creditor (like a factoring company) has an outstanding that is only partially secured, the factoring company will be a member of two classes: for the secured part of its outstanding it is a member of the secured creditors class (who usually will get paid 100%) and for the unsecured part of its outstanding it will be a member of the unsecured creditors class. This latter class will suffer the highest discounts (up to 100%, unless the creditor is an SME in which case the discount will be no higher than 80%).

Each class receives a restructuring offer (x% discount on the outstanding debts) which is specifically drafted for this class taking into account its priority. Each class votes over the restructuring proposal and only if creditors representing 2/3 of the amount of debts in this class vote in favour, the class is deemed to have agreed to the proposal.

A 'cross class cram down' applies: if at least one class has agreed to the proposal, the client can request the court to approve the Scheme, forcing the other classes of creditors (who have rejected the proposal) to accept the proposal. If the court approves the Scheme it is binding for all creditors. The client's request for protection under this Scheme can't be used as an event of default in order to terminate or suspend the factoring facility: contract clauses to that effect are invalid.

During the restructuring procedure (which may take several months) usually a freeze period will apply during which creditors are not allowed to enforce their claims. A factoring company that finances the client's receivables based on a Dutch law right of pledge will be required to continue financing, however taking into account the agreed eligibility criteria. The client is still bound to its obligation to pledge new receivables to the factoring company. Debtors can continue to pay on the factor's bank account and (as commented above) the client can continue to draw under the factoring facility as long as the receivables are still eligible. If the client's borrowing base decreases because of lower turnover, or because of ineligible claims, the amount the client can draw under the facility will decrease in accordance with the factoring contract. So this part of the factoring contract remains effective during the freeze period.

The impact of a Scheme on factoring companies that *purchase receivables on a non recourse basis* is different from the impact of a structure based on the *financing* of receivables.

If the seller (of receivables on a non recourse basis) requests for protection under the Scheme, this doesn't affect the receivables the factoring company has already purchased. Only if the **debtor** requests for protection under a Scheme, this factoring company is impacted and will be a member of a class of unsecured creditors (see above), which are usually confronted with considerable discount proposals.

If a factoring company purchases receivables based on a recourse basis (against the seller of the receivables), then its recourse claim on that seller (of receivables) will be part of a Scheme and this factoring company can also become a member of a class of unsecured creditors.

The above-mentioned rules regarding the freeze period and the obliged continuation of the factoring *finance* facility also apply to a factoring *purchase* facility. So the factoring company usually will be obliged to continue its purchase facility under the existing eligibility criteria.

Please note that in a recent WHOA-ruling (IHC, ECLI:NL:RBROT:2023:2800), a bank was ordered to continue providing financing under different conditions than originally the case, as determined by the court. There is an appeal with the Supreme Court ongoing to contest this ruling.

[Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.](#)

In general, this is a non-existent issue in The Netherlands, as a non-recourse factoring structure is based on an assignment/true sale mechanism, having the effect that legal title to the receivables has been transferred to the factoring company in full, out of the estate of the supplier/seller.

Possible exceptions to the above may apply in one of the following scenarios:

the intended true sale doesn't qualify as a true sale after all (it being understood that an assignment by way of security is invalid under Dutch law, we refer to our answer to question 2). However, please

note that (in view of case law and prevalent doctrine) requalification will not be assumed lightly by the Dutch courts;

the assignment has taken place in violation of an assignment restriction with “in rem” effect (we refer to our answer to question 6);

the assignment is qualified as fraudulent creditors’ conveyance/in violation of Actio Pauliana rules (we refer to our answer to question 11).

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

The factor can claim late payment interest if the relevant receivable is governed by Dutch law.

The Dutch implementation of this Directive in a B2B-context is as follows:

- The legal payment term for companies is 60 days, unless you have made other arrangements and specified these in the contract. There are other rules for large companies to pay their SME clients.
- You may set a longer payment period of up to 60 days in the contract if you can demonstrate that this is not harmful to either party.
- If you did not specify a payment term, the payment term is 30 days.

At the time of writing, the Late Payment Regulation is still being discussed by the European Commission, so we are not able to provide any updates on that front.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Both have not been ratified.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party (“battle of forms”) in this regard?

Pending the discussion/adoption/implementation of the relevant new EU regulation, and the third party effects of an assignment not being covered by the Rome I treaty, under current Dutch private international law such third party effects are governed by the laws that apply to the contract in which the obligation to assign is included (i.e. the laws that apply to the factoring agreement). A contractual choice of law is allowed. As the currently applicable Dutch private international law rule as specified above also applies to “battle of forms” matters, such matters will also be governed by the laws that apply to the factoring agreement (typically: based on a choice of applicable law in the factoring agreement).

Under Dutch law, the so-called ‘first-shot rule’ applies in case of ‘battle of forms’. If offer and acceptance refer to different GT&C, the second reference remains without effect, unless it explicitly rejects the applicability of the GT&C as indicated in the first reference.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

This has not been ratified.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

Public bodies are treated the same way as a commercial party in a B2B relationship, so no special requirements apply. The only exception is that public bodies are required to pay any invoices within 30 days.

All suppliers who have contracts with Dutch central government (i.e. ministries, their core departments and agencies) with start dates from 1 January 2017 onwards are required to submit e-invoices.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

Not applicable

## Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

At the time of writing of this contribution in 2021, Dutch parliament is in the process of adopting legislation that mitigates the effects of assignment and pledge prohibitions with “*in rem*” effect for (amongst others) factoring companies (we refer to our answer to question 6). However, please note that this process has been ongoing for years, and that it is still unclear whether such legislation will be adopted at all, and if so, to what mitigating effect.<sup>25</sup>

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<sup>25</sup> In early March 2025, the Dutch parliament adopted a prohibition on bans on assignments, the details and effects of which remain to be seen.



## PL > Poland

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

No license required in Poland to carry out any of the operations abovementioned with the potential exception of "*Protection against third party payment default*" if this takes a form of credit derivatives regulated by MiFID. If an EU-based entity is to provide such services in Poland, it should be defined as a financial institution.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☒ NO ☐

Due to the amendments in Polish civil code, provisions regarding concluding the contract with the costumer concerning the wrongful contractual provisions ( art. 385<sup>1</sup>- 385<sup>4</sup> of civil code) shall be applied to entitles such as a natural person, one-person-business, partner of civil partnership concluding a contract directly related to his economic activity, where the contents of this contract indicate that it has not professional nature for this person, resulting in particular from the object of the economic activity conducted by said person.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES ☒ NO ☐ Anti-money laundering

Financial institutions engaged in factoring are subject to anti-money laundering regulations in PL. The requirements include – among others – the ultimate beneficial owner search, pre-contractual customer



due diligence, reporting on politically exposed persons and suspicious transactions and monthly reporting of transactions exceeding 15,000 EUR.

YES NO

☐
☒

Capital requirements for credit, market and operational risks

Not applicable unless factoring services are carried out by a bank, then EU regulations apply.

YES NO

☒
☐

Data protection

Pursuant to GDPR: data protection regards individuals (private persons) only. Generally, there is no obligation to obtain consent for processing of personal data (other than sensitive data) if at least one of the bases for disclosure applies (e.g. legitimate interest) but broad information obligations apply.

YES NO

☐
☒

Liquidity risk requirements

Not applicable unless factoring services are carried out by a bank, then EU regulations and Basel standards apply.

YES NO

☐
☒

IAS / IFRS accounting principles

No specific regulations for factoring institutions.

YES NO

☐
☒

Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

Not applicable unless factoring services are carried out by a bank.

YES NO

☐
☒

Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Not applicable unless factoring services are carried out by a bank.

YES NO

☐
☒

Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

Not applicable unless factoring services are carried out by a bank.

YES NO

☐
☒

Reporting duties (e.g. AnaCredit, NSFR)

Not applicable unless factoring services are carried out by a bank.

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

Not applicable unless factoring services are carried out by a bank

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance – ESG)

Not applicable unless factoring services are carried out by a bank.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

None.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>26</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence? Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

There is no specific law regards factoring services. An assignment of receivables (*cesja*) is based on the Polish Civil Code (Articles 509 – 518) regulating, among others, the form and effects of an assignment. The *causa* of the assignment may be diverse – a sale, donation, exchange or inheritance. In the case of factoring, it is usually a sale of rights (Article 555 of the Civil Code).

A pledge is not common on the factoring market as an alternative form of transfer of receivables.

An assignment agreement (a sale of rights agreement) is necessary. The written form of transfer is not a condition for the transfer's validity, however, it is recommended for the evidence reasons (*ad probationem*). An electronic form is also acceptable.

If the assignee wants to collect receivables on its own behalf directly from the debtor the assignor must notify the debtor. Unless the debtor is notified, it is entitled to pay to the assignor's account and it will be released from its debt.

The registration of an assignment is not required. Stamp-duty does not apply but civil transaction tax may apply (for taxes other than stamp-duty, please refer to Question 4).

There are no other requirements to make the assignment valid or effective (please refer to Question 11).

An assignment of future receivables is possible if such receivables are clearly identifiable (it is not

<sup>26</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

possible to make a general assignment of all claims).

It is advised to make notification to a debtor of each individual receivable, for example by stamping the invoice or make a proper invoice notice. One general notification of assignment is not recommended as the courts verdicts are often negative for the factoring institutions in respect of general notifications.

Generally, subrogation (*cession legis*) is possible. However, subrogation is effected (i) where a third party pays someone else's debt which he is liable for personally or with certain property-related objects; (ii) where the third party entitled to a right over which the paid off receivable has priority in satisfaction; or (iii) if the third party acts upon the debtor's consent to enter into the creditor's rights; the debtor's consent shall be expressed in writing on pain of invalidity.

Subrogation has been used in respect of debt of public institutions (e.g. hospitals) in order to avoid consents from their founding authorities. However, in 2012 the Supreme Court held that subrogation was not possible if it was to avoid the consent required for the assignment.

There are no specific requirements for a true sale.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

The requirements relating to qualified electronic signatures do not need to be met as written form (which the qualified electronic signature replaces) is not necessary for the validity of an assignment. Usually, there are special clauses in factoring agreements governing the form of assignment and the method of electronic transfer. The notification can be validly made by adding notice to an e-invoice.

The abovementioned Directive had been implemented to Polish law system. The e-invoicing regime applied to contract based on public procurement, concessions for construction works or services and public-private partnerships with possibility of e-invoicing regime exemption in certain situations

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

23% of VAT for factoring services applied (as for all services). According to tax experts' interpretations VAT applies only to factor's fee's and other service expenses or commissions but not to receivables themselves and interests however there are differences among factors in VAT treatment in this respect since part of them apply VAT for interests as well.

Banks' transactions that are based on receivables are explicitly VAT free.

The obligatory split-payment mechanism applied for the transaction between taxpayers (B2B), which

are subject to VAT in Poland, documented by invoices in which the total amount of receivables exceeds PLN 15,000 (gross) or its equivalent in foreign currency, the obligatory split payment mechanism covers selected goods and services ( a list of goods and services is annexed to the Polish VAT Act).

Factors are liable jointly and severally with the supplier of goods or the service provider for the tax due under supply of the goods or this provision of services and not settled by the goods supplier or service provider up to the amount with which the VAT account has been credited.

This joint and several liability of the Factor shall be excluded in the case when Factor makes a payment to a VAT account of the goods supplier or service provider or in the case of refund of the payment with which the Factor's VAT account has been credited, said payment having been received from this taxpayer, forthwith after becoming aware of its receipt, in the amount with which the VAT account has been credited.

Whitelist of VAT-registered taxpayers- has been introduced on the 1<sup>st</sup> of September 2019. The bank accounts of Factors (including virtual/technical accounts) shall be provided on the whitelist.

In addition, Factor so as to avoid tax sanctions are obliged to verify if the contractor appears as registered taxpayer at the whitelist.

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

In the case of conflicting assignments– if several assignments of the same receivable are made, the first assignment is generally valid and the further assignments are considered to be void pursuant to the rule "*Nemo plus iuris*".

The reservation/retention of title does not affect the rights of an assignee.

The underlying debtor will be entitled to use any defences against the assignee which the debtor had against the assignee at the moment of learning about the assignment. These defences do not need to be publicly registered or notified.

### Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Parties can prohibit the assignment of receivables in their contract. The assignment agreement concluded despite the prohibition is legally valid in respect of the parties' contractual rights and obligations, however, it does not transfer the receivable and it is not effective towards the debtor unless the debtor consents to such assignment.

There is no requirement for registration – a clause in the assigned contract will suffice.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

Barriers related to answer to Question 1 concerning the wrongful contractual provisions.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

The Polish equivalent of a fixed charge will be a civil law pledge or security assignment and the equivalent of a floating charge would be a registered pledge.

Both types of pledge may encumber specific receivables. A registered pledge may encumber a variable collection of moveable and rights constituting an economic whole.

A registered pledge has to be registered in a court register.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

The risk resulting from undisclosed invoice finance operations is minimised by the client's collateral such as bank account submission, bank account transfer of rights, insurance policy assignment, etc.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

The insolvency law issues distinguish differences in status of receivables (please refer to Question 11).

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

Unfortunately, the abovementioned data is unavailable. However, huge majority of the payments is done by bank transfer, the rest is realized in cash. Cheques mainly are not used anymore. Bill of exchanges are issued as a collateral to transactions mostly. Cash is allowed if the payment amount is not more than 15,000 PLN (or its equivalent) or if there is a B2C relationship only.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

The most important issue is whether the receivables were validly assigned or not. If not – the factor is an unsecured creditor of the insolvent client. If yes – the factor is a standard creditor of insolvent client's debtors, so client's insolvency should not affect the assigned receivables.

An assignment of a future receivable is ineffective against the bankruptcy estate if the receivable comes to existence after the declaration of bankruptcy. However, if the assignment agreement was entered into not later than six months before the bankruptcy petition, the ineffectiveness does not apply.

If the assignment is for security purposes only, the assignment must have its date officially certified (*data certa*) – usually by a notary public in order to be effective against the bankruptcy estate.

The security assignment will be re-characterised as a pledge in bankruptcy proceedings.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

Taking a charge (a pledge over a receivable) will not allow the factoring institution to manage the business of the customer.

If the assignment is for security purposes, security assignment will be re-characterised as a pledge in bankruptcy proceedings and it will establish priority.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

The process of implementation of the Restructuring Directive (EU) 2019/1023 is still going on. Perhaps, the position of an entity financing (including potential factor) the restructuring arrangement may become more privileged.

Changes in insolvency law did not provide regulations particularly affecting factoring. The last amendments related to insolvency laws provided the possibility for one-person-business (potential factors' clients) to apply simplified bankruptcy procedure intended for consumers. Work is underway to implement the final part of the directive, which allows debtors at risk of insolvency to remedy their company's financial situation and gives them a second chance.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

Answer given above- in Question 11.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Regarding the penalties applying to debt defaulters- the rate of interest for late payment can be either (i) statutory (the National Bank of Poland reference rate increased by 10 percentage points- for the moment: 11,25% per annum) or (ii) contractual (but not more than 22,50 % per annum at the time of writing).

There is a special law (implementing the EU Late Payments Directive) whereby, in general:

- suppliers may charge interest if the payment date is later than 30 days from invoice date (if supplier is not a Large Enterprise),
- statutory interest in commercial transactions is announced by the Minister in charge of economical area,
- the payment term specified in the contract may not exceed 60 days, counted from the date of delivery of the invoice or bill to the debtor, confirming the delivery of the goods or the performance of the service,
- suppliers may not relinquish the right to interest for late payment
- creditors have right to demand 40, 70 or 100 euros (depending on value of monetary obligation) as a kind of lump sum compensation for the costs of pre-court debt collection.
- debtor who has Large Enterprise status may declare its status by statement submitted during conclusion of the contract at the latest.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Poland has not ratified either of these conventions, however the provisions of abovementioned regulations are applied by parties of factoring agreement.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

Pursuant to the Polish International Private Law (art. 36): The law of the state under which the transferred receivable debt falls shall be decisive for the effects of such transfer towards third parties. (This issue is not regulated by Rome I Regulation), however in case of insolvency - UE regulations concerning insolvency prevail.



The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

For the moment, there is no input related.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

Specific rules apply to hospital debts (see below).

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

In respect of assignments of receivables of public health establishments, the consent of founding authorities is required. Such founding bodies have the right to refuse the assignment after reviewing the financial situation and profit or loss of the establishment.

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

Not more than pointed out in previous questionnaire.

## PT > Portugal

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☒ NO, factoring is not limited to CI/banks ☐

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☐

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Only credit and financial institutions (banks, IFIC's - global specialized credit institutions -, SFIC's – global specialized financial institutions - and Factoring companies) can undertake Factoring in Portugal. They are authorized and supervised by the Bank of Portugal (BoP - Portuguese Central Bank) to carry out factoring operations and thus are approved by and registered with the BoP.

Banks and also credit insurance companies are allowed to give guarantees to third parties for obligations of clients and protect against third parties default. The insurance companies are authorized by the Portuguese Insurance and Pension Funds Supervision Authority.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES ☒ NO ☐

Anti-money laundering

Institutions undertaking Factoring operations are subject to the regulation of the Portuguese Central Bank and as such have to follow all AML/TF legislation and regulation.

YES NO

☒ ☐ Capital requirements for credit, market and operational risks

Credit institutions (banks and IFICs) have to comply with CRR/CRD. Financial institutions (SFICs and Factoring Companies) comply with the Portuguese Central Bank's regulation which derive from the CRR/CRD but with some simplifications for financial institutions.

YES NO

☒ ☐ Data protection

Factors have to follow Data Protection legislation although they belong to a specifically regulated financial sector. Data protection applies only to the information of single individuals which is rare to occur.

YES NO

☒ ☐ Liquidity risk requirements

Credit institutions (banks and IFICs) have to comply with CRR/CRD. Financial institutions (SFICs and Factoring Companies) comply with the Portuguese Central Bank's regulation which derive from the CRR/CRD but with some simplifications for financial institutions.

YES NO

☒ ☐ IAS / IFRS accounting principles

Listed credit and financial institutions use IAS/IFRS accounting principles (their parent companies might also require it).

YES NO

☒ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

Factors have to obtain information on their clients (effective beneficiary).

All listed companies have to produce a transparency report, in accordance with updated Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004.

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

All Factors follow regulations issued by the ECB, EBA and the Portuguese Central Bank, in particular those derived from the CRD/CRR.

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

The Factoring activity in itself should not contribute to the DGS but it is dependent on the type of institution and not on the activity itself. All Banks and deposit-taking institutions have to contribute to the DGS but Factoring companies don't, since they don't receive deposits.

YES NO

☒ ☐ Reporting duties (e.g. AnaCredit, NSFR)

Factors are obliged to report to the Portuguese Central Bank's Credit Responsibilities Central (CRC) every effective or potential credit.

The CRC contains information on effective credit liabilities assumed by any natural or legal person towards the participating entities, as well as potential credit liabilities that represent irrevocable commitments.

YES NO

☒ ☐ [Rules on payment services following the Payment Services Directive PSD II](#)

Factoring services are provided by banks/financial institutions and therefore are subject to this Directive as well as the Decree-Law nº 91/2018, from 12 November 2018, issued by the Portuguese Government.

YES NO

☒ ☐ [Rules and regulations on sustainability \(environmental, social and governance – ESG\)](#)

Yes, banks and financial services are subject to the rules and regulations emanated by the European instances. This is a very current topic, on which everyone is currently working (both regulators and factors).

[Which are the local authorities that regulate and discipline the factoring activity \(if applicable\)?](#)

Factoring activity is authorized, regulated and supervised by the Portuguese Central Bank (Bank of Portugal).

Listed companies are supervised by the CMVM (Portuguese Securities Market Commission).

## Question 2 Transfers of Receivables

[Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables \(or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>27</sup>\)?](#)

In general, the transfer of receivables is ruled by articles 577 to 588 of the Portuguese civil code.

According to these provisions, the transfer of receivables is not subject to the consent of the debtor.

Nevertheless, the transfer is only effective to the debtor after the respective notification to the debtor.

In particular, factoring operations are governed by the Decree-law n.º 171/95, of 18th July.

This Decree-law rules the activity of the factoring company and the factoring contract. With regard to the factoring contract, the only specific limitations refer to the mandatory written form of the contract and to the types of payment of the credits to the assignor.

The general and special terms of the factoring contract are also subject to the provisions foreseen in article 577 to article 588 of the Portuguese Civil Code and to standard terms contracts (Decree-law number 446/85, of 25th October).

[Please describe the physical process for the assignment of receivables.](#)

Concerning factoring operations, the assignment of receivables should take place under a factoring contract.

The assignments take place by the acceptance of an assignment proposition.

The assignment of receivables is only effective against the debtors after their notification. Usually, the assignor is responsible for the notification, being referred in the respective invoices that the payment of same should be made to the assignee (the factor).

[Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:](#)

- registration
- stamp-duty or other documentary taxes

<sup>27</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.

- notification (please specify the formal requirements for such notification?)

To be effective, the assignments should be notified to the debtors. This is usually done by registered letter.

Are there any other requirements for a valid assignment?

The credits assigned should previously not be subject to a ban on assignment by the debtor or any kind of warranty by another third party.

Is it possible to assign future receivables by a so called "assignment in advance"?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

According to Portuguese law, the assignment of future receivables against payment is possible in the event that the credits are susceptible of being defined in the moment of the assignment. These future receivables may result from a legal transaction already entered into or not.

The assignment of these credits is considered a special type of assignment of credits, subject to special regulation.

The Factor will usually sign the contract with his client only once and the debtors will only be notified once, applying both to present assigned receivables and to future ones.

Is transfer by way of subrogation possible? what are the requirements?

This term is not usual, however it is possible in the Portuguese Market to have a Syndication process.

Is it possible to transfer parts of a receivable or to make conditional transfers?

Transfer of credits can be subjected to limits or conditional on certain premises taking place, which will usually be defined in the Factoring contract or general clauses.

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

The assignment must always be done with invoices.

Non-Recourse Factoring is considered a sale with the usual only safeguard, being the contractual compliance of the goods. Factoring activities are subject to stamp duty when there is a financing component involved but apply VAT when there is no financing activity.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature?

Yes.

Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

The notification is required, however a "legend stamp" is inserted in the invoice to reinforce and remember that the invoices are assigned to the factor.

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Yes, the e-invoicing Directive 2014/55/EU has been incorporated by the Government in the Decree-Law nº 111-B/2017, 31st August 2017. Although its implementation started in 2018, only in 2021 it will be mandatory for all types of businesses.

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

No. Nevertheless, in case of the debtor's bankruptcy the VAT on the invoices cannot be recovered by the factoring companies.

What is the VAT treatment of factoring commission/ service charge?

VAT applies to commissions where no advancements have been made. When there is advancement, Stamp tax applies to both commissions and interest, once it is considered financial activity.

What is the VAT treatment of discount or interest?

No VAT applies (see answer above).

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

There is no difference in treatment between banks and non-banks engaged in Factoring (although they are all credit and financial institutions), considering its financial activity.

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

No split payment mechanism is applicable.

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

In Factoring, there is no liability to pay the invoices' VAT to the State. The Factor's client is liable for such payments.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Previous ban on assignment clauses or warrants over the credits or the goods sold.

If the supplier has unpaid tax or social security debts, government debtors (public debtors) can retain 25% of their payments.

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

No difference. Reservation clauses will prevail if they are prior to the assignments. In non-recourse factoring, if all clauses of the contract are accomplished the client has the right to receive the indemnity/compensation from the credit insurance.

Do these rights have to be publicly registered or notified to be valid?

No. However, as mentioned above, the assignment shall only be enforceable against the debtor when notified.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Contractual prohibitions are valid in Portugal and if in place will render assignments invalid. They should make part of the supply contract or part of the purchaser general conditions. This can also be established by notification, via registered letter to the factoring companies.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

The major contractual barriers and practices are related with ban on assignments.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

In accordance with Portuguese law, there are several types of security interests that may be qualified as fixed or floating charge. Nevertheless, its viability in relation to receivables must be analysed on a case-by-case basis.

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

Please see comments above.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

Undisclosed Factoring is not common in Portugal and it is only done in very specific cases of healthy relationship with the client (supplier). The factor can demand a notification letter that can be kept in a safe, and it is only sent if the necessity arrives to let the debtor know.

GDPR only applied to single individual's data and therefore did not have a big impact in the business.



## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

There are no differences in all 3 cases.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

- Bank-Transfer 95 %
- Cheque <5 %
- Bill of Exchange <1 %
- Cash deposits <1%

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

No matter what the modality, the credits are transferred to the factor and this gets the ownership of the credits assigned, except on the situations already mentioned before. However, in the event of recourse factoring or of invoice discounting with recourse, the assignee (the factor) does not assume the risk of the insolvency/non-payment of the debtor. This risk is assumed by the assignor and, therefore, the credits are retransferred to the assignor. This situation constitutes an assignment pro solvendo. In case of the debtor's bankruptcy the factor is not able to recover the VAT tax included in the invoices.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

In case of insolvency, the creditors will need to make their claims with the Court and if there is agreement of the majority of creditors, the insolvent company may be allowed by the Court to attempt a recovery plan. In case it fails or the recovery plan is not approved, a court-appointed administrator will be assigned. The priority of the credits owned by the Factor is the same as they were when they rested with the assignor.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

Directive (EU) 2019/1023 has been incorporated in the Portuguese legislation by Law nº 9/2022, January 11th. As far as we know this has not had a substantial effect on Factoring.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

It should not be possible for an acquired invoice to become part of the insolvency estate.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Interest could be charged in the sales contractual terms or else as stated in the commercial law. In a non-recourse factoring contract, the factor can report debtors with payments delay to the Bank of Portugal (Portuguese Central Bank). These will be circulated by the Bank of Portugal to all the financial system and so the debtors are penalized on their creditworthiness since their late debts are visible on the BdP responsibilities, updated on a monthly basis.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

No in both cases.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

The Civil Code, specifically, articles 577 to 588 are applicable to third party effects. Contractual terms should be consistent when built upon previous ones.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

Although Portugal is a Member of UNIDROIT, specific national Factoring legislation exists, and we are not aware of any national consequence or change deriving from the adoption of this Model Law. As such it does not seem to be very relevant.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☒ NO ☐

Procedures are not homogeneous with all public administration entities, and it might be hard to communicate with them. One must take into account that PA entities will withhold 25% of the total invoice amount, if the supplier (assignor) is found to have debts to the State, in some cases, even if those invoices had been already assigned to a Factor.

E-invoicing Directive 2014/55/EU has been transposed in Portugal but its implementation has been an ongoing process since the pandemic, with successive delays. Large corporates are supposed to be working fully with e-invoices to PA, and the current date of mandatory use of e-invoices in PA for all is now 2025.

Do PA debtors have the right to refuse the assignment

YES ☒ NO ☐

If so, what consequences does this have?

The same consequences of refusal from businesses apply: decrease in factoring opportunities because the risk involved in the Factoring operation when the debtor has not allowed itself to be notified is much higher.

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

Changing the taxes applied to factoring interest and commissions from the present Stamp Tax to the usual VAT Tax would be very important.

## RO > Romania

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☐ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Factoring is a lending activity that may be performed on a professional basis by licensed CIs and by licensed non-banking financial institutions (NFIs). Banks already have factoring in their object of activity, whereas the Central Bank authorizes and then monitors all CIs and NFIs (independent factors included) regarding the factoring and commercial finance activities. There are special accounting and reporting systems towards the Central Bank.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO  
☒ ☐ Anti-money laundering

YES NO  
☒ ☐ Capital requirements for credit, market and operational risks

Independent factors established as NFIs have minimum share capital requirements set by the Central Bank in order to be authorized, in amount of EUR 200,000 equiv.  
 Specific prudential requirements relating to own funds, large exposures and risks apply both to CIs and NFIs providing factoring services.

YES NO

☒ ☐ Data protection

YES NO

☒ ☐ Liquidity risk requirements

YES NO

☒ ☐ IAS / IFRS accounting principles

YES NO

☒ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

This information is publicly available within the official site of the National Trade Registry Office. The EUR recommendation has been adopted into national law. However, each Bank/CI may have its own internal classification as well. Corporates are treated under a separate law of trading companies which generally applies also to CIs and NFIs.

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Both CIs and NFIs should have their own internal policies of risk management covering all issues mentioned.

YES NO

☒ ☐ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

General compliance requirements for CIs only, nothing specific for factoring or NFIs, which cannot take deposits.

YES NO

☐ ☒ Reporting duties (e.g. AnaCredit, NSFR)

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance – ESG)

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Central Bank of Romania

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>28</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

As a general rule, the law governing the assigned claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and whether the debtor's obligations have been discharged.

The Civil Code regulates the assignment of receivables governed by Romanian law. At the same time, special legislation applies to public institutions (Law 125/2011) and the National Company for Road Infrastructure Administration (Law 76/2104).

The process is described as follows:

1. The factoring contract is signed with the supplier,
2. The assignment is registered publicly in the Electronic Archive for Secured Transactions;
3. The buyer is notified of the assignment;
4. The schedule of invoices is issued by the supplier representing the proof of assignment to the assignee/factor;
5. Finance/payment of receivable by the factor upon supplier request / collection / a date set out in the contract.

The assigned debtor will have the obligation to make payments on account of the assigned claims to the assignee/factor only after:

- (i) accepting the assignment in writing with a date certain; or
- (ii) receiving a written notification of the assignment (as per step 3. above) indicating the identity of the assignee and the assigned receivable and the extent (full or partial) of the assignment and requesting payment of the assigned receivable to the assignee.

However, the claim is assigned by the simple agreement between the assignor and the assignee, without notification to the assigned debtor being required for this purpose, unless the claim is intimately linked to the assignor. Moreover, pursuant to the Civil Code, the assignment is effective between the assignor and the assignee, and the assignee may request from the assignor all proceeds of the claim received by it from the assigned debtor, even if the assignment was not rendered enforceable against the assigned debtor.

Additionally, the assignment will be enforceable against third parties (other than debtor) only upon registration of a specific notice of assignment with the Electronic Archive for Secured Transactions (as per step 2. above), duly identifying the assigned receivables, the purchaser and the relevant seller.

In case of insolvency the requirement is registration to the creditor's table against the assets of the debtor.

It's possible to assign future receivables and the notice is given once, to the extent such future receivables are sufficiently determined from the onset, but the assignment of future receivables will not be effective until the moment when such claims have actually arisen and are effectively borne by their respective debtors.

The transfer is by way of subrogation if steps 1 to 5 described above are met. In order to be enforceable, conventional subrogation must be expressed in writing and operates at the moment when payment is made by the new creditor to the initial creditor.

<sup>28</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

Assuming that the conditions for a valid assignment of Romanian law governed receivables are fulfilled, an assignment provided under a factoring agreement would amount to a true sale, noting that:

- (i) The assignment of receivables is valid and effective (i.e. triggering the transfer of ownership over such receivables from the seller to the purchaser) only if (among others) the receivables to be assigned are identified or at least identifiable and the assets subject to assignment are clearly identified.

- (ii) Should the seller of the receivables be a Romanian corporate, the approval of the general meeting of shareholders of the seller is necessary for the valid sale by it of any receivables whenever the value of such receivables exceeds half of the book value of all the assets of the relevant seller as at the date of the transaction.

- (iii) Certain prohibitions to assignment may apply (see Question 6 below).

Other implications may be relevant depending on the nature of the receivable. Commercially, the assignment of receivables is considered a true sale when it is financed.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

There is no prescribed form for the purchase of receivables. However, written form is advisable for purposes of court admissibility in evidence. A document in electronic format will comply with this requirement only if the party from whom the document originates incorporates in, attaches to or associates logically to the document an advanced electronic signature based on a qualified certificate unsuspended, un-revoked and generated by a secure-signature-creation device. The notification of the debtor is required only for perfection, not validity, purposes (see also Question 2 above) but it should also be in written form.

Moreover, a company that issues e-invoices must notify the Ministry of Finance, dispose of proper technical and human resources to guarantee the security, reliability and continuity of data processed electronically, has the capacity to process and archive information within the periods of time legally established. E-invoices meet the forms established by normative acts and will contain timestamp certifying the time of issuance and electronic signature of the issuer of the invoice.

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

Assignment of receivables would be VAT-exempt provided that: (i) the purpose of the sale is not debt collection and (ii) the purchase price is lower or equal to the nominal value of the receivables.

The factoring commission and interest (finance commission) are subject to VAT. There are no differences between banks and non-banks in this respect

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:



Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights

Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

Non-Recourse Factoring

Recourse Factoring

Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

The Romanian Civil Code entitles a debtor to indemnity from the assignor and the assignee for any additional expenses caused to it by the assignment of the relevant receivable.

Additionally, the assignment of receivables will not be enforceable against a guarantor of the relevant debtor unless the formalities required for enforceability against the debtor have also been performed against the guarantor.

If the assignor has sold the same receivables successively to several assignees, a debtor will be validly discharged of its relevant obligations by paying to the assignee who has first notified the assignment to such debtor or whose assignment that debtor accepted in writing first. Insofar as the successive assignees of those receivables are concerned, preference will be granted to the assignee who has performed the registration of its assignment with the Electronic Archive for Secured Transactions first. If the notification of the assignment of the receivables is made by the assignee, the assigned debtor will be entitled to request from the assignee proof of the assignment (e.g. copy of the factoring agreement). The debtor is entitled to suspend payment of the receivable until receipt of such proof.

When it has only been notified of the assignment, but has not accepted it in writing under a date certain, the assigned debtor will be entitled to oppose to the assignee any set-off rights it holds against the assignor.

An assigned debtor may also oppose to the assignee any payment made to the assignor before the assignment became enforceable against that debtor, as well as any other cause of termination of the assigned receivable that intervened before that moment. Furthermore, the assigned debtor may oppose to the assignee any payment made in good faith to an apparent creditor by itself or by its personal guarantor, regardless of the perfection of the assignment against the debtor and third parties. While under Romanian law related rights and collateral are transferred by operation of law along with the relevant assigned receivable, such transfer may not be enforceable against third parties until the relevant Electronic Archive for Secured Transactions registration of the relevant related rights and collateral is amended to reflect such transfer.

Where the assignor has granted to a third party a Romanian law mortgage over the receivables to be assigned, the Civil Code allows the mortgagee to notify the debtor of the relevant receivable requiring payment of the receivable directly to the mortgagee. In such case, the assigned debtor will not be discharged of its obligations under the relevant receivables unless it pays to the relevant mortgagee, notwithstanding the valid assignment becoming effective after the perfection of the mortgage. A perfected mortgage over receivables would need to be (i) registered with the Electronic Archive for Secured Transactions and (ii) notified to or accepted by the relevant debtor.

The enforcement or effectiveness of the assignment of receivables may be limited in the case of commencement of insolvency proceedings in Romania against the relevant assignor. In this circumstance, there is a risk that a liquidator, insolvency administrator or creditors holding at least 50% of the aggregate claims against the insolvent assignor will challenge the assignment of receivables either on general or on insolvency procedure-specific grounds (the latter including certain cases of suspect contracts entered into in the so-called hardening period).

Regarding third parties rights, besides all of the above mentioned, a seizure of account can also affect the factors rights.

The rights of the factor after signing the factoring contract with the supplier must be registered in the Electronic Archive for Secured Transactions for the assignment to be considered enforceable against third parties. The registration of the assignment is valid only for a period of five years from the date of the registration or re-registration; however, a renewal of registration may be made in the Electronic Archive for Secured Transactions before the expiry of the aforementioned five-year period; a failure to renew such registration in due course will render the assignment unenforceable against registered third-party assignees of the same asset or assets.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

The assignment of receivables which is limited or prohibited by the contract between the underlying debtor and the seller may not be enforced against the debtor unless (i) the debtor agreed to the assignment; (ii) the prohibition is not expressly stipulated in the document of the receivable and the purchaser was not or should not have been aware of the existence of the prohibition at the time of the assignment; or (iii) the object or the receivable being assigned is an amount of money. Despite the prohibition of assignment stipulated in the sales contract, according to the Civil Code the assignment is considered valid. But if the sales contract also mentions penalties then the seller can be held accountable in court. On the other hand, If there are no such penalties then the buyer must prove the prejudice/damage in order to make the seller accountable

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

N/A

## Question 7 Question Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

It is possible to create a floating charge on receivables only; there is no need to register publicly for validity purposes. However, for enforceability against third parties, a mortgage over receivables (either as a fixed or as a floating charge) would need to be (i) registered with the Electronic Archive for Secured Transactions and (ii) notified to, or accepted by, the relevant debtors.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

Thorough seller selection process and appropriate contractual clauses.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

Romanian law separately regulates the sale-purchase of receivables (true sale), the conditional assignment of receivables for the purpose of security, and the mortgage over receivables. As a consequence of assignment, the factor becomes the sole owner of the receivables.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

Bank transfers are most common, , followed by bills of exchange. Cheques are not eligible, as their issuing date and due dates coincide.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

In case of insolvency the lender registers to the creditor's table against the assets of the debtor (non-recourse) and seller and/or debtor (recourse).

In the case of commencement of insolvency proceedings in Romania against the supplier, there is a risk that a liquidator, insolvency administrator or creditors holding at least 50% of the aggregate claims against the insolvent supplier will challenge the assignment of receivables either on general or on insolvency procedure-specific grounds (the latter including certain cases of suspect contracts entered into in the so-called hardening period). The following suspect contracts may be relevant:

(i) Acts and contracts attempting to defraud the interests of the creditors entered into two years prior to the opening of the insolvency proceedings against the insolvent supplier. The parties' intention to defraud must be proved in order to obtain the annulment of individual transactions.

(ii) Transactions at undervalue, consisting in commercial operations where the performance of the insolvent party (i.e. the supplier) clearly exceeds the performance of its counterparty (i.e. the factor), which are entered into in a period of six months before the opening of insolvency proceedings.

Romanian law lays down an assumption of fraud for this particular case of suspect contract.

(iii) Transactions entered into in the two years before the opening of the insolvency proceedings against the insolvent supplier, with the intention of the parties to harm the creditors' rights. Romanian law lays down an assumption of fraud for this particular case of suspect contract.

(iv) Prepayment of debts of the insolvent party (i.e. a supplier) in the six months before the opening of the insolvency proceedings, where the maturity of such debts was supposed to occur after the date of opening of the insolvency proceedings. Romanian law lays down an assumption of fraud for this

particular case of suspect contract.

(v) Ownership transfers to the factor to terminate a previous debt towards it or in its benefit, effected 6 months prior to the opening of the insolvency proceedings, if the amount that the factor might obtain in case of winding-up of the supplier would be lower than the value of such transfer. Romanian law lays down an assumption of fraud for this particular case of suspect contract.

(vi) The establishing of a preference right for an unsecured receivable within the 6 months prior to the opening of the insolvency proceedings. Romanian law lays down an assumption of fraud for this particular case of suspect contract.

(vii) Acts of transfer or the undertaking of obligations by the supplier in a period two years prior to the opening of the insolvency proceedings with the intention to hide or delay the state of insolvency or to defraud a creditor. Romanian law lays down an assumption of fraud for this particular case of suspect contract.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

From the moment the court decides to commence insolvency proceedings, the debtor loses the right to administer its business (i.e. the right to manage its activity and its assets and to dispose of such assets – including any assets acquired subsequent to the opening of the proceeding), unless the debtor has declared, in certain cases, its intention to reorganise. The right of administration also terminates on the date bankruptcy is declared. During the observance period of the insolvency proceedings, the debtor may continue its usual business and is permitted to make payments to known creditors, which are in the ordinary course of business (i) under the supervision of the judicial administrator, if the debtor declared its intention to reorganise and has not lost the right to administer its business; or (ii) under the management of the judicial administrator, if the debtor has lost the right to administer its business. When exceeding the limits of its usual business, any act, operation or payments must be authorised by the judicial administrator or the creditors' committee or otherwise it is considered null and void. All other payments to creditors, acts or operations, which do not comply with the above described requirements that are performed by the debtor after the proceeding is declared opened are null and void, unless expressly provided by law or authorised by the judicial administrator or the syndic-judge.

All ongoing contracts are considered to be maintained at the opening of the insolvency proceedings and the contractual provisions which provide for termination for the reason of insolvency proceedings being opened are null and void. In order to maximise the value of the debtor's assets, the insolvency official may maintain or unilaterally terminate any contract, so long as such contracts have not been performed in whole, or substantially by all the parties involved. The counterparties of such contracts are entitled to send notices to the insolvency official requiring him to terminate such contracts. In case the insolvency official fails to reply to such notices, he shall not be able to require performance under the respective contracts, as the contracts will be deemed unilaterally terminated.

As a general rule, following the opening of an insolvency proceeding, all judicial actions and enforcement proceedings undertaken against the debtor or its assets for the satisfaction of a creditor's receivable are suspended. As an exception to the above-mentioned rule, there are two situations where a secured creditor may seek relief from the automatic stay of actions in order to obtain the immediate enforcement of its security interest in its secured assets:

(aa) if the value of the asset subject to security, as valued in accordance with international valuation standards, is fully covered by the secured claims and the respective collateral is not essential for the success of the reorganisation plan and its separate sale would not affect the value of its component business unit as a whole, or

(bb) if there is no sufficient protection of the secured claim due to (i) decrease or potential decrease in the value of the collateral, (ii) decrease in value of an inferior ranking claim as a consequence of the accruing of interest to the higher ranking claim, (iii) lack of insurance protection for the collateral against risk of loss or deterioration.

In case a creditor's claim falls under the situation envisaged under item (bb) above, the court may deny the creditor's right to enforce its security by adopting measures that are likely to offer sufficient protection of the claim such as periodic payments in favour of the secured creditor, or replacement by novation of the initial security (i.e. granting of additional real or personal security or substitution of collateral). In addition to these enforcement cases, subsequent to the opening of an insolvency proceeding, liquidation of assets may take place either during the judicial reorganisation or in bankruptcy, and any proceeds resulting from the liquidation of the secured assets are used to satisfy secured creditors.

Secured claims will be discharged out of the proceeds resulted from the sale within the insolvency

proceeding of the relevant charged assets, in the following order:

- (a) taxes and other expenses related to the proceeding, including payment of expenses related to the preservation, administration and sale of the assets and the payment of the remuneration of certain professionals hired within the insolvency proceeding;
- (b) principal, interest, penalties, increases, and expenses of secured claims created during insolvency proceedings;
- (c) principal, interest, penalties, increases, and expenses of secured claims created before the opening of the proceeding.

Creditors secured with the same asset will be satisfied in the order provided by the ranking of their claim.

Secured creditors hold this position in respect of the proceeds resulted out of the sale of assets subject to their security interests. In case such proceeds are insufficient to fully discharge the secured obligations, for the uncovered difference the secured creditors are assimilated to unsecured creditors and in such case their unsecured claims will be discharged according to the general order of discharge, which is as follows:

- (i) charges, stamp duties or any expenses related to the insolvency proceedings, including expenses with the conservation and administration of the debtor's assets, with the continuation of the debtor's activity, as well as with the remuneration of the persons involved in the proceedings;
- (ii) claims arising from financings granted during the observance period in order to perform current activities;
- (iii) employees' claims;
- (iv) claims (a) resulting from the continuation of the debtor's activity after the commencement of the proceedings, (b) representing damages arising out of the unilateral termination by the judicial administrator / liquidator of agreements entered into by the debtor prior to the opening of the proceedings; (c) of good faith third party acquirers arising from the return of the assets to the insolvency estate in case of annulment of acts concluded by the debtor before the opening of proceedings;
- (v) budgetary claims;
- (vi) receivables resulting from financings received from banks, trade receivables or rents, as well as claims of leasing companies in certain scenarios and bonds;
- (vii) other unsecured claims; and
- (viii) subordinated claims.

The claims in a category of the ones mentioned above will be satisfied only after the full satisfaction of the claims in the precedent category. If the remaining sums are not sufficient to fully satisfy the claims in a category, such sums will be distributed proportionally.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

N/A

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No, it's not possible if the sale of the receivable had been completed before insolvency process for the seller was initiated.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Penalty interests are charged depending on factoring contract provisions. In addition to the provisions of the EU Late Payment Directive as implemented in Romania, Romanian law provides, among others, that contractual clauses providing for:

- (i) penalty interest rates lower than the legal penalty interest rate;
- (ii) the obligation to formally notify the debtor of the payment delay in order for interest to start incurring;
- (iii) a term for interest to start incurring longer than that provided by law;
- (iv) a payment period longer than that provided by law;



(v) a specific term for issuing/receiving the invoice;  
are qualified as abusive and are therefore deemed null and void.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

No

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

In the context of Romanian law, the conflict of laws rules applicable to the third-party effects of assignments, particularly in factoring transactions, are primarily guided by European Union regulations and national legal provisions. Below is a detailed analysis addressing these aspects:

### 1. Applicable Law to Third-Party Effects of Assignments:

In Romania, the applicable law to the third-party effects of assignments of receivables is determined by the conflict of laws rules under the European Union framework, specifically the Rome I Regulation (Regulation (EC) No 593/2008). According to Article 14 of the Rome I Regulation:

- Law of the Assigned Receivable: The third-party effects of the assignment are generally governed by the law that applies to the assigned receivable. This means the law governing the original contract from which the receivable arises.

However, it's important to note that the Rome I Regulation does not explicitly address all aspects of third-party effects, which has led to varied interpretations and the need for national laws or further international instruments to provide clarity.

### 2. Contractual Choice of Law:

- Permissibility: The parties to an assignment agreement can choose the applicable law governing their contractual relationship, including the assignment itself, under the Rome I Regulation. This choice of law is generally respected, provided it does not contravene mandatory provisions or public policy of the forum.

- Limitations: The choice of law by the contractual parties primarily governs their mutual rights and obligations. However, for third-party effects, the law of the assigned receivable typically takes precedence, as noted above.

### 3. Battle of Forms (Conflicting Terms and Conditions):

The issue of conflicting terms and conditions, often referred to as the "battle of forms," can be addressed through the following principles:

- Common Law vs. Civil Law: In common law jurisdictions, the "last shot rule" often prevails, meaning the terms of the party who last sent the terms and conditions before performance are considered binding. In civil law jurisdictions, such as Romania, the approach is more nuanced.

- Contract Formation in Romania: Romanian law, influenced by civil law principles, typically resolves the battle of forms through a combination of rules on contract formation and interpretation. The following steps are generally considered:

- Agreement on Essential Terms: The contract is formed based on the essential terms agreed upon by both parties. Any additional or conflicting terms are subject to negotiation or may be considered non-binding if they were not expressly agreed upon.

- Knock-Out Rule: In cases of conflicting standard terms, courts may apply the "knock-out rule," where

conflicting terms cancel each other out, and the contract consists of the terms on which the parties agree, supplemented by default rules of the applicable law.

- Good Faith and Fair Dealing: Romanian contract law emphasizes good faith and fair dealing, guiding the resolution of conflicts in terms to ensure fairness and balance in contractual relationships.

#### 4. Implementation of the New UNIDROIT Model Law on Factoring:

If Romania adopts the new UNIDROIT Model Law on Factoring, it will further influence the applicable legal framework. The new Model Law encourages harmonization with international standards, potentially impacting conflict of laws rules by providing clearer guidelines on third-party effects and assignment priorities.

In summary, under Romanian law and the Rome I Regulation, the law applicable to the third-party effects of assignments is generally the law governing the assigned receivable. A contractual choice of law is possible but primarily affects the rights and obligations between the parties. In cases of conflicting terms ("battle of forms"), Romanian law applies principles of good faith, agreement on essential terms, and may use the knock-out rule to resolve conflicts. Adoption of the new UNIDROIT Model Law on Factoring would further enhance clarity and harmonization in this area.

[The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.](#)

Overall, the adoption of the new UNIDROIT Model Law on Factoring is expected to have a positive impact on the Romanian factoring market by modernizing the legal framework, promoting transparency and security, supporting technological advancements, and aligning with international standards, thereby enhancing market growth and competitiveness.

The new UNIDROIT Model Law on Factoring may have several significant effects on the Romanian factoring market, with the following potential impacts:

#### 1. Expansion of Factoring Services:

- Broader Range of Transactions: With the expanded scope of the new Model Law, Romanian factoring companies can offer services for a wider range of receivables, including future receivables. This can attract more businesses to use factoring as a financial tool, thereby increasing market activity.
- Inclusion of International Transactions: The applicability to both domestic and international transactions can encourage Romanian firms to engage in cross-border factoring, promoting international trade and investment.

#### 2. Improved Legal Framework:

- Enhanced Legal Certainty: The clearer rules regarding the assignment of receivables and the rights of parties involved can provide greater legal certainty for both factors and clients. This can reduce disputes and litigation, fostering a more reliable and predictable business environment.
- Debtor Protections: The protections for debtors from multiple assignments and clearer debtor obligations can enhance trust in the factoring process, encouraging more businesses to participate.

#### 3. Increased Transparency and Security:

- Registration System: The encouragement to establish a registration system for assignments can improve transparency in the market. This can help in identifying and resolving priority conflicts, making the factoring market more secure and trustworthy.
- Clear Priority Rules: Clearer priority rules can provide confidence to creditors and investors, making the Romanian factoring market more attractive to domestic and international players.

#### 4. Technological Adaptation:

- Support for Digital Transactions: By accommodating electronic transactions, the new Model Law supports the digitalization of factoring services. This can lead to more efficient operations, reduced paperwork, and faster processing times, benefitting both factors and clients.

#### 5. Dispute Resolution:

- Arbitration and Mediation: The inclusion of dispute resolution mechanisms like arbitration and mediation can reduce the time and cost associated with resolving conflicts. This can lead to quicker settlements and enhanced business relationships.



**6. Alignment with International Standards:**

- International Harmonization: The alignment with other international instruments can facilitate Romanian businesses in engaging with international partners more smoothly. It can also make the Romanian market more attractive to foreign investors and factoring companies.
- Consistency in Cross-Border Transactions: Harmonized rules can reduce legal barriers and uncertainties in cross-border transactions, promoting international trade and economic cooperation.

**7. Market Growth and Competitiveness:**

- Enhanced Market Competitiveness: The improvements in the legal framework and the adoption of international best practices can make the Romanian factoring market more competitive. This can lead to better terms for businesses and increased market participation.
- Attraction of Foreign Investment: The increased transparency, security, and alignment with international standards can attract foreign factoring companies and investors to the Romanian market, promoting growth and innovation.

**8. Implementation Challenges:**

- Transition and Adaptation: Implementing the new provisions may require adjustments in current practices and systems. Factoring companies, legal professionals, and regulators will need to adapt to the new requirements, which might involve initial costs and efforts.
- Training and Awareness: There will be a need for training and raising awareness among market participants about the new rules and their implications to ensure smooth transition and compliance.

**Question 14 Public Administration**

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☒ NO ☐

Condition for validity: to obtain the debtor's agreement (public institutions only) in writing beforehand, otherwise the assignment is not fully enforceable.

Do PA debtors have the right to refuse the assignment

YES ☒ NO ☐

If so, what consequences does this have?

The assignment is null.

**Question 15 Any other Matters**

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No answer.

## SE > Sweden

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring
- Financing business including commercial operations with the purpose of (i) accepting repayable funds from the public, directly or indirectly via a closely linked undertaking and (ii) to grant loans, provide guarantees for loans or, for financing purposes, to acquire claims or grant rights of use in personal property (leasing) may only be conducted pursuant to licence. Banking business also requires a licence.
- In case the aforesaid requirements are not fulfilled then a licence or permit should not be required the activities set forth above.
- The Swedish Financial Supervisory Authority (Sw. Finansinspektionen) ("SFSA") exercises supervision over credit institutions.
- A foreign credit institution domiciled within the European Economic Area may conduct its business through a (i) branch or (ii) cross border (different requirements applies). In case of cross border activities into Sweden, the SFSA should at least be notified if the transaction (-s) are more than a few. (Non-disclosed factoring is not a product in Sweden.)

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

No specific regulatory requirements for the above categories.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

KYC investigation/due diligence regarding the client/ the issuer of the invoices.

YES NO

☐ ☒ Capital requirements for credit, market and operational risks

The answer above is based on the assumption that the question concerns companies that do not have a bank authorization, i.e. companies that have the obligation to only inform the SFSA about their activities (according to the Lag (1996:1006) om anmälningssplikt avseende viss finansiell verksamhet). Such companies do not have to comply with the legislation on capital requirement or operational risk.

YES NO

☒ ☐ Data protection

If personal information is registered. The processing of personal data relating to private individuals, including consumer debtors, is regulated by General Data Protection Regulation. "Processing" in this context includes, among other things, collection and transfer of personal data, and the processing must be in accordance with the requirements with the regulation.

YES NO

☐ ☒ Liquidity risk requirements

The answer above is based on the assumption that the question concerns companies that do not have a bank authorization, i.e. companies that have the obligation to only inform the SFSA about their activities (according to the Lag (1996:1006) om anmälningssplikt avseende viss finansiell verksamhet). Such companies do not have to comply with the legislation on capital requirement

YES NO

☒ ☐ IAS / IFRS accounting principles

Sweden has three accounting acts; one accounting act for "ordinary companies", one for credit institutions and securities firms and one for insurance companies. IFRS applies to the group accounting of all listed companies. The SFSA has via regulation decided that the IFRS also applies to the legal entity of all credit market companies, if the local GAAP does not say anything else. Besides that, the SFSA issues regulations and general guidelines for the financial reporting of credit market companies.

YES NO

☒ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

In Sweden the accounting legislation doesn't differentiate between microbusiness, small business, medium sizes business and corporate as the questionnaire does. Instead, the accounting legislation differentiate between large companies/groups and small companies/groups.

A large company/group fulfils two of the three following criteria during the course of the each of its two latest financial years:

- More than 50 employees,
- More than € 4M Balance Sheet,
- More than € 8M Turnover.

However, companies with securities listed on a stock exchange or regulated market as well as credit institutions, investment services companies and insurance companies shall always, regardless of the

fulfilment of the above criteria, apply the regulations applicable on large companies in this regard. If a company/group doesn't fulfil the definition of a large company/group it is a small company/group. The accounting legislation and the SFSA regulation concerning requirements for transparency and supplier information follow the structure above meaning that the large companies/groups have more requirements than small companies/groups.

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Ordinary business supervision.

YES NO

☒ ☐ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

The Deposit guarantee scheme covers all banks that accept deposit on account. Factoring companies which receive such deposit are considered as credit institutions and fall under the scheme. The default rule for calculation of the total annual fee is that the fee shall correspond to 0.10 per cent of insured deposits at the close of the previous year. The fee may vary from 0.06 per cent to 0.14 per cent of insured deposits. All else being equal, a higher capital adequacy ratio should result in a lower fee, and a change in an institution's capital adequacy ratio should result in a corresponding change in the fee. The relation between the size of the fee and the capital adequacy ratio is not linear but rather convex. A given change to an institution's capital adequacy ratio has a greater effect on the fee if the institution's capital adequacy ratio is low than if it is high. For an institution with a high capital adequacy ratio, the preliminary calculated fee may fall below the legal minimum fee (0.06 per cent). To correct this, the fee is raised to 0.06 per cent. This then affects the fees of institutions whose preliminary fees were already within the legally mandated range. For these institutions, fees are reduced relative to the preliminary fee. The reduction is distributed proportionally.

YES NO

☒ ☐ Reporting duties (e.g. AnaCredit, NSFR)

Banks are under reporting duty to the Swedish Financial Supervision Authority (Sw Finansinspektionen) "SFSA".

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

PSD II is incorporated in Sweden through the revised Payment Act ("Betaltjänstlagen") where for example enhanced security through SCA (strong customer authentication) is implemented. Also the enablement and regulations of third party access to accounts information. However this is not impacting the central flow of the factoring process.

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance – ESG)

No specific rules and regulations incorporated.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

No answer

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>29</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

Some aspects of the transfer of ownership of receivables is governed by the law of promissory notes (Lag (1936:81) om skuldebrev)

There must be a binding sale agreement between the seller and the purchaser. No formal requirements exist for a sale agreement, but for evidence purposes a written agreement is recommendable. In addition to the sale agreement the sale/purchase must be perfected, which is done by giving notice of the assignment to the debtor. The notice is commonly done on the invoice.

The debtor of the receivable must be notified of the assignment. The notice shall at least state that the receivables have been transferred and also state the name of the purchaser. There are no registration procedures nor any taxes that affect the validity of a legal assignment.

The assigned receivables must be sufficiently identified either in the sales agreement of receivables or in a deed of assignment executed under the sale and assignment agreement.

It is possible to assign future receivables, as long as the sale agreement sufficiently identifies the assigned receivables. The debtor has to be notified of each assigned (identified) receivable. However, please note that perfection cannot be achieved until the receivable has been earned.

It is not stated in the local law if notice needs to be repeated. Is more the fact to prove that the debtor is notified of the assignment.

Subrogation of the seller is possible but the new seller/creditor needs to give notice of the assignment to the debtor.

Apart from that the assignment has to be perfected by way of notification to the obligor (as per above) and that the obligor is instructed to pay the debt to the assignee, there are no special requirements to qualify as true sales.

## Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

As long as a sale agreement exist between the seller and the purchaser and the debtor is duly notified of the assignment of the receivable, it should be possible to assign a receivable using an Electronic Data Exchange message. The structure of the assignment should be agreed in writing between the seller and the purchaser.

The Bank may in the agreement add a table functions as a translation where for example a specific digit (say “1”) in the EDI message means that “this invoice is assigned to Bank X”, the debtor is notified

<sup>29</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

and in understanding with these terms.

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

In Sweden there are different VAT rules depending on the factoring solution, type of factoring agreement. If the receivables are pledged to the factor and used as collateral for a loan, there is no VAT on interest and fees. If the receivables are assigned under a Purchase of Receivables agreement then the Swedish Tax Agency has stated it as a collection service and therefore subject to VAT. Calculation of the VAT is based on the total reimbursement from the receivables (e.g. interest, discounting fee or other applicable fees) unless this service is supplied separately from the lending arrangement.

Fees pertaining to services of factoring arrangements (e.g. commissions and service charges) are subject to VAT in purchase of receivable arrangements, but not in lending arrangements (see above). Discount and interest are subject to VAT in purchase of receivable arrangements, but not in lending arrangements (see above).

In general, the same VAT rules apply to banks and non-banks

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

In order for a reservation of title to be valid, the purchaser is not entitled to sell or otherwise dispose of the goods in its turn. The scenario set forth in the question should not be an issue in Sweden.

### Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Parties to an agreement may agree on a ban of assignment of receivables.

If the seller sells the receivable without the obligor's prior consent and if the purchaser of the receivable is in good faith the assignment is valid and the debtor has to pay the receivable. However, the Seller will be liable to the Obligor for breach of contract.

The seller and the purchaser shall agree on such a prohibition their agreement concerning sale of goods.

No requirements for registration

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No answer

## Question 7 Security Interests

For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

The floating charge has to be taken over all assets of a company. Stamp duty at a rate of 1 per cent of the face amount of any corporate mortgage issued, will be payable.

A floating charge (företagshypotek/-inteckning) has to be registered with the Swedish Companies Registration Office (Sw. *Bolagsverket*) in order to be valid.

The answer to the last question is no.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

Banks do not offer undisclosed factoring.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

No

Claw back issues may arise if new security is provided for old debts.



## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange%
- Other instruments%

(please give details, preferably also about similar estimates relating to factoring relations only)

We have unfortunately no payments statistics specifically for corporate business. The figures for non-cash payments in general are as follows for 2019:

Shares number of transactions transaction value

Cheque: Number of transactions 0% Transaction value 0%

Credit cards 11% , 1%

Debit cards 55% , 4%

Paper-based credit transfer 1% , 3%

Non paper-based credit transfer 26%, 88%

Direct debit 7% , 3%

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

After initiation of insolvency proceeding against the seller, the seller may no longer dispose of its assets. As long as the purchase/pledge over the receivables has been perfected, the purchaser or the pledgee is entitled to exercise its ownership/pledged rights over already purchased/pledged receivables as long as they are separated from the seller's estate.

In case of inventory financing (leasing) the financier is the owner of the financed equipment and therefore the financier should be entitled to take back the leased equipment provided inter alia the equipment is sufficiently identified in the lease agreement.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

The creditor who has floating charge as security will receive the outcome from trading to complete outstanding contracts.

That creditor who registered the floating charge at a registration authority first will have the first priority, the second one will have the second priority, etc.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

As far as we are aware no direct changes relevant to factoring.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No answer

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

If the seller and purchaser of goods have not agreed on a penalty interest in case of late payment, then under Räntelagen (1975:635) a creditor is entitled to certain level of penalty interest in case of late payment by the debtor. Normally the seller and the purchaser of goods have agreed on a higher penalty interest than set forth in the aforesaid legislation.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

No on both cases.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

No answer

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

Not yet to our awareness implemented as giving consequences in Sweden. As we understand it, it is still work in progress on an international level (working groups).

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

No special requirement for assignment of invoices issued to public authorities

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

No consequences

## Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

According to Swedish international private law the question whether a sale purchase of receivables is perfected against third party, is-most likely- decided by the law of the country in which the debtor is domiciled. Sweden thus applies the *lex rei sitae*-principle. In cross border transactions, it can be difficult to fulfil all perfection rules applied in the different countries where the debtors are domiciled.

## SK > Slovakia (answers from 2021 EUF Legal Study)

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐

NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☐ NO ☒

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (*i.e non-disclosed factoring with or without recourse*)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-

factoring The industry is not

regulated

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

YES NO

☐ ☒ Capital requirements for credit, market and operational risks

YES NO

☒ ☐ Data protection

YES NO

☐ ☒ Liquidity risk requirements

YES NO

☐ ☒ IAS / IFRS accounting principles

YES NO

☐ ☒ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

YES NO

☐ ☒ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme

YES NO

☐ ☒ Reporting duties (e.g. AnaCredit, NSFR)

Only factoring provided by banks

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance – ESG)

Which are the local authorities that regulate and discipline the factoring activity (if applicable)? The central bank of the Slovak Republic

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>30</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification? Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

<sup>30</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

The Civil Code governs the assignment of receivables.

The transfer needs to be in the form of a written agreement with sufficient identification of the receivable.

The debtor can ban the assignment in the contract with the seller and in that case, any kind of assignment is not valid.

Law requires a written contract on assignment; receivables can be assigned without approval of the debtor. The debtor has to be notified about the assignment of a specific receivable without any delay.

After signing the assignment agreement, the supplier is obliged to send a notice to the debtor (separate notice or assignment legend printed on the invoice). The debtor has the right to raise any counterclaims against the supplier (in case they exist at that time) and announce that he will lower the payment. If he does not do this within a reasonable period after being informed about the assignment, he is obliged to pay the full amount to the factor.

Since the notification is required, this limits the possibilities to offer undisclosed factoring. Any assignment is binding for the debtor after he has been notified about the assignment. You have to be able to prove that the debtor was given notice in written form to be able to sue him.

On the supplier's side – the assignment agreement is enough to achieve a valid assignment.

No registration or stamp duty is required.

The Slovak Civil Code does not regulate assignment of receivables specifically in relation to future receivables. Law does not ban assignment of future receivables, however the Civil Code does not specify **when such specific assignment becomes effective legally** either in respect to the assignee, or in respect to the debtor or to third parties, The answer therefor depends fully on the practice of the courts. For above reasons, giving notice of the assignment to the debtor after the (future) receivable has come into existence is recommended.

Subrogation in respect to account receivables (in the meaning of taking over of the rights (or position) of the creditor by paying the receivable to its original creditor – in slovak: "*prevzatie práv veriteľa zaplatením pohľadávky*") is not possible, as every monetary receivable shall extinct (*ex lege*) by paying the receivable to its creditor.

We do not have experience with assignment of a part of receivable. Law to assign a part of receivable under condition the part has been sufficiently specified as for the sum and the legal title of the receivable in the Assignment Agreement does not ban it. However, a legal dispute might there arise in situation if the debtor pays the respective receivable only partially in the meantime – i.e. before the assignment has been notified to the debtor.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Qualified electronic signature will have to be used by both parties to obtain a valid assignment.

The notification to the debtor can be validly achieved by adding language to an e-invoice.

Regulation concerning an electronic invoice is included in the Slovak VAT Act i.e. Act. No. 222/2004 Col. (Zákon č.. 222/2004 Z.z.) as subsequently amended.

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

No

What is the VAT treatment of factoring commission/ service charge?

VAT has to be applied

What is the VAT treatment of discount or interest?

VAT has to be applied

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

No

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller.

The payment is not divided automatically, only upon the request of the state authorities in case the VAT is past due.

Is this system of split payments used in your country, and if so, what impact does it have on factoring?

The impact is minimal.

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

No

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

No

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables?

The pledge on receivables

The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights

No

- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

No



Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

A pledge needs to be registered.

### Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Yes – the debtor has the right to ban the assignment

What actions are needed to make the prohibition effective?

In all cases the same – the assignment of receivable from a contract where any restriction on assignment was agreed is not effective.

Is there any requirement for registration?

No

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No

### Question 7 Security Interests

*For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.*

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

There is nothing like a charge over assets in Slovakian law – only a pledge. You can put a pledge on receivables.

A pledge needs to be registered through a notary office to be valid.

### Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance

operations in your country?

None

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

No

The notification of the transfer of receivables is required.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

In the third case we are not the owner of the receivables.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- |   |                   |   |
|---|-------------------|---|
| ▪ | Bank-Transfer     | % |
| ▪ | Cheque            | % |
| ▪ | Bill of Exchange  | % |
| ▪ | Other instruments | % |

(please give details, preferably also about similar estimates relating to factoring relations only)

In domestic transactions nearly 100% are paid by bank transfer, the other instruments are used only in export transactions.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

The factor has the standard rights, there is no difference in products

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

The administrator of the bankruptcy assets is in charge of keeping the business

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect

on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

The Restructuring Directive has been implemented, but there aren't special legal regulations for factoring industry. The Regulation allows the bankrupt to continue to operate in order to maximize compensation for creditors.

Our experience with this topic is rather limited. We do not dispose with sufficient legal knowledge, which would allow us to provide the relevant answer. A deeper legal analysis would be necessary.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No.

### Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Those agreed in the agreement. Otherwise, rate defined by the law can be applied.

No more strict norms implemented.

### Question 13 International Conventions

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)

Yes

- The United Nations Convention on the Assignment of Receivables in International trade (2001)

No

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

The law of the Slovak republic always governs assignment Agreements concluded by us as a factor. We have not had yet any need to apply or solve the question of conflict of laws with any third party. Our experience with application of rules on conflict of laws is therefore rather limited. A deeper legal analysis would be necessary.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be

accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☐

We have the knowledge that Assignment of receivables from PA debtors ensuing from a private law supply contract can be restricted by a special law or by the debtors themselves. These debtors can refuse the assignment as well as any other debtors (either directly in the supply contract or in a separate agreement with the particular supplier).

Our experience with assignment of receivables from such kind of debtors is rather limited, though. We do not dispose with sufficient legal knowledge to provide you with the relevant information. A deeper legal analysis would be necessary.

Do PA debtors have the right to refuse the assignment?

YES ☒ NO ☐

If so, what consequences does this have?

No answer

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

Factoring and other financial instruments related to the assignment of receivables are completely unregulated. The third parties (courts, financial authorities) sometimes do not know how to handle it. There is a latent danger that the applied processes might be negatively influenced by future changes in legislation. The efforts of the factoring community to improve the position were without any results up until now.

## SL> Slovenia

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES ☐ NO ☒

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

There are no special legal requirements for any of the above mentioned operations.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

There are no special legal requirements for factoring in relation to one-person-business/individual entrepreneur/sole proprietor.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES ☒ NO ☐ Anti-money laundering

According to ZPPDFT-1 (Act on preventing money-laundering and financing terrorism) each financial institution, which includes persons providing factoring services, has to appoint a person responsible for anti-money laundering and his/her deputy. Financial institutions must also make an assessment of risk for money laundering, establish policies, controls and procedures to effectively manage the risks of money laundering, implement measures for reviewing their suppliers, organize on-the-job trainings, report of suspicious transactions to the competent authorities, prepare lists of indicators for money-laundering and protect all data and information.

Reviews of clients must comprise: identification of clients and verification of their identity, identification of the client's owner/shareholder, obtaining information on the purpose and intended nature of business or transaction, monitoring their business activities.

YES NO

☐ ☒ Capital requirements for credit, market and operational risks

YES NO

☒ ☐ Data protection

Processing of personal data is subject to the provisions of ZVOP-1 (Protection of Personal Data Act) and according to GDPR (General Data Protection Regulation).

YES NO

☐ ☒ Liquidity risk requirements

YES NO

☒ ☐ IAS / IFRS accounting principles

YES NO

☐ ☒ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

For all companies it is necessary to act according to ZFPPIPP (the Slovenian Insolvency Act), which governs the general principles of diligent management.

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

YES NO

☐ ☒ Reporting duties (e.g. AnaCredit, NSFR)

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

Not applicable for services with regard to factoring. Only for banks which are payment services providers.

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance – ESG)

Only in case of public tenders.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

There is no authority specially designated for factoring activities

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>31</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

Transfer of receivables is regulated by Obligacijski zakonik (Code of Obligations), official consolidated version is published in the Official Gazette of the Republic of Slovenia, No. 83/2001 with later amendments.

The receivables are assigned with a written contract between the Client and the Factor. For a valid assignment the Debtor does not need to be notified about the transfer although he is permitted to validly pay to the primary creditor (the Client) in cases where he is not informed about the transfer. Therefore notification to the debtor is usually necessary.

No registration, stamp-duty or other documentary taxes and notification is needed. In case of multiple assignment: If the creditor assigned the same claim to various persons the claim shall pertain to the recipient regarding whom the creditor first notified the debtor or that first made himself/herself/itself known to the debtor. There are no special formal requirements for a notification (but it is usually in written form).

Regarding other requirements... The assignor must be in the position and have the power to transfer the receivable (i.e. he must be the owner of the receivable).

It is possible to assign future receivables by a so called “assignment in advance”, but only if the receivable is at least determinable.

Under the current law it is sufficient that the debtor is notified about the assignment only once.

Transfer by way of subrogation is possible. In order for the subrogation to arise the necessary condition is that a third party (who has a legal interest) performs the obligation for the debtor to the creditor.

It is possible to transfer parts of a receivable or to make conditional transfers.

There are no special requirements for a receivables assignment to qualify as a “true sale”.

## Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Yes, a receivable can be validly assigned using e.g. an Electronic Data Exchange message or a digital signature.

Electronic signatures in Slovenia are governed by Zakon o elektronskem poslovanju in elektronskem

<sup>31</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.



podpisu (Electronic Commerce and Electronic Signature Act, published in the Official Gazette of the Republic of Slovenia, No. 57/2000 with later amendments). According to this law a document in electronic form is equivalent to a document in written form, whereas only a secure digital signature is deemed equivalent to a handwritten signature. A notification can be validly added to an e-invoice. When supplying goods or services to public entities the suppliers must issue an e-invoice.

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

There are no VAT issues or problems concerning the assignment of receivables.

The VAT treatment of factoring commission/service charge: VAT is applied to the service charge/commission, unless the Client is a foreign company.

The VAT treatment of discount or interest: VAT is also applied for discounts, but not for interest (VAT must be applied for interests for late payments exceeding the interest rate for late payment defined by law).

There is no difference in the VAT treatment between banks and non-banks engaged in receivables financing.

Our legislation on value added tax (ZDDV-1) is harmonized with the European Council Directive 2006/112/EC on the common system of value added tax.

Similar mechanisms as split payments are used, but do not impact the factoring services.

We have no data regarding the "white lists"

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

Such contract conflicts may arise. For these cases the Slovenian law uses its rules regarding multiple assignment (see above).

There is no difference between Non-Recourse and Recourse Factoring or Invoice Discounting

To be valid in case of the buyer's insolvency the buyer's signature on the contract about the retention of title must be certified by a notary.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

In case of a contractual prohibition, the claim can nevertheless be validly assigned, but the debtor can still make a valid payment to the primary creditor, even if he was notified about the assignment. The prohibition of assignment is effective if it is agreed between the client and the debtor. There is no requirement for registration.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

Security on receivables can be created by way of pledge or by way of assignment as security. The effect of a fixed charge can be obtained by pledge while the effect similar to floating charge (as described above) can only be obtained by assignment a security. Only in case of undisclosed assignment.

A fixed or floating charge does not have to be publicly registered to be valid.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?

Monitoring the client’s creditworthiness, collateral, guarantees.

In B2B situations there is no impact of GDPR or other specific laws.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

If the receivables are assigned in fulfilment of a purchase contract of these receivables, they become the assets of the assignee and are legally and beneficially owned by the assignee.

If the receivables are assigned to collateralise a financing facility, the beneficial owner thereof remains the assignor while their legal owner is the assignee who shall enforce the assigned rights by exercising the care of an expert businessperson and apply the proceeds of such rights towards satisfaction of its secured claims, while any surplus of these proceeds shall be given to the assignor. Furthermore, such “assignment as security” shall be entered into a form of a notarial deed in order to be recognised as valid and effective in the assignor’s insolvency proceedings.

In the case of pledge the legal beneficial owner of the receivables remains the pledgor while the pledgee shall be entitled to enforce the pledged rights and the debtor may only discharge the receivables by payment to the pledgee. The pledge is only valid once the pledge is notified to the debtor.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange%
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

- Bank-Transfer 90 %
- Cheque 0 %
- Bill of Exchange 5 %
- Other instruments 5 %

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

In each case, the Factor's claim against the Debtor remains valid. In case of non-recourse factoring the factor cannot file a claim in the insolvency procedure of the client. In case of non-disclosed invoice discounting the factor's claim against the debtor also remains. The position for structured financing depends on whether reservation of title was agreed on the goods or not. If not, the factor can be paid from the sale of goods. In case of guarantees, the factor must fulfil his obligation and try to obtain a refund from the client. In case of protection against a third party payment default, the factor must fulfil his obligation to the client if the debtor does not fulfil his own obligation.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

Assignment of receivables as security and pledge of receivables have the same effect after the

initiation of the insolvency proceedings as before, provided that in the case of the assignment as security that such assignment is evidenced by a notarial deed.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

No answer

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

Receivables assigned as security are deemed as part of insolvency estate and a factor has only a right to separate settlement if a contract is concluded in a notary deed.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Yes, there is a legal default interest prescribed for late payments by ZPOMZO-1 (The statutory Default Interest Rate Act).

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Slovenia did not accede to any of these conventions. We have no information on whether or not it intends to do so

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

No answer

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

No answer

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No

## **Country details: Non EU Countries**

## CH > Switzerland

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☐ NO ☒

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

Non-Recourse Factoring

Recourse Factoring

Invoice Discounting (i.e non-disclosed factoring with or without recourse)

Structured Financing , including Inventory Financing

Giving guarantees to third parties for obligations of supplier/seller

Protection against third party payment default\*

Direct cross border factoring

2-Factor cross-border factoring

B2B-/B2C-factoring

There is no license needed to offer any of the above-mentioned services.

The service provider however needs to comply with the Federal Act on Combating Money Laundering and Terrorist Financing (Geldwäschereigesetz, GwG)

\* In case of protection against third party payment default, the Supervision of Insurance companies (Versicherungsaufsichtsgesetz, VAG) applies, if the provider acts as an insurance company.

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒

☐

Anti-money laundering

YES NO

☐

☒

Capital requirements for credit, market and operational risks



YES NO

☒ ☐ Data protection

Federal Act on Data Protection (Bundesgesetz über den Datenschutz DSG)

YES NO

☐ ☒ Liquidity risk requirements

YES NO

☒ ☐ IAS / IFRS accounting principles

Companies listed on the SIX Swiss Exchange that have opted for the SIX standard "International Reporting Standard" can report either in accordance with IFRS or US GAAP. Unlisted companies can opt to apply IFRS for Small and Medium sized Enterprises SMEs.

YES NO

☒ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

1 The following companies must have their annual accounts and if applicable their consolidated accounts reviewed by an external auditor in an ordinary audit:

1. Publicly traded companies; these are companies that:

- a. have equity securities listed on a stock exchange,
- b. have bonds outstanding,
- c. contribute at least 20 per cent of the assets or of the turnover to the consolidated accounts of a company in terms of letter a or b;

2. Companies that exceed two of the following thresholds in two successive financial years:

- a. a balance sheet total of 20 million francs,
- b. sales revenue of 40 million francs,
- c. 250 full-time positions on annual average;

3. Companies that are required to prepare consolidated accounts.

If the financial reporting is not carried out in francs, in order to ascertain the values in accordance with paragraph 1 number 2, the exchange rate as at the balance sheet date shall be applied for the balance sheet total and the annual average exchange rate for the sales revenue.

An ordinary audit must be carried out if shareholders who represent at least 10 per cent of the share capital so request.

If the law does not require an ordinary audit of the annual accounts, the articles of association may provide or the general meeting may decide that the annual accounts be subjected to an ordinary audit.

If the requirements for an ordinary audit are not met, the company must have its annual accounts reviewed by an external auditor in a limited audit.

With the consent of all the shareholders, a limited audit may be dispensed with if the company does not have more than ten full-time employees on annual average.

The board of directors may request the shareholders in writing for their consent. It may set a period of at least 20 days for reply and give notice that failure to reply will be regarded as consent.

If the shareholders have dispensed with a limited audit, this also applies for subsequent years. Any shareholder has however the right, at the latest 10 days before the general meeting, to request a limited audit. In such an event, the general meeting must appoint the external auditor.

The board of directors shall amend the articles of association to the extent required and apply to the commercial register for the deletion or the registration of the external auditor.

See Code of Obligations (Obligationenrecht) Art. 727

YES NO

☐ ☒ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

YES NO

☐ ☒ Reporting duties (e.g. AnaCredit, NSFR)

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

YES NO

☐ ☒ Rules and regulations on sustainability (environmental, social and governance – ESG)

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>32</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

registration

stamp-duty or other documentary taxes

notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

➔ See Swiss Code of Obligation Art. 164 - 183

A creditor may assign a claim to which he is entitled to a third party without the debtor's consent unless the assignment is forbidden by law or contract or prevented by the nature of the legal relationship.

<sup>32</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

The debtor may not object to the assignment on the grounds that it was excluded by agreement against any third party who acquires the claim in reliance on a written acknowledgement of debt in which there is no mention of any prohibition of assignment.

An assignment is valid only if done in writing.

No particular form is required for an undertaking to enter into an assignment agreement.

Your Questions, answer:

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

☐ registration → not applicable

☐ stamp-duty or other documentary taxes → not applicable

☐ notification (please specify the formal requirements for such notification? → not applicable

Are there any other requirements for a valid assignment? → see above

Is it possible to assign future receivables by a so called "assignment in advance"? → yes, this is possible As long as the assignee is not too severely restricted in his personal and economic freedom (Art. 27 sec. 2 ZGB), a global assignment is permissible. However, if neither the temporal nor the content is unlimited, the assignment in advance is immoral and invalid (Art. 27 sec. 2 ZGB).

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence? → it can be done once

According to Swiss Code of Obligations Art. 110:

A third party who satisfies the creditor is by operation of law subrogated to his rights:

1. if he redeems an object given in pledge for the debt of another and he owns said object or has a limited right in rem in it;

2. if the debtor notifies the creditor that the third party who is paying is to take the creditor's place.

Is it possible to transfer parts of a receivable or to make conditional transfers? → not applicable

Where assignment is made for valuable consideration, the assignor warrants that the claim exists at the time of assignment.

However, he does not warrant that the debtor is solvent unless he has undertaken to do so.

Where there is no valuable consideration for the assignment, the assignor does not even warrant that the claim exists.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

According to Swiss law, the assignment has to be in written form. Therefore it is necessary to include the assignment into a written agreement.

A written agreement is necessary, according to which the assigned receivables can be determined.

Electronic signatures: new law came into force in 2005 (Bundesgesetz über Zertifizierungsdienste im Bereich der elektronischen Signatur); nevertheless, electronic signatures are not very common yet.

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

The VAT legislation does not provide a clear guideline of the definition and VAT treatment of factoring services. Moreover the Federal Tax Administration has developed a complex VAT practice regarding the VAT treatment of factoring services without appropriate criteria for the VAT qualification of the respective services in the factoring business.

Due to the complex rules no generally valid statement can be made. The VAT qualification depends on the factoring product structure in the particular case and is affected by the single service modules provided to the client. What can be said, is that as long a factoring solution contains a financing component, the whole commission will not be taxable with VAT. If the factoring services are qualified as taxable with VAT, a VAT rate of 8.1% applies.

Interest is in principle VAT exempt. For discount no general statement can be made.

There are not any differences in the VAT treatment between banks and non-banks engaged in receivables financing.

No split payment mechanism is applicable.

Relating to other measures to ensure that the seller's VAT is paid, since January 1st 2010 the Swiss VAT law contains a special VAT liability rule in case of assignment of receivables and insolvency of the client. Practice rules especially regarding the application in connection with factoring services are still missing.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

- Contractual prohibition against the assignment of receivables

- Earlier assignment or pledge (only the earliest assignment is valid)
- No security assignment in advance of the receivable possible if the supplier sells the goods on

Swiss law does not recognize a supplier's possibility of security assignment in advance ("verlängerter Eigentumsvorbehalt") as in Germany; therefore no difference between the three kind of factoring exists.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Yes, according to art. 164 (1) CO (cf. above).

There is no obligation for registration.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

## Question 7 Security Interests

For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

It is possible to obtain a fixed charge on specified receivables or on all assets. The charged assets have to be determined or have to be determinable. From a legal point of view "floating charges" are not possible.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

No specific experiences.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

A fiduciary relationship between assignor and assignee applies to all variants.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

Estimation over all: 90% Bank-Transfer, 10% Rest

Factoring: 99% Bank-Transfer, 1% Cash

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

Given the valid assignment of the claims,

a) all claims created and in existence prior the opening of bankruptcy: claims belong to the factor; b) all claims created on or after that date: receivables belong to the bankruptcy assets.

Regarding the necessity of notification, please see above (question no. 2). No special pitfalls.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

Question unclear

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

It may be possible to avert impending bankruptcy through debt restructuring proceedings or at least minimise the damage and save parts of the business. In debt restructuring proceedings, a company with a debt restructuring moratorium is given time to examine reorganisation measures and, if necessary, obtain partial debt relief. The prerequisite for this is that this is examined in good time before the financial room for manoeuvre is too severely restricted.

➔ Procedure regulated under Art. 293 ff Federal Law on Debt Enforcement and Bankruptcy

Relevant for factoring:

If the assignment of a future claim was agreed before the debt restructuring moratorium was granted, this assignment has no effect if the claim only arises after the debt restructuring moratorium has been granted. See Art. 297 4. Federal Law on Debt Enforcement and Bankruptcy

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

Yes, insofar the bankruptcy administration has entered into the factoring contract. Credits after deducting the financing by the factor belong to the bankruptcy estate.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Art. 104 CO ("Penalty interest; a) in general"):

- If an obligor is in default as to the payment of a financial debt, he shall pay penalty interest at five percent per annum, even if the contract provides for a lower rate. If a higher interest rate than five per cent has been agreed upon in the contract, whether directly or by stipulation of a periodic bank charge, such higher interest may be claimed during the period of the default.
- As between merchants, if the usual bank discount at the place of payment is higher than five percent, penalty interest may be calculated at such higher rate.

Art. 105 CO ("b) In case of interest, pensions, donations"):

- An obligor who is in default with the payment of interest, or with the payment of pensions, or with the payment of a donated sum, must only pay penalty interest from the day of the demand for enforcement or the institution of a legal action.
- An agreement to the contrary is to be handled in accordance with the principles regarding liquidated damages.
- No penalty interest shall be calculated on penalty interest

Further damage Art. 106 CO ("Further damage"):

- If the obligee has incurred greater damage than that compensated by the penalty interest, the obligor will be obligated to also compensate such damage unless he proves that no fault is attributable to him.
- If this additional damage can be estimated in advance, the judge may award it in the judgment regarding the principal claim.

Withdrawal from contract (Art. 107 – 109 CO)

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

No



According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

The law states that claims must be made at the debtor's seat. Other regulations must be contractually agreed and accepted by the debtor.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

Not relevant

#### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

Not relevant

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

No, only if the prohibition of assignment is contained in the contract.

#### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No answer.

## GB > Great Britain (Parts 1 and 2)

It is acknowledged that some confusion may arise from the ISO 3166 term GB which is intended to refer to the United Kingdom as a whole. The United Kingdom (UK) is actually the United Kingdom of Great Britain and Northern Ireland, whereas Great Britain (GB) comprises England, Scotland and Wales only. The Channel Islands are not part of the UK and have their own laws and courts.

The chapter “GB > Great Britain” therefore covers the UK with its separate legal jurisdictions of (i) England and Wales; (ii) Scotland; and (iii) Northern Ireland, each with their own laws (sometimes overlapping) and courts.

Generally, the law of Northern Ireland is similar to that of England and Wales but in Scotland there are significant differences which are outlined below. Part One of this chapter covers the law of England, Wales and Northern Ireland and Part Two refers to Scottish law where it differs from Part One.

### PART ONE England and Wales (and Northern Ireland)

#### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES ☐ NO ☒

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Licences are not required in the UK for the provision of invoice finance or asset-based lending to businesses, and the industry is not subject to statutory regulation in terms of conduct of business. There is regulation/supervision by the UK Financial Conduct Authority (FCA) in respect of any associated credit insurance and mortgage business, which certain industry participants conduct. There is also registration and supervision in respect of financiers' compliance with anti-money laundering laws, data protection laws and (where applicable, as described below) consumer credit laws. Where an industry participant is part of a wider banking group, additional regulatory

considerations may apply, including liquidity and capital requirements, as appropriate (see below).

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☒ NO ☐

It is possible for factoring and other receivables finance facilities to be subject to the requirements of the Consumer Credit Act 1974 and its secondary legislation where such facilities are offered to individuals (including sole traders), partnerships of up to three persons (not being LLCs) or other incorporated recipients of credit. In such cases, firms wishing to provide consumer credit must be licenced and will fall under FCA supervision.

Provided the amount of credit extended exceeds £25,000 and the credit agreement is entered into wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the recipient of credit, the finance agreement will be treated as an exempt agreement. It will not need to comply with the detailed requirements of the consumer credit regime, but will still be subject to the unfair relationship provisions of the consumer credit legislation. A financier which only enters into exempt agreements is not deemed to be carrying on a regulated activity and therefore does not require FCA licensing or authorisation.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒☐

Anti-money laundering

An invoice finance or asset based lending provider will need to register with the FCA under the UK Money Laundering Regulations 2017. However, if an invoice finance provider is also an FCA or PRA authorised person who can carry on regulated activities, it is not required to register separately with the FCA for money laundering purposes.

YES NO

☐☒

Capital requirements for credit, market and operational risks

No specific direct requirements although it should be noted that the majority of finance provided through invoice finance and asset-based lending in the UK is provided either through regulated bank entities (Credit Institutions) or indirectly through wholesale facilities provided by banks to specialist non-bank providers. So, in this respect, the majority of finance extended is accounted for through the capital requirements regime, whether the institution is subject to the Internal Ratings Based or Standardised Approach.

YES NO

☒☐

Data protection

Notwithstanding the UK's departure from the European Union, UK finance providers must continue to comply with the EU General Data Protection Regulation (2016/679) as it forms part of the law of England and Wales (and Northern Ireland) by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as supplemented by section 205(4) of the UK Data Protection Act 2018.

YES NO

☐☒

Liquidity risk requirements

No specific requirements.

YES NO

☒
☐

IAS / IFRS accounting principles

Not all factoring and discounting arrangements will achieve accounting derecognition under IFRS 9. This is a particular issue for with-recourse arrangements under which the seller transfers receivables to an invoice financier but retains the bad debt risk.

YES NO

☐
☒

Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

Invoice finance and asset based lending providers would not be subject to such requirements unless providing financial services directly to Central Government or any of its Departments.

However, businesses of whatever size providing publicly funded services to the Government are subject the Cabinet Office's Policy Document "Transparency of Suppliers and Government to the Public" – March 2015, as updated in February 2017 and in PN 01/17 dated 29 March 2023

These principles set out the requirement for the proactive release of information under the government's commitment to publish contract information. They set a presumption in favour of disclosure, to encourage both government and suppliers to consider the information that should be made available when government signs a contract with a supplier.

YES NO

☐
☒

Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

There is no general law covering risk management in its widest scope. However under specific laws, such as relating to health and safety legislation, risk assessments are required.

Under the Companies Act 2006 directors of all companies (including finance companies) have specific duties to:

- Promote the success of their company
- Exercise independent judgment
- Exercise reasonable care, skill and diligence
- Avoid conflicts of interest
- Not accept benefits from third parties
- Declare any interest in a proposed transaction or arrangement.

The 2018 UK Corporate Governance Code sets out certain key principles and standards of good practice for leadership, effectiveness, accountability, remuneration and relations with shareholders. In particular, the section on accountability addresses risk management issues. Listed companies are required to report on how they have applied the main principles of the Code, and either to confirm that they have complied with the provisions or provide an explanation as to why they have not. An updated (January 2024) version of the Code applies to financial years beginning on or after 1 January 2025.

There may also be specific provisions in a company's articles of association which relate to risk management e.g. form of governance.

In addition, those financial institutions that fall within the remit of the FCA (above) will be subject to the Senior Managers and Certification Regime (SMCR) which, where the entity is regulated at an institutional level, applies across both regulated and unregulated activity areas, to varying extents.

YES NO

☐☒

Contribution to the Deposit Guarantee Scheme

If applicable, what is the basis of the contribution to the DGS for factoring companies?

No specific requirements.

YES NO

☐☒

Reporting duties (e.g. AnaCredit, NSFR)

No specific requirements

YES NO

☒☐

Rules on payment services following the Payment Services Directive

PSD II

Notwithstanding the end of the Brexit transitional period on 31 December 2020, the UK government has passed legislation and the FCA has updated its rules with a view to 'onshoring' EU binding technical standards. The effect is that, for the present, the EU payments regime continues to operate effectively in the UK. The functions of the EBA pertaining to regulatory technical standards have however been transferred to the FCA.

YES NO

☒☐

Rules and regulations on sustainability (environmental, social and governance – ESG)

The Corporate Governance Code and certain provisions of the Companies Act 2006 (referred to above) contain ESG principles and rules. In addition, the UK FRC Stewardship Code 2020 sets out principles that institutional investors are expected, as a matter of good practice, to adhere to when engaging with investee companies.

The Companies Act 2006 (CA 2006) and its related regulations, as well as the London Stock Exchange (LSE) Listing Rules and the Disclosure Guidance and Transparency Rules require certain companies to report annually on environmental, climate-related and other non-financial matters (such as social and employee-related) in their directors' reports, strategic reports and elsewhere in their annual reports.

Other UK legislation contains relevant provisions. For example the Modern Slavery Act 2015 includes an obligation on large business enterprises to report annually on the actions they have taken to ensure that their business and supply chains are slavery-free. Similarly, large employers are subject to mandatory gender pay gap reporting under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017.

The UK government has announced its intention to make climate-related disclosures compulsory for large companies and financial institutions by 2025. In the context of Brexit, the EU-UK trade and co-operation agreement includes commitments from both the UK and the EU on ESG and sustainability. The core principle is that neither the UK nor the EU should regress on levels of environment and climate protection, and that both parties should make efforts to increase those levels. The EU-UK agreement also obliges the parties to encourage responsible supply chain management and CSR.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

None that specifically relate to invoice finance – however, conduct or other activities may be regulated

and enforced e.g. anti-money laundering laws are enforced by the FCA.

However almost all significant invoice finance and asset-based lending providers will be members of UK Finance, which maintains a specific Standards Framework for invoice finance and asset-based lending, including a code of conduct and an independent professional standards mechanism to enforce it amongst its members.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>33</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

registration

stamp-duty or other documentary taxes

notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

The usual methodology in English invoice finance practice is for the financier to take an outright assignment of receivables, as opposed to taking a mere security interest. Security interests over receivables can be problematic (see question 7, below).

Assignments may be equitable or statutory (sometimes called “legal”) in nature. Either type may be effective, but statutory assignments carry certain advantages as explained below. Provided a statutory assignment is not required, it is not necessary that notice of assignment be given to the account debtor in order to constitute a valid assignment.

If a statutory assignment is required to enable the financier to issue legal proceedings in its sole name then it must comply with the Law of Property Act 1925 (LPA), section 136. To create such an assignment, it must be in writing, signed on behalf of the client and notice (oral or written) must be given to the debtor. It can only apply to an existing debt. An equitable assignment in contrast strictly requires the client (seller) to join in any court proceedings for collection.

Contracts are signed between the client and the financier setting out the terms of the agreement between the two parties.

The most usual contracts will include “whole turnover” assignments that effectively assign all existing debts and all future debts the moment they come into existence. Where there is a whole turnover agreement of all present and future debts, notification to the financier of the existence of the debts or their details is not necessary in order to obtain ownership, the agreement itself achieves that objective.

Operationally, where a whole turnover agreement exists, the notification to the financier of the coming into existence of each debt can be achieved electronically or in paper form. Each financier will determine what physical paper is necessary depending upon their assessment of any specific client risks involved.

A second type of agreement known as a “facultative agreement” requires the client to offer all debts for sale to the financier. With this type of agreement, the individual invoices are notified after creation

<sup>33</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

accompanied by a signed statement offering the debts for sale. The offer is accepted by crediting the debt's value to a debts purchased account thereby completing the purchase. With this type of agreement, the financier is likely to accept an electronic submission but may sometimes reserve the right to await receipt of the physical paper before advancing any funds. This type of assignment is often used with unlimited partnership and sole trader clients in order to avoid registration of the agreement at the public Bills of Sale Registries for England and Wales and for Northern Ireland (which is required when such unincorporated clients sign a whole turnover agreement).

**Sole traders and Partnerships:** registration is required, in England, Wales and Northern Ireland at the Bills of Sale Registry for agreements containing whole turnover assignments but only if the client is an unlimited partnership or a sole trader. It does not apply to limited companies or limited partnerships. Failure to register, in such cases would mean that the financier would have no title to the outstanding debts upon the client's insolvency. In all other situations registration is not required.

**Stamp duty:** (a documentary tax) upon assignments of debts was abolished in 2003.

**Notification to Debtors** - is essential if the invoice financier wants to issue court proceedings to collect the debt in its own name. It is also used to determine priority between competing assignments. It is essential to overcome claims upon the client's insolvency by security holders who take security over debts after the assignment to the financier, where no waiver has been obtained. Notice to debtors is generally given with factoring agreements but not with invoice discounting products where the client collects the debts as the financier's undisclosed agent.

**True sale treatment:** There is a distinction in English practice between legal and accounting treatment of receivables as true sales. Accounting true sale depends on derecognition which, as noted above, is unlikely to be achieved unless the receivables assignment is fully non-recourse as against the client (seller). However, under English case law, either a with-recourse and a non-recourse assignment can be a legal true sale of the receivable (*Lloyds & Scottish Finance –v- Cyril Lord* [1992] BCLC 609). In all cases, it is necessary to verify that other structural characteristics of the transaction will not undermine the legal true sale characterization.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

In equity only, but not in law. EDI is widely used in practice for the notification to the financier of the existence of debts previously assigned under a whole turnover agreement of future debts. The master financing agreement can also agree that an EDI message can be treated by the parties as a valid offer to sell the specified debts under a "facultative" agreement. Whilst there have been no court cases on the validity of such messages it is believed they are safe. However it must be emphasized that, to be valid, there must first be a written and signed agreement recording the implied terms or wording of any EDI notification or offer for sale. They are a standard part of most factoring/ID Agreements.

Electronic signatures are increasingly widely used in factoring/ID facilities. Agreements state that the financier can rely on any communication apparently coming from the client. However the effectiveness of such provision has never been tested in court and there remains some doubt about it.

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?



The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

Part of the financier's output will be VAT exempt, so in order to allow correct calculation of a finance provider's VAT input tax recovery, a framework within which finance providers would be able to agree acceptable partial exemption methods with their tax office depending on the specifics of their business was agreed between a predecessor Industry Association and Her Majesty's Revenue and Customs (HMRC) in 1995.

From 2020, however, this Administrative Agreement was replaced by the revised and consolidated Partial Exemption Guidance Manual. This, again, provides a framework within which acceptable methods can be agreed bilaterally (it does not constitute an approved method in itself). All Partial Exemption Special Methods (PESMs) are subject to review to ensure that the outcome is fair and reasonable.

**VAT treatment of factoring commission/ service charge:** The service charge is subject to VAT output tax at the standard rate (currently 20%). The extent to which input VAT can be set-off against such output tax is subject to each financier's individual agreement with HMRC (as above), known as the Partial Exemption Special Method. This relies on every individual financier agreeing the actual recovery rate with their local tax authority.

**VAT treatment of discount or interest:** The discount charge is currently exempt from VAT.

**Differences in the VAT treatment between banks and non-banks engaged in receivables financing:**

None.

**Split payments:** The UK government consulted on implementing split payments in 2018. Thereafter, a domestic reverse charge procedure was introduced (UK VAT Notice 735) in relation to the supply of certain goods and services. This was an extension of the pre-existing regime (which had applied, in a limited range of cases, from as long ago as 2007) to a wider selection of services including emissions allowances and certain construction services. Where the reverse charge rule applies, the supplier will no longer charge VAT to the customer. Instead the customer must pay the VAT element of the invoice directly to HMRC rather than the supplier. There are material exceptions to the reverse charging requirement (most notably, where the supply is made to end users, who are not passing them on to further buyers).

Policy development continues on the potential implementation of split payment of VAT across the wider economy, however, and this work is initially focused on online market supply chains.

Additionally, in 2020 new insolvency rules came into force which have the effect of promoting any claim of HMRC for unpaid VAT (and certain other taxes) to the status of a preferential creditor in a corporate insolvency.

**White lists:** There is no specific provision.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

**Contract:** e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights

**Law:** e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official

or private rights?

Please indicate if there is in this respect any difference between  
Non-Recourse Factoring  
Recourse Factoring  
Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

- 1) A prohibition on assignment clause in the sale contract between a receivables seller (client) and its customer may be effective to prevent a valid assignment of the debt, depending on the size of the contracting parties. Please see question 6 below for further information.
- 2) A pre-existing charge (usually within a third party's security debenture over a client's assets) means that debts cannot be subsequently sold to a financier unless the financier obtains a "waiver" of the third party's rights, directly from the third-party security holder.

Where the third-party debenture is dated after the factoring agreement which has a whole turnover assignment of future debts then such a waiver is not needed for factoring. However, if the client has an undisclosed invoice discounting facility then it is advisable to obtain an "acknowledgment" from the third party that they were aware of such facility when taking their debenture. If this is not the case then a "waiver" has to be obtained. These waivers and acknowledgments are a protection in case the bank's administrator of the client (appointed by the third-party security holder) gives notice to the debtor of its security right before the financier's notice of assignment. If the third-party security holder were to be first to give notice then they would have the prior right to the debt.

Where there is an offer for sale ("facultative") type of assignment a waiver always has to be obtained, irrespective of whether the third party security is dated before or after the factoring or invoice discounting agreement.

- 3) An unpaid carrier may take a lien on goods (which are the subject of an assigned debt) whilst they remain in his possession.
- 4) A debt payable by one Central Government Department or Ministry (but not by a Local Authority) may be reduced by (i) any taxes due by the client to the Tax Authorities such as corporation tax, VAT and social security tax; or (ii) monies due by the client to another Central Government Department or Ministry.
- 5) Where the client has an import finance facility from its bank pre-dating the factoring/invoice discounting facility this often involves a "trust receipt" given to the bank. The proceeds of any debts arising from the release of shipping documents for the goods will be held by the client in trust for the bank. This trust will have priority over any subsequent assignment to the financier under factoring or invoice discounting.
- 6) Where a deep (or double) reservation of title ("ROT") exists then the original supplier has the right to claim back the goods (or the receivable arising from their sale, if the ROT clause so states) from the factor's debtor, if the original supplier has not been paid for those goods. For this right to be effective, then the original supplier must be able to identify the specific goods in question (i.e. by serial numbers or other identifiers). Goods, such as raw materials, incorporated into a composite product cannot be recovered. (e.g. the resin used to make a carpet, or the raisin in a chocolate bar). If the item can simply be detached from the finished product it may be recovered. (e.g. the winding motor in an elevator installation)

If the sub-sale by the client is completed (e.g. by the financier being paid) then the original supplier cannot reclaim the associated goods, even if he can identify them.

There is no difference for any of the above purposes between Recourse Factoring, Non-Recourse Factoring and Invoice Discounting.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

Non-Recourse Factoring

Recourse Factoring

Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Is a contractual prohibition against the assignment of receivables valid in your country?

A prohibition on assignment clause in the sale contract between the receivables seller (client) and its customer may be sufficient to invalidate the assignment of the payment obligation of the customer, depending on the contracting parties. This is the traditional English law position. It has long been recognised that this principle has the effect of preventing suppliers from using their invoices as collateral for financing in cases where such prohibitions apply.

After an extended process of consultation and draft legislation, the Business Contract Terms (Assignment of Receivables) Regulations 2018 were brought into force for any applicable contract entered into on or after 31 December 2018. The Regulations provide that a term in a business contract will have no effect to the extent that it prohibits or imposes a condition, or other restriction, on the assignment of a receivable arising under that contract or any other contract between the same parties. While this has been welcomed by invoice financiers, it should be understood that the Regulations are targeted at helping SMEs trading on a B2B basis to access finance and do not apply to quite a wide range of contracts, including contracts with consumers, "International" contracts and, critically, contracts with suppliers that are large enterprises or special purpose vehicles. For these 'excluded' contracts, a prohibition on assignment will continue to prevent the contract receivable from being assigned to a financier.

What actions are needed to make the prohibition effective?

In circumstances where the Business Contract Terms (Assignment of Receivables) Regulations 2018 do not apply (as per the aforementioned exclusions), the prohibition merely needs to be effectively incorporated into the contract for the supply of goods between purchaser and supplier (i.e. the financier's client).

Is there any requirement for registration?

No.

What is the effect of a prohibition upon factoring or Invoice discounting (in each case with or without recourse)?

A prohibition on assignment within the contract between the client and his customer would make the assignment ineffective as between the assignee (i.e. the financier) and the debtor. However, the assignment between the client and its financier probably remains effective. As a result, any proceeds of the debt received by the client will be held upon constructive trust for the financier and will not form part of its property, should it become insolvent. However, the position has never been tested before the courts.

A prohibition on assignment is often overcome, in practice, by instructing the debtor to pay into a bank account in the name of the client which is declared in trust for the financier. This account is not considered as the client's asset for insolvency purposes.

However, upon the insolvency of the client, the assignment would not be valid over any, as yet, unpaid debts subject to a prohibition of assignment. It is therefore commonplace for a funder to register an all assets debenture to ensure that any non-vesting debts are captured by way of security under the

debenture.

There are no legal differences between the products.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance?

The use of so-called 'pay when paid' clauses and unlimited liquidated damages clauses within supplier contracts – often imposed by a large debtor on smaller suppliers, reflecting negotiating power – can cause significant practical obstacles to the provision of invoice finance by significantly increasing the financier's risk.

## Question 7 Security Interests

For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

*Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?*

Yes, it is possible to take either a fixed or floating charge over receivables only without taking security over any other assets. The requirements for fixed charges are material and exacting: the financier must exercise full dominion over the proceeds of receivables in order to establish the necessary control of the asset that English law requires of a fixed charge. Springing dominion will not suffice to establish a fixed charge.

*Does a fixed or floating charge have to be publicly registered to be valid?*

Yes, such charges have to be registered at the Companies Registry within 21 days of their creation otherwise they will be invalid against creditors and insolvency practitioners.

*Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?*

Yes, this is common market practice.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

In many cases the invoice discounter will take a fixed and floating charges over all the assets of the company.

This security will include at least a fixed charge over so-called non-vesting book debts – those that by reason of some impediment (such as a valid prohibition on assignment – see question 6 above) fail to vest effectively in the financier. Taking security will enable the invoice financier to avail itself of the remedies available to secured creditors, in addition to the exercise of its rights as purchaser of the

receivables. For example, if the invoice financier has a floating charge over all, or substantially all, of the assets of the client, it will be entitled to appoint an administrator. In the case of a fixed charge, the financier may appoint a receiver. In each case, an official is appointed to take possession of the assets and assist in recovery, with (in the case of administration) the benefit of a moratorium to protect the company during the process.

An invoice financier may also take a personal or associated company guarantee for the obligations of its client.

Typically, proceeds of receivables are credited to a so-called “trust account” – a bank account owned and controlled by the financier but including the name of the client. In some other cases, though less frequently, one of the client’s own bank accounts may be designated the collections account but if so, the account must be subject to a mandate that gives full control over the account to the financier and it would be common to implement a regular cash sweep from that collection account to the financier’s own bank account.

Regular verification of debts, undertaken in the name of the client by the agents of the financier, ensure that customers have received the goods and services and are willing to pay for them.

The client is visited by the financier’s audit team at intervals to conduct an audit of the ledgers to ensure that they are valid and correct.

On commencement of a facility, a letter giving notification of assignment to customers, signed by the directors, is often obtained. If there is a breach of the facility, the discounter can date the letter, send it to the debtors and then operate the facility as if it were a disclosed factoring facility. If such a letter is not obtained at commencement, it is usual for the finance agreement to contain a provision entitling the financier to give notice of assignment to account debtors. Depending on the negotiating power of the parties, this right may be exercised by the financier at any time or only following a pre-agreed trigger, such as an event of default.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)  
 assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)  
 pledged to collateralize such a financing facility

(a) In only the first case – assignment under a purchase contract – will the assignment be capable of taking effect as a true sale. In the latter two cases, the assignment or pledge will take effect as a security interest only.

(b) In the latter two cases, the security interest should be registered at the Companies Registry as a charge, as described in question 7 above.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange%
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

- Bank-Transfer 99% (including CHAPs and Faster Payments)
- Cheque 1%
- Bill of Exchange
- Other instruments

The latter two payment modes represent too small a percentage to report. Bills were once widely used in certain sectors but have fallen largely into disuse.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

Non-Recourse Factoring

Recourse Factoring

Invoice Discounting (non-disclosed factoring with or without recourse)

Structured Financing including Inventory Financing

Giving guarantees to Third Parties for obligations of suppliers/sellers

Protection against third party payment default

Direct cross border factoring

2-Factor Cross-Border Factoring

Invoice finance – On the insolvency of the client the rights of the invoice financier under the first three products are only threatened where:

- a valid ban on assignment exists and no waiver has been obtained -this applies to all products;
- where a whole turnover assignment has not been registered at the Bills of Sale Registry against a sole trader or an unlimited partnership with a whole turnover agreement - see above;
- where a waiver has not been obtained from a third party security holder - see above ;

To further secure its position the financier will normally take whatever steps are necessary to perfect a legal assignment of the debt. This will usually be the giving of notice to the debtor where a non-disclosed facility exists.

Structured financing – an Administrator has the powers to sell assets subject to a floating charge and under certain circumstances to sell assets subject to a fixed charge.

Direct cross border factoring – None

2-factor cross border factoring – None

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

The holder of a floating charge over all or substantially all of a company's asset may appoint an administrator to ensure that the assets of the business are protected.

Often the administrator will determine that the best means of maximising distributions to creditors will be by keeping the business trading to ensure that the business can complete its outstanding contracts and/or can be offered for sale as a going concern.

A fixed chargeholder will be a secured creditor with priority rights to receipts from realisation of assets including receivables that have been charged to it by way of fixed charge (as opposed to those that have been assigned outright to it).

Assigned receivables would not fall within the assets of a business in insolvency, but where there has been a defect in assignment (for example where an effective prohibition on assignment prevents the receivables from vesting in the financier), a non-vesting receivables charge will operate as a fall-back security interest for the invoice financier. See question 8 above.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have



### an effect on factoring?

The Recast Insolvency Regulation continues to apply, notwithstanding the ending of the Brexit transition period, where main proceedings were opened before the end of the transition period.

The EU-UK Withdrawal Agreement transplants both the Insolvency Regulation and the Recast Insolvency Regulation as then in effect into English law at the end of the transition period, but the UK's Insolvency (Amendment) (EU Exit) Regulations 2019 (SI 2019/146), as amended (Exit Regulations), do significantly temper the effect of this retention.

Most significantly, no mechanism now exists whereby member states of the EU are bound to apply the benefit of, or procedures or constraints under, the Recast Insolvency Regulation to insolvency proceedings commencing in the UK where COMI is in the UK.

Consequently, a determination by a UK court or insolvency officeholder that the COMI of a debtor is in the UK will not bind the courts of member states of the EU, unless a given member state has other domestic laws that will create this effect. EU insolvency proceedings will no longer benefit from automatic recognition in the UK, and relevant UK insolvency proceedings will no longer benefit from automatic recognition in the EU.

The UNCITRAL Model Law on Cross-Border Insolvency (Model Law) and (in the UK) the Cross-Border Insolvency Regulations 2006 (CBIR 2006) are likely to have increased importance, and cross-border insolvencies will be susceptible to recognition and cooperation on a basis that is not entirely mutual. For example, although the UK has implemented the Model Law, a number of EU member states have not done so: therefore it is conceivable that a UK officeholder would have to seek recognition under the relevant local laws (which might be difficult or impossible), while an EU insolvency office holder could apply for recognition of the foreign insolvency proceedings by the UK courts under the CBIR 2006.

*Since 2021, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?*

There were numerous changes in response to the Covid-19 pandemic, some temporary, although these do not specifically impact invoice finance. Of the permanent changes, the most important are contained in the Corporate Insolvency and Governance Act 2020. This legislation introduced, among other things, a new moratorium process known as a Part A1 Moratorium designed to allow financially distressed incorporated entities a short breathing space from enforcement action by certain types of creditors while they organise their affairs to make their rescue viable.

This is a "debtor in possession" process during which the entity's management will remain in control, albeit under the scrutiny of a monitor. Critically, most lending and factoring liabilities that fall due before or during the moratorium period will still need to be paid. Specifically, these are liabilities that (among other things) arise "under a contract or other instrument involving financial services" which include largely any commercial lending, factoring arrangements, finance leases and guarantee liabilities, regardless of the amount of liability. There is some limited provision in the new legislation for DIP financing; this is not currently viewed as being likely to open the door to a greater involvement of DIP lenders (in contrast to, say, US bankruptcy), although consideration continues.

As far as supporting client businesses that are suppliers to debtor businesses that are in an insolvency process is concerned, finance providers will be especially interested in Sections 233, 233A and 233B of the Insolvency Act 1986 (inserted by the 2020 Act) which prevent certain contracts from being terminated simply because a company goes into an insolvency process. They ensure that supplies are not cut off when a company becomes subject to an insolvency process, due to a supplier refusing to supply, terminating the contract or making other unfavourable changes to the terms on which they are prepared to continue supplying. At the same time, they ensure that the supplier gets paid for supplies made during this period.

Another major change in English law, for insolvencies commencing on or after 1 December 2020, is the partial reintroduction of crown preference, under which certain debts owed to HMRC will have preferential status in insolvency procedures. These will not rank ahead of the interests of finance providers that have either taken outright receivables assignments or hold fixed charges over receivables. However, these claims will rank ahead of claims secured by way of floating charge only.



The HMRC claims given preferential status are VAT, PAYE income tax, employee national insurance contributions, construction industry scheme deductions and student loan repayments.

Given the extraordinary current economic circumstances during the pandemic, including significant government guarantees for lending and deferral of taxes, the full impact of this significant policy change on access to finance is yet to be fully demonstrated. It is likely to be particularly seen in economic sectors that are inherently 'floating charge heavy'; retail, wholesale and manufacturing. However, perhaps more significantly in economic terms, it may be felt in more general lending facilities that are secured by debenture where the floating charge asset value is not specifically quantified but where, nonetheless, the assumed value may enable a finance provider to be more flexible in supporting the business.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No, a properly-constituted debt purchase arrangement will operate as a true sale for legal purposes and the purchased receivables will fall outside the bankrupt estate. See question 2 above.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

It is possible to apply late payment interest to overdue debts.

The rate is determined either:

- (a) by the relevant contract of sale up to the judgment and thereafter, by the courts at 8% p.a.; or
- (b) if the contract is silent as to the interest, pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 which provides for interest at 8% above the Bank of England's rate (plus a fixed sum and reasonable costs of recovering the debt).

The 1998 Act preceded the EU directives, although it was later amended to implement changes required by the directives. The end of the UK-EU transition period on 31 December 2020 had no effect on the Act, but the UK will be free to amend it (and could therefore depart from the EU directives) in the future.

Perceptions of 'late payment' and poor payment practices, along with treatment of small businesses more generally, remain prominent issues amongst stakeholders in the UK.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Not at present.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

Following the end of the Brexit transition period, the rules in Rome I were unilaterally retained (with only minor procedural and consequential amendments) in English law. This substantially identical incorporation of Rome I into English law post-Brexit has come to be known as "UK Rome I".

Rome I and UK Rome I alike provide that matters arising from the contractual relationship between assignor and assignee are governed by the applicable law of the contract of assignment, while the rights and liabilities of the debtor, including the assignability of the claim and the question of whether the claim has been discharged are governed by the governing law of the assigned or underlying claim.

However, Rome I/UK Rome I leave unanswered the question of the law applicable to the third party effects of an assignment. There has long been a divergence of views over which law should apply. In March 2018, the European Commission published a proposal for a new regulation, which would supplement the relevant provisions of Rome I, on the law applicable to the third party effects of assignments of claims. The new regulation will provide that in conflict situations, the law of the assignor's habitual residence will apply. This is based on the view of the Commission that the law of the assignor's habitual residence is easy to determine and most likely to be the place in which the main insolvency proceedings with respect to the assignor will be opened. The proposal is also particularly suitable for bulk assignments and assignments of receivables under future contracts. While the proposal is continuing through the EU's legislative process, it will not apply to the UK. The UK government chose not to opt into the proposed regulation and it will therefore not form part of retained EU law in the UK. As a result, in England & Wales, English private international law will apply.

English legal opinions vary in their approach to the most appropriate law to apply to the third party effects of assignment. The traditional conflicts position has been that this should be the law of the underlying claim assigned. However, there has been a countervailing view in favour of the *lex situs* of the underlying claim (which could often be the law of the debtor's residence), which was seen as controversial. Further debate now seems inevitable. Until that is resolved, the arguably safer course under English law, even if not universally accepted, would be to regard the law of the underlying claim as the applicable law.

*Is a (contractual) choice of law possible and,*

Yes. The Rome I principles (now enshrined in UK Rome I) will apply.

*if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?*

If English law is the governing law, the courts will apply the traditional offer and acceptance analysis, which holds that a contract is formed when an offer is made by one party, which is unequivocally accepted by another party, either in words or by conduct. The court will seek to identify the "last shot", although this is not always straightforward. The issue can be confused by a course of dealing between the parties. The English courts have been prepared to hold that certain terms are incorporated where, as a result of their consistent use in previous transactions, the reasonable expectation of the parties is that those terms will apply to the particular transaction that is now in dispute. In addition, there are examples of parties successfully using framework agreements to govern future supplies, containing provisions that effectively pre-empt the battle of the forms.

In *TRW Ltd v Panasonic Industry Europe GmbH* [2021] EWHC 19, the English High court found that Panasonic's (German law and jurisdiction) sales framework document, which provided that any conditions of the buyer that diverged from Panasonic's conditions would not be valid, was effective, with the result that the German courts would have exclusive jurisdiction to resolve any dispute.

[The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.](#)

No formal steps are under way to implement the UNIDROIT Model Law in the UK.

Any such implementation would need to take place in the context of a reform of UK secured transactions law and registration processes. These continue to be heavily debated and the necessary reforms are unlikely to be undertaken in the near future. Nevertheless, the Model law may be of relevance as English case law develops over time; the approach set out in the Model Law may be cited as persuasive authority in an English court.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

Do PA debtors have the right to refuse the assignment

YES ☒ NO ☐

If so, what consequences does this have?

The doctrine of Crown Immunity means that UK central government departments and ministries may still incorporate restrictions on assignment into procurement contracts, notwithstanding the general effect of the Business Contract Terms (Assignments) Regulations 2018 (see question 6).

A protocol between the UK Government and the Asset Based Finance Association (a predecessor to UK Finance) discourages such incorporation, however, and is likely to be revisited in future.

Prohibitions are in any case still permitted where the contract "concerns national security interests". This phrase is not defined, but will be subject to a conclusive certificate from the Secretary of State at BEIS. However, it is clear from other legislation that national security is a wide ranging concept and not just limited to defence matters. Thus, a sale between a main defence contractor and its subcontractor could be subject to an effective prohibition.

## Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

England & Wales continues to be a highly receptive jurisdiction for invoice finance and asset-based lending, with advantageous treatment for invoice financiers that purchase receivables and a light touch approach to the regulation of non-bank invoice financiers, including no EU passport requirement.

Brexit has complicated the legal position somewhat for multi-jurisdictional invoice finance and ABL between the UK and the EU, with uncertainty over cross-border insolvency recognition being the major area of concern. Otherwise, English law has a widely-accepted approach to private international law and its new status as a third country does not present insurmountable difficulties to EU invoice financiers, whose rights in England & Wales will frequently be at least as strong as, if not more robust, than the rights of UK financiers seeking to provide finance to recipients in EU member states.

On a domestic level, certain features of English law as it pertains to invoice finance could be improved and have been debated at length with mixed results. Primarily:

(a) The traditional English law approach to prohibitions on assignment is out-of-step with the laws of many other jurisdictions and the 2018 regulations which were originally introduced to bring an end to such prohibitions have been diluted so they are of benefit only in certain cases, necessitating a degree of due diligence that continues to be an inconvenience for prospective financiers.

(b) The establishment of priority as between competing assignments is antiquated and depends on the timing of the giving of such notice of assignment under the 1828 court decision in *Dearle v Hall*. Periodic reviews and consultations have failed to result in any meaningful initiative to address this, for example by making provision for registration or filing of debt purchases as quasi-security interests, as has been implemented in other jurisdictions.

(c) As noted above, in addition to prohibition of assignment clauses, there remain other onerous contractual clauses imposed on supplier businesses that can restrict the ability of the sector to provide finance. These vary from sector to sector but so-called 'pay-when-paid' clauses are found in the recruitment/temporary worked sector, and unlimited liquidated damages clauses can restrict the finance provided in the construction sector, in particular.

## PART TWO Scotland

This part of this comparative study is applicable to Scotland as part of the United Kingdom; that is to say where the receivables or the agreement for their acquisition is subject to Scots law.

As Scotland is part of the United Kingdom and much regulation in the UK is the same UK-wide, by far the greater part of the answers applicable to Part One of this study (the part applicable to England and Wales) is equally applicable to this Scottish section. For brevity, therefore, answers will only be given in this Part Two where there are differences with the English position. If nothing is said, the position set out in Part One applies equally in Scotland.

### Question 1 Legal and Regulatory requirements to operate

See Part One

### Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>34</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

registration

stamp-duty or other documentary taxes

notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

Under Scots law an assignation (the Scottish equivalent of the English use of the word “assignment”) is required to transfer ownership of a receivable. The assignation need not be in writing, though invariably it is because of the difficulties of proof of an oral assignation. The assignation must contain wording clearly indicating an intention to convey or transfer the receivable, but is otherwise not prescribed. A real right does not vest in the financier until notice is given – see below.

While financiers in relation to receivables governed by Scots law may use whole turnover and facultative agreements as set out for England and Wales, the different consequences of the two types of agreement under English law do not arise in Scots law. In Scots law the contract to sell or, in the case of a facultative agreement, to offer to sell receivables is simply that, a contract. It establishes personal or contractual rights between seller and buyer but no transfer or assignment of the receivable. The agreement in Scots law must be followed by an assignation of the receivable (see above). That assignation may be in the agreement (for whole turnover agreements) or in the offer (for facultative agreements) or separate. The assignation gives the financier a right *in personam* to the receivable but notice is needed to create a right *in rem* (see below). For the validity of an assignation of future debts, see below.

The text in Part One relating to the Bill of Sale Registries has no applicability to Scotland.

**Are any of the following necessary to achieve a legal assignment valid against the account**

<sup>34</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

**debtor or the supplier's insolvency practitioner or third party creditors:-**

- **registration**
- **stamp-duty or other documentary taxes**
- **notification?**

No registration is required for the acquisition of a receivable under Scots law.

Notice or Notification (called "intimation" in Scots law) is essential for the financier to acquire a real right to the receivable, valid against third parties, including other creditors of the client and the client's liquidator, administrator or trustee in bankruptcy. The only exception to this is that the assignation itself gives the financier a better title to the receivable in a competing claim by a receiver appointed to the client. Receivers, a form of insolvency appointment, can only be appointed in effect to a company by a creditor holding a floating charge from the company, but following the change in the law under the Enterprise Act 2002, receivers are rarely appointed nowadays, except where the floating charge extends only over limited assets of the company or where the floating charge was granted prior to the coming into force of that Act.

To be effective, the intimation must be given to the debtor (a) after the receivable has come into existence and (b) before the client has an insolvency practitioner appointed to it. Where there are competing assignees, the first to give valid intimation has priority.

Under the Transmission of Moveable Property (Scotland) Act 1862, intimation should be accompanied by a copy of the assignation and an acknowledgment of receipt by the debtor is required. This is impracticable for invoice financiers, who instead rely on common law provisions, bolstered by recent court decisions, permitting intimation to be given in any way which clearly advises the debtor of the fact of the assignation, to whom the assignation has been made, and the amount of the debt.

To protect a financier's position where intimation is not to be given as a matter of course, say because the financing is on an undisclosed, and therefore unnotified, basis, there will be established a trust under which the client as seller, who has been paid by the financier for the sale and purchase of a receivable, declares that he holds the title to the receivable and its proceeds on trust for the financier, pending the financier completing his real right thereto by intimation of the assignation. This trust can be set up either in the invoice finance agreement or separately. This trust will remove the trust assets (the assigned but unintimated receivables) from the estate of the client available to the client's creditors on the client's insolvency. It will not prevail against the rights of another bona fide purchaser of the same receivable who has paid for it, received an assignation and intimated it.

There are further technicalities regarding the trust, so that notice has to be given to the financier (not to the debtor) as and when invoices on purchase become part of the property of the trust, though this can easily be combined with whatever process is established by the invoice finance agreement for the purchase of the receivables as they arise.

**Are there any other requirements for a valid assignment?**

None of the requirements for England and Wales apply in Scotland, where the position is as set out above. There is no distinction in Scots law between legal and equitable assignments; Scots law does not have the English law distinction between obligations taking effect in law or in equity.

**Is it possible to assign future receivables by a so called "assignment in advance"?**

It is almost certainly the case that future receivables can be assigned in Scotland before they come into existence (a final court decision on this has still not been given), though a real right to them cannot be acquired until intimation is given, and intimation can only be given once the receivable comes into existence. Until that time, the financier has to rely on the trust referred to above for his vindication of title against third parties.

Some commentaries have questioned whether future receivables can be assigned. Because of this, financiers seek to ensure that an assignation of such receivables is contained within the procedure for notification of the receivables to the financier given at the later stage when the receivables come into existence, notwithstanding that there will have been an assignation of receivables present and future in the invoice finance agreement.

While accepting there is a very strong argument that future receivables can be "assigned in advance"



the commentators consider the prudent view to protect the financier's position in case a court should ever take the view that they cannot be so assigned. They therefore consider the practice of taking further assignments (and also trusts) after relevant receivables have come into existence to be highly advisable. There is a further common practice of taking floating charges from corporate assignors over present and future receivables that are agreed from time to time to be factored and, as future receivables can clearly be charged effectively by a floating charge, that will provide a further layer of comfort in relation to concerns regarding the effectiveness of assignments or trusts. Such a floating charge will, however, require to be registered with the UK Registrar of Companies when granted by a UK company. As in England (under the UK-wide tax regime), there should normally be no stamp duty or other documentary taxes chargeable in this context.

The Bills of Sale Registry does not apply in Scotland.

**True sale treatment:** See Part One. The English case and practice there cited are equally applicable in Scotland. The trust mechanism outlined above in relation to un-notified receivables is considered adequate to justify the application of true sale treatment to the receivable notwithstanding that notification has not been given.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Electronic signatures are increasingly widely used in factoring/ID facilities. There are two issues to watch out for where Scots law applies to the receivables purchase agreement.

First, trusts in Scots law may only be constituted, where signature is electronic, by an advanced electronic signature (as defined in EU regulations relating to electronic signatures). Therefore, if the trust is contained in the document, the electronic platform used must have the facility to comply with the requirements for such a signature. (Note, however, that many receivables purchase agreements in the UK apply to both English and Scottish receivables with appropriate additional provisions in relation to the Scottish receivables. In such an agreement the trust provisions may be governed by English law, where the signature requirements in relation to the constitution of the trust are less strict and there has been a court decision recognising the validity of such an English trust in respect of the Scottish receivables.)

Second, in relation to the assignment of a Scottish receivable, as there are no formalities required for a valid assignment in Scots law, EDI can be used. However, to ensure that the EDI message is sufficient to operate as an assignment, the receivables purchase agreement should make clear that an EDI message is deemed to contain words of transfer or assignment.

It is also possible to achieve electronic notice provided systems clearly demonstrate receipt and understanding of notice by the correct recipient.

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables? What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does



it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

See Part One. VAT is governed by EU and UK-wide legislation so there are no issues which arise differently from those set out in Part One.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?
- Please indicate if there is in this respect any difference between
- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

1) A fixed charge on receivables in Scots law requires assignation and notice to the debtors - in other words the procedure is the same as for the purchase of such a receivable. However, it is considered that the trust route outlined above, which protects the factor who has taken an assignation of the debt and paid for it but not given notice, cannot be so readily used to protect a fixed charge holder. As notice to multiple, changing debtors is impracticable, it follows that a fixed charge on multiple, as opposed to single receivables, is rarely encountered in Scots law.

2) A pre-existing floating charge may contain provisions barring the factoring of the grantor's debts. If the factor has notice of this provision, it may seek a waiver of the third party's rights. This is also the case where there is an offer for sale ("facultative") type of receivables purchase and such a pre-existing floating charge. In practice, however, such a waiver will rarely be relevant, as, since the financier will be taking its own floating charge, the consent issues will be dealt with in a ranking or priority arrangement between the financier and the pre-existing floating charge holder as creditors secured by floating charge.

Likewise, therefore, where there is a subsequent floating charge granted to a third party by the client, all issues arising will be sorted out in such a ranking or priority agreement.

As sole traders and partnerships (other than limited liability partnerships) cannot grant floating charges, the issue does not arise in the case of such clients.

3) An unpaid carrier may take a lien on goods (which are the subject of an assigned debt) whilst they remain in his possession.

4) A debt payable by one Central Government Department or Ministry (but not by a Local Authority) may be reduced by (i) any taxes due by the client to the Tax Authorities such as corporation tax, VAT and social security tax; or (ii) monies due by the client to another Central Government Department or Ministry.

5) Where the client has an import finance facility from its bank pre-dating the factoring/invoice discounting facility this often involves a "trust receipt" given to the bank. The proceeds of any debts arising from the release of shipping documents for the goods will be held by the client in trust for the

bank. This trust will have priority over any subsequent assignment to the financier under factoring or invoice discounting. The validity of such a trust receipt in relation to goods in Scotland will require to be tested according to the stricter Scots law tests (see above) but difficult conflicts of laws questions can arise where the shipping documents are governed by Scots law and/or the goods in question are imported through England rather than Scotland, where it is likely to be English law which governs the effect of the trust receipt.

6) In this paragraph (6) the position is the same as In Part One for England and Wales where the following is stated. Where a deep (or double) reservation of title ("ROT") exists then the original supplier has the right to claim back the goods (or the receivable arising from their sale, if the ROT clause so states) from the factor's debtor, if the original supplier has not been paid for those goods. For this right to be effective, then the original supplier must be able to identify the specific goods in question (i.e. by serial numbers or other identifiers). Goods, such as raw materials, incorporated into a composite product cannot be recovered. (e.g. the resin used to make a carpet, or the raisin in a chocolate bar). If the item can simply be detached from the finished product it may be recovered. (e.g. the winding motor in an elevator installation)

If the sub-sale by the client is completed (e.g. by the financier being paid) then the original supplier cannot reclaim the associated goods, even if he can identify them.

There is no difference for any of the above purposes between Recourse Factoring, Non-Recourse Factoring and Invoice Discounting.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

Non-Recourse Factoring

Recourse Factoring

Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Is a contractual prohibition against the assignment of receivables valid in your country?

A prohibition on assignment clause in the sale contract between the receivables seller (client) and its customer may be sufficient to invalidate the assignment of the payment obligation of the customer. An English law case confirming this has been followed by the Scottish courts. It has long been recognised that this principle has the effect of preventing suppliers from using their invoices as collateral for financing in cases where such prohibitions apply.

In Part One, reference is made to the Business Contract Terms (Assignment of Receivables) Regulations 2018, which provide that a term in a business contract will have no effect to the extent that it prohibits or imposes a condition, or other restriction, on the assignment of a receivable arising under that contract or any other contract between the same parties. These Regulations do not apply in Scots law, though by informal negotiation the Scottish Government has recommended that state and local authority entities do not include ban on assignment clauses in their contracts. It may be that provision will be made for the extension of the effect of the 2018 Regulations to Scotland but that has not happened as at the date of this note.

What actions are needed to make the prohibition effective?

The prohibition merely needs to be effectively incorporated into the contract for the supply of goods between purchaser and supplier (i.e. the financier's client) .

Is there any requirement for registration?

No.

What is the effect of a prohibition upon factoring or Invoice discounting (in each case with or without recourse)?

A prohibition on assignment within the contract between the client and his customer would make the assignation ineffective as between the assignee (i.e. the financier) and the debtor. However, the assignation between the client and its financier probably remains effective. As a result, it may be possible, in practice, to overcome the prohibition by instructing the debtor to pay into a bank account in the name of the client which is declared in trust for the financier. This account is not considered as the client's asset for insolvency purposes.

However, upon the insolvency of the client, the assignation would not be valid over any, as yet, unpaid debts subject to a prohibition of assignation. It is therefore commonplace for a funder to register a floating charge to ensure that any non-vesting debts are captured by way of security under the floating charge. It should be noted, however, that this is a less favourable position for the funder than is the case in England as set out in Part One, because, in insolvency, the floating charge has a poorer priority in ranking than the debenture there referred to. It ranks behind certain debts owed to employees and by way of taxes, an amount reserved for ordinary creditors and the expenses of the insolvency practitioner. (It has been explained above why a fixed charge on the debts, which does not suffer this ranking problem, is unlikely to be taken in Scotland.)

There are no legal differences between the products.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

The use of so-called 'pay when paid' clauses and unlimited liquidated damages clauses within supplier contracts – often imposed by a large debtor on smaller suppliers, reflecting negotiating power – can cause significant practical obstacles to the provision of invoice finance by significantly increasing the financier's risk.

## Question 7 Security Interests

For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

*Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?*

Yes, it is possible to take either a fixed or floating charge over receivables only, without taking security over any other assets. To repeat what is stated above, a fixed charge on receivables in Scots law requires assignation and notice to the debtors - in other words the procedure is the same as for the purchase of such a receivable. However, it is considered that the trust route outlined above, which protects the factor who has taken an assignation of the debt and paid for it but not given notice, cannot be so readily used to protect a fixed charge holder. As notice to multiple, changing debtors is impracticable, it follows that a fixed charge on multiple, as opposed to single receivables, is rarely encountered in Scots law.

A floating charge can be granted over receivables only, but floating charges in Scotland can only be granted by companies or limited liability partnerships. In practice, however, for reasons relating to the ease of enforcement of the security, a floating charge is normally taken over all of the company's

assets, though agreement may be required with other secured creditors of the client to limit the priority in ranking of the floating charge to the receivables and their proceeds.

*Does a fixed or floating charge have to be publicly registered to be valid?*

Yes, such charges have to be registered at the Companies Registry within 21 days of their creation otherwise they will be invalid against creditors and insolvency practitioners.

*Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?*

Yes, it is common market practice to take an all assets floating charge from clients which are corporate bodies or limited liability partnerships.

## Question 8 Undisclosed Operations/invoice discounting

*What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?*

*What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?*

In question 17 above, comment was made as follows as to the protection sought by invoice discounters where a receivables purchase facility was undisclosed, namely: there will be established a trust under which the client as seller, who has been paid by the financier for the sale and purchase of a receivable, declares that he holds the title to the receivable and its proceeds on trust for the financier pending the financier completing his real right thereto by intimation of the assignation. This trust can be set up either in the invoice finance agreement or separately. This trust will remove the trust assets (the assigned but unintimated receivables) from the estate of the client available to the client's creditors on the client's insolvency. It will not prevail against the rights of another bona fide purchaser of the same receivable who has paid for it, received an assignation and intimated it.

Further, as explained in Question 22, it is common practice for the invoice discounter to take a floating charge over all the assets of the company. Taking such a floating charge will enable the invoice financier to avail itself of the remedies available to it as floating charge holder. For example, it will be entitled to appoint an administrator to take possession of the assets and assist in recovery, with the benefit of a moratorium to protect the company during the process.

An invoice financier may also take a personal or associated company guarantee for the obligations of its client.

Typically, proceeds of receivables are credited to a so-called "trust account" – a bank account owned and controlled by the financier but including the name of the client. In some other cases, though less frequently, one of the client's own bank accounts may be designated the collections account but if so, the account must be subject to a mandate that gives full control over the account to the financier and it would be common implement to be a regular cash sweep from that collection account to the financier's own bank account.

Regular verification of debts, undertaken in the name of the client by the agents of the financier, ensure that customers have received the goods and services and are willing to pay for them.

The client is visited by the financier's audit team at intervals to conduct an audit of the ledgers to ensure that they are valid and correct.

On commencement of a facility, a letter giving notification of assignation to customers, signed by the directors, is often obtained. If there is a breach of the facility, the discounter can date the letter, send it to the debtors and then operate the facility as if it were a disclosed factoring facility. The finance agreement will also contain a provision entitling the financier to give notice of assignation to account debtors. Care has to be taken in determining when such a letter or notice is given to the debtors. As explained above, in Scots law no real right to a receivable vests in the financier until such letter or notice is given and thus it must be given before an insolvency practitioner is appointed to the client. It

follows, therefore, if you contrast this situation with what is set out for England and Wales in Part One above, that the finance agreement provisions permitting the financier to give notice to the debtors in relation to a Scottish receivable must allow that notice to be given at any time of the financier's choosing and not just on, say, an event of default which could itself be the insolvency of the client.

### Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)  
 assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)  
 pledged to collateralize such a financing facility

See Part One above in relation to what will constitute a true sale.

As explained above in Questions 17 and 23, a fixed charge on receivables in Scots law requires intimation (notice) to the debtors for it to be effective and the trust mechanism relied on by undisclosed receivables purchasers has limited validity in relation to a security transaction. Thus in the latter two instances in the question, in practice, only a floating charge may be taken.

### Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

Bank-Transfer %  
 Cheque %  
 Bill of Exchange %  
 Other instruments %  
 (please give details, preferably also about similar estimates relating to factoring relations only)

See Part One above

### Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

Non-Recourse Factoring  
 Recourse Factoring  
 Invoice Discounting (non-disclosed factoring with or without recourse)  
 Structured Financing including Inventory Financing  
 Giving guarantees to Third Parties for obligations of suppliers/sellers  
 Protection against third party payment default  
 Direct cross border factoring  
 2-Factor Cross-Border Factoring

Invoice finance – On the insolvency of the client the rights of the invoice financier under the first three products are only threatened where:

- a valid ban on assignment exists and no waiver has been obtained -this applies to all products;
- where any necessary waiver has not been obtained from a third party security holder - see above;

To further secure its position the financier will normally take whatever steps are necessary to complete the assignation of the receivable by giving (or by procuring that the client give) notice to the debtors, where this has not already been done. Note, as explained above, such notice is ineffective unless given prior to the appointment of an insolvency practitioner to the client.

Structured financing – an Administrator has the powers to sell assets subject to a floating charge.

Direct cross border factoring - None

2-factor cross border factoring – None

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

The holder of a floating charge over all or substantially all of a company's asset may appoint an administrator to ensure that the assets of the business are protected.

Often the administrator will determine that the best means of maximising distributions to creditors will be by keeping the business trading to ensure that the business can complete its outstanding contracts and/or can be offered for sale as a going concern. But note the restricted priority in ranking of a floating charge holder as set out at Question 21 above.

Assigned receivables would not fall within the assets of a business in insolvency, but where there has been a defect in assignation (for example where a valid prohibition on assignment prevents the receivables from vesting in the financier), a floating charge will operate as a fall-back security interest for the invoice financier. See question 22 above.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

*How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring ?*

See Part One above, all of which is equally applicable in Scotland, subject to the restriction following.

It is explained in Part One that a major change in the law, and this applies in Scotland as in England and Wales, for insolvencies commencing on or after 1 December 2020, is the partial reintroduction of crown preference, under which certain debts owed to HMRC will have preferential status in insolvency procedures. These will not rank ahead of the interests of finance providers that have either taken outright receivables assignments or hold fixed charges over receivables. However, these claims will rank ahead of claims secured by way of floating charge only. The HMRC claims given preferential status are VAT, PAYE income tax, employee national insurance contributions, construction industry scheme deductions and student loan repayments. As it is impracticable in Scots law to take fixed charges on receivables and reliance instead may only be placed on floating charge, it follows that this change in the law has a more deleterious effect on the position of the invoice financier in Scotland than it does in England.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No, a properly-constituted debt purchase arrangement will operate as a true sale for legal purposes and the purchased receivables will fall outside the bankrupt estate. See question 2 above.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Not at present.



### Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

The UNIDROIT Convention on International Factoring (1988)

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

Not at present.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

The position in Scots law is the same as that stated for English law in Part One. It should be noted, however, that by regulations passed in both Scotland and England in identical terms, the rules set out in what is now UK Rome 1 apply also in relation to potential conflicts between Scots law and English law. These regulations are thus far unaffected by supervening Brexit rules.

*According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments?*

The position in Scots law is the same as that stated for English law in Part One. It should be noted, however, that by regulations passed in both Scotland and England in identical terms, the rules set out in what is now UK Rome 1 apply also in relation to potential conflicts between Scots law and English law. These regulations are thus far unaffected by supervening Brexit rules.

*Is a (contractual) choice of law possible and,*

Yes. The Rome I principles (now enshrined in UK Rome I) will apply.

*if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?*

The position is the same as that set out for England and Wales in Part One.

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

The implementation of the model law has had no impact in Scotland since it was adopted and is unlikely to be relevant given the pending Moveable Transaction (Scotland) Act 2023 which has been passed by the Scottish parliament and is expected to come into force over the course of 2024.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

N/A

Do PA debtors have the right to refuse the assignment

YES ☒ NO ☐



If so, what consequences does this have?

See Question 21 in Part One above for the position in relation to the UK Government, save for the explanation that the Business Contract Terms (Assignment of Receivables) Regulations 2018 do not in any event apply in Scotland. However, by informal negotiation, similarly to the UK Government, the Scottish Government has recommended that state and local authority entities in Scotland do not include ban on assignment clauses in their contracts. It may be that provision will be made for the extension of the effect of the 2018 Regulations to Scotland but that has not happened as at the date of this note.

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

See the comments in Part One as to the law of England and Wales being attractive to invoice financiers, subject to certain caveats.

The same cannot be said for Scotland, where the need to intimate (give notice) to debtors, either on the purchase of receivables or to obtain a fixed charge over receivables, before a real right is obtained by the purchaser or lender is a deterrent to invoice financing or to lending with fixed charge security over receivables. Other uncertainties too, such as the need for formality in the creation of the trust, the need to give notice of receivables being vested in the trust, and the question of the assignability of future debts combine to increase that deterrent. The trust mechanism described above does, however, serve as a device which invoice financiers in the UK consider gives them enough reassurance to make invoice finance a much-used finance offering in Scotland. It should also be recognised that for now the UK remains a single country despite having plural legal jurisdictions and systems, with the consequence that most financing arrangements will apply to both England and Wales, on the one hand, and Scotland, on the other. Thus nearly all UK invoice finance agreements will contain provisions dealing with both systems, making use for the English receivables of the more favourable English legal background.

There is a real likelihood of substantial reform of the Scottish position in the next year or two, with legislation passed by the Scottish Parliament to set up a register of moveable property. Registration in that register of a receivables purchase agreement or a fixed charge on receivables would give the purchaser or lender right to the receivables without the need for intimation (notice), including over future receivables. This would make the Scottish environment even more financier-friendly than the current English position.

## NO > Norway

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☒ NO, factoring is not limited to CI/banks ☐

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☐

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☒ NO ☐

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

Non-Recourse Factoring

Recourse Factoring

Invoice Discounting (i.e non-disclosed factoring with or without recourse)

Structured Financing , including Inventory Financing

Giving guarantees to third parties for obligations of supplier/seller

Protection against third party payment default

Direct cross border factoring

2-Factor cross-border factoring

B2B-/B2C-factoring

Factoring and commercial finance activities are considered as financial services under Norwegian law and requires a licence under the Financial Institutions Act 2015

Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.

YES ☐ NO ☐

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

YES NO

☒ ☐ Capital requirements for credit, market and operational risks

YES NO

☒ ☐ Data protection

YES NO

☒ ☐ Liquidity risk requirements

Credit and financial institutions must follow IAS/IFRS.

YES NO

☒ ☐ IAS / IFRS accounting principles

Credit and financial institutions must follow IAS/IFRS.

YES NO

☒ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

Transparency Act:

– Sales revenue: NOK 70 million

– Balance sheet total: NOK 35 million

– Average number of employees in the financial year: 50 full-time equivalent

YES NO

☒ ☐ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Legislation for risk control and internal control, CRR/CRD IV

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

YES NO

☐ ☐ Reporting duties (e.g. AnaCredit, NSFR)

YES NO

☐ ☐ Rules on payment services following the Payment Services Directive PSD II

YES NO

☒ ☐ Rules and regulations on sustainability (environmental, social and governance – ESG)

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

Finanstilsynet (FSA-N)

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>35</sup>)?

Please describe the physical process for the assignment of receivables.

<sup>35</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called "assignment in advance"?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

You can register a factoring pledge per the Lien Act (1980) § 4-10 which will give protection against creditors and acquirers which are not in good faith. You can give notice to the debtor which will give total protection. Notification must be given each time.

Accounting must follow IFRS or NO-GAP. In order for receivables to be a "true sale", the transferee must have assumed the economic risk.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Yes, there are formal rules. You need to be able to document notification. Digital solutions and e-invoicing is very common in the market.

### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

Unconditional assignment is without VAT. Administration of factoring should include VAT while interests are not. Debt collection is fully subjected to VAT.

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights

- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

There is no difference between the 3 alternatives. No need to have a public registration, but it may be registered.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Yes, the supplier and buyer may have agreed a ban on pledging/assignment. Then the transfer will be invalid. The transferor is under the agreement obliged to speak out about such restrictions and the buyer will in the notification be asked if there is such an agreement.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

Factoring companies normally take a fixed charge in receivables constituting payment for the sale of goods and services, and provides notification to the debtor so that he pays them. Banks usually take a floating charge with a registration without registration.

Under Norwegian law, a so so-called factoring pledge or assignment can be taken or created over all receivables owned by a business entity and arising out of the entity’s sale of its products and services. The pledge or assignment will compromise all receivables from time to time and is in that sense a floating charge. Legal perfection is obtained by registration in the Norwegian Moveable Property Registry.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

Careful follow up the supplier and the debtor.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

No

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange%
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

In Norway we have a rule that the bankrupt estate has a legal mortgage for 5% of the value of the pledged assets. This also applies to receivables. This mortgage can only be used to cover bankruptcy costs.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

Not relevant

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

See above

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

We have a separate law on overdue payments influenced by the EU Late Payment Directive

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

No

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☐ NO ☒

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

If so, what consequences does this have?

## Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

No



## RU – Russia (answers from 2021 EUF Legal Study)

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☐ NO ☒

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES ☐ NO ☒

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (*i.e non-disclosed factoring with or without recourse*)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

In the Russian Federation Factoring operations are regulated by the Chapters 24 (Change of persons in obligation) and 43 (financing against assignment of a Receivable) (which has been significantly amended by the Federal law N 212-FZ of July 26, 017) of the Civil code of the Russian Federation (there are no separate laws or other legal acts on factoring).

In terms of types of products there are the following peculiarities

- Non-Recourse Factoring: is allowed. A general rule is as follows: A Client is responsible for the invalidity of the Receivable assigned, but not for the Debtor's payment, unless provided otherwise by the Factoring agreement (part 1 and part 3 of the Art. 827 of the Civil Code of the Russian Federation), which means, that if a Factoring agreement does not contain a clause on the Client's responsibility for payment, factoring is meant to be non-recourse.
- Recourse Factoring: is allowed. A Client is responsible for the invalidity of the assigned Receivable and for the payment, which should be specified in the Factoring agreement (part 1 and part 3 of the Art. 827 of the Civil Code of the Russian Federation).
- Invoice Discounting ( i.e non-disclosed factoring with or without recourse)- is allowed . Validity of assignment does not depend on the notification of the Debtor on the assignment of a Receivable. The only consequence is as follows: in case the Client and/or the Factor fail to notify the Debtor on the assignment, the new creditor (i.e. Factor) shall bear risks of negative consequences caused by such non-notification and the Debtor's payment to the Clients payment details is considered as a proper fulfilment of obligations for the Debtor (part 3 of the Art. 382 as well as part 1 of the Art. 830 of the Civil Code of the Russian Federation). Both the Factor and the Client are entitled to notify the Debtor on the assignment and such a notification should be binding for the Debtor. But in case the Factor notifies the Debtor, the Debtor is allowed to demand from the Factor evidence confirming the assignment (the Debtor is

deprived of such a right in case the Client notifies the Debtor on assignment) (Art. 385 and Art.830 of the Civil Code of the Russian Federation).

- Structured Financing, including Inventory Financing: one of the main principles of the civil legislation of the Russian Federation is freedom of Contracts (Art. 421 of the Civil Code of the Russian Federation), which means, that legal entities, entrepreneurs and citizens are allowed to conclude any agreements, provided that such agreements do not contradict the Russian legislation. Mixed agreements (i.e. combining provisions of different agreements) are also allowed.
- Giving guarantees to Third Parties for obligations of supplier/seller: is allowed and may be implemented in two general ways: as a Suretyship agreement or by issuance of an Independent guarantee
- Protection against third party payment default: is allowed and will be structured as a Suretyship agreement or by issuance of an Independent guarantee or as a Pledge agreement.
- Direct cross border factoring: is allowed, but there is an obstacle in terms of import factoring, as Russian companies are not allowed to get a payment from another Russian company in a foreign currency (the Russian law “On the currency regulation and the currency control” N173- FZ of December 10, 2003 states, that the currency operations between the residents ARE PROHIBITED (Art. 9). Herewith in terms of export factoring there will be no obstacles, because the mentioned law allows currency operation between the Factor and the Client in case the Client supplies goods/performs works/ provides services to a non-resident (any foreign legal entity).
- 2-Factor Cross-Border Factoring: is allowed, but there is an obstacle in terms of import factoring, as Russian companies are not allowed to get a payment from another Russian company in a foreign currency (the Russian law “On the currency regulation and the currency control” N173- FZ of December 10, 2003 states, that the currency operations between the residents ARE PROHIBITED (Art. 9). Herewith in terms of export factoring there will be no obstacles, because the mentioned law allows currency operation between the Factor and the Client in case the Client supplies goods/performs works/ provides services to a non-resident (any foreign legal entity).
- B2B-/B2C-factoring – both are allowed in terms of the Russian legislation and may be structured as any of the operation, listed above, although B2C-factoring is not widely used due to higher risks and more difficult procedure of the debt collection from a consumer.

[Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one- person-business/individual entrepreneur/sole proprietor? Please give details.](#)

YES ☐ NO ☒

In the Russian legislation there are no specific requirements in case of factoring activities in relation to an individual entrepreneur/sole proprietor.

An individual entrepreneur/sole proprietor may assign receivables to a Factor or act as a Debtor in case a Client assigns to the Factor receivables, arising from the supply of goods/performance of works/ providing of services to an individual entrepreneur/sole proprietor, on general grounds.

It's worth mentioning that individual entrepreneur/sole proprietor may not act as a Factor as due to the Russian legislation only commercial legal entities may act as a financial agent when concluding factoring agreements (Art. 825 of the Civil Code of the Russian Federation).

As for a one-person-business, such a term does not exist in the Russian legislation. The Russian legislation allows to establish a legal entity having one and sole participant – a Russian or a foreign citizen. An such a legal entity will have all the rights/bear all the legislations as any another legal entity incorporated in accordance to the Russian legislation.

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒ ☐ Anti-money laundering

Factoring companies in the Russian Federation should comply with the Federal Law № 115-FZ “On Countermeasures to Combat Legalization (Laundering) of Illegally Obtained Proceeds and Financing of Terrorism” of August 7, 2001, in accordance to which every factoring company is obliged to identify its counterparts, their beneficial owners, inform an authorized authority on transactions to be controlled and block and freeze monetary amounts in case there is information on their connection with terroristic activity.

Any transaction the amount of which exceeds RUB 600,000 (or its equivalent in a foreign currency) and that falls under certain criteria listed in Federal Law No. 115-FZ is subject to AML control and, therefore, should be reported accordingly.

YES NO

☐ ☒ Capital requirements for credit, market and operational

risks Are applied only to the credit organizations.

There are no such requirements for non-credit organizations.

GPB factoring (LLC) as a subsidiary of Gazprombank (JSC) applies some requirements voluntarily in accordance with the rules of Gazprombank Group.

YES NO

☒ ☐ Data protection

All companies in the Russian Federation should comply with the Federal Law № 152-FZ “For Personal Data Protection” of July 27, 2006, in accordance to which in order to operate with the personal data of Russian residents (which include name, surname and any other information, allowing to identify a person) a company should get a consent to personal data processing.

There are several exclusions when a company may not get such a consent

YES NO

☐ ☒ Liquidity risk requirements

Is applied only to the credit organizations

There are no such requirements for non-credit organizations.

GPBF as a subsidiary of GPB (JSC) applies some requirements voluntarily in accordance with the rules of GPB Group.

YES NO

☐  IAS / IFRS accounting principles

IAS / IFRS accounting principles are implemented in the Russian Federation gradually by issuing of orders of In accordance with the Art. 8 of the Federal law № 208-FZ “On consolidated financial accounting” of July 27, 2010, companies, specified in the law, should form, present and publish consolidated financial accounts starting from the year following the year when corresponding IAS / IFRS standards are recognized for application in the Russian federation. The law is obligatory only for the types of companies named in the law, as follows: credit organizations, insurance companies etc. The list of types of companies is closed, which means, that a factoring company, that does fall under one of such types of companies, may use the IAS / IFRS standards at its discretion

the Ministry of Finance of the Russian Federation, enforcing one or another standard. A standard comes into force: for an optional application – from the moment of official publication; for a compulsory application by the above-mentioned types of companies – in cases, specified in the corresponding standard.

YES NO

☒ ☐ Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

GPBF does not fall under the category of microbusiness in accordance to EU definition. Definition of the Russian legislation- please refer to Q15

YES NO

☐ ☒ Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

Risk management requirements apply to factoring companies, which are credit institutions.

There are no compulsory legal regulations for factoring companies, which are not credit institutions.

YES NO

☐ ☒ Contribution to the Deposit Guarantee Scheme

If applicable, what is the basis of the contribution to the DGS for factoring companies?

Is applied only to credit organizations

YES NO

☐ ☒ Reporting duties (e.g. AnaCredit, NSFR)

There are no reporting duties which would be specific only for factoring companies.

All the Russian legal entities are obliged to file reports on a periodic basis to the Federal Service of State Statistics, to the Federal tax service, Social insurance fund, Pension fund etc.

Specific regulations apply also to the factoring companies, which are credit institutions.

YES NO

☐ ☒ Rules on payment services following the Payment Services Directive PSD II

PSD II is not adopted in the Russian Federation and therefore may not be applied to the Russian factoring companies.

YES NO

☒ ☐ Rules and regulations on sustainability (environmental, social and governance – ESG)

There are several laws in the Russian Federation regulating environmental, social and governance matters.

Federal law "On protection of environment" N 7-FZ of January 10, 2002 provides for general principals and wide range of procedures of environmental protection including a duty on full recovery of the harm caused to the environment by a citizen or a legal entity. The main ideas of the said law are supported in the Code on administrative violations, providing for sanctions for environmental offences.

Russian Federation enters into the Paris Agreement on climate changes of 2015.

Furthermore 2019-2024 years are declared in the Russian Federation as years of the National project "Ecology", providing for multiple measures on forest conservation, river restoration etc.

As for the social sustainability, Russian Federation has adopted various legal acts, providing for principles of social support, which also shall be implemented by employers. Among them Labor code N197-FZ of December 20, 2001, which includes diverse social guaranties for employees (e.g. annual paid leave, paid pregnancy leave, paid sickness leave, guaranties for disabled persons, single mothers/fathers etc.).

Federal law "On state social assistance" N 178-FZ of 17 July, 1999; Federal Law "On guarantees of the rights of the child" N 124-FZ of 24 July, 1998; Federal Law "On Veterans" N 5-FZ of 12 January, 1995; Federal law "Concerning state benefits for citizens with children" N 81-FZ of 19 May, 1995 etc.

As for the governance sustainability, all the legal entities and sole entrepreneurs in the Russian federation shall comply with the Federal law "On corruption control" N 273-FZ of December 25, 2008.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

There is no special authority, regulating only activities of factoring companies. Factoring companies which are credit institutions are under control of the Central Bank of the Russian Federation.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>36</sup>)?

In the Russian Federation Factoring operations are regulated by the Chapters 24 (Change of persons in obligation) and 43 (financing against assignment of a Receivable) (which has been significantly amended by the Federal law N 212-FZ of July 26, 2017) of the Civil code of the Russian Federation.

Please describe the physical process for the assignment of receivables.

Assignment of a Receivable should be made in a written form, because all the transactions between legal entities should be concluded in a written form (Art. 161 of the Civil Code of the Russian Federation). Failure to comply with this rule leads to impossibility to refer to the witness statements confirming assignment in court (Art. 162 of the Civil Code of the Russian Federation)

In case a Receivable arises from a notarized Contract (e.g. sale of participation interest in a Limited liability company) or a Contract is subject to state registration (e.g. sale of immovable property), the factoring agreement should be notarized or registered by a state authority respectively (Art. 163, 164 of the Civil Code of the Russian Federation). Failure to comply with this rule may lead to invalidity of assignment (in case of failure to comply with notarized form) or a factoring agreement may be deemed unconcluded (in case of failure to comply with state registration obligation).

A written form of assignment is considered to be compiled also in case of signing of a document stating assignment with an electronic signature (Art. 160 of the Civil Code of the Russian Federation).

Assignment of Receivables, strictly combined with the Debtor's personality, is not allowed (e.g., Receivables arising from demands on alimony or compensation for health damage) (Art. 383 of the Civil Code of the Russian Federation).

Assignment of Receivables is valid in case it does not contradict a law (Art. 388 of the Civil Code of the Russian Federation). E.g. a Federal law "On State Defence Procurement" N275-FZ of December 29, 2012, provides for settlement of accounts using so called special accounts and therefore prohibits assignment of Receivables

The other rights arising out of the Contract, concerning Receivables being assigned shall be transferred to the Factor concurrently with the assignment of the Receivables, in particular: the right to apply of punitive sanctions to the Debtor, rights for guarantees, provided to the Client, interest for use of the commercial credit, beneficiary rights under possible insurance claims etc. (Art. 384 of the Civil Code of the Russian Federation).

Assignment of an invoice in part is allowed. (Art. 384 of the Civil Code of the Russian Federation).

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<sup>36</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.

Prohibition of assignment of a monetary receivable, included into the Contract, is invalid. (Art. 388 of the Civil Code of the Russian Federation).

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Starting from January 1, 2017, the information on the factoring agreements shall be submitted to the Unified Federal Register of Information on Facts Relating to Legal Entities' Activity by assignors (i.e., clients). Such information may not be disclosed in case it contains any commercial secrets, therefore clients usually do not disclose such information (Federal law № 129-FZ "On registration of legal entities and individual entrepreneurs" of August 08, 2001).

There are no stamp-duty or other documentary taxes.

As for notification, the Debtor has to be notified on assignment and such a notification shall contain either a specific Receivable to be paid, or a method by which such a Receivable shall be determined and a person to which such a receivable shall be paid. (part 1 of the Art. 830 of the Civil Code of the Russian Federation). The only consequence of failure to comply with this rule is the Debtor's right to pay to the Client's account and such a payment will be considered as a proper fulfillment of the Debtor's obligations. (Part 3 of the Art. 382 of the Civil Code of the Russian Federation).

Both the Client and the Factor are allowed to notify the Debtor on assignment, but in case the Factor notifies the Debtor, the Debtor is entitled to demand from the Factor confirmation of assignment (the Debtor is deprived of such a right in case he gets a notification from the Client). (Art. 385, Art. 830 of the Civil Code of the Russian Federation).

In case the Debtor gets notification on several consequent assignments of one and the same Receivable, the Debtor is considered to act in good faith if he pays the amount of the Receivable in accordance with the latest of such notifications. (Art. 385 of the Civil Code of the Russian Federation).

In Russia Factors and Clients usually send to the Debtor two notifications: 1. An introductory letter stating, that accounts receivable, arising from a specific contract, are from a said date assigned to the Factor and the Debtor therefore is obliged to transfer all the monetary amount in payment of such Receivables to the Factor's account details (so this notification does not contain any concrete Receivables). 2. The second-notification on assignment of a specific Receivable- this notification is usually included in the text of shipment documentation (consignment note etc.) or may be signed as a separate document.

Russian courts have declared as proper behavior cancellation by the Client, without Factor's consent, of a notification sent to the Debtor, if such a notification did not contain Factor's signature, therefore we highly recommend to include both Factor's and Client's signatures on a notification (introductory letter).

Is it possible to assign future receivables by a so called "assignment in advance"?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

A Client may assign an existing at the moment of assignment Receivable, as well as a future Receivable. (Art. 388.1 of the Civil Code of the Russian Federation).

As stated above a Debtor has to be notified on assignment of each concrete Receivable or the notification shall contain a method allowing to determine an assigned Receivable. So according to the letter of the law only one notification determining that all the future receivables are assigned is allowed. Nevertheless to avoid any risks we recommend to notify the Debtor twice- the first time at the moment of assignment of a future Receivable, the second time – at the moment when a corresponding Receivable arises.



According to part 2 of article 826 of the Civil Code of the Russian Federation, in the case of an assignment of a future Receivable, such Receivable shall be deemed as transferred to a factor once the Receivable is matured (i.e., once the right to receive funds has arisen). Neither Russian law, nor the practice of the Russian courts give clear answer to the question: whether upon the maturity the Receivable for a moment belongs to the assignor and only then immediately transfers to the assignee or such Receivable belongs to the assignee straight after its maturity. This issue is relevant for the circumstances where an assignor falls into bankruptcy before maturity of the assigned future Receivable. Query, whether such Receivable may be included in the bankruptcy estate of the client (as for a moment it belonged to the latter) or such Receivable cannot be included in the bankruptcy estate of the client since it never belonged to the client

Is transfer by way of subrogation possible? what are the requirements?

Under Russian law, subrogation applies in the context of insurance contracts and means that the rights of a creditor are transferred to a third party who performed the obligations of a debtor towards that creditor (i.e., a new legal relation does not arise but the creditor in the existing legal relation is being changed, which is contrary to regress relations, where a new legal relation arises). Although subrogation typically applies to insurance relations, legal effect analogous to that of subrogation may also apply to other relations, such as suretyship. For factoring arrangements subrogation is not relevant.

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

There is no such a term as “true sale” in the Russian civil legislation. As a rule regulations on sale are applied to the sale of Receivables. So in legal practice and literature true sale will mean a non-recourse assignment of a Receivable.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Yes, it is possible to assign Receivables using electronic data, but in order to make such an assignment valid and enforceable, the Client and the Debtor are recommended to use enhanced electronic signatures, because the position of the Russian courts on transactions concluded by exchange of emails (not signed by an electronic signatures) is still ambiguous.

The requirements regulating electronic signatures are contained in the Federal Law № 63-FZ “On electronic signatures” of April 06, 2011. There are three types of electronic signatures: simple, enhanced unqualified and enhanced qualified electronic signatures. And only a document signed with an enhanced qualified electronic signature is equaled to a paper document.

A document signed with a simple electronic signature or an enhanced unqualified electronic signature is equaled to a paper document only in cases, provided by the law or an agreement of parties.

As stated in questions above, notification of a Debtor does not in any way influence validity of assignment, however in order for considering a Debtor properly notified – if notification is made by inclusion of an assignment sign in an electronic document, the said document should be signed with an enhanced qualified electronic signature, or- in case there is such an agreement between the Client and the Debtor – with a simple electronic signature or an enhanced unqualified electronic signature.

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

The said directive is not applicable to the Russian Federation.



## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

Generally speaking, there are no issues or problems concerning the assignment of receivables. But there are some issues concerning assignment of receivables arising from contract not concerning sale of goods, performing of works, providing of services. So in case of assignment receivables, concerning, for example of intellectual rights or a share in a chapter capital, there are high risks that such an assignment may be subject to VAT. In case of structuring such transaction we highly recommend to consult qualified tax consultants.

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

A Factor should pay VAT on all amounts received above the amount of Receivable assigned i.e. on the amount of remuneration, commission/service charge, received from the Client, on the amounts of penalties or interest for commercial credit, received from the Debtor. The same treatment is used in case of assignment with a discount. If a Factor gets 100% of a Receivable for less than 100% of its nominal value, VAT is accrued on the amount of difference. Current VAT rate equals to 20%.

This point of view is based on the cl. 4 art. 155 of the Tax code of the Russian Federation and further commentaries of state authorities to these provisions. In accordance to the said article "when acquiring a Receivable from a third party a tax base for VAT is determined as exceeding of the amounts of proceeds, received from the Debtor, over the amount of expenses for acquisition of such the said Receivable".

There is to mention, that the described position is questionable in case of a commercial credit.

There are clarifications, issued by the Russian Finance Ministry, in accordance to which commercial credit is not a subject to VAT, but these clarifications concern relations between the Seller and the Buyer, when there is no factoring company, to which the Receivable is assigned. As soon as a Receivable is assigned to a factoring company, the latter may be considered to be obliged to accrue VAT at any amount, received above the expenses for acquisition of this receivable, as provided for by the cl. 4 art. 155 of the Tax code of the Russian Federation, mentioned above. This position and obligation are confirmed by the Russian Finance Ministry in its letters and clarification sent to different factoring companies as an answer to their request as well as to the Association of Factoring Companies (Russian non-profit organization, joining factoring companies). The latest clarification of the Russian Finance Ministry stipulates that in case A factor grants commercial credit to the Debtor in terms of assigned Receivables, such a commercial credit shall not be subject to VAT. But in case the Factor acquires a receivable arising from the contract in which the Client and the Debtor have provided commercial credit, the right to demand such commercial credit transfers to the Factor and in this case such commercial credit, received by the Factor, shall be subject to VAT.

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

In terms of assignment of receivables, the regulation is the same, but banks are more free in structuring of transactions. For example, a bank is allowed to give a credit to the Client and consider assignment as a collateral. In this case the Bank is allowed not to charge VAT on the interest accrued on the amount of credit.

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

In the Russian Federation split payment of VAT is not used. The Client (supplier/seller) calculates and pays VAT to the budget from the amount paid by the Debtor for the sold goods/performed works/ rendered services.

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

There are no other measures to ensure that the seller's VAT is paid.

The factoring company is not liable for payment of VAT under the Contract by the Debtor and the Client.

There are no VAT-related reporting duties for factoring companies

### Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights

Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

The rights of third parties which could affect the position of a factor are to be considered on a case by case basis, and will depend on the type and terms of the underlying arrangement and the structure of the transaction.

The most common examples of cases, when factor's rights may be affected by a third party, are as follows :

- In case a Client assigns a pledged or arrested Receivable, there is a risk for the Factor that the Receivable will be withdrawn by the first party (Pledgee or a company, to benefit of which the Receivable was arrested).
- In accordance with the Russian insolvency law in case of the Client's bankruptcy insolvency practitioners are allowed to dispute assignment if a Receivable was assigned within a month before the moment of filing of a bankruptcy notice, or even within a year or three years in case such an assignment falls under definition of suspicious transactions.
- In accordance with the Russian civil law a Contract may contain a clause on retention of title to goods supplied till the moment of payment by the Debtor of a Receivable. But this regulation does not affect Factor's rights in any way.
- The said rules do not depend on a type of factoring (Non-Recourse, Recourse Factoring or Invoice Discounting)

Do these rights have to be publicly registered or notified to be valid?

Only in terms of pledge a Pledgee will be entitled to demand a Receivable from the Factor if such a pledge was registered in a public register of pledged immovable property (registration is not compulsory and is effectuated on the Pledgee's discretion).

### Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring

- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Assignment of Receivables may be prohibited in a Contract, but in entrepreneurial activity such a prohibition may not be applied and assignment will be valid notwithstanding such a clause.

The only consequence of such a prohibition is Client's obligation to compensate to the Debtor damages and losses caused by such an assignment and to pay a penalty if a penalty is provided by the Contract.

The said rules do not depend on a type of factoring (Non-Recourse, Recourse Factoring or Invoice Discounting).

There is no requirement for any registration.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

As a rule, there are no contractual barriers, which may hinder the provision of factoring and receivables finance. As was mentioned above even prohibition of assignment, included in a Contract, does not affect such assignment.

Nevertheless, there may be some contractual terms and conditions, which may lead to reduction of the assigned amount of Receivable:

A Receivable is assigned to the Factor in amount and on conditions, which exist at the moment of assignment. So the Debtor is allowed to use any means, provided for by the Contract, to cease the payment or to reduce the amount of Receivable. So it's important for the Factor to be aware of the provisions of the Contract at the moment of assignment.

There are several decisions of Russian State courts, in accordance with which the Debtor was allowed to return to the Client goods of a good quality, because such a right has been provided for by the Contract, regardless of the fact, that the corresponding Receivable had already been assigned by the moment of return of goods. So in order to avoid such disputed it's important to make sure, that the Contract does not contain Debtor's rights to return goods of a good quality.

A Contract may contain a Debtor's right to pay for a Receivable not only by monetary amounts, but also by securities, goods etc. Which means, that Debtor may use this right when paying for a Receivable assigned. So in order to avoid such situations we highly recommend to check that the Contract does not contain such provisions.

It's important to finance a Client when a risk of damage of the goods supplied has already been transferred to the Debtor. Otherwise in case goods get damaged prior to transfer of the said risk the corresponding Receivable will be considered to be terminated.

## Question 7 Security Interests

*For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest allowing the supplier/borrower to deal with the asset without consent until "crystallisation" such as its insolvency.*

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

Russian legislation does not operate with the definitions of floating or fixed charges.

It is possible to describe the pledged assets in a pledge agreement by way of reference to all assets of a pledgor, however, such concept is rather new and is not commonly used in practice as there are a lot of practical obstacles connected with such a pledge.

If an immovable property is pledged, the corresponding Pledge agreement must be registered

If a movable property is pledged, a Pledgee is allowed to register the pledge.

So in case of sale or another disposal by the Pledgor of an immovable property or of a movable property, pledge on which was registered, such property may be withdrawn by the Pledgee from the acquirer. In case of sale or another disposal by the Pledgor of a movable property, pledge on which was NOT registered, such a pledge terminates.

So it is possible to pledge a concrete Receivable as a separate property, and also pledge of future receivables (within an agreed amount)

Pledge of all the assets of the Client is used by factoring companies in case there is a necessity to secure transaction and depends on a concrete structure of a deal.

### Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

There are several options to minimize a risk arising from the non-disclosure factoring:

In the first instance, as standard instruments for securing of obligations, may be used collateral granted by the Client: pledge, suretyship, independent guaranty.

In the second instance Russian civil legislation provides a concept of nominal account- account opened with a Bank by the Client, which provides that all monetary amounts transferred to this nominal account belong to a Beneficiary owner, which may be a factoring company.

This scheme allows to minimize risks concerning failure of the Client to transfer to the Factor amounts received from the Debtor or in case of insolvency of the Client.

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

GDPR is not adopted in the Russian Federation. There are no specific law which could have any impact on undisclosed factoring.

### Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

There is no difference in assignment as a purchase and assignment as a collateral.

In case of pledge of a Receivable, such a Receivable will be assigned to the Pledgee only in case of failure to fulfil the main secured obligation and such an assignment should be a subject to a special procedure of enforcement of a pledge. In contrast, the receivables assigned in fulfilment of a purchase contract or to

collateralize a financing are typically considered as assigned from the date of the relevant factoring agreement (unless provided otherwise by this factoring agreement).

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

- Bank-Transfer 97%
- Cheque 1%
- Bill of Exchange 1%
- Other instruments 1%

Other instruments may include cash payments, but the amount of a possible payment in cash allowed for legal entities is limited to 100 000 roubles for one contract.

The mostly preferred payment instrument is a bank-transfer.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

If assignment was effectuated within one month prior to filing of bankruptcy petition, an insolvency practitioner may dispute such an assignment and demand return by the Factor of an assigned Receivable to the Client. The Factor is entitled to demand a return of a financing paid for such a Receivable, but will receive such money only from bankruptcy estate in accordance with the existing priority of creditors.

In case Factor's payment to the Client was not proportionate to the amount of receivable assigned (which in legal terminology sounds as follows: not equal counter-execution) the period for which assignments may be disputed extends to up to three years within one month prior to filing of bankruptcy petition.

The same is applied to the amounts of the remuneration, paid by the Client to the Factor within above mentioned periods.

According to part 2 of article 826 of the Civil Code of the Russian Federation, in the case of an assignment of a future Receivable, such Receivable shall be deemed as transferred to a factor once the Receivable is matured (i.e., once the right to receive funds has arisen). Neither Russian law, nor the practice of the Russian courts give clear answer to the question: whether upon the maturity the Receivable for a moment belongs to the assignor and only then immediately transfers to the assignee or such Receivable belongs to the assignee straight after its maturity. This issue is relevant for the circumstances where an assignor falls into bankruptcy before maturity of the assigned future Receivable. Query, whether such Receivable may be

included in the bankruptcy estate of the client (as for a moment it belonged to the latter) or such Receivable cannot be included in the bankruptcy estate of the client since it never belonged to the client.

These risks may be applied to all the types of transactions, mentioned above.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

In case a bankruptcy petition is filed and one of the procedures of bankruptcy is implemented, the Client is not allowed to conclude new transactions or perform its obligations in terms of already concluded transactions. That's why completing outstanding contracts by a Client may be considered as fulfilment of obligations with preference and will be under the risk of disputing.

As for the priorities, obligations secured by a pledge shall be fulfilled in the third priority of creditors, but prior to the creditors in the third priority, whose demands were not secured by a pledge (the first priority comprise obligations concerning compensation for health damage or moral harm; the second – obligations arising from the labor relations).

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

The Restructuring Directive (EU) 2019/1023 is not applicable in the Russian Federation

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

As mentioned above, risks concerning Client's bankruptcy procedures, described above, may be applied to all the types of transactions, including non-recourse factoring.

In case counter-execution by Factor equals to the amount of assigned Receivables (i.e. the Client gets 100% of the amount of Receivable), the said risk is considered to be insignificant. But even in such a case a Factor risks to lose remuneration, paid by a such insolvent Client.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

In accordance with the Russian law in case a Debtor fails to pay, the Debtor should bear a responsibility in a form of compensation of damages and penalty provided for by a Contract.

In case a contract does not contain any clauses on penalty, a creditor may demand from the Debtor interest for use of monetary amounts in accordance with the art. 395 of Civil code of RF. This interest should be calculated based on the key interest rate established by the Central Bank of the Russian Federation.

At the current moment the key interest rate equals to 4,25 % per annum.

In comparison to the EU Late Payment directive Russian legislation does not provide any minimum compensation for recovery costs.

## Question 13 International Conventions

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)



UNIDROIT Convention on International Factoring (1988) was acceded by the Russian Federation by issue of Federal law N 86-FZ on May 05, 2014

The United Nations Convention on the Assignment of Receivables in International trade (2001) was not yet ratified in the Russian Federation.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

In accordance to the Art. 1211 of the Civil Code of Russian Federation unless provided otherwise by the agreement between the Client and the Factor, to the factoring agreement shall be applicable the law of the country of the main activity of the party, which performance of the factoring agreement is considered to be crucial, and the Factor is considered to be such a party.

Nevertheless In accordance to the Art. 1216 of the Civil Code of Russian Federation possibility of assignment, relations between the Debtor and the Factor, proper or improper fulfillment by the Debtor of obligations shall be determined by the law, which is applied to the Receivable, subject to assignment.

### Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☒ NO ☐

Assignment of debts against public administrations (PA) is allowed in the Russian Federation (which has been confirmed by the Supreme court of the Russian Federation), but due to imperfection of legal regulation the public authorities acting as Debtors often hesitate to change payment details from Client's to Factor's because Treasury administrative regiments do not provide any procedure thereof.

So in case of assignment of debts against PA we highly recommend to get a prior PA's acceptance (which may be included in a notification to be signed by the PA)

E-invoicing Directive 2014/55/EU is not applicable in the Russian Federation.

Do PA debtors have the right to refuse the assignment

YES ☐ NO ☒

As mentioned above the Supreme court of the Russian Federation) has confirmed, that the assignment of debts against public administrations (PA) is allowed. However to avoid any possible legal arguments we highly recommend to get a prior PA's acceptance on such assignment.

### Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

In accordance to the Federal law № 209-FZ "On development of small and medium sized business of July 24, 2007, a company is considered to be a small, medium sized or micro business in case at least one of the following general requirements is complied with:

- Common share of the Russian Federation, territorial entity of the Russian Federation, municipal entity, noncommercial organizations, funds in the chapter capital of a company does not exceed 25% and the common share of companies which are not small and medium sized businesses the chapter capital of a company does not exceed 49 %.
- average number of workers for the past year does not exceed – for medium sized companies- from 101



- till 250 employees; for small companies – 100 employees; for micro companies – 15 employees.
- income for the past year does not exceed for medium sized companies- 2 billion roubles; for small companies – 800 million roubles; for micro companies – 120 million roubles.

## TR > Turkey

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services ☐ NO, factoring is not limited to CI/banks ☒

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES ☒ NO ☐

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the "European passport" to provide factoring services also in other EU countries?

YES ☐ NO ☒

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing, including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Pursuant to Financial Leasing, Factoring, Financing and Saving Financing Companies Law No. 6361 dated November 21, 2012 ("Law No. 6361"), only factoring companies and banks can provide factoring services with the licenses being granted by the Banking Regulation and Supervision Agency ("BRSA/ Agency") in Turkey. There is a two-stage establishment permission procedure. At the first stage permission is granted for the establishment of the company. Once the procedures related to the establishment are completed, the company may apply to obtain an operating license. As a separate note, we underline that foreign factoring companies cannot enter into cross-border factoring activities without a license obtained from the BRSA.

In terms of commercial finance activities, banks are authorized to do this kind of activities such as supply chain finance. However, it should be noted although commercial finance activities (as supply chain finance) are conducted by the trade finance departments of banks, it is clearly stated by the BRSA that supply chain finance is a product of factoring.

#### Factoring Products in Turkey

- Full factoring
- Recourse factoring
- Non-recourse factoring
- Invoice discounting (undisclosed factoring)
- Direct cross border factoring
- 2-Factor cross border factoring
- Purchase order management, including inventory financing. (Please kindly take into account structured financing is served by the Banks in Turkey and inventory financing is being done by the financing companies as well as by the factoring companies in accordance with the assignment of future receivables.)

- Supply Chain Finance

As per the provisions of the Law No. 6361, any factoring company established in Turkey should fulfil the following requirements:

1. Establishment conditions

- It should be established as a joint stock company
- Its shares should be issued against cash and registered to name
- Its trade name shall have the expressions of "Factoring Company"
- The founders should meet the requirements indicated in the Law No 6361
- Its members of board of directors shall bear the qualifications set out in the corporate governance provisions in the Law No 6361 and shall have the professional experience required for carrying out the planned activities
- Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than 50 million Turkish Liras, ( Banking Regulation and Supervision Board is authorized to increase the minimum paid-up capital amount each year.)
- Its articles of association shall be in compliance with the provisions of the Law No 6361 and the Turkish Commercial Code (TCC),
- There should be a transparent and open partnership structure that will not constitute an obstacle for the efficient supervision of the Banking Regulation and Supervision Agency,
- The business plans for the intended fields of activity, the projections regarding the financial structure of the institution, the budgetary plan for the first three years and an activity program showing the establishment of corporate structure must be submitted to BRSA.

2. Qualifications of founders

The founders of companies shall;

- Not have been declared bankrupt within the framework of the provisions of the Execution and Bankruptcy Law No. 2004 dated June 09, 1932 or other legislation, not be in possession of a certificate of bankruptcy, not have an approved application for restructuring through reconciliation or not have been issued a decision for postponement of bankruptcy,
- Not have ten percent or more shares directly or indirectly or not hold control in banks that have been subjected to Article 71 of the Banking Law No. 5411 dated October 19, 2005 or that have been transferred to the Savings Deposit Insurance Fund before the effectiveness of the Law No 6361,
- Not have ten percent or more shares directly or indirectly or not hold control in banker subjected to liquidation, and in factoring, financial leasing, financing and insurance companies whose operating permissions have been revoked, excluding voluntary liquidation, as well as in agencies operating in capital markets,
  - Have not been sentenced to heavy imprisonment or imprisonment of more than five years pursuant to the repealed Turkish Penal Code Nr. 765 dated March 01, 1926 or other laws, even though pardoned, with the exception of negligent offenses, have not been sentenced to imprisonment of more than three years pursuant to the Turkish Penal Code No. 5237 dated September 26, 2004 or other laws or have not been convicted of the violation of the provisions, that require imprisonment, of the repealed Banking Law Nr. 3182 dated April 25, 1985, of the repealed Banking Law Nr. 4389 dated June 18, 1999, of this Law, of the banking law Nr. 5411 and of the Capital Market Law Nr. 2499 dated July 28, 1981 and of the legislation on lending transactions, or have not been convicted of infamous crimes such as embezzlement, extortion, bribery, theft, swindling, forgery, breach of trust, fictitious bankruptcy, smuggling offenses other than those arisen by the acts of using and consuming, fraudulent acts in official tenders and trades, money laundering or crimes committed against the prestige of the State and unveiling State secrets, offenses committed against the sovereignty of the state or the prestige of its organs, offenses committed against the security of state, offenses committed against the constitutional order or the functioning of the constitutional order, offenses committed against national defense, offenses committed against the secrets of the state and espionage, offenses committed against relations with other states, offenses within the scope of the Prevention of Terrorism Act No. 3713 dated April 12, 1991 as well as tax evasion or have not been engaged in such offenses under the repealed Turkish Penal Code No. 765, Turkish Penal Code No. 5237 or other laws,
  - Have necessary financial strength and esteem in a level to meet the capital amount committed,
    - In case of a legal person, have a transparent and open partnership structure,
    - Have the honesty and competence required for the business.

The partners of the company having ten percent or more shares in the capital of legal person founding partners or the natural persons and legal entities having the control shall meet the conditions laid down above.

having the control of the company as well as natural persons or legal entities having ten percent or more shares in the capital of legal entities having ten percent or more shares in the capital of company or having the control of company no longer meet the qualifications stated in the first paragraph, excluding fifth bullet point, they shall transfer the shares they own within six months in a manner to make their status to be in compliance with the provisions of this article. By whom and how shall the voting rights for the shares to be transferred within the mentioned period be used is determined by the Banking Regulation and Supervision Board ("BRSA").

### 3. Operating permission

The companies that are permitted to be established are obliged to also obtain permission for operation from the Banking Regulation and Supervision Board. The permissions granted by the Banking Regulation and Supervision Board are published in the Official Gazette.

In case of one or more of the following conditions occur, the Banking Regulation and Supervision Board revokes the establishment permission of a company;

- the permission is based on nonfactual declarations,
- failure to apply for operating permission within six months following the issue of establishment permission,
- clearly stating the decision to waive the establishment permission,
- losing the eligibility qualifications for permission until commencement of operation,
- failure to get operating permission.

It is also required to meet the following criteria in order to commence the operations by the companies that have received establishment permission:

- Their capital should have been paid in cash and must be at a level that enables the execution of planned activities,
- The system entrance fee, equivalent to five percent of the minimum capital requirements indicated in Article 5, should have been paid to the accounting units of the Ministry of Finance in order to be registered as income to general budget and the related document should have been submitted to the Agency by the founders
- Appropriate service units as well as internal control, accounting, data processing and reporting systems should have been established, adequate staff for these units should have been assigned and job definitions as well as duties and responsibilities of the employees should have been clearly determined,
- Their managers should meet the qualifications set out in the Law No. 6361.

According to the Law No. 6361 and to the sub-regulations of BRSA

#### 1. Factoring Companies cannot;

- Engage in transactions other than their main activities specifically indicated by their articles of association (factoring),
- Issue guarantee letters (giving guarantees to Third Parties for obligations of supplier)
- Collect funds through instruments such as deposits,
- Undertake collection of receivables that cannot be verified with the invoices or any other related documents

#### 2. Assignment of future receivables is possible. (Docs: sales contract, purchase order, proforma invoice etc.)

should follow such receivables and undertake the invoices when they arise

In addition to the above mentioned main regulations, there is a complex structure in which the factoring transactions realized by banks and factoring companies are also subjected to The Financial Crimes Investigation Board, Revenue Administration, Capital Market Boards of Türkiye, Ministry of Trade, Central Bank etc.

[Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.](#)

YES ☐ NO ☒

Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO

☒☐

Anti-money laundering

According to the Prevention of Laundering Proceeds of Crime Law No. 5549, dated October 11, 2006, banks and all financial institutions including factoring companies are subject to the money laundering and terrorist financing legislation of the Financial Crimes Investigation Board under the Ministry of Finance.

All financial institutions operating in Turkey are required to report suspicious transactions to the Financial Crimes Investigation Board (MASAK). The Board, when it deems it necessary, routinely checks whether financial institutions are performing these transactions and, if necessary, imposes penalties.

YES NO

☒☐

Capital requirements for credit, market and operational risks

According to the Law No. 6361, the minimum paid-in capital of the factoring companies should be TRY 50 million as of 2021. However, the Banking Regulation and Supervision Board is authorized to increase the minimum paid-up capital amount each year so as not to exceed the increase rate required in annual producer prices index announced by the Turkish Statistical Institute.

Pursuant to the Regulation on the Establishment and Operation Principles of Financial Leasing, Factoring and Financing Companies (published in the Official Gazette dated April 24, 2013 No: 28627), the ratio of a factoring company's equity to total assets should not be less than 3 percent. However, the Board may raise the ratio or determine different ratios for each factoring company.

YES NO

☒☐

Data protection

According to the Banking Law, Law No. 5411 dated October 19, 2005, factoring companies are members of the "Risk Center" under the management of the Banks Association. So, they have access to all client information of the Banks and Financial Institutions. Therefore, they are subject to the data protection rules.

The Risk Center in Turkey supervises the data security of financial institutions. The audits are carried out by the independent audit firms authorized by the BRSA.

Apart from that, despite the fact factoring activities are mainly consist of technical information, regulations under the Turkish Law on the Protection of Personal Data, Law No. 6698 dated March 23, 2016 also apply where relevant. The provisions of the mentioned Law apply to natural persons whose personal data are processed and natural or legal persons who process such data wholly or partly by automatic means or otherwise than by automatic means which form part of a filing system in general.

YES NO

☐☒

Liquidity risk requirements

Liquidity risk stems from the inability to cover cash payments in full and in due time with the level and quality of cash receipts, whereas factoring firms can only finance their own equity and funds they receive and also cannot collect deposits in Turkey. Therefore, there is no liquidity requirement for factoring companies.

YES NO

☒☐

IAS / IFRS accounting principles

Factoring Companies are subject to the accounting principles regulated under the Regulation on Accounting Principles and Financial Statements of Financial Leasing, Factoring, Financing and Saving Financing Companies (Published in the Official Gazette dated December 24, 2013 No: 28861) published for the factoring companies by BRSA.

Factoring companies in Turkey adjust their accounting records and obliged to be audited by independent auditing institutions according to Turkish Accounting Standards which are in line with IFRS.

YES NO

☒ ☐ [Transparency and supplier/seller information for SMEs or corporates \(EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.\)](#)

Pursuant to the Small and Medium Enterprises Regulation (published in the Official Gazette dated May 25, 2023 No: 32201) ("SME Regulation"), micro enterprises are defined as firms with less than 10 employees and no more than 10 million Turkish Liras in annual net sales or any of the financial balance sheet items.

Pursuant to the SME Regulation, small enterprises are firms with less than 50 employees and no more than 100 million Turkish Liras in annual net sales or any of the financial balance sheet items.

Pursuant to SME Regulation, the number of employees for medium size enterprises must be less than 250 and the annual net sales or any of the financial balance sheet items should not exceed 500 million Turkish Liras.

YES NO

☒ ☐ [Risk management \(covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance\)](#)

Pursuant to Article 14 of the Law No. 6361, each company is responsible for building and operating a sufficient and efficient system appropriate to the scope of its activities as well as the changing conditions, to monitor the risks to which it is exposed and provide control.

According to the regulations of the Law No. 6361;

Internal system, accounting, reporting and independent audit;

- The company is responsible for building and operating a sufficient and efficient system appropriate to the scope of its activities as well as the changing conditions, to monitor the risks to which it is exposed and provide control.
- The company is obliged to account all of its transactions in accordance with their real natures, within the principles and procedures specified by the Public Oversight, Accounting and Auditing Standards Board and organize their financial reports on time and accurately, in a form and content to meet the need to obtain information, in understandable, reliable and comparable way, convenient for audit, analysis and interpretation.
- The company is obliged to send financial statements and statistical information, form and scope of which will be determined by the Agency by the time and methods requested to the Agency.
- Independent audit of the company shall be made within the framework of the Decree Law on Organization and Duties of Public Oversight, Accounting and Auditing Standards Board number 660 dated September 26, 2011. Independent audit reports to be prepared shall be sent to the Agency within the framework of principles and procedures regulated by the Banking Regulation and Supervision Board.

Protective regulations

The Banking Regulation and Supervision Board is entitled to make necessary regulations and to take all kinds of measures to detect, analyze, monitoring and evaluation of the risks exposed, by specifying limitations and standard ratios for activities and own funds of companies. The company is obliged to comply with the regulations made, calculate limitations and standard ratios specified, come up to them and maintain them and to take and implement the measures requested by the Banking Regulation and Supervision Agency, concerning them in the requested time.

## On-site, Off-site Supervision and Notification

On-site and off-site supervision of the company within the scope of this Law shall be conducted by the Banking Regulation and Supervision Agency.

The Banking Regulation and Supervision Agency is entitled to request all information they consider to be related with the Law No. 6361 even if it is confidential, from the company, company partners, affiliates controlled by the company and their branches and natural persons and legal entities concerned and to examine all books, records and documents including the records about taxes; and the ones from which the information is requested are responsible for giving the information requested, keeping the books, records and documents ready for examination, opening all information processing system for the Banking Regulation and Supervision Agency's professional personnel conducting on-site audit in accordance with supervisory purposes, providing the reliability of data and submitting the codes and systems necessary to make reachable or readable all kinds of books, documents and ration cards they must maintain, as well as micro chip, micro films, magnetic tapes, diskettes and similar records they must give for the examination and also operating them.

Public institutions and corporations are obliged to procure all kinds of information and document requested by the Agency, being limited to duties given within the scope of this Law, even if they are confidential, without considering the prohibitive and restrictive provisions in special laws and without prejudice to the provisions concerning the circumstances which may create severe results against the security of the State and its fundamental external interests, and professional secret, privacy of family life and the right of defence, in appropriate time and environment, constantly or singly.

On-site supervision of the company's activities shall be conducted by the professional personnel of the Agency authorized to conduct on-site supervision. The company, company partners, affiliates controlled by the company and natural persons and legal entities concerned are obliged to give all kinds of information and documents to be requested by the professional personnel of the Agency authorized to conduct on-site supervision but also to submit all books and documents and keep them ready for examination.

YES NO

☐ ☒ [Contribution to the Deposit Guarantee Scheme](#)  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

Not applicable

YES NO

☐ ☐ [Reporting duties \(e.g. AnaCredit, NSFR\)](#)

YES NO

☐ ☐ [Rules on payment services following the Payment Services Directive PSD II](#)

YES NO

☐ ☐ [Rules and regulations on sustainability \(environmental, social and governance – ESG\)](#)

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

BRSA (Banking Regulation and Supervision Agency) and Association of Financial Institutions.

The Association of Financial Institutions is assigned and authorized for the followings:

- Providing the development of the profession, increasing the union and solidarity of the members, making activities of training, presentation and research,
- Providing the members to work in union and in discipline which the profession requires according to the needs of the economy, by defining the principles of the profession,
- Defining professional principles and standards to which the members shall adjust,
- Announcing the precautions requested to be taken by the Agency and the resolution taken pursuant to the legislation concerned,
- Taking each kind of precautions required for preventing unfair competition between their members and implementing thereof,



- f) Defining principles and conditions which the members shall obey in their announcements and advertisement by type, shape, quality and amount,
- g) Suing in subjects which concerns the common interests of their members, pursuant to the resolution of the board of directors,
- h) Providing cooperation relating to common projects between members,
- i) Fulfilling other duties stated in the Law No. 6361.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>37</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third-party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called “assignment in advance”?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a “true sale”.

In general, an assignment (transfer) of receivables is perfected by entering into a written assignment agreement. Present or future receivables can be assigned but they should be ascertainable. Although notifying the underlying debtor(s) is not a perfection condition, in the absence of such a notification, the underlying debtor(s) shall be released from its/their obligation once the relevant payment under the underlying agreement to the assignor has been made. There is no required form of such notification but unless an acknowledgement will be obtained, it would be advisable to use a method that allows receipt to be evidenced. Acknowledgement from the underlying debtor(s) would also ensure that there are no prior claims or encumbrances over such receivables and ideally a waiver from the debtor from exercising its right of set-off can also be potentially obtained.

Pursuant to Article 9 of the Regulation on the Principles and Procedures to be applied in Factoring Operations (published in the Official Gazette dated February 4, 2015 No: 29257) in order for factoring operations to account for potential receivables, (i) the transferred receivables must be certified by invoice or other documents substituted for an invoice, (ii) the factoring companies and banks will confirm the information on an invoice or other documents substituted for the invoice on the date of the commencement of the receivable.

The second paragraph of the same provision stipulates the conditions for the acquisition of receivables arising out of the sale of goods or services. Such conditions are as follows:

- i) Factoring companies and banks shall conclude agreement with their clients that include the definition of the work, quality of the receivable, maximum factoring limit and payment requirements.
- ii) The matters concerning the potential receivable shall be certified via other documents, such as an agreement signed by the client and the debtor, an order form, a pro forma invoice or letter of credit.
- iii) The accuracy and validity of the documents and information proving the commercial relation between the debtor and the client, as well as the fact that the receivable to be transferred will arise out of such commercial relation, shall be checked and evaluated.
- iv) The factoring companies and banks shall obtain the invoice or other documents substituting the invoice that shall be issued following the production of the receivable from the client, and shall submit such documents to the relevant operations file.

## Stamp Duty

<sup>37</sup> If such alternative forms are common in your jurisdiction, replace in the questions below ‘assignment’ for such alternative forms.

Factoring agreements between factoring companies and their customers and related documents in connection with these agreements are exempted from stamp tax (Article IV-20 of the Table 2 appended to the Stamp Tax Law).

### **Legal Framework on Assignment in Turkey**

The provisions relating to the assignment of receivables are contained in the Turkish Code of Obligations (the "TCO"). The TCO does not specifically define assignment of receivables. Pursuant to Article 183 of the TCO, the assignor assigns its receivables arising from an obligation under a contract to a third party without the necessity of the consent of the debtor so long as the law, agreement or nature of the commercial activity does not prevent such assignment. Pursuant to Article 184 of the TCO, the assignment itself will only be valid if made in writing, whereas the promise of assignment can also be made informally

#### **To Sum, according to the TCO;**

1. Assignment must be written;
2. No requirement for the factor or the client to notify the debtor regarding the assignment of receivables;
3. Assignments of receivables are not subject to the consent of debtor;
4. Ban on assignment of the debts in the sales contract is valid;

### **Procedures on Assignment**

The procedures on the assignment of receivables are defined by BRSA.

Pursuant to Art. 184 of the Code, the assignment of receivables agreement shall be made in writing. An assignment of receivables agreement that is not executed shall be void. The express intention, declaration, and signature of the assignor are the key points, and the intention of the assignee is neither required, nor necessary, for the assignment of receivables agreement to be valid.

In practice, the assignment of receivables agreement is mutually executed by the assignee and the assignor. Moreover, in transactions where a bank is the assignee, the bank will generally prefer and require the execution of the assignment of receivables agreements to be notarized, by stating that this method strengthens the proof mechanism, and determines the time for such an assignment. Thus, the notary public notifies the debtor.

The terms and conditions regarding the assigned receivables are set forth under the assignment of receivables agreement; the assigned receivables shall be determined as specifically set forth under the agreement.

The consent of the debtor is not required to validate the assignment of receivables. However, the debtor, who has no knowledge of the assignment (has not been notified of the assignment of receivables agreement), shall be released of its obligations when he makes a bona fide payment to the assignor (Art. 186 of the Obligation Law). As per the banking practices, the assignor is requested to notify the debtor of the execution of the assignment of receivables agreement. This requirement is generally regulated under the assignment of receivables agreement, and it is usually deemed that the assignment of receivables agreement is duly perfected when the notification is made to the debtor. Moreover, in practice (mostly in the cases where the banks are the assignee) confirmation by the debtor to receive such a notification with regard to the assignment of receivables agreement is requested.

The debtor may raise defences against the assignor to the assignee at the time of notice of the assignment of receivables (Art. 188 of the Obligation Law) or at a later stage. Such defences may include a plea such as non-payment plea and objection rights (i.e. the debtor may raise same defences against the assignee which it would be entitled to raise against the assignor).

#### **According to the regulations of BRSA;**

1. The Factoring contract, is arranged in written or at a distance by using remote communication tools or whether it is distant or not, through the methods determined by the Board that it can replace the written form and will be carried out by means of an information or electronic communication device and that will allow the authentication of the customer identity;
2. Clients can assign a part of his receivables to the factors for financing purposes;
3. Partial assignment of a receivable is also allowed;

4. Copies of the assigned receivables are required to be notified to the factor by a Notification and Transfer of Receivables Form (NTR);
5. The cancellation of invoices and credit notes should be notified to the factors by the client;
6. Assignment of future receivables is possible (Docs: sales contract, purchase order, pro forma invoice etc.);
7. Additional agreement between factor and client for the assignment of future receivables is required;
8. The factor should follow such receivables and undertake the invoices when they arise; and
9. Factors and Banks must control and record the assigned receivables to "Receivables Recording Center" in order to prevent multiple assignments.

There are no stamp-duty or any other documentary taxes by assignment.

Pursuant to the Articles 9.2 and 9.3 of the Law No. 6361;

*"(2) A factoring company cannot take over the collection of receivables arising from the sale of a goods or services not documented by an invoice, even if they are based on bills of exchange within the framework of the principles and procedures determined by the Board and the receivables which will arise from the sale of goods or services not documented within the framework of the principles and procedure determined by the Board. Total amount of partial assignments made to more than one factoring companies based on the same invoice cannot exceed the amount of the invoice.*

*(3) In case a bill of exchange is transferred to a factoring company by endorsement, the person applied because of the bill of exchange cannot bring forward the refutations based on the relations existing between him/herself with one of the regulatory or previous holders against the factoring company; unless the factoring company has acted on purpose to the disadvantage of the debtor while acquiring the bill of exchange."*

In terms of succession, there are two types of it.

### **Universal Succession**

Universal succession is the transfer of a legal relationship as a whole, including all the rights and obligations arising thereof, to the other party; which occurs in instances designated by the Turkish Code of Obligations and other relevant legislation (in mergers pursuant to the Turkish Commercial Code) or through an agreement between the parties. As a consequence of universal succession, any and all claims arising out of the legal relationship shall be made to the successor by the third parties even if this claim is not foreseen during the time of the succession.

### **Partial Succession**

Partial succession is the transfer of a legal relationship to the extent designated by the parties, and therefore, only the pre-determined rights and obligations arising out of such relationship would be borne by the other party. Contrary to universal succession, if a claim is not foreseen during the transfer, the successor would not be liable for any such claims by third parties due to the nature of partial succession.

## **Question 3 EDI, e-invoicing, etc.**

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

In practice, this issue is controversial under Turkish law. However, in recent conditions assignment of the receivable through using Electronic Data Exchange message by e-signature can be possible in near future according to the newly amended Article 38.2 of the Law No. 6361.

Regulations concerning this matter are as follows;

- With respect to Article 5(1) of the Turkish Electronic Signature Law, Law No. 5070 dated January

15,2004, a secured e-signature creates the same legal effects as a handwritten signature and electronic data exchange is valid via e-signature. An exception to this is regulated under the Article 5(2) of the Law No. 5070, which states that e-signatures have no legal effect in the security contracts and transactions required by law to be performed in an official form or through certain procedures.

- Pursuant to Article 38.2 of the Law No. 6361, a factoring contract, is arranged in written or at a distance by using remote communication tools or whether it is distant or not, through the methods determined by the BRSA that it can replace the written form and will be carried out by means of an information or electronic communication device and that will allow the authentication of the customer identity. The BRSA is authorized to determine the procedures and principles regarding the implementation of this paragraph. Therefore, it is expected that the BRSA will make regulations for legal entities regarding this regulation. (The regulations for natural persons have been already made by BRSA).

On the other hand, the article 8.1. about “branches” has been recently amended allowing the companies carry out factoring transactions through information systems (digital platforms). However, according to the amended article, the scope, procedures and principles shall be determined by the BRSA. Therefore, it is expected that the BRSA will also make regulations on this issue.

In addition to the above mentioned main regulations, some important legislation published by BRSA regarding digitalization can be listed as follows:

- Regulation on Procurement of Support Services by Banks (2011)
- Communique on Management and Supervision of Information Systems of Financial Leasing, Factoring and Financing Companies (2019)
- Regulation on Information Systems and Electronic Banking Services of Banks (Open Banking) (2020)
- Amendment to Article 38 of Law No. 6361 (Factoring contracts could be signed by using digital methods determined by the BRSA.) (2020)
- Regulation on Remote Identification Methods by Banks and Establishment of Contract Relationship in Electronic Environment (Natural person) (2021)
- Regulation on the Operating Principles of Digital Banks and Banking as a Service Model (2022)
- Regulation on Remote Identification Methods by Financial Leasing, Factoring, Financing and Saving Financing Companies and Establishment of Contract Relationship in Electronic Environment (Natural person) (2022)
- Amendment to Article 8 of Law No. 6361 (Factoring services could be provided through digital platforms) (2022)
- Regulation on Remote Identification Methods by Banks and Establishment of Contract Relationship in Electronic Environment (Legal person) (2023)
- Circular on the Criteria to be Provided for Authentication and Transaction Security in Electronic Banking Services and the Establishment of a Contractual Relationship in the Electronic Environment (2023)

## Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there “white lists” or any other VAT-related reporting duties for factoring companies?

Among other financial institutions only leasing companies are subject to the VAT. Both Banks and

Factoring Companies in Turkey are not subject to the VAT. However, under some circumstances Banking and Insurance Transaction Tax ("BITT") liability arises both for banks and factoring companies. The income like commission, fees and costs received against factoring services are subject to BITT. Only factoring fees, commissions and costs from transactions providing foreign exchange for Turkey are exempted from BITT.

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third-party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

Pursuant to the Articles 9.2 and 9.3 of the Law No. 6361;

*“(2) A factoring company cannot take over the collection of receivables arising from the sale of a goods or services not documented by an invoice, even if they are based on bills of exchange within the framework of the principles and procedures determined by the Board and the receivables which will arise from the sale of goods or services not documented within the framework of the principles and procedure determined by the Board. Total amount of partial assignments made to more than one factoring companies based on the same invoice cannot exceed the amount of the invoice.*

*(3) In case a bill of exchange is transferred to a factoring company by endorsement, the person applied because of the bill of exchange cannot bring forward the refutations based on the relations existing between him/herself with one of the regulatory or previous holders against the factoring company; unless the factoring company has acted on purpose to the disadvantage of the debtor while acquiring the bill of exchange.”*

Pursuant to Article 9.3 of the Law No. 6361, in case of assignment of the receivables the debtor should not be able claim against the factoring company that the goods and/or services are defective.. However, this issue is also controversial in Turkish jurisdiction. Still, factoring companies can request a written buyer confirmation including consent of the buyer about his waiver of claims in advance and this waiver protects factoring companies in legal proceedings.

Additionally, the differences between recourse and non- recourse factoring should also be considered;  
a) Recourse Factoring: These are transactions in which the factoring company does not assume the nonpayment risk of the debtor.

Recourse factoring, is the type of factoring in which the factoring company does not assume the risk of non-payment of receivables and in this model, financing and collection service is provided. In case of non-payment of receivables, the factoring company's right to recourse to the vendor and to ask back the pre-payment remains hidden.

b) Non-Recourse: These are transactions in which factoring companies take the risk of non- payment of the debtor within the framework of the factoring contract provisions. Any situations of dispute to arise of the relation between the debtor (buyer) and customer (vendor) or any other reasons, are not covered by the guarantee.



Non- Recourse factoring is the type in which the factoring company undertakes the risk of non-payment of the receivables within the framework of limits and conditions identified at the beginning. In general invoice discounting (undisclosed factoring) transactions are conducted as recourse business in Turkey.

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

### 1. Is a contractual prohibition against the assignment of receivables valid in Turkey?

In general, according to the Article 183/I of TCO, the assignor assigns its receivables arising from an obligation under a contract to a third party without the necessity of the consent of the debtor so long as the law, agreement or nature of the commercial activity does not prevent such assignment.

Aforementioned article allows contractual prohibition against the assignment of the receivable. Parties shall completely or partially prohibit the assignment of the receivables in their agreement. Also, parties may choose to stipulate the said assignment. Parties are able to prohibit the assignment both before and after they execute the agreement.

However, it is possible that the third parties and especially the assignee can be unaware of the assignment of receivables. In that situation, Article 183/II of the TCO protects the assignees trust on the written agreement. As per this article, a debtor cannot claim that the assignment of a receivable is contractually prohibited if the assignee of such receivable has relied on a written debt acknowledgement which did not include a contractual prohibition against assignment. Nonetheless, in the event that the written assignment of the debt includes a provision about prohibition of assignment, the debtor shall be able to allege the defence of the prohibition of assignment against the assignee.

### 2. What is the effect of contractual prohibition against the assignment of the receivable?

In principle, if a non-assignable receivable is assigned to a third party, the transaction would be invalid and it would not have any effect or a consequence all for the debtor, the assignor and the assignee. However, since contractual prohibitions against the assignment are mostly on behalf of the debtor, with the consent of the debtor regarding the assignment, invalid assignment becomes valid retrospectively.

As it has been explained above, the assignee shall be protected by Article 183/II of the TCO, if the assignee is in good faith. Valid assignment must contain below mentioned conditions:

- If the receivable has been cognizance with a bond by the debtor;
- If there is no reservation regarding the prohibition against the assignment within such bond;
- If the assignee has taken the action regarding such bond; and
- If the assignee is oblivious to prohibition against the assignment between the parties, the third party assignee's acquirement based on good faith shall be considered lawful and protected by the TCO.

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

## Question 7 Security Interests

For this questionnaire a "fixed charge" is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor's consent. A "floating charge" is a security interest

allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

In Turkey, in terms of receivables fixed charge is obtained. Pursuant to the types of the agreement of the financing method, one of the securities for the fulfilment of the payment of a debt can be a pledge on the immovable property.

Apart from that, pursuant to the Law on Pledges of Movable Property in Commercial Transactions, Law No. 6750 dated October 20, 2016 (“**Law No. 6750**”), a pledge could be established over a movable property in the commercial transactions through a registration system without the transfer of possession of the pledged assets.

According to mentioned Law, the pledge can be established over:

commercial title and/or trade name, machinery, vehicles, tools and motor transportation vehicles, which are present at the time of registration of the pledge and which are allocated to the activity of the operating activities of the enterprise, intellectual property rights, receivables, trees yielding perennial products, earnings and revenues, licences and permits which are not required to be registered with another registries or are not administrative permit, raw materials, animals, rental incomes, rental right, stock, consumable material, agricultural product, commercial enterprises in their entirety, commercial plates or commercial lines, commercial project, wagons, among those mentioned above; movable properties, rights and joint ownership rights which are under the third party's possession.

It is also possible to establish a pledge on future movable properties.

The pledge will be established by registration of the pledge agreement to the Registry. For the properties that should be registered to other registries, the registration to the Registry will not establish the pledge. To exemplify; there are separate registries for livestock and motor vehicles. Accordingly, the pledge of livestock or pledge of motor vehicles is deemed to have been established only after registration with their respective registries. Registration of such pledge to the Registry will not be sufficient for establishment of any such pledge.

In addition, the Registry provides publicity and the pledge on movable properties will also be effective towards third parties upon the registration of the pledge agreement with the Registry.

The valuation mechanism is envisaged in various situations within the scope of the New Law; some of which are mandatory and some of which are discretionary. The parties may request a valuation before the establishment of the pledge. The parties shall request a valuation:

- in the event of intermingle or commingle of a pledged asset, and
- in the exercise of the rights after an event of default.

The value of movable properties shall be determined within three days by an expert appointed by civil court of peace. In the event an objection is raised to this valuation, a new valuation shall be made within three days. The valuation made upon objection will be deemed to be final and a revaluation cannot be requested until the expiry of two years.

In the event a business takes out a loan and secures it with its inventory, the floating charge applies.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. “white lists” of tax payers) had on undisclosed factoring?



Factoring companies generally receive cheque for their risks. Cheque is an important part of Turkish commercial life and legally protected collections. Banks and financial institutions provide a cheque account facility to their customers in accordance with the Cheque Act, Law 5941, dated December 14, 2009.

Also, please note that cheques are used as debt instruments rather than a payment method in Turkey. In practice, a common method for issuing cheques is inserting a deferred date as the issue date (i.e. a date later than the actual issue date). In such a case, cheque cannot be cashed before such inserted date. Therefore, by using deferred (post-dated) payment cheques, it is possible to minimise the risk in the practice to facilitate undisclosed invoice finance operations in Turkey.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

The difference among the above-mentioned options in terms of the transaction between the assignee and the assignor is the amount of finance being obtained. There might be interest, discount, commission, etc. in factoring, whereas they are not in the others. Since the loan is transferred as a payment instrument or guarantee, the payment is made without any decrease in the amount. In addition, there may not be a default in terms of non-recourse factoring, however in the event a principal debtor does not make necessary payments, for example, the transferor of the assignment may be defaulting. There might be provisions that would lead to separate conclusions in the contract between them and even in the main loan contract.

Additionally, there is not any difference in terms of the relationship between assignee and the principal debtor.

Apart from that, the Law On Pledges Of Movable Property in Commercial Transactions, Law No. 6750 dated October 20, 2016 ("**Law No. 6750**"), allows for pledges to be established – as part of transactions entered into in order to secure a debt – over any one or all of those movable assets listed within Article 5 thereunder (save for pledged deposits, financial agreements relating to capital market instruments and derivative instruments, and movable assets registered with the Turkish land register). Hence, it will be possible to establish pledges not only over the commercial title and trade name of a company, movable company equipment (including machinery, vehicles and electronic devices etc.) and intellectual property rights, but also over other movable assets such as receivables, revenue, rental income, tenancy rights, stocks and commercial projects.

Moreover, Law No. 6750 allows for pledges to be established not only over existing assets, but also over a company's prospective movable property, the proceeds obtained from a company's existing or prospective movable property, and existing or prospective receivables arising from all types of agreements. In this context, prospective movable property is defined as those assets listed under Article 5 of the Law No. 6750 which do not exist or are not yet owned by the pledgor at the time of execution of the pledge agreement.

In light of the above, an assignment (transfer) of receivables would generally be the preferred form of security because it transfers the title of such receivables to the assignee unlike a pledge.

Last but not least, the provisions of the Law on the Procedure for the Collection of Public Receivables, Law No. 6183 dated July 21, 1953 are reserved in this matter. The provisions of this law apply to principal public receivables and to auxiliary public receivables and interest due to the government, the private offices of the provinces and to municipalities and to other receivables due to the same bodies from implementation of public services by the same bodies other than those due under contract, tort or misappropriation. Additionally, pursuant to Law No. 6183 Article 21 public receivables have priority over the third party receivables.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange %
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

Bank-Transfer 53%

Cheque 47%

Bill of Exchange -

Other Instruments -

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

### **BANKRUPTCY PROCEEDINGS IN TURKEY**

The liquidation and bankruptcy procedure of a company in Turkey is governed by the Turkish Commercial Code, Law No. 6102 and the Execution and Bankruptcy Law, Law No. 2004.

Bankruptcy proceedings can only be commenced against merchants. In the presence of a monetary debt, creditors of merchants may either commence execution or bankruptcy proceedings, before execution offices. Creditors may also directly request a debtor's bankruptcy from the competent commercial courts, if; (i) the debtor does not have a permanent address; (ii) the debtor is hiding in order to not pay his debts; (iii) the debtor is involved in or attempts to be involved in fraudulent practices that infringe the creditors' rights; (iv) the debtor hides his assets during execution proceedings; (v) the creditors are explicitly or implicitly informed by the debtor that the due receivables may never be paid; (vi) the proposed concordatum is not granted, or the concordatum period is cancelled or terminated; (vii) the debt could not be paid through execution of a court verdict; (viii) indebtedness of capital companies; (ix) termination of restructuring through conciliation or breach of its project.

If a creditor wishes to pursue non-direct bankruptcy proceedings against a debtor, the first step involves requesting payment of the debt through the competent execution office. The execution office will then serve a bankruptcy payment order to the debtor. If the debtor does not pay or objects to this payment order within seven days following its service, the creditor may file a bankruptcy lawsuit before the commercial court, within the execution office's judicial circuit within one year following the service of the bankruptcy payment order. If the debtor objects to the bankruptcy payment order, the bankruptcy proceedings will be suspended. In such case, the creditor will be required to file a bankruptcy lawsuit before the commercial court within one year following the service of the bankruptcy payment order. Before examining merits of the bankruptcy request, the court initially examines merits of the objection. If the court decides on its cancellation, the bankruptcy proceeding against the debtor becomes definite and the court starts examining the bankruptcy request.

Commercial courts are entitled to grant measures of protection upon the creditor's request. If the debtor has not objected to the bankruptcy payment order, the commercial court will be required to grant interim measures of protection. These interim measures include, but are not limited to, preparing an inventory of the assets, appointing a trustee, etc.

Within 15 days following the announcement of the court's declaration of bankruptcy in the Trade Registry Gazette, other creditors of the debtor may object to the debtor's bankruptcy. If these

objections are found reasonable, the commercial court will grant a depository injunction and order the debtor to make payment (or deposit) of the debts, along with interest and expenses, within seven days following such order. The commercial court will then notify the defendant (debtor) that the court will grant the bankruptcy decision, if such payment is not made. Within this seven-day period, the debt is paid or deposited to the court, the court will reject the bankruptcy request. Otherwise, the court will grant the bankruptcy decision at the first hearing following the order.

Once the decision of bankruptcy is granted by the commercial court, the decision is conveyed to the competent bankruptcy office. The bankruptcy offices are the administrative authorities responsible for carrying out bankruptcy proceedings. The bankruptcy office announces the bankruptcy to creditors and third parties and also notifies related persons and entities (i.e. creditors that previously commenced execution proceedings against the debtor, trade registries, professional organizations, etc.) of the debtor's bankruptcy.

All debts of the debtor become due from the moment the bankruptcy decision is rendered by the commercial court. All creditors can benefit from the bankruptcy proceedings (i.e. they can collect their receivables through the same bankruptcy proceeding). If the debtor is a legal entity, once the bankruptcy decision is rendered, the only purpose of the bankrupt entity becomes concluding the liquidation for the purpose of generating proceeds in order to pay the debts. Moreover, the authorities of the bankrupt legal entity's organs are limited to the purpose of liquidation (e.g. proposal of composition of debts) and they are not authorized to dispose the assets, which are considered the "bankruptcy estate".

The bankruptcy administration conducts the liquidation process and takes care of and liquidates the bankruptcy estate. Subsequent to the bankruptcy administration's examination of the receivables claimed by all creditors of the bankrupt person or legal entity that have duly registered their claims with the bankruptcy estate, the bankruptcy administration will finalize the list of debts and creditors. This list consists of claims of debts, including disputed claims, as well as the bankrupt person's or legal entity's receivables from the third parties. Furthermore, in this list of debts and creditors, the state authorities (e.g. tax offices, the Social Security Institution) that claim public receivables are ranked on top of the list of creditors and pledgee creditors will have a priority over the value of pledged assets.

After the finalization of this list (namely, the ranking scheme), the assets contained in the bankruptcy estate will be sold through a public auction. A certain threshold is set forth under the EBL that must be reached at the public auction for the sale of an asset. This threshold is 50% of the estimated value of the assets. If the threshold determined for the first public auction is not reached, the public auction will be adjourned and a second public auction will take place with the same threshold. As an alternative to the public auction method, the creditors may also decide to sell a portion of the bankruptcy estates through negotiations with buyers. In that case, the bankruptcy administration would ask to the creditors if any of them intends to purchase a particular estate and then decide to sell through negotiations.

During the distribution of the proceeds certain receivables have priority over other claims registered on the list. These are based on employment or family relations or defined as "privileged debts" in specific laws. After these claims are satisfied from the proceeds of the sale of the bankruptcy estate, the remaining amount will be distributed to the creditors. If the remaining amount is not sufficient to satisfy the total amount of other debts, the remaining amount will be distributed to all other creditors in proportion to their receivables.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

### Composition

On demand, a commercial court may also rule for the pre-bankruptcy agreement according to Execution and Bankruptcy Law, numbered 2004. This request must be made along with a reasonable " **pre-composition project**" to the commercial court. If the all required documents are submitted to the court, the court gives temporary composition term for 3 months, and can extend this period for 2 months and appoint trustee/s in composition at the same time to examine whether the pre-project shall be successful or not. End of this temporary period, the court either grants the peremptory term for one year which can be extended for six months or dismiss the composition application and rules for liquidation in bankruptcy.

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

No answer.

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No answer.

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

In the Turkish law, in case of a debtor defaults, a “default interest” will be charged.

The TCO stipulates that the default interest rate will be determined by the statutory law effective on the date of the default, except the case that the Parties have determined a default interest rate within the contract. It should be noted that the default interest rate may not exceed the doubles of the rate determined by the statutory law in any case. As the TCO refers to the statutory law for the matter, the determination procedure of the default interest rate is subject to the Law No. 3095, where it has been stipulated that the rate will be 9%, but the Turkish Central Bank may monthly declare a rate between 0.9%-18%. In commercial affairs, however, if the interest rate in advance transactions determined by the Turkish Central Bank is higher than 9 per cent., default interest may be requested over such higher amount (which is 9.75 per cent. as of 2017).

If the parties fail to determine a default interest rate, but contract between them possesses a contractual interest rate higher than the default interest rate, the contractual interest rate will be applied as the default interest rate.

Moreover, Article 120 of the TCO provides that the default interest to be contractually agreed by the parties cannot exceed 200% of the default interest to be determined in accordance with the applicable legislation.

Debtors who default their interest or revenue debts, or who fail to pay their pledged donations will be charged with a default interest, starting from the launching date of the debt enforcement or lawsuit proceedings. Any contradictory agreement between the parties will be regarded as a penal clause. It is not possible to charge default interest for the default interest debts.

Except the case that the debtor proves his irreproachableness, he is obliged to compensate all the exceeding damages which may have been occurred in creditor's asset.

If it's possible, while placing the final judgment, the Judge may determine the quantity of the exceeding damages upon the request of the creditor/claimer.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

Turkey is not a party to the International Factoring Convention. However, parties of the factoring agreement can decide whether to apply the Convention by stating in the factoring agreement, or they can write the provisions contained in the Convention in their own agreement. Under both situations, the rules in the Convention become a provision of the agreement. In addition to that, Turkey is also

not a signatory state of the United Nations Convention on the Assignment of Receivables in International Trade (2001).

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES ☒ NO ☐

Assignment debts against PA.

Pursuant to the Central Government Expenditure Documents Regulation, public administrations would only make payments to the assignees upon provision of notarised assignment agreement.

Assumption of Debt for B2B businesses.

Article 195 through 200 of the TCO deal exclusively with the assumption of debt, referred to as "internal assumption of debt" between the debtor and the assumer of debt and the "agreement of assumption of debt" between the assumer of debt and the creditor. The agreement of assumption of debt, in principle, follows the internal assumption of debt; however, its validity is independent from it.

Until the conclusion of the agreement of the assumption of debt the creditor can demand performance from the debtor. However, if an internal assumption of debt exists, the assumer is obliged to release the debtor from the performance obligation.

The assumption of debt becomes effective upon signing of the agreement of assumption of debt. The offer of the assumer can be made through notification of the internal assumption of debt to the creditor. Acceptance can be made explicitly be understood and assumed from the circumstances.

In case of an assumption of debt, the ancillary rights of the creditor remain generally unaffected, unless they are intrinsically tied to the person of the former debtor. Important exceptions concern pledges granted by a third party and sureties (i.e., pledgor and surety continue to be liable to the creditor only if they have consented in writing to the assumption of debt.).

Do PA debtors have the right to refuse the assignment

YES ☒ NO ☐

If so, what consequences does this have?

As stated above, pursuant to the Central Government Expenditure Documents Regulation, PA debtors may refuse to make payments until they have been provided with a notarised assignment agreement.

## Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

## US > United States of America

### Question 1 Legal and Regulatory requirements to operate

Does the factoring and commercial/receivables finance activity require a credit institution (CI)/bank license in your country?

YES, only CI/banks can provide factoring services      NO, factoring is not limited to CI/banks

If no, does the factoring and commercial/receivables finance activity require a different license or authorization?

YES      NO

Is it possible for factoring and commercial/receivables finance companies in your country to make use of the “European passport” to provide factoring services also in other EU countries?

YES      NO

Please give details about the legal requirements to conduct business in the factoring and commercial/receivables finance industry in your country, if relevant separately for the operation of

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (i.e non-disclosed factoring with or without recourse)
- Structured Financing , including Inventory Financing
- Giving guarantees to third parties for obligations of supplier/seller
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor cross-border factoring
- B2B-/B2C-factoring

Legal requirements in the United States can be imposed at the federal level or at the state level. With respect to the above-described credit accommodations, there are no federal licenses or government approvals that must be obtained. Similarly, a majority of the states in the United States do not impose any licensing or government approval requirements on providers of the loans and other credit accommodations described above. However, certain states require that a lender or other provider of credit accommodations obtain a license from the state or qualify to do business in that state. Whether these requirements are imposed generally depends, in part, upon the level of activity conducted by, or the presence of, such lender or other provider in the particular state. The standards and requirements vary significantly from state to state.

For example, the state of California has enacted a law that prohibits any person from engaging in the business of a “finance lender” without a license from the Department of Financial Protection & Innovation (formerly the Department of Business Oversight), unless exempt. Cal. Fin. Code § 22100(a). The California Financing Law (formerly known as the California Finance Lenders Law) defines a “finance lender” as any person (which includes corporations and other entities) who is engaged in the business of making consumer loans or making commercial loans. The business of making consumer loans or commercial loans may include lending money and taking in the name of the lender, or in any other name, in whole or in part, as security for a loan, any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or any lien on, assignment of, or power of attorney relative wages, salary, earnings, income, or commission.” Cal. Fin. Code § 22009.

In New York, N.Y. Banking Law §340, known as the “Licensed Lender Law,” requires certain people and entities to obtain a license from the New York Department of Financial Services to be able to make loans, at a higher interest rate than otherwise allowed under law, currently an annual interest rate in



excess of 16%. The statute applies to both individuals and businesses who are borrowers of business and commercial loans of less than \$50,000.

In addition, several states have enacted regulations requiring the disclosure of specific information to borrowers or factored clients in connection with certain commercial finance arrangements.

California's disclosure law became effective on December 9, 2022. The legislation sets out specific requirements for the disclosure of terms by funders, lenders and brokers. The law covers accounts receivable purchase transactions, asset-based lending transactions, commercial loans and similar arrangements offered to any prospective borrower or factored client whose business is principally directed or managed from California in an amount not to exceed \$500,000 on and after December 9, 2022. California Financing Disclosure Act, Cal. Fin. Code §22800 et seq. and accompanying regulations, California Code of Regulations, Title 10, Chapter 3, Subchapter 3.

New York disclosure regulations for commercial finance transactions became effective August 1, 2023. The regulations apply to non-regulated commercial institutions offering financial transactions of \$2.5 million or less. New York Commercial Finance Disclosure Law, N.Y. Financial Services Law Article 801 et seq. and implementing regulations at New York Official Compilation of Codes, Rules and Regulations Title 23, Part 600-600.25. There are certain exemptions from this requirement, including for federally- and state-chartered banks, savings banks, credit unions, trust companies, and industrial loan companies authorized to conduct business in New York. The disclosures required include, among other things, the "finance charge" and an actual or estimated "annual percentage rate". How these terms are to be interpreted is somewhat uncertain.

Other states have established registration and disclosure requirements as well.

In Utah, the Commercial Financing Registration and Disclosure Act, UT Code §7-27-101 et seq., applies to "commercial financing transactions" defined as a business purpose transaction under which a person extends a business or commercial loan or a commercial open-end credit plan or that is an accounts receivable purchase transaction. The statute exempts certain entities as well as a provider that consummates five or fewer commercial financing products in state during a 12-month period, a commercial financing transaction secured by real property and a commercial financing transaction of more than \$1 million. The regulations became effective on January 1, 2023.

The Florida disclosure law became effective on July 1, 2023 but only applies to transactions consummated on or after January 1, 2024. Fla. Stat. Ann. §559.961 et seq.

The Georgia disclosure law enacted on May 1, 2023 became effective on January 1, 2024. Ga. Code Ann. §10-1-393.18.

The Florida and Georgia statutes do not apply to a commercial financing in an amount greater than \$500,000 and do not apply to a provider that does five or fewer commercial financing transactions in the state during any 12-month period.

Virginia has enacted a statute, effective on November 1, 2022, which requires sales-based financing providers to register with the State Corporation Commission and provide certain disclosures to a recipient at the time of extending a specific offer of sales-based financing. Va. Code Title 6.2, Chapter 22.1, Sections 6.2.228 through 6.2.2238. It exempts certain financial institutions and any person, provider or broker that enters into no more than five sales-based financing transactions in a 12-month period or enters into a single sales-based financing transaction greater than \$500,000. "Sales-based financing" is defined as "a transaction that is repaid by the recipient to the provider, over time, as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient."

These types of laws and regulations are being considered in other states as well.

[Do specific regulatory requirements apply to factoring/receivables finance activities in relation to a one-person-business/individual entrepreneur/sole proprietor? Please give details.](#)

YES NO

No answer.



Which of the following areas of regulation is factoring and commercial/receivables finance subject to in your country?

YES NO Anti-money laundering

No answer.

YES NO Capital requirements for credit, market and operational risks

No answer.

YES NO Data protection

YES NO Liquidity risk requirements

No answer.

YES NO IAS / IFRS accounting principles

No answer.

YES NO Transparency and supplier/seller information for SMEs or corporates (EU definition of SMEs: <250 employees, Turnover ≤ €50M or Balance Sheet ≤ €43M. If another definition is used, please clarify this.)

No answer.

YES NO Risk management (covers: monitoring of operations and internal control, organisation of the accounting and information processing, selection of risks, politics of remuneration, risk monitoring and risk limitation, governance)

No answer.

YES NO Contribution to the Deposit Guarantee Scheme  
If applicable, what is the basis of the contribution to the DGS for factoring companies?

No answer.

YES NO Reporting duties (e.g. AnaCredit, NSFR)

No answer.

YES NO Rules on payment services following the Payment Services Directive PSD II

No answer.

YES NO Rules and regulations on sustainability (environmental, social and governance – ESG)

No answer.

Which are the local authorities that regulate and discipline the factoring activity (if applicable)?

No answer.

## Question 2 Transfers of Receivables

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge<sup>38</sup>)?

Please describe the physical process for the assignment of receivables.

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Are there any other requirements for a valid assignment?

Is it possible to assign future receivables by a so called "assignment in advance"?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Is transfer by way of subrogation possible? what are the requirements?

Is it possible to transfer parts of a receivable or to make conditional transfers?

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

Please provide brief details of any specific laws in your country governing the transfer of ownership of receivables (or – if used for the factoring practice in your jurisdiction – alternative legal forms like pledge)?

In the United States, both the consensual grant of rights in receivables to secure the payment of a debt or other obligation and the outright assignment of accounts receivable are, in general, governed by the laws of the state of the United States applicable to the transaction, rather than federal law. The laws in a state that apply to such transactions are set forth in Article 9 of the Uniform Commercial Code (the "UCC") as adopted in that state. The UCC is a model law that was prepared and sponsored by a national commission of state-appointed lawyers, the Uniform Law Commission, formerly known as the National Conference of Commissioners on Uniform State Laws ("NCCUSL"), interested in establishing consistency among the laws of the different states in many areas of law.

First introduced in 1952 and substantially revised in 1962, by 1968 the UCC was in effect in 49 of the 50 states. All 50 states have now enacted Article 9 of the UCC based on the 1999 model version that was subsequently developed by NCCUSL, with only minor variations from that model version. This version of Article 9 became effective in most States as of July 1, 2001, and in a few others by October of 2001 or January 1, 2002. In 2010, NCCUSL drafted additional revisions to Article 9 of the UCC. These amendments have been enacted in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, effective in most States as of July 1, 2013. All references in this questionnaire to provisions of the UCC are to the model version, and state variations should be consulted in all cases.

For purposes of Article 9 of the UCC, both (i) the grant of a security interest in receivables to secure an obligation and (ii) an outright assignment of receivables fall within the definition of the term "security interest" as used in the statute. (Outright assignments of receivables are included because they resemble security interests in receivables in many respects.) Section 1-201 of the UCC provides in relevant part:

"Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9..."

The term "accounts" as defined in Section 9-102 of the UCC includes "a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligations incurred or to be incurred..."

<sup>38</sup> If such alternative forms are common in your jurisdiction, replace in the questions below 'assignment' for such alternative forms.

and other more specific types of rights to payment. Thus, the UCC uses the term "account" to describe trade receivables.

There are also certain transactions involving the sale or assignment of receivables that are excluded from Article 9 of the UCC by its terms. These transactions include (i) a sale of receivables as part of a sale of a business out of which they arose, (ii) an assignment of receivables for the purpose of collection only and (iii) an assignment of a single receivable to an assignee in full or partial satisfaction of a pre-existing indebtedness. UCC § 9-109(d). Such transactions are governed by general contract laws of the applicable jurisdiction rather than the UCC.

Article 9 by its terms also does not apply to the extent that: (i) a statute, regulation, or treaty of the United States preempts it; (ii) another statute of the applicable state expressly governs the creation, perfection, priority, or enforcement of a security interest created by the state or a governmental unit of the State; (iii) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest, created by the state, country, or governmental unit, or (iv) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 5-114 of the UCC.

Of course, the rights of the assignee may be affected by other laws beyond Article 9 of the UCC, most notably the United States Bankruptcy Code, which is a federal law. However, in general, federal law does not preempt and will defer to State law for the process of creating a security interest and the "perfection" of the security interest (that is, establishing the rights of the holder of the security interest as against third parties).

Whether an assignment is a "true sale" is a complex issue that is often subject to elaborate legal opinions in the securitization context. While there are no hard and fast rules, it is generally thought that, if there is recourse to the assignor in the event of non-payment of the receivables, a true sale may not have occurred, and the assignment could be considered a security interest instead of a true sale. **However, regardless of whether an assignment is a true sale or merely a security interest, the assignee must file a UCC financing statement in order for its interest in the receivable to be effective against third parties and to establish the priority of such interest as against competing claimants.**

Some of the other statutes that affect a security interest are discussed below.

[Please describe the physical process for the assignment of receivables.](#)

The physical process for the assignment of receivables involves the due execution and delivery by the assignor/debtor of a "security agreement" (defined below) in favour of the assignee/secured party. The term "debtor" is defined in the UCC to refer to, and as used in these materials means, either a person having an interest in the collateral to secure an obligation or a seller of accounts. The term "secured party" is similarly defined to cover both a person in whose favour a security interest is created or provided under a security agreement and a person to whom accounts have been sold. Unlike the terminology used in many other countries, the term "debtor" is not used to refer to the party obligated to make payment on the receivable. Under the UCC, the obligor on a receivable is referred to as the "account debtor."

Under the UCC, a "security agreement" is defined as an agreement that creates or provides for a security interest. UCC § 9-203 provides that a security interest is only enforceable against the debtor and third parties with respect to the "collateral" (in this case the assigned accounts) if: (i) value has been given by the assignee/secured party to the assignor/debtor, (ii) the assignor/debtor has rights in the "collateral" or the power to transfer rights in the collateral to the assignee/secured party and (iii) the debtor has "authenticated" a security agreement that provides a description of the collateral.

The term "authenticated" is defined in the UCC to mean to sign or to attach to or otherwise adopt an electronic sound, symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record. A "record" is defined as information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form. Consequently, in general, a security agreement covering receivables should:

- (i) be in writing (please note, however, that for certain other types of assets, possession of the

collateral by the secured party may be an acceptable alternative under the UCC);

(ii) be signed or otherwise authenticated by the debtor;

(iii) use words showing an intent to create a security interest; and

(iv) include a description of the collateral (that is, the receivables).

Under Section 9-108, a description of the collateral is sufficient for purposes of the requirements for a security agreement if the description "reasonably identifies" the collateral, whether or not the description is specific. See UCC § 9-108(a). Section 9-108 expressly states that a description of collateral reasonably identifies the collateral for purposes of the security agreement if the security agreement identifies the collateral either by a specific listing or by category or by a type of collateral defined in the UCC (e.g. all "accounts"). However, it is not sufficient for purposes of the security agreement to describe the collateral as "all of the debtor's assets" or "all or the debtor's personal property" or words of similar import. See also *Maxus Leasing Group, Inc. v. Kobelco America, Inc.*, 2007 U.S. Dist. LEXIS 13312 (N.D.N.Y. 2007) (explaining that collateral is reasonably identified if its identity is "objectively determinable" even if it includes minor errors); *First National Bank of Lewisville v. Bradley*, 80 Ark. App. 368, 372 (Ark. Ct. App. 2003) (explaining that the test of sufficiency of a description is whether it makes possible the identification of the thing described; the description need not be such as would enable a stranger to select the property); *In re Bennett Funding Group*, 255 B.R. 616, 636 (N.D.N.Y. 2000) (explaining that any description of collateral must enable a third party to distinguish between collateral and other, similar goods that the debtor owns).

Are any of the following necessary to achieve a legal assignment valid against the account debtor, against the supplier's/seller's insolvency practitioner or against any third party creditors:

- registration
- stamp-duty or other documentary taxes
- notification (please specify the formal requirements for such notification?)

Although the filing of the financing statement in the UCC registry of the applicable state is not required to establish the rights of the assignee/secured party as against the assignor/debtor, the filing of a financing statement indicating the assignee/secured party and the assignor/debtor and other required information is necessary to establish the rights of the assignee/secured party against third parties, including a trustee in the event an insolvency proceeding is commenced with respect to the assignor/debtor, and subsequent purchasers, and the priority of such rights. The establishment of such third-party effectiveness is referred to as the "perfection" of the security interest.

Under Section 9-502 of the UCC, a financing statement is sufficient if it:

(i) provides the name of the assignor/debtor,

(ii) provides the name of the assignee/secured party or a representative of the assignee/secured party, and

(iii) "indicates" the collateral covered by the financing statement.

For a "registered organization" (i.e. an organization formed or organized solely under the laws of a single State of the United States or under the laws of the United States by the filing of a certain specified types of documents with applicable authorities of such State (referred to in the UCC as a "public record" or after the 2010 amendments, a "public organic record")), the proper name of the organization is the name that appears on such record—such as an certificate or articles of incorporation in the case of a corporation—most recently filed with or issued or enacted by the registered organization's jurisdiction of organization. UCC § 503(a). For any organization that is not a "registered organization", then the UCC provides simply that the financing statement must set forth the organizational name of the debtor. Section 503(a)(4) or, pursuant to the 2010 amendments, Section 503(a)(6).

For an individual debtor's name there may be multiple variations, and determining which variation is appropriate for use in a financing statement has become a challenge. Since the adoption of the 2001 amendments, U.S. courts have become split on this issue, so NCCUSL drafted two options in the 2010 amendments—Alternative A and Alternative B—to assist the States in resolving this problem. UCC

§503(a). Alternative A states that if a debtor that is an individual possesses an unexpired state driver's license, a financing statement has sufficiently provided the debtor's name only if the name provided is identical to the name on the driver's license. If the individual does not have an unexpired state driver's license, a financing statement has sufficiently provided the debtor's name only if it provides the individual name, or surname and first personal name, of the debtor. It is important to note, however, that the term "individual name" has not been defined in the model version of the UCC. Alternative B is a "safe-harbor" approach, which provides three alternatives for sufficiently providing a debtor's name. These options are (1) the individual name of the debtor, (2) the surname and first personal name of the debtor, or (3) the driver's license name, as detailed in Alternative A. As of January 2017, 43 states, the District of Columbia and Puerto Rico have enacted Alternative A, while only 7 states have adopted Alternative B.

As contrasted with the requirements for a security agreement, for purposes of the financing statement, only an "indication" of the collateral is required, rather than a "description" of it. Section 9-504 expressly provides that an indication of collateral is sufficient for this purpose if it provides a description pursuant to Section 9-108 (as described above), so that a type or category of asset, or using a defined term from the UCC, such as "accounts," is sufficient, as is a statement that the financing statement covers "all assets" or "all personal property". Such an "indication" is understood to include both existing and future assets of the applicable category or all existing assets, as the case may be.

As noted above, there are also certain transactions involving the sale or assignment of accounts that are excluded from Article 9 of the UCC by its terms and therefore do not require the filing of a financing statement. These transactions include (i) a sale of receivables as part of a sale of a business out of which they arose, (ii) an assignment of receivables for the purpose of collection only and (iii) an assignment of a single receivable to an assignee in full or partial satisfaction of a pre-existing indebtedness.

Each state maintains a registry in which financing statements are recorded that may be searched by the public. Under the UCC, the financing statement naming the assignor/debtor is required to be filed in the UCC registry in the state where the assignor/debtor is deemed "located" in accordance with the rules set out in Section 9-307 of the UCC. For example, if the assignor/debtor is a legal entity organized under the laws of a state within the United States, then the assignor/debtor is deemed located in the state in which it is organized for purposes of the perfection of the rights of the assignee/secured party.

No stamp duty or other document tax per se is required to achieve a legal assignment that is valid against the debtor or third parties. However, a fee is charged for filing a financing statement. The government office in each State which maintains the UCC registry will charge a fixed fee for filing the financing statement. The amount of the filing fee charged by the different States is nominal, and not related to the amounts involved in the underlying transaction (except in Tennessee and Florida, where there are separate "taxes" payable under certain circumstances in connection with the filing of a financing statement).

Notification of the assignment to the account debtor is not necessary for a valid assignment or security interest. However, pursuant to Article 9 of the UCC, an account debtor has a right to pay the assignor until the account debtor receives appropriate notification of the assignment of, or other security interest in, the receivables. See UCC § 9-406(a). After receiving appropriate notice of the assignment or security interest, the account debtor can only discharge its obligation by paying the assignee/secured party. *Id.* For the notification to be effective under Article 9 of the UCC, the notification must, among other things, reasonably identify the rights assigned. See UCC § 9-406(b).

In addition to the requirements described above, a secured party/assignee may also be required to furnish reasonable proof of the assignment or security interest, such as an authenticated writing, if requested to do so by the account debtor. See UCC § 9-406(c). If an assignee fails to comply with any such request, the account debtor may discharge its obligation by paying the assignor/debtor, even if the account debtor has received notice of the assignment. See UCC § 9-406(c).

#### Are there any other requirements for a valid assignment?

The only other requirements are those applicable to any other contract binding upon the parties under applicable contract law.

#### Is it possible to assign future receivables by a so called "assignment in advance"?

In that case, is it sufficient under local law to give notice of the assignment to the debtor only once, or does the notification process have to be repeated each time a (future) receivable comes to existence?

Yes. Assignments of receivables may be of both existing and future receivables if so provided in the security agreement. See UCC § 9-204(a). For most purposes (including determinations of priority), the effectiveness of the assignment or establishing the rights of the assignee/secured party to the receivables as against most other creditors will be the earlier of the date on which the assignment is perfected or the date on which a financing statement is filed. Thus, for example, in the case of a loan secured by receivables, priority of the lender's security interest can date from the date on which the financing statement is filed, even if the other steps required for perfection of the security interest (such as signing a security agreement or giving value) have not yet occurred. This feature of the UCC enables a lender to establish the priority of its security interest, and to confirm such priority by conducting a search of the registry, before the lender extends credit to a borrower.

Is transfer by way of subrogation possible? what are the requirements?

No answer

Is it possible to transfer parts of a receivable or to make conditional transfers?

No answer

Please also describe the specific requirements, if any, in your country for a receivables assignment to qualify as a "true sale".

No answer.

### Question 3 EDI, e-invoicing, etc.

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature? Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures. If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

Can a receivable be validly assigned using e.g. an Electronic Data Exchange message or a digital signature?

As mentioned above, the assignment of a receivable is treated as a "security interest" under the UCC. In general, for a security interest covering receivables to be validly assigned it should:

- (i) be in writing;
- (ii) be signed or otherwise authenticated by the debtor;
- (iii) use words showing an intent to create a security interest; and
- (iv) include a description of the collateral (that is, the receivables).

Although there are no additional requirements for an assignment made via Electronic Data Exchange ("EDI"), these primary requirements are supplemented by the Uniform Electronic Transaction Act ("UETA"), a state-based initiative to streamline e-commerce laws, and the ESIGN Act, a federal provision that pre-empts state variations from UETA. The main force of these Acts is to preclude denial of legal effect to any record, writing, or signature solely because it is in electronic form.

Thus, the two elements of perfecting a UCC security interest that pose the main issue with using electronic communications (i.e. the writing and signing prongs) are given effect by UETA and ESIGN.



Moreover, the dispatch of an assignment via EDI likely suffices as a showing of intent. Consequently, assignments conducted through an EDI message remain valid so long as such message conforms to the basic requirements of a UCC security interest.

Please give details and state any requirements e.g. for a separate written agreement governing procedures or electronic signatures.

UCC financing statements do not need to be signed by the debtor or the secured party in order to be effective.

Please see above. As mentioned, there are no additional requirements.

If notification to the debtor is required to achieve valid assignment (or pledge or alternative forms), can such notification be validly achieved by adding language to an e-invoice sent by the supplier to the debtor?

Notification to the account debtor (i.e. the party with whom the primary obligation lies) is not required to achieve a valid assignment of a receivable. However, under the UCC an account debtor has a right to pay the assignor until the account debtor receives appropriate notification of the assignment. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

The UCC requires for such notification to be effective only that (i) it inform the account debtor that the amount due or to become due has been assigned and should be paid to the assignee and (ii) either the assignor or the assignee authenticate (i.e., sign) it. UETA and E-SIGN protect the validity of an electronic signature. None of these statutory frameworks provide any additional requirements regarding the manner of delivery or specify that this information be delivered independently of other content.

Consequently, it is likely that notification of an assignment achieved by adding language to an e-invoice sent by the supplier (i.e. the assignor) to the account debtor would be valid so long as it complies with the above basic requirements of the UCC.

Please also provide information on the national implementation of the e-invoicing Directive 2014/55/EU (is the e-invoice-regime applicable in your country? Is the e-invoicing-regime mandatory for specific contractual situations?).

No answer

#### Question 4 Value Added Tax

Are there any VAT issues or problems in your country concerning the assignment of receivables?

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?

Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

Are there any VAT issues or problems in your country concerning the assignment of receivables?

No, there is no VAT in the U.S. However, in certain states a lien for unpaid personal property taxes has priority over a previously perfected security interest.

What is the VAT treatment of factoring commission/ service charge?

What is the VAT treatment of discount or interest?



Are there any differences in the VAT treatment between banks and non-banks engaged in receivables financing?

The split payment mechanism is an anti-tax evasion measure requiring debtors to pay the VAT payable under a contract directly into a dedicated account/to the state instead of to the supplier/seller. Is this system of split payments used in your country, and if so, what impact does it have on factoring?

Are there any other measures to ensure that the seller's VAT is paid, e.g. is the factoring company jointly liable together with the seller or is it liable in the second degree after the seller?

Are there "white lists" or any other VAT-related reporting duties for factoring companies?

Not applicable

## Question 5 Third Party Rights

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Do these rights have to be publicly registered or notified to be valid?

What third party rights can affect the position of a factor regarding its rights to the supplier's receivables? The factor's rights can perhaps be affected pursuant to contract or under mandatory law:

- Contract: e.g. (for Germany) the party that sold the goods to the supplier/seller may have stipulated an extended retention of title (that includes a security assignment in advance of the receivable if the supplier sells the goods on) and consequently may have priority above factor as based on security assignment; there may also be other cases of multiple (parallel) assignments of the same receivable raising the issue of third party rights
- Law: e.g. taxes, social security dues, entitlements of insolvency practitioners or any other official or private rights?

An assignee's rights in receivables vis-à-vis third parties can be affected by federal and state tax claims as well as various other federal and state statutes. At the federal level, these include (but are not limited to) the Federal Tax Lien Act, (see 31 U.S.C. § 3727 (2007); 26 U.S.C. §6321 (2007)), the Perishable Agricultural Commodities Act ("PACA") and the Packers and Stockyards Act ("PASA").

A federal tax lien will have priority over a security interest in receivables unless one of two exceptions applies. The first exception applies if the receivables are already in existence and subject to a perfected security interest at the time a notice of a federal tax lien is filed by the government in the appropriate lien registry. Under this exception, a prior perfected security interest in any such "pre-existing" receivables will have priority over the federal tax lien. The second exception applies if (i) the receivables are created by the debtor within 45 days after notice of a federal tax lien is filed (regardless of whether when the grantee/assignee had actual knowledge of the tax lien filing), (ii) the receivables are covered by a security agreement entered into before the notice of the federal tax lien was filed, and (iii) the secured party filed a financing statement with regard to these receivables prior to the filing of the notice of federal tax lien. Under this exception, a security interest has priority over a federal tax lien to the extent the security interest secures advances made before the earlier of (A) 45 days after the notice of federal tax lien is filed and (B) the date on which the grantee/assignee first had actual knowledge of the tax lien filing. Advances made after expiration of the 45-day period (or the date the

grantee/assignee had actual knowledge of the tax lien filing) will be secured by a security interest subordinate in priority to the federal tax lien.

In addition to a federal tax lien, a security interest in receivables may be subordinate to the claims of beneficiaries of the statutory trusts established under PACA and PASA. PACA and PASA provide protection to sellers of fresh fruit and vegetables, and sellers of livestock, respectively, in the form of a statutory constructive trust. The PACA and PASA statutory trusts apply to, among other assets, accounts receivable generated by the sale of produce and livestock. A trust beneficiary's interest in these receivables can have priority over a prior perfected security interest in the accounts. In *Nickey Gregory Co., LLC et. al. v. AgriCap, LLC*, 597 F.3d 591 (4th Cir. 2010), the Fourth Circuit concluded that because the factoring arrangement in that case was a financing transaction and not a sale based on various considerations (including that the factor retained recourse against the company if the receivables remained unpaid), the factor was required to turn over the receivables to satisfy a claim under PACA. See also *Endico Potatoes v. CIT Group/Factoring Inc.*, 67 F.3d 1063 (2d Cir. 1995) (holding that, in a dispute brought under PACA, the factor was merely a secured lender and not a purchaser for value of the accounts receivable); and *Reaves Brokerage Co. v. Sunbelt Fruit & Vegetable Co.*, 336 F.3d 410 (5th Cir. 2003) (holding that the factor was essentially a lender that received PACA trust assets through the enforcement of what was really a security agreement. As such, the factor was not a bona fide purchaser for value, and its interest in the assets was subordinate to the PACA trust).

At the state level, there are several possible claims that may adversely impact the priority of a security interest in receivables. For example, some states grant a priority lien in favour of (i) landlords for unpaid rent or other charges, (ii) processors and repairmen for unpaid expenses such as for repairs, shipping and storage, (iii) the state for unpaid personal property taxes, (iv) the state for unpaid expenses incurred in the clean-up of hazardous wastes or other environmental conditions, (v) employees for unpaid wages and (vi) judgment creditors under certain circumstances. See, e.g., N.Y. CLS Lien § 182 (2007) (creating priority lien in favour of owner of self-storage facility for unpaid storage costs); Va. Code Ann. § 43-33 (2007) (creating priority lien in favour of unpaid mechanics); N.J. Stat. § 2A:44-157-164 (2007) (creating priority lien in favour of unpaid processors of goods); N.Y. CLS ECL § 15-0511 (2007) (creating a lien for unpaid environmental clean-up costs); R.I. Gen. Laws § 44-3-1 (2007) (creating a lien for unpaid environmental clean-up costs); Conn. Gen. Stat. § 22a-452a (2007) (creating a lien for unpaid taxes owed to the State of Connecticut); Fla. Stat. § 197.122 (2007) (creating a lien for unpaid taxes owed to the State of Florida). It is important to consult the laws of each State to ascertain if there are any specific State statutes that may create a lien on assets of a business that would have priority over a previously perfected security interest.

Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

Retention-of-title rights, which are so prevalent in Europe and other parts of the world, are not enforceable in the United States, unless the seller complies with the requirements for a security interest as to any goods sold with such terms. U.S. secured transactions law is based on a "unitary" concept tied to function and intent, under which a reservation of title (pursuant to which the seller of goods retains title to the goods until the seller receives payment of the purchase price) will be treated as the reservation of a security interest. See UCC § 2-401. Thus, retention-of-title arrangements without additional steps to satisfy the requirements of the UCC are unenforceable under U.S. law.

The rights of a holder of a security interest in goods resulting from a reservation or retention of title to such goods as against an assignee of a receivable will be governed by, and subject to, Article 9 of the UCC. Such holder will therefore be required in most instances to comply with the rules of Article 9 in order to establish its rights to both the goods and the proceeds of the goods, whether such proceeds are in the form of a receivable or otherwise, as against an assignee of the receivable.

In general, the priority of the rights of a supplier that holds a security interest in the goods that it sells to the assignor/debtor will be determined by the general priority rules under Article 9, which give priority to the "first to file or perfect" and therefore requires the supplier to file a UCC financing statement. See UCC § 9-322(a)(1). The filing of the UCC financing statement by the supplier as to the inventory also establishes the time of the priority of the supplier as to the accounts that arise from the sale of the inventory under Section 9-322(b). If the supplier has filed its financing statement prior to the financing

statement filed by the assignee/secured party, then the supplier should have priority. See Comment 9 to UCC § 9-324. Conversely, if the assignee/secured party has filed its financing statement prior to the date of the filing of the financing statement by the supplier, the assignee/secured party will have priority.

Article 9 of the UCC establishes special priority rules for "purchase-money security interests," which change the general priority rules under certain circumstances. See UCC § 9-324. Under such circumstances, a purchase-money security interest in (i) inventory or equipment and (ii) certain proceeds of such inventory or equipment, will have priority over a previously perfected security interest in such assets. Section 9-103 of the UCC provides that a security interest in goods will be a purchase-money security interest: (i) to the extent that the goods are "purchase-money collateral" (defined as goods or software that secures a "purchase money obligation" incurred with respect to that collateral); and (ii) if the security interest is in the inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase money-security interest; and (iii) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest. UCC § 9-103.

A "purchase-money obligation" means an obligation of an obligor incurred as all or part of the price for the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

Under UCC § 9-324, a perfected purchase-money security interest in inventory has priority over (i) a conflicting security interest in the same inventory and (ii) a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper (if so provided in Section 9-330), and also has priority in "identifiable cash proceeds" of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, in each case, only if the holder of the purchase-money security interest takes certain additional steps.

However, as a general matter, the "super-priority" of the holder of a purchase-money security interest in the inventory does not extend to receivables arising from the sale of the goods by the assignor/debtor. See Comment 8 to UCC § 9-324. There are similar rules for purchase-money security interests in goods other than inventory, except that the super-priority of the purchase-money security interest in such goods extends to all "identifiable proceeds" if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

Accordingly, the rights of third party creditors who have sought to retain title to goods supplied to the assignor and the receivables arising from the sale of such goods as against the assignee/secured party are not affected by whether the assignment is with or without recourse or is structured as invoice discounting or factoring.

As previously noted, there are certain types of creditors that are not subject to the rules of Article 9. In particular, the beneficiaries of a PACA or PASA trust (discussed above) would have priority over an assignee/secured party as to assets that are subject to the trust established under such federal statutes, regardless of compliance with Article 9 by the assignee/secured party.

#### [Do these rights have to be publicly registered or notified to be valid?](#)

As noted above, a supplier that wants to have rights to the receivables arising from the sale of goods that it supplies to a debtor as against an assignee/secured party must file a UCC financing statement with respect to the goods and their proceeds in accordance with Article 9 of the UCC. However, the supplier is not required to notify account debtors of its security interest in order to establish its rights.

As previously noted, Article 9 of the UCC does not apply in all instances. There are specific exceptions for certain transactions. For instance, the beneficiaries of a PACA or PASA trust do not need to register or otherwise file notice before they can claim an interest in the trust assets (which can include accounts receivable). (See discussion above.)

## Question 6 Prohibitions against Assignments

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Is there any requirement for registration?

Is a contractual prohibition against the assignment of receivables valid in your country? What is the exact effect of such assignment prohibition/ban on assignments: does it make the transfer invalid or does it only allow the debtor to pay the supplier/seller with discharging effect despite the assignment? Please indicate if there is in this respect any difference between

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting

What actions are needed to make the prohibition effective?

Under Section 9-406(d) of the UCC, a term in an agreement between an account debtor and an assignor is ineffective to the extent that it (i) prohibits, restricts or requires the consent of the account debtor to the assignment or transfer of, or to the creation, attachment, perfection or enforcement of a security interest in, the receivable or (ii) provides that the assignment or transfer or the creation, attachment, perfection or enforcement of a security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the receivable.

Please note, however, that an account debtor may discharge its obligation under a receivable by paying the holder of the receivable until, but not after, the account debtor receives a notification, authenticated by the assignee of the receivable or the secured party, that the amount due or to become due has been assigned and that payment is to be made to the secured party. After receipt of the notification, the account debtor may only discharge its obligation by paying the assignee and may not discharge its obligation by paying the assignor. There are, however, limited circumstances in which the notification is not effective against the account debtor.

Since the prohibition is generally ineffective as a matter of law, there are no steps that can be taken to make it effective.

Re product differences, there is no effect; any such prohibition would be unenforceable under Article 9 of the UCC. (See discussion above.)

Is there any requirement for registration?

Not applicable

Are there any other contractual barriers or practices which hinder the provision of factoring and receivables finance? Please give details.

No answer

## Question 7 Security Interests

For this questionnaire a “fixed charge” is a security interest under which the supplier/seller/borrower is unable to deal with an asset without the creditor’s consent. A “floating charge” is a security interest allowing the supplier/borrower to deal with the asset without consent until “crystallisation” such as its insolvency.

Is it possible in your country to obtain a fixed or a floating charge on receivables only, or does a fixed or floating charge have to be taken over all assets?

Does a fixed or floating charge have to be publicly registered to be valid?

Are such fixed and/ or floating charge security interests over all assets normally taken in addition to the assignment of receivables?

The secured transaction law in the U.S. does not distinguish between security interests based on whether the client/borrower is able to deal with the asset subject to the security interest. Article 9 of the UCC does not recognize the concepts of a "fixed charge" or a "floating charge". Thus, designating an Article 9 security interest as fixed charge or a floating charge does not affect its validity or priority.

It is possible to take a security interest in only receivables. Under Article 9 of the UCC, the parties are free to define the scope and extent of the assets subject to the security interest or assignment in such manner as they choose, subject to satisfying the requirements of reasonable identification for purposes of the security agreement.

As previously noted, for purposes of establishing the rights of the secured party as against third parties, a UCC financing statement only needs to describe the asset by type or category, although it may be more specific.

A security interest does not have to be publicly registered to be valid as against the assignor/debtor. However, a financing statement giving notice of the security interest must be filed in the appropriate public registry, as dictated by the rules of Article 9 of the UCC in effect in the applicable State, in order to establish the rights of the assignee/secured party as against third parties (including a trustee or debtor-in-possession in an insolvency proceeding filed by or against the assignor/debtor).

Although the filing of a financing statement in the public registry is the most common manner of establishing the rights of a secured party, as to certain categories of assets a secured party may, or may in fact be required under the UCC to, perfect its security interest by taking possession of such assets, or by having "control" over them. "Control" is a term used in a specific way under the UCC in the context of particular types of assets. Most commonly, it is applicable to security interests in deposit accounts, for which control is the only available manner of perfection. For this purpose, Section 9-104 of the UCC provides that a secured party has control of a deposit account if:

- (i) the secured party is the bank with which the deposit account is maintained;
  - (ii) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
  - (iii) the secured party becomes the bank's customer with respect to the deposit account."
- Section 9-104 also provides that a secured party that has satisfied one of the alternatives above has control for this purpose, even if the debtor retains the right to direct the disposition of the funds from the deposit account.

## Question 8 Undisclosed Operations/invoice discounting

What risk minimisation or security options exist in the practice to facilitate undisclosed invoice finance operations in your country?

What impact have the GDPR or other country specific laws (e.g. "white lists" of tax payers) had on undisclosed factoring?

See above.

In addition, notice to account debtors that their accounts have been sold to a factor is evidence that the parties intend the transaction to be treated as a true sale rather than a loan. If business considerations militate in favour of not notifying account debtors of the sale of their accounts to the factor, or if applicable law prohibits the factor from directly collecting the accounts absent a court order



(as is the case with Medicare and Medicaid accounts), another variable that may support the conclusion that the transaction should be treated as a true sale is if the factor exercises control over the collection of the assigned accounts or the proceeds of the accounts once they have been collected by the client.

## Question 9 Purpose of Assignment

Are there any differences in the legal status if receivables are:

- assigned in fulfilment of a purchase contract of these receivables (Factoring –Non-Recourse or Recourse, Invoice Discounting)
- assigned to collateralise a financing facility (Structured Finance, Issuing Guarantees)
- pledged to collateralize such a financing facility

The assignment of receivables will transfer title to the assignee if such assignment is a "true sale." If the assignment is not a true sale, then the assignee will be deemed to have a security interest in the underlying receivables and title will be retained by the assignor. On the other hand, a pledge of receivables as security for obligations under a credit facility will be deemed to be the grant of a security interest to the pledgee, but will not transfer title to the pledgee.

Whether an assignment is a true sale is a complex issue that is often subject to elaborate legal opinions in the securitization context. While there are no hard and fast rules, it is generally thought that, if there is more than nominal recourse to the assignor (i.e. more than 10%), or recourse by the buyer to the seller for the breach of certain types of representations and warranties given by the seller of the receivables, a true sale may not have occurred. When there is sufficient recourse to the seller, then the assignment would be considered a security interest instead of a true sale. In either case, whether an assignment is a true sale or merely a security interest, the assignee must file a UCC financing statement for its interest to be effective against third parties.

## Question 10 Payments

Please estimate the payment structure for corporate businesses (across the whole economy, not just factoring clients and debtors) in your country by percentage:

- Bank-Transfer %
- Cheque %
- Bill of Exchange%
- Other instruments %

(please give details, preferably also about similar estimates relating to factoring relations only)

Unlike certain European countries where electronic wire transfers are predominant, in the United States businesses use a variety of means to make payment on outstanding receivables. Electronic funds transfers are, however, often used.

## Question 11 Supplier/Seller Insolvency

Please describe the rights of a financier following the insolvency of the supplier/seller and any possible threats and/or pitfalls in respect of:

- Non-Recourse Factoring
- Recourse Factoring
- Invoice Discounting (non-disclosed factoring with or without recourse)
- Structured Financing including Inventory Financing
- Giving guarantees to Third Parties for obligations of suppliers/sellers
- Protection against third party payment default
- Direct cross border factoring
- 2-Factor Cross-Border Factoring

One of the possible threats to a receivables financier upon the insolvency of the assignor/debtor is a claim by the trustee in bankruptcy (which term includes a "debtor-in-possession") that the receivables

financier has received a "transfer" from the assignor that constitutes an avoidable "preference" (also known as a "preferential transfer"). If the assignee/receivable financier is found to have received a preferential transfer from the assignor/debtor, then the transfer may be voided and the assignee/secured party will be required to return the payments on the receivable that the assignee received pursuant to such transfer. A preference claim may only be brought in the context of an insolvency case.

There are six conditions that must be met under the U.S. Bankruptcy Code for a transaction to qualify as a preference:

- (i) there must be a "transfer" (as defined in Section 101(54) of the Bankruptcy Code) of the debtor's property;
- (ii) to or for the benefit of a creditor;
- (iii) for or on account of an "antecedent debt";
- (iv) while the debtor is "insolvent" (as defined in Section 101(32) of the Bankruptcy Code);
- (v) within 90 days before the commencement of the bankruptcy case under the Bankruptcy Code (assuming that the creditor is not an "insider"); and
- (vi) the transfer must result in the creditor receiving more than it would have had the transfer not been made and the debtor were in a liquidation bankruptcy.

Based on the foregoing elements, the critical period is the 90 days prior to the commencement of the case. If the assignee/secured party is only granted its rights to the receivables within this 90-day "preference period" to secure obligations previously owing to it, the assignee/secured party is at risk that the assignment might be voided under the Bankruptcy Code as a preference. However, for this purpose, the transfer is deemed to occur at the time that the initial grant of the "security interest" in all present and future receivables, not at the time the particular receivables arise, so long as the assignee/secured party perfects its security interest within 30 days after the date of the transfer. Otherwise, the transfer date for preference purposes will be the date on which the security interest is perfected. In addition, as noted above, one of the elements of a preference is that the grant of the security interest enables the creditor to receive more than it would in a liquidation. Accordingly, if the value of the collateral subject to the security interest of the assignee/secured party at all times during the 90 day preference period exceeds the amount of the obligations owing by the assignor/debtor to the assignee/secured party, then one of the elements of a preference is not satisfied and any preference claim should fail.

Similarly, a trustee in bankruptcy may not avoid a transfer if such transfer was intended by the debtor and the creditor to be a "contemporaneous exchange for new value given to the debtor" and is in fact a "substantially contemporaneous exchange." Accordingly, to the extent that the assignee makes an advance payment of the purchase price for the receivables at approximately the same time as the receivables were created, the financier should not be deemed to have received a preference.

There are a number of other defenses to a preference claim that may be applicable to protect the secured party from having to disgorge payments or collections received during the preference period and to prevent having its lien on collateral granted during the preference period from being avoided.

The question of whether a transfer of receivables constitutes a sale of receivables, or a loan secured by receivables where the financier obtains a security interest in the receivables, is often an issue of concern for financiers after the insolvency of a client. If a bankruptcy court determines that the transfer was a loan and not a true sale, then the transferred receivables are property of the estate under Section 541 of the Bankruptcy Code, and subject to use, sale or lease by the bankruptcy trustee or a debtor-in-possession. If the transaction is a true sale and the seller retains no interest in the receivables, then the receivables remain outside of the bankruptcy estate.

Courts apply a "subjective totality of the circumstances" test in determining whether a transfer is a loan versus a sale. Among the factors courts consider are: the parties' intent (see *In re Grand Union Co.*, 219 F. 353, 360-362 (2nd Cir. 1914)); the contract language and the nature of the transaction (*Id.*); retention of servicing by seller and commingling of proceeds; and arguably the most significant factor in the majority of the cases, the purchaser's retention of some recourse against the seller (see *Ratto*



v. Sims (In re Lendvest Mortgage, Inc.), 119 B.R. 199, 200 (B.A.P. 9th Cir. 1990)).

Specifically, when dealing with factoring arrangements, it is possible that a sale of accounts may be recharacterized as a secured transaction. Although factoring is defined as the sale of a seller's accounts to its factor at a discount, courts typically hold that factoring agreements do not give rise to true sales but instead factors have security interests in accounts. For example, in *In re LTV Steel Co., Inc.*, 274 B.R. 278, 285 (Bankr. N.D. Ohio 2001), the bankruptcy court held that the accounts were not actually sold to the factor because the debtor has an ownership interest in the products that it creates with its own labour, as well as the proceeds to be derived from that labour, and therefore the debtor's equitable interest is property of the debtor's estate. Similarly, in *Major's Furniture Mart, Inc. v. Castle Credit Corp.*, 602 F.2d 538, 546 (3d Cir. 1979), the court reasoned that a factoring arrangement between a furniture retailer and a financier was not a true sale because the accounts were sold with "full recourse" (there was a reserve from the purchase price held back against future non-paying accounts, as well as a requirement that the seller repurchase accounts delinquent after 60 days). As noted above, in *Nickey Gregory Co., LLC et. al. v. AgriCap, LLC*, 597 F.3d 591 (4th Cir. 2010), the Fourth Circuit concluded that factoring arrangement was not a sale based on various factors, including that risk of non-collection was not transferred to the factor because the factor maintained recourse against the company if a receivable remained unpaid. As a result of the characterization of the arrangements as secured loan, the factor was required to turn over the receivables to satisfy a claim under PACA.

The U.S. Bankruptcy Code, as well as state creditors' rights statutes, include the right of a trustee in bankruptcy (or in the case of state creditors' rights statutes, a creditor) to void transfers of property of the debtor if the transfer is made with actual intent to hinder, delay or defraud creditors or if the debtor does not receive "reasonably equivalent value" in exchange for the transfer and is or is rendered "insolvent" after giving effect to such transfer. Each of these concepts has been defined and subjected to interpretation under extensive case law.

Of course, the most basic possible threat to the rights of an assignee/secured party is if it has failed to properly perfect its security interest in the assigned receivables in accordance with Article 9 of the UCC, such as by filing against an incorrect name or in the wrong state's registry, or has allowed the effectiveness of its financing statement to lapse. In such cases, the obligations of the assignor/debtor to the assignee/secured party will be treated as unsecured if the trustee in bankruptcy exercises its right under the U.S. Bankruptcy Code to avoid the security interest as a result of the failure to perfect or maintain perfection.

To the extent a financier executed a guarantee in favour of a third party with regard to the obligations of the client/borrower, the obligations of the financier under the guarantee are unaffected by the U.S. Bankruptcy Code.

Similarly, to the extent a third party executed a guarantee in favour of the financier with regard to the obligations of the client/borrower, the obligations of the third party under the guarantee are, except in certain limited circumstances, unaffected by the Bankruptcy Code. As long as the financier has taken the steps required for the perfection of its security interest prior to the commencement of the insolvency proceeding and outside the preference period (described above), the U.S. Bankruptcy Code should have no direct effect on cross-border financing. Regardless of the type of financing involved (as listed in the categories above), the rights of the financier with regard to the collateral will be determined by who is first to file or perfect and whether federal and state laws override Article 9 of the UCC.

Should insolvency proceedings be conducted, what is the impact of taking a charge a) in terms of keeping the business under administration trading to complete outstanding contracts and b) in terms of priority? (see Q 7)

No answer

How is your country implementing the Restructuring Directive (EU) 2019/1023 and will/does this have an effect on factoring? Since 2017, have there been any other changes to insolvency laws which are relevant to factoring (including changes made in response to the Covid-19-pandemic, which may be temporary)?

Not applicable

Is it possible for a receivable purchased/acquired through non-recourse factoring to be deemed part of the insolvency estate/assets of the supplier/seller who has become bankrupt? Please give details.

No answer

## Question 12 Late Payments

Are there any penalties (and if so of what kind) applying to debt defaulters? E.g. interest. Did your country implement more strict norms than the EU Late Payment directive 2011/7/EU required it to implement?

Any penalties incurred by a company that fails to pay its obligations when due derive from the terms and provisions of the underlying contract. For instance, a common term in a U.S. loan agreement provides the secured lenders with the ability to impose a 2% increase in the interest rate applicable to a secured loan in the event of a payment default or any other event of default under such loan agreement. In addition, judgment rates of interest can apply in the event a judgment has been entered against the debtor that has failed to pay its obligations. These vary from state to state.

## Question 13 International Conventions and Model Laws

Has your country ratified or does it intend to ratify:

- The UNIDROIT Convention on International Factoring (1988)
- The United Nations Convention on the Assignment of Receivables in International trade (2001)

The United States signed the UNIDROIT Convention on International Factoring (1988) but has not ratified it.

The United States signed the United Nations Convention on the Assignment of Receivables in International trade (2001) and has also ratified it. The instrument of ratification was deposited at UN Headquarters in New York on October 15, 2019.

According to the rules in your country on the conflict of laws, which law is applicable to the third party effects of assignments? Is a (contractual) choice of law possible and, if so, what is the rule on e.g. conflicting terms and conditions set by each contractual party ("battle of forms") in this regard?

No answer

The UNIDROIT Model Law on Factoring was adopted in May 2023. Please provide input on the relevance of this model law for your country and any national consequences of it in your country up to date.

To date, neither the federal government or any state has adopted any law based on the UNIDROIT Model Law on Factoring.

## Question 14 Public Administration

Are there any formal requirements in order to assign debts against public administrations (PA), different from those applicable to the assignment of other (B2B) debts? E.g.: Does the assignment of debts have to be accepted by the PA debtors to be effective against the PA? Please also include information on the national implementation of the e-invoicing Directive 2014/55/EU with regard to invoices for public authorities.

YES NO

In general, contracts with the United States government or any of its departments, branches, divisions, agencies or instrumentalities cannot be assigned.

Under the Federal Assignment of Claims Act, 41 U.S.C. §15, it may be possible to assign the accounts payable by the federal government to vendors arising from the vendors' performance of their obligations under contracts with the applicable government unit subject to the satisfaction of the conditions provided for in the Act and related regulations.

The Assignment of Claims Act only applies when each of the following is satisfied:

- When moneys due or to become due from the government are assigned to a bank or "financing institution";
- The contract itself does not prohibit assignment;
- The assignment covers all amounts payable under the contract and not already paid;
- The assignment is not made to more than one party;
- The contract which is assigned is not subject to further assignment; and
- The assignee files written notice of the assignment with (a) the contracting officer, (b) the surety or sureties on the bonds in connection with the contract, and (c) the disbursing officer, if any designated in the contract.

An assignee should make sure that it uses the statutorily prescribed form of Notice of Assignment to notify the appropriate parties and should be certain to receive the Notice of Assignment as acknowledged by the government.

An assignment of proceeds (not of the duty to perform) is recognized by the federal government, and the contract is modified (novated) to provide that the assignee is the payee upon satisfaction of the conditions.

There may be additional requirements in the case of amounts owing by certain departments and agencies of the Federal government. The provisions of the Code of Federal Regulations for the applicable department or agency need to be reviewed as well as the Federal Acquisition Regulations, found in Title 48 of the Code of Federal Regulations which supplement the Assignment of Claims Act. The assignment becomes effective when the government receives notice; however, the government is given a reasonable amount of time to determine the validity of the assignment before making payments. Once "perfected," by the filing of the requisite documents with the government, the assignment remains in effect until revoked by the assignee.

Compliance with the Assignment of Claims Act is not a substitute for compliance with the requirements of the UCC to obtain a perfected security interest. The assignee must also comply with the UCC.

There are also cases that have held that the Assignment of Claims Act requires that the financing institution must show that it loaned money or at least made money available for the performance of the government contract under which the amounts owing have been assigned.

In the case of receivables due from States or local governments, there are varying requirements. Some states, such as Delaware and North Carolina, appear to totally bar assignments of government accounts. In other states, such as Maine, the assignment may be recognized, but with the condition that the state will only pay the assignor. In states such as Hawaii, Maryland and New York, as well as the District of Columbia, assignments of claims are allowed only if timely approved by designated governmental officials and subject to other conditions. Many municipalities and other local governmental entities have statutes and regulations applicable to the assignment of amounts payable by such entities under their contracts which would need to be satisfied in order to have an assignment of such receivables.

[Do PA debtors have the right to refuse the assignment](#)

YES    NO

[If so, what consequences does this have?](#)

In the case of receivables due from the United States government or departments or agencies of it, if all of the conditions under the Federal Assignment of Claims Act are satisfied, the governmental entity should not be able to refuse the assignment. Under the Federal Assignment of Claims Act, if all of the conditions to the effectiveness of the assignment are satisfied, the applicable governmental entity should only pay the assignee, even for invoices and services which predate the assignment, and if the government pays the assignor by mistake it should be liable to make payment a second time to the assignee.

## Question 15 Any other Matters

Are there any other matters that you would like to tell us about receivables financing in your country, i.e. matters that make it unnecessarily complex or make it very attractive? Are there any features in other countries that you have come across which you would find useful?

The adoption of the UCC by every state in the United States (albeit with minimal variations in certain states) has substantially facilitated a lender's ability to obtain a valid and enforceable security interest in most types of personal property, including receivables, of the borrower.

As noted above, the 2010 amendments to Article 9 of the UCC provide for a series of changes to the text to clarify certain aspects of it. The 2010 amendments, which have been enacted by all 50 states and are effective in most States as of July 1, 2013, include the following changes, among others:

- The introduction of the new term "public organic record" (as noted above), which is important for determining the correct name of a registered organization that must appear on a financing statement
- Expanding the definition of the term "registered organization" to expressly address an organization formed as a "business trust" and other specific issues related to forms of organization
- Providing for methods to determine the name of an individual that is a grantor that must be placed on a financing statement
- Dealing with certain changes to a grantor's business
- Facilitating nonjudicial enforcement of real estate mortgage notes that are pledged as collateral
- Allowing secured parties to file "information statements" to allow a secured party of record to put searchers of the records on notice that a financing statement or the termination of a financing statement is inaccurate or unauthorized

The 2010 amendments also include various changes to the official comments to the UCC to address specific issues that have arisen since the effectiveness of the 2001 amendments to the UCC.

# Summary, conclusion and market sizes

## Summary and Conclusion

When US-president John F. Kennedy addressed the audience gathered in the historic Paulskirche in Frankfurt am Main in Germany in June 1963, he said: "Change is the law of life. And those who look only to the past or the present are certain to miss the future."

For lawyers, it is obvious that the law never stands still or remains unchanged, so it would be just as appropriate to say that not only is change the law of life, but that the life of the law is change. Amendments of existing laws and the entry into force of new laws are inevitable developments in all legal systems and jurisdictions around the world.

The last edition of this EUF Legal Study was published nearly four years ago, in the late summer of 2021, and contained national responses to a questionnaire which had been reviewed for the 2018 and the 2021 editions. Since those revisions, the questionnaire on which this legal study is based has comprised questions on e.g.

- risk minimisation and security options to facilitate undisclosed factoring/invoice finance operations
- the assignment of receivables against public administrations
- reporting duties such as AnaCredit
- rules regarding sustainability and ESG
- the national implementation of the EU e- invoicing directive and of the EU restructuring directive and on
- the introduction of split payment or similar systems under national VAT-regimes.

Due to the amount and speed of legislative changes not only on the national, but also on an international and in particular EU level, an update of the EUF Legal Study is both appropriate and necessary at this point in time.

For this 2024 update of the EUF Legal Study, only question 13 of the questionnaire was amended: It now also contains a request for information on the impact of the Unidroit model law on factoring which was adopted in May 2023. Apart from this, the questionnaire has remained unchanged in comparison to the questionnaire used for the 2021 edition of the EUF Legal Study. As a consequence, a nearly full comparison of the 2021 and 2024 responses to the questionnaire is feasible, even though (in contrast to 2021) it was not possible to obtain updated responses from all countries covered by the EUF Legal Study: The responses from Cyprus, Malta, Slovakia and Russia were unfortunately not updated, which is why we have included the responses for the 2021 edition of the EUF Legal Study and noted this accordingly in the headline of these countries' chapters.

All in all, this updated 2024 version of the EUF Legal Study covers responses for all EU member states as well as six non-member states in- and outside of Europe which can be considered as benchmark countries in the area of factoring.

Generally, many responses in 2024 show an enhanced legislative or regulatory focus on sustainability and ESG issues (e.g. in the Czech Republic, Germany, Finland, France and Hungary), as well as further developments regarding e-invoicing (e.g. France and Latvia) and the national implementation of the restructuring directive (EU) 2019/1023 (e.g. the Netherlands and Sweden). In some countries, changes or clarifications have also occurred with a view to third party rights (e.g. Romania), bans on assignments (e.g. Czech Republic) and payment instruments used by businesses (e.g. Greece and Turkey). In e.g. Denmark and the UK, there has also been debate about the issue of late payments. However, some developments which were already reported in the 2021 EUF Legal Study are apparently still work in progress, such as e.g. the process of adopting a legislative prohibition or limitation to bans on assignments in the Netherlands, or the complete implementation of the EU restructuring directive in Poland. The following explanations will provide some more details and insights into certain legal issues surrounding factoring in the jurisdictions covered by this Legal Study, while also attempting to

compare jurisdictions' approaches and putting these in context with EU legislative projects.

### A short history of receivables financing

Factoring and other closely related forms of receivables financing can look back on a long and international history. It appears that more than 4000 years ago, the Babylonians were already selling and assigning receivables for financing purposes. From as early as the 12<sup>th</sup> century, the merchants of the Hanseatic League established offices in different countries to facilitate trade all over Europe. Also, Portuguese merchants as well as the Fugger-dynasty are said to have practiced a kind of factoring in the 15<sup>th</sup> and 16<sup>th</sup> centuries, just as the English and Dutch did in their trade with East India in the 17<sup>th</sup> century.

The idea behind contemporary forms of receivables financing and the modern concept of factoring, however, seems to have originated in the trading and business relationships between Great Britain and the USA, particularly towards the end of the 19<sup>th</sup> century: Mercantile agents, also called factors, represented British companies in the USA, sold the imported goods on behalf of their British principals and then forwarded the payments they received to their British principals, less a commission for their services as mercantile agents or factors. With time, these factors would not only forward payments, but also guarantee as well as advance the customers' payments to the British exporting companies, in return for the assignment of the British companies' receivables.

Thereafter, this idea of receivables financing spread over the world and also throughout Europe. It has since undergone a variety of developments, many of these based on the different national legal frameworks applicable to the factor in question and to the factoring services provided. It is this variety of national legal frameworks into which the present updated EUF Legal Study 2024 first and foremost seeks to give an insight. However, the overview contained in this study would not be complete without at least an attempt at finding (more or less striking) similarities and differences as well as examples of outstanding singularity or of general trends in the national factoring industries and legal environments described in this study, from which conclusions may be drawn.

### Receivables financing – a general service with particular definitions

The most basic and all-encompassing similarity of the reviewed national legal frameworks is also the most obvious: Receivables financing is offered and practised in all the 27 EU member states as well as in all six important non-EU "benchmark" countries contained in this study (Great Britain, Norway, Russia, Switzerland, Turkey and the USA). However, this is just about as far as the unanimity goes - under which name and how exactly receivables financing is predominantly provided as a financial service differs from country to country: While e.g. in Spain, "confirming" is offered as a special and very popular kind of (reverse) factoring, invoice discounting is predominant in e.g. Great Britain, and factoring without recourse prevails in e.g. Germany, while in the Netherlands, recourse factoring is still largely effected through a pledge over a receivable, although true sale assignments and limited recourse structures are becoming increasingly popular.

When looking at the few legal definitions of factoring or receivables financing which are contained in some national laws or have been devised by courts of law, both similarities and differences can be noticed. Some form of a legal definition of factoring can e.g. be found in Bulgaria, Germany, Greece, Malta and in US case law, whereas in e.g. Turkey and Croatia, specific laws on factoring exist. All of these definitions and legal concepts of factoring entail the transfer of receivables (mainly through assignments) for financing purposes, mostly in B2B-relations and without recourse, but sometimes also allowing for recourse (e.g. in Bulgaria and Croatia) as well as undisclosed transactions (e.g. in Germany and Turkey).

In many European countries, there are no specific laws or rules for factoring but only for the



assignment, pledge or transfer of receivables which are often to be found in the national civil codes; this is the case in e.g. Belgium, Poland, Finland and France. In Europe as a whole, the European Court of Justice (ECJ) explained and defined factoring with and without recourse in a VAT-context in its 2003 judgment in the case of Finanzamt Groß Gerau and MKG Kraftfahrzeuge-Factoring GmbH (C-305/01), thereby influencing e.g. the Belgian VAT law with regard to factoring. In this judgment, the ECJ did not use the widespread English terms of factoring with and without recourse, but unfortunately used (literal translations of) the German factoring terminology, which has over time repeatedly led to some confusion.

Moreover, the definitions of factoring contained in the laws of the aforementioned countries show a variety of approaches as to where to include such a legal definition: While the Maltese chose to include a definition in their civil code, the Bulgarian definition of factoring can be found in the Bulgarian Corporate Income Tax Act. In Germany, the German Banking Act not only regulates, but also defines factoring, while in Turkey and Croatia, special factoring laws exist since 2012 or 2014, respectively. The definitions themselves, in contrast, show some similarities by ranging from the continuous purchase of receivables on the basis of a framework agreement, with or without recourse (Germany) to the assignment of one or more debts arising out of or in connection with the business of a trader as the assignor to a person licensed to carry out the business of banking or the business of factoring as the assignee (Malta). These definitions are largely in agreement with at least the first part of the definition of factoring contained in EUF's glossary<sup>39</sup>, namely that factoring is an "agreement between a business (Assignor) and a financial entity (Factor) in which the Assignor assigns/sells its Receivables to the Factor...". The second part of the definition of factoring contained in the EUF's glossary relates to which services the factor offers in combination with the assignment or sale of the receivable (e.g. accounting or collection services) – this is a different matter which is mostly ignored by these national legal definitions as it depends less on the legal definition of factoring as such than on the kind of factoring chosen by the factoring client.

### Carrying out factoring: How is the transfer of receivables done?

Differences also appear in the way factoring is carried out in the countries included in this study. Mostly, receivables are assigned to a factoring company which then becomes the owner of the assigned receivable. In the Netherlands, the common legal instrument for factoring used to be a pledge, but over recent years, limited recourse structures carried out through the transfer of ownership or assignments of receivables have become more common, thereby clearly eroding the use of pledges which was nearly exclusive up until approximately 15 years ago.

Approaches also differ with a view to procedures and formal requirements: In the large majority of countries covered by this legal study, the assignment of receivables is done in writing, either for the purely practical purpose of having reliable and adequate evidence for subsequent disputes out of and in court (e.g. in Poland, Scotland and Sweden) or because this is more or less strictly required by law (e.g. in the Netherlands, Greece and Portugal). While in e.g. Croatia a signed (and hence presumably written) assignment is enough to be legally valid, e.g. Greek and Norwegian laws offer the added possibility of registration (with varying degrees of use in practice), whereas other countries (e.g. the Netherlands, Hungary and Romania) require a written and registered assignment, sometimes even combined with the further requirement of the debtor's notification of the assignment (e.g. Romania, England, Wales and Northern Ireland). The costs for such registrations vary greatly from country to country (from free of charge in the Netherlands to rather costly in Greece), as do the places for registration, ranging from the Bills of Sale Registry in England, Wales and Northern Ireland over the Electronic Archive for Secured Transactions in Romania, the online securities registry in Hungary, the registration with tax authorities in the Netherlands to the Unified Federal Register of Information on Facts Relating to Legal Entities' Activity in Russia.

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<sup>39</sup> <https://euf.eu.com/glossary-on-factoring-and-commercial-finance.html>

The notification of debtors continues to be a requirement in the majority (at least 70%) of the countries covered by the updated legal study. Such notification is required in e.g. Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Poland, Spain and Sweden, although the effect can vary from thereby binding the debtor to the assignment (this is the case in e.g. Estonia and Poland) to making the assignment valid and binding also on third parties (e.g. in Belgium, Finland and Spain). In Italy, the effectiveness of the assignment against third parties such as creditors of the assignor is achieved by the assignee paying the purchase price and such payment bearing certainty of date - a rather particular but apparently also practical solution.

These variations regarding some basic traits of factoring and receivables financing show that the legal framework in terms of civil or contract law surrounding the factoring companies and the financial services they offer is by no means completely uniform or fully harmonised, neither within nor outside the EU. Nevertheless, certain widespread parallels and similarities can be detected, as well as some noteworthy particularities.

### Special kinds of assignment

It is also worth noting that more than a 2/3 majority of the countries (72%) included in the updated study not only acknowledge the concept of assigning future receivables, but actually consider assignments in advance as valid, even though in some legal frameworks (e.g. in France under the “cession Dailly”), there are prerequisites to be fulfilled which may seem cumbersome or uncertainties remain with a view to possible subsequent insolvency proceedings (e.g. in Finland). Most legal frameworks however only require that the receivable and/or the debtor can be determined or specified sufficiently clearly for an assignment in advance to be valid.

The answers contained in this study paint a similar picture of the legal situation regarding assignments of receivables through Electronic Data Ex- or Interchange (EDI): This method of assigning receivables is accepted and considered legally valid in well over 80% of the reviewed countries, even though in e.g. England, Wales and Northern Ireland such EDI-assignments are considered as equitable assignments, thereby entailing certain legal uncertainties. However, even though such EDI-assignments are theoretically possible in a majority of the countries covered by this legal study, in practice they are apparently not used very widely.

The EU e-invoicing directive has been implemented (at least in part) in more than 50% of the EU member states covered by this study, although the practical implications for factoring so far seem to be quite limited in most countries, mainly due to the fact that the e-invoicing rules often only cover public procurement, i.e. the public sector as debtor, or are not fully mandatory (yet), with e.g. Greece only implementing the e-invoicing directive in 2022 and Portugal having introduced a complete mandatory use of e-invoices for transactions with public authorities since the start of 2025. There are however clear signs that the EU-level efforts to standardize e-invoicing in cases of public procurement, with which the EUF has also been actively involved, are leading to the expected spill-over effect from mandatory e-invoicing in public procurement, thus making e-invoicing and EDI-assignments more popular and more widely used in practice, also in cases of B2B-factoring outside of public procurement. In Latvia, e-invoicing has become mandatory for both B2G and B2B-transactions since the start of 2025, while in France, e-invoicing is being gradually introduced between 2024 and 2027 for all transactions between VAT-taxable persons (i.e. including B2B transactions), and in Germany, it is mandatory for businesses to at least be able to receive e-invoices since January 2025. Outside of the EU, similar trends can be noted, with digital solutions and e-invoicing being very common in Norway, and Turkey amending its laws and administrative practice to allow digital signatures on and the use of remote identification methods for factoring contracts and factoring transactions also being carried out through e.g. digital platforms.

Another special kind of assignment can be seen in undisclosed or non-notification factoring transactions, in some countries also referred to as invoice financing. This is a form of factoring that entails specific risks, in particular the risk that the factoring company does not receive the

debtor's payment, be it on time or at all. Nearly all responding countries provide for some measures to manage, mitigate or minimize these risks. Examples of such measures include the following: The collection account can be in the name of or owned by the factoring company (e.g. in Belgium, Germany, France, the Netherlands) or it can be pledged to or held in trust for the factoring company or another security can be created over the account (e.g. in the Czech Republic, Greece, Italy and Scotland), an (assigned) insurance can cover these risks (e.g. Bulgaria, Hungary and Poland) and/or specific decision-making processes, client checks and rules on debtor notification as *ultima ratio* may be implemented within the factoring company (e.g. in France, Portugal, Norway, England, Wales, Northern Ireland and Scotland). It remains to be seen whether the new "verification of payee"-procedure which is introduced as a consequence of the Instant Payments Regulation<sup>40</sup> as from October 2025 will make (semi-)disclosed factoring more challenging in the future due to a lack of matches between the (original) creditors of the receivables and the payees in certain case scenarios.

Some assignments can also be considered as a specific class as they only cover receivables against certain debtors. This is for example the case with the assignment of debts against the public sector or public authorities. The responses to the corresponding question 14 in the updated legal study show that in around 2/3 the countries, such assignments are not only possible, but can also be carried out without any different requirements having to be met than in other (B2B) factoring relations. However, in nearly a third of all countries covered by the updated legal study, special requirements and rules apply to such debtors and assignments. Examples of such rules include general prohibitions of the assignment of certain debts (e.g. claims against public authorities from tax relations in Hungary), special requirements for the debtor's notification (e.g. by reliable notification in Spain or combined with e.g. an assignability certificate issued by the competent administration in France) or special formal requirements for the assignment as such (e.g. registration of contract with public authority in contracts registry in Czech Republic, formal public contract or notarized private contract in Italy or notarised assignment agreements in Turkey). This already shows that the assignment of receivables against public authorities can be complicated and rather cumbersome, even more so when considering that in quite a few countries (such as e.g. Turkey, Finland, Greece, Italy, Portugal, Romania and Slovakia), the public authority can refuse the assignment and thereby make it impossible, even though such refusals or bans are not encouraged in the public sector of some countries (e.g. England, Wales, Northern Ireland and Scotland).

## Making payments

Also related to the practical side of the factoring business is the question of how payments are effected. Here, bank transfer is clearly the preferred method of payment as it is known and used (largely or even exclusively) in the overwhelming majority of the countries included in the study. In the 2017/2018 edition of this study, a notable increase in the use of bank transfers had occurred in Great Britain (England, Wales and Northern Ireland) where 95% of the payments were effected through bank transfers, in contrast to 80% in 2013 and 60% in 2011. The 2021 study edition showed that in Great Britain, bank transfers were used nearly exclusively (99%), and the 2024 response confirms this. In Ireland, bank transfers have also increased, from 90% in 2021 to 95% in 2024, just like in the Czech Republic, where bank transfers went from 90% in 2021 to 97% in 2024, with "other instruments" accounting for around 2% of the payments, though mostly for export transactions. In other countries such as Turkey, the increase in bank transfers was not as drastic, but still noticeable (52% in 2021 to 53% in 2024).

A few countries such as Spain and Italy submitted information on how payments are effected for the first time in the 2024 study version. Their figures also support the predominance of bank transfers: In Spain, between 53% and 71% of payments are done through bank transfer, while cheques account for between 25% and 29% of payments and are mainly used for transactions involving perishable products. In Italy, 79,5% of payments are done by bank transfer, to which the Italian debt collection routine RIBA (7,5%) and SEPA direct debit (3,5%) can be added as

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<sup>40</sup> Regulation (EU) 2024/886 on instant credit transfers

similar non-physical and bank or payment service related forms of payment.

The general (more or less striking) increase in bank transfers may therefore, at least in part, be attributed to technical developments in (especially online and digital) payment services which ultimately rely on bank transfers as more physical payment methods simply are not feasible solutions for digitalized businesses and transactions. Also, some countries such as Greece introduced measures to promote electronic means of payments, which in turn ultimately very likely promoted bank transfers.

Another indicator of a general digitalization trend also in the area of how payments are effected is the ever decreasing amount of payments by cheque: The use of cheques has declined significantly in countries where it used to be a more or less common form of payment, like Cyprus (from 75% in 2017 to 45% in 2021), Ireland (from 20% in 2017 to 10% in 2021 and in 2024 even down to 5%) and Portugal (from 30% in 2017 to under 5% in 2021). In Turkey, the decrease is much less drastic, but still noticeable (from 48% in 2021 to 47% in 2024). In contrast to the 2017/2018 edition of this study, cheques are therefore apparently no longer the predominant or main method of payment in any country covered by the study, but in quite a few countries, they still come in (a more or less far removed) second place after bank transfers. Other instruments of payment (e.g. direct debits, credit and debit card operations, but also cash payments) are used in e.g. Poland and Sweden, but they nevertheless take a still further removed third place, while bills of exchange (in e.g. Croatia) are becoming even less frequent and therefore come fourth out of these four options. Hence, means of cashless and nowadays mainly digital payments are clearly preferred in a large majority of countries, probably also because of the aforementioned need for adequate evidence in case of e.g. subsequent arguments, but supposedly mainly due to the ever-increasing digitalisation trend.

Closely connected to the matter of payment methods is the question whether the reviewed legal systems provide for any penalties in the case of late payments. Considering the commercial importance of such penalties, it is hardly surprising that all legal frameworks included in this updated legal study know and allow for such penalties, but once more, the approaches vary: In some national legal frameworks, there are laws and statutes which explicitly establish and even put a number on certain penalties such as interest rates and damages which have to be paid by the debtor (e.g. in Austria, Belgium and Bulgaria) while other legal systems allow for (additional) individually developed contractual clauses on penalties for late payments (as in e.g. Poland, Spain, Turkey, Russia and the USA). The implementation of the EU late payment directive 2011/7/EU<sup>41</sup> has been effected in all EU member states, mainly leading to some legal changes to an already existing national legal regime on late payments. But in some cases, the national legislator opted for a stricter implementation or “gold-plating” of the EU late payments directive, or used the implementation process as an opportunity to also introduce other rules which are somehow considered to be connected to late payments, e.g. in Germany and Romania, where additional rules on the admissibility and validity of contractual terms of payment/payment targets/payment terms were introduced, and in France, where the law subsequent to the implementation of the EU late payment directive states that contractual payment terms which exceed the maximum legal payment terms entail administrative sanctions of up to 75,000 Euro for natural persons or up to 2 or even 4 million Euro for legal persons. Also in the Netherlands, the implementation of the EU late payment directive has gone beyond what the directive requires by introducing a special rule for payment terms agreed on with large companies as debtors: While the legal payment term for companies is 60 days in the Netherlands, other contractual arrangements (i.e. also longer payment terms) can generally be agreed on by businesses, just as foreseen in the EU late payments directive. However, Dutch law states that large companies may not foresee payment terms longer than 60 days in contracts with their SME creditors, otherwise such longer payment terms are not valid and will automatically be changed into a maximum payment term of 30 days. In Poland, an apparently similar view on large enterprises has led to the law implementing the EU late payments directive stating that suppliers may charge interest if their debtor’s payment date is later than 30 days after the invoice date, unless the supplier is a large enterprise. It is also worth noting that Polish

<sup>41</sup> Directive 2011/7/EU of 16 February 2011 on combating late payment in commercial transactions



law differentiates between a statutory and a contractual interest rate for late payments and that both have gone up since 2021, which in itself is normal due to economic developments such as inflation. Notwithstanding, the (maximum) contractual interest rate for late payments foreseen in Polish law has increased drastically, from at most 11.20% in 2020 to a maximum of 22.5% in 2024; it is however unclear how often this maximum contractual interest rate is used and actually enforced.

The EU late payment directive has also had effects outside the EU, as shown by the Norwegian law on overdue payments which has been influenced by the EU late payments directive. Also, the laws on late payments in Great Britain have so far remained unchanged since Brexit and are therefore based on the EU late payments directive of 2011, although it is possible that since poor payment practices and the treatment of small businesses remain prominent issues amongst UK stakeholders, amendments could occur in the future and then depart from the EU late payment directive.

It is unclear whether such rules exceeding or adding to the scope of the EU late payment directive are actually helpful in avoiding late payments, but experiences and data over the last nearly 14 years since the EU late payments directive was finalized indicate little to no impact. As an example, introducing a maximum payment period to be validly agreed on in contractual terms may seem as a suitable tool to prevent late payments at an early stage, but in practice, there are many cases of such contractual terms either being agreed on despite corresponding legal restrictions or being violated by one or both parties to a contract, even despite the possibility of sanctioning measures.

The 2016 report COM(2016) 534 final from the EU Commission to the EU Parliament and the Council on the implementation of the EU late payments directive inter alia showed that even though payment periods were at that time slowly decreasing, especially public entities in more than half the EU member states were not respecting the directive's payment periods of 30 days or less, and around half of the creditors did not claim the late payment interests they were entitled to. The report ultimately pointed out that there was little evidence of the EU late payments directive having a measurable impact on business' liquidity and the facilitation of cross-border trade so that late payments still continued being a relevant issue for companies across the EU.

Over the last years and in particular since the global Covid 19-pandemic started showing its economic effects, the EU has once more put a spotlight on how to avoid and mitigate late payments. The EU Payment Observatory, which was set up by the EU Commission in 2022, is tasked with collecting, validating, consolidating and analysing data on payments in commercial transactions as well as mapping documents, policy measures and other relevant initiatives to combat late payments and promote a prompt payment culture in commercial transactions. Together with other sectorial associations and business or industry representatives as well as representatives from national authorities and academia, the EUF early on became involved in the EU Payment Observatory's stakeholder forum. In its 2024 annual report, the EU Payment Observatory states that the share of EU enterprises experiencing problems because of late payments has increased to 47%, thus unfortunately returning to pre-pandemic levels, and that average payment periods have deteriorated in both B2B as well as G2B transactions, though B2B transactions increased the most, namely by more than 5 days since 2022. With B2B transactions, larger companies remain less likely to pay on time in 15 out of 20 EU member states, while micro companies in 13 out of 20 countries pay on time. The negative effects of late payments as stated in the EU Payment Observatory's 2024 annual report range from causing more late payments further down the value or supply chain over significantly influencing investment decisions e.g. regarding sustainability and digitalization to considerably hindering a business' ability to access financial services, which then in turn can lead to liquidity issues and hence set off a "vicious circle" of late payments.

In late 2022 and early 2023, the EU Commission indicated through a "call for evidence" that a review of the EU late payments directive was imminent, but only just over half a year later in September 2023, the EU Commission surprised almost everyone by issuing a proposal for an EU late payments regulation with some fundamental and far-reaching additions and changes to the measures aimed at combating late payments: The proposal for an EU late payments

regulation contains inter alia a fixed maximum cap of 30 days on contractual payment terms, an automatism for late payment interests and it foresees the introduction of national enforcement authorities to ensure compliance with the new rules. This proposal met with quite a lot of criticism from both business and industry associations (including the EUF) as well as from a majority of EU member states, who criticized both the choice of legislative instrument (regulation instead of a reviewed directive) as well as its contents as too far-reaching since e.g. the cap on contractual payment terms restricts contractual freedom and certain rules in the proposal would entail changing or harmonizing certain aspects of national civil and contract laws - for the first time! Also, unintended negative consequences were pointed out such as e.g. the cap on payment terms to 30 days resulting in a massive liquidity and financing gap especially for SMEs. Up until the publication of the proposal for the EU late payments regulation, it seemed that a review of the rules to combat late payment would rather focus on measures which can counteract late payments as such or mitigate their effects, e.g. more efficient judiciary and alternative dispute resolutions and support for certain forms of financing such as factoring which can help businesses, especially SMEs, avoid many or even all negative effects of late payments and even pay more promptly. However, the proposal for the late payments regulation is lacking in this regard: It does e.g. reference financial education and raising awareness of e.g. credit management tools, but only the amendments to the proposal tabled by the EU Parliament in April 2024 actually promote e.g. factoring and address the issue of contractual bans on assignments which hinder especially SMEs' access to financing services such as factoring. At the turn of the year 2024 to 2025, the proposed late payments regulation seems more controversial than ever, with several EU member states openly stating their opposition to the proposal and demanding the EU Commission to withdraw and possibly replace it with a proposal for a reviewed directive, but only after further research and analysis into the issue of late payments.

In this context, it is worth mentioning once more other means of discouraging late payments which are practised in e.g. Portugal and Denmark. In Portugal, payment delays by debtors in cases of factoring without recourse can be reported to the Portuguese central bank, leading to a corresponding entry in the Bank of Portugal's monthly overview of receivables and debts which is made known to more or less the whole financial industry in Portugal. Such entries in the Portuguese central bank's monthly overview may lead to a decrease in creditworthiness, which can be seen as an additional or different form of penalty for late payments, which may be even more effective in practice than e.g. creditors in theory being able to claim interest payments under the law, but often feeling less inclined to do so in practice.

A soft law approach was implemented in Denmark in 2022, with an initiative of the Danish ministry of industry, business and financial affairs and trade and industry associations (including members of the Danish factoring association FoL) working together to strengthen a healthy payment culture through setting up a code. This code was reviewed in 2023, but no changes were made, and it is apparently generally accepted and followed by businesses.

The EUF maintains its point of view that the proposed EU late payments regulation with its fixed maximum payment periods is likely to do more harm than good, especially to SMEs, and that available means and services that help minimize and mitigate the negative effects of late payments should be supported and fostered instead.

### VAT on factoring

Another area with a great amount of similarities as shown by this updated legal study, although only in basic principles, lies in VAT on factoring: A large majority of around 80% of the reviewed countries charge VAT on the factoring commission and service charge, and around 48% do not charge VAT on the interest and discount charge. Turkey is a special case as no VAT is applied to factoring, but rather a particular "banking, insurance and transaction tax" exists which covers forms of income like factoring commission and fees. In a similar vein, in Portugal, when advances are made, factoring commission and interest are subject not to VAT, but to a stamp tax. In most countries, there is also no difference in the treatment of banks and non-banks providing factoring services with regard to VAT. To a certain extent, this large extent of

harmonization can be attributed to the EU's legislative contributions to harmonising national VAT-regimes. However, there are answers received in the study which also indicate that different national approaches to the issue of VAT on factoring remain. This is last but not least reflected in the fact that in quite a few countries, VAT-issues regarding the assignment of receivables exist (e.g. in Finland and Portugal).

Measures to counter tax evasion are apparently generally on the rise, in some countries also with a specific view to VAT: Italy introduced a system of "split payments" for certain supplies of goods and services to public authorities in 2015, with subsequent expansions of its scope of application to e.g. certain companies listed on the stock exchange so that this system now requires debtors to pay the VAT payable under a contract directly into a dedicated bank account of the State Treasury instead of to the supplier/seller under the factoring contract or to the factoring company. Similarly, Poland has introduced an obligatory split payment system for transactions between taxpaying businesses which go over a certain amount. In some countries such as Lithuania, Slovakia and Slovenia, split payments only apply in certain cases or a similar mechanism to split payments is in place. In Great Britain, the introduction of a split payments regime has been under consideration since 2018, but for the time being, a reverse charge procedure is being applied to supplies of certain goods and services, and since 2020, new insolvency rules entail that tax authorities have the status of preferential creditor regarding inter alia unpaid VAT. Despite these numerous examples of split payments or similar regimes, more than 40% of all responses contained in the study stated clearly that no split payments system or similar measures have been implemented in their countries. A similar picture applies to "white lists" and other VAT-related reporting duties for factoring companies as well as other measures to ensure the factoring client's payment of VAT: Around 40% clearly denied such lists, reporting duties or other measures to ensure VAT-payment being applicable in their countries, with only Poland explicitly confirming the introduction of "white lists" in autumn 2019, and other countries such as the Czech Republic and Lithuania resorting to some form of checks of VAT-payments through the financial or tax authorities. In e.g. Germany and Switzerland, there are special rules establishing additional or joint VAT liabilities for assignees in the case of e.g. factoring in order to ensure VAT-payment. All in all, this shows a very varied array of measures to guarantee that at least certain taxes such as VAT are paid.

### Receivables as collateral – purposes of assignments

As for security interests such as fixed and floating charges, more than 60% of the reviewed countries allow such charges over all assets, but in nearly a third of the responses, it is stated that such charges are (theoretically) possible, but rarely used in practice, if at all.

There is also a significant number of responses, namely nearly 40%, that explicitly state that there is no difference in status when the assignment has different purposes or backgrounds, e.g. if the receivables are assigned in fulfilment of a purchase contract over these receivables or if they are assigned as collateral for a financing facility. However, there are examples for other views which differentiate between varying purposes or backgrounds of assignments. In Austria, for example, the purchaser in a factoring transaction obtains the right to collect the claim and is neither internally nor externally bound to refrain from collecting these receivables – in contrast to cases where receivables are used as collateral for financing facilities, in which cases the assignee is externally entitled to collect, but is internally bound by his agreement with the assignor and may therefore be liable for a breach of this agreement. Similarly, in Turkey, assignments are generally the preferred form of security as they transfer the title to the assigned receivables to the assignee which is not the case with pledged receivables. In Hungary, simple sales or assignments of receivables need not be registered, apparently irrespective of their background, but if the purpose of the purchase/assignment lies in financing the seller of the receivables, then the transaction is classified as a case of factoring and hence needs to be registered in the online securities registry in order for the receivables to be transferred effectively to the factor. In Italy, differences between a pledge and an outright purchase of receivables can be noted in the case of the factoring client's insolvency since pledges can only be declared void under insolvency law under stricter circumstances than those applicable to the purchase of



debts.

These examples show that many countries not only differentiate as to the purpose or background of transactions but that they also attribute varying legal consequences to this differentiation, from rather basic civil or contract law questions such as collection rights to other issues arising in more specialised legal areas such as insolvency law.

### Obstacles for factoring

As for the question of third party rights affecting either the assignment or the assigned receivable, in around 80% of the reviewed countries, rights of third parties such as the factoring client's supplier or tax debts can affect the assignment or the assigned receivable in one way or another. In some responses, even certain rights of the debtor such as set-off rights were considered as third-party rights affecting the assigned receivable, even though it can well be argued that the debtor should not be considered as a third party in this regard. Notwithstanding, the extent to which these rights affect the factoring company as assignee varies: Rights of the factoring client's supplier such as pledges or retention of title are known in e.g. the Czech Republic, Germany, Hungary and France, although with varying practical relevance. In some countries such as the Czech Republic, Greece, Italy, Portugal and the USA (on both federal and state level), tax claims and/or unpaid social security debts can also lead to deductions, although in some of these countries, this is limited to deductions by public administration debtors of the receivable in question.

In the case of a conflict of several assignments over the same receivable, nearly a third of the countries covered by the legal study follow the principle of temporal priority of the assignment or the notification (e.g. Croatia, Finland, the Netherlands, Poland, Romania and Slovenia).

In this context, Germany presents a particular solution to the legal problem that a receivable is assigned both to the factoring client's supplier by way of an (extended) retention of title and to the factoring company: Even if the assignment in the non-recourse factoring relationship is effected after the assignment through the retention of title, the assignment to the factoring company is under certain circumstances considered valid, thereby breaking the general rule of temporal priority in favour of non-recourse factoring.

Another legal peculiarity is to be found in Spain where a third purchaser can validly acquire receivables from the seller if they are in good faith and the other assignment (e.g. to the factoring company) has not been notarized.

A similar result can be deduced from the information obtained on contractual prohibitions of assignments: In a few countries, the contractual prohibition or ban on assignments (b.o.a.) is generally not legally valid and/or has no effect whatsoever on the factoring relationship and the corresponding assignment (e.g. in France, Hungary, Lithuania and Luxembourg). However, in around 2/3 of the countries included in the updated study, contractual prohibitions/b.o.a. are tolerated, possible and legally valid. Once more, however, the effects of such contractual prohibitions on factoring vary, from the ban being fully valid *erga omnes* to only being valid relatively, i.e. between the parties of the contract in which the ban was agreed upon, and/or combined with a range of subsequent effects of the ban.

In some countries, the prohibition clause's effect is mitigated or limited, e.g. because the assignment remains valid (only) between the assignor and the assignee (e.g. in Poland, Romania and Italy) or because the assignee's good faith is protected (e.g. in Finland, Sweden and Turkey) or because the debtor retains the right to effect discharging payments to the assignor despite his knowledge of the otherwise valid assignment (e.g. Denmark, Slovenia and Germany). In this context, certain countries such as Germany and Russia also differentiate between prohibitions of assignments in B2C and B2B relations: If a ban on assignments is part of a B2B contractual relationship in these countries, such a clause is apparently generally considered as less worthy of legal protection than in B2C cases, possibly also because the transferability of receivables plays such an important role in modern business relations.

In the Netherlands, the effect of the b.o.a. depends on the language which is chosen: If the b.o.a.

is linked to the parties' capacity to assign, then the effect is purely between those contractual parties, whereas if reference is made to certain articles of the Dutch civil code, there is an *in rem* effect and the assignment is null and void. B.o.a. with only the aforementioned contractual effects are sometimes linked to (substantial) fines for assignments or pledges without the debtor's prior consent, which can ultimately lead to the debtor avoiding its payment obligation through a set-off, thus deterring both factoring companies and (potential) factoring clients from assigning such receivables.

Contractual prohibitions of assignments are also valid in e.g. the Czech Republic, Switzerland, Spain, Portugal, Scotland (with certain informal recommendations that Scottish state and local authority entities do not include ban on assignment clauses in their contracts), Norway and Belgium, but at least in Switzerland, Norway and Belgium there are rules to protect the assignee, either through the debtor having to mention the b.o.a. in their written acknowledgment of the debt or through the assignor's duty to inform about such restrictions or through putting the burden of proof on the debtor that such a prohibition clause was actually recognized and accepted by the assignor.

Similarly, in Greece, the debtor cannot claim that the receivable was not validly assigned due to a b.o.a. if the assignee acquired the receivable relying on a document which did not mention any b.o.a. or prohibition of assignments. Moreover, Greek law states that the factoring agreement prevails over any b.o.a. clause or agreement between the factoring client and the debtor (with the exception of receivables against public sector debtors) – this is an exceptionally factoring-specific and -supportive law on b.o.a.-clauses.

In the Czech Republic, a court decided in April 2023 that the assignment to an assignee who knew about the b.o.a. is temporarily ineffective until the debtor consents to the assignment, if only implicitly. The court's reasoning in this judgement makes it possible that in the case of a bona fide assignee, the protection of the assignee's interests could override the debtor's interests, as long as the assignee was not and could not have been aware of the b.o.a. if exercising ordinary care.

These are some examples of more or less well-balanced rules which do not categorically exclude contractual prohibitions or bans on assignments, but rather take into account the interests of both factoring companies and factoring clients, especially the latter's need for financing, while also considering the practical non-feasibility of compelling factoring companies to check all of their factoring clients' contractual relationships and agreements for b.o.a.-clauses.

It should be noted that in England, Wales and Northern Ireland, the Business Contract Terms (Assignment) Regulations were brought into force at the end of 2018, providing that a term in a business contract will have no effect to the extent that it prohibits or even restricts the assignment of a receivable arising under that contract. However, since these regulations were apparently aimed at supporting SMEs rather than fostering factoring in general, they only apply to a limited range of contracts, excluding e.g. B2B-contracts with suppliers that are large enterprises. Also, these regulations do not (yet) apply to Scotland. Hence, b.o.a.-clauses continue to prevent receivables from being validly assigned to a factoring company in the UK.

Nevertheless, this most recent legislative development in the UK, together with the aforementioned examples of more or less well-balanced rules with the aim of at least limiting the negative effects of b.o.a.-clauses on factoring as well as a still ongoing legislative process in the Netherlands aimed at prohibiting bans on assignments through changes to Dutch law<sup>42</sup> may be seen as a starting point and as positive examples for supporting factoring through restricting contractual prohibitions and bans on assignments, just as suggested by the EUF in the context of the ongoing legislative process for an EU late payments regulation. However, it is important to note that any such supporting measures for factoring need to cover not only b.o.a.-clauses agreed upon between the assignor/factoring client and the debtor, but also contractual clauses between the assignor/factoring client and e.g. their suppliers which may negatively

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<sup>42</sup> In early March 2025, the Dutch parliament adopted a prohibition on bans on assignments, the details and effects of which remain to be seen.

impact and hinder the effective transfer of receivables for financing purposes, e.g. through legal issues arising from a (prolonged) retention of title agreed upon between the assignor/factoring client and their suppliers.

### In case of insolvency

A rather high rate of national variation can be seen when it comes to more detailed aspects of the factoring company's rights in case of a client's insolvency. Here, there are many particularities in national insolvency laws to be considered so that ultimately, only a general tendency to prioritize factoring companies over other creditors can be established: Around 2/3 of the countries included in this EUF Legal Study apparently grant certain priority rights to the financier in the case of factoring with or without recourse and/or for invoice discounting, in particular if the assigned receivable/debt was incurred before the insolvency and validly assigned or otherwise transferred to the factor. Such priority rights of the factoring company will often take the form of a right of segregation for the purchased/assigned receivables, with the consequence that the receivables in question are considered as being outside the scope of the insolvency estate or assets (e.g. in Austria, Estonia, Germany, Greece, the Netherlands, Spain and Ireland).

However, these priority rights do not always help the factoring company as e.g. assignments and transfers of receivables as well as debtor's payments can be challenged by e.g. the insolvency practitioner through avoidance actions, not only if these transactions and payments took place after the insolvency, but under certain circumstances also if they were effected before the insolvency. This is e.g. the case in Italy for payments from the assignee to the assignor which occurred within a year before the insolvency was declared and while the assignee was aware of the assignor's insolvency. In e.g. Germany, the Netherlands and Romania, an unjustified and wilful preference of certain creditors over others may give rise to an avoidance action and clawback on payments or even to a nullification of the assignment. In this context, Maltese insolvency law contains rather unique differentiations and criteria for contestations and clawbacks as it stipulates that inter alia the status of the factoring client (e.g. as individual trader or limited liability company) is decisive for whether e.g. an act of fraudulent preference has occurred and such act is deemed null and void.

Another issue related to the factoring client being in a financial crisis or even insolvent is the question whether a factoring contract can consequently be terminated: In Austria, a clause that entitles the factoring company to terminate the contract without further reasons and with immediate effect in the case of the factoring client's insolvency is null and void; even the termination of the factoring contract within six months after insolvency proceedings have begun is problematic from a legal point of view – the factoring company needs a solid reason for termination, but neither the client's bad economic situation nor his late payments on receivables incurred before the insolvency proceedings are considered as solid reasons. A similar rule exists in Spanish insolvency law, prohibiting the factoring company from terminating the factoring contract simply due to the debtor's insolvency.

The EU directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (EU restructuring directive) entered into force in mid-2019 and was to be implemented into the national laws of the EU member states by mid-July 2021, i.e. just before the 2021 updated EUF Legal Study was published. The responses contained in the 2021 version of the Legal Study showed that only around 20% of the respondents stated that the restructuring directive had already been implemented in their country, while this was not yet the case during the first half of 2021 in approximately half of the EU member states. Notwithstanding the fact that the restructuring directive had not yet been implemented into all EU member states' national laws by mid-2021, quite a few EU jurisdictions (e.g. Denmark, Czech Republic and Ireland) already had some form of restructuring procedure in place, before and independently from the restructuring directive; also outside the EU such as

in e.g. Switzerland debt restructuring proceedings to save businesses and avert insolvencies are possible. This can be seen as further proof of an ongoing legislative trend to foster the restructuring and “rescue” of companies in crisis which was already noted in the 2017/2018 edition of the EUF Legal Study.

Since 2021, the EU restructuring directive has been implemented in an increasing number of EU member states: 15 of the responses received clearly state that the EU restructuring directive has been implemented and transposed into national law, either fully (as in e.g. Finland, Hungary and Portugal) or at least partly (as in Poland), while for around a dozen EU member states, the implementation has not occurred yet (Croatia) or the implementation status is unclear (e.g. in Luxembourg and Romania). Where implementation has already taken place, there is a clear majority stating that this has had no or only a neutral effect on factoring, which refutes the negative expectations which were voiced during the 2021 version of the study. Only the response for the Netherlands mentions an ongoing court case where a bank so far has been ordered by the courts to provide continued financing throughout the freeze period of restructuring procedures – it remains to be seen whether this could also become relevant for factoring companies in the Netherlands. Some countries also point out a certain reluctance to use the new restructuring measures based on the EU restructuring directive, which leads to limited practical experiences with the new measures or even certain (temporary) adaptations (e.g. in Germany, France and Hungary). Overall, it seems that the EU restructuring directive, despite some national implementation processes involving quite fundamental and in-depth changes, did not make the “great wave” which was expected back in 2021, but has so far rather only created minor ripples in the sea of financially distressed companies and insolvencies. It remains to be seen whether this may still change over the next years, depending on the development of the economy and of the number of businesses in distress or even insolvency.

Some countries also adopted (temporary and/or permanent) measures in the area of insolvency laws in relation to the economic consequences of the Covid 19-pandemic: E.g. Germany and Hungary delayed the commencement of insolvency or liquidation proceedings, while Finland (originally temporarily, but ultimately permanently) limited the debt collection measures and the costs arising from these. In England, Wales and Northern Ireland, a new moratorium process was introduced in response to the Covid 19-pandemic, but with permanent effect; this moratorium process is designed to allow financially distressed incorporated entities a short breathing space from enforcement actions by certain types of creditors while these companies are preparing and organising rescue and restructuring attempts.

The proposal for a new EU directive harmonizing certain aspects of insolvency law which was presented in December 2022 comprises aspects of substantive insolvency laws normally only covered by the EU member states national insolvency legislation. It contains new European rules on issues such as avoidance actions, more transparent insolvency asset tracing through e.g. access to centralized registers, the introduction of mandatory creditors’ committees with certain rights and duties as well as harmonized rules on pre-pack proceedings and a winding-up process for micro-enterprises. Considering the aforementioned numerous variations and differences between national insolvency laws, the urge to harmonize this area of law more on a European level is understandable. However, national legal particularities which may have evolved historically over time and are suited to certain national conditions need to be taken into consideration. Also, a good fit of such harmonized EU rules with other areas of national legislation need to be ensured in order to prevent regulatory gaps or conflicting regulation. Moreover, any harmonized EU legislation should avoid re-opening legal issues which were previously resolved on a national level, such as definitions and interpretations of certain legal terms and concepts related to insolvency proceedings. Like many other areas of law, insolvency laws have to strike a careful balance between different parties and their interests, and this balance needs to be maintained also when amending legislation for EU harmonization purposes.

In March 2023, EUF joined forces with Leaseurope and presented their views on this proposal for a EU directive to harmonize certain aspects of insolvency law in a common position paper,



inter alia calling for prudent and balanced legislation that respects priority satisfaction for e.g. factoring companies with full asset ownership, takes the interests of the creditors better into account and avoids a too far-reaching exchange of contractual counterparties or debtors. At the end of 2024, only a partial general approach was reached by the Council, excluding the issues of pre-pack proceedings, streamlined winding-up procedures for microbusinesses, and creditors' committees, all of which still require further discussions in the Council before trilogue negotiations on the directive as a whole can even start. The area of insolvency law may therefore see further changes over the next years, both on the EU as well as on national levels.

### Financial supervision and regulation

In the first updated edition of the EUF Legal Study in 2013, the existence as well as the absence of legal prerequisites such as license requirements and of supervision for operations in factoring and receivables financing was nearly evenly distributed throughout the EU as well as among the five non-EU states included in the study then, with a slight tendency towards non-regulation.

In the updated edition from 2017/2018, this picture had changed somewhat: In nearly a third of all countries covered by the study then, a license was required to provide factoring services, while in over 40% of the surveyed countries, no license was required. However, not all responses included in the 2017/2018 edition of this legal study had been updated, and almost 30% of all the responses remained silent on this issue, hence leaving a substantial data gap.

In the 2021 edition of the EUF Legal Study, there was no such data gap: It was possible to include updates to all the responses from all countries covered by the study, and all respondents actually answered at least the first and most basic questions regarding the financial supervision for factoring. From this feedback, it became clear that in 2021, in approximately 90% of all countries factoring was not limited to being provided only by banks or credit institutions, but rather, other companies in the financing industry were also allowed to provide factoring services. Only in Austria, Lithuania and Portugal factoring services could solely be provided by credit institutions, i.e. a banking license was required for factoring. In 11 other countries (33%, e.g. Bulgaria, Cyprus, France, Germany, Hungary Italy and Turkey), another kind of license or authorisation was required to provide factoring services, while in the clear majority of countries included in the 2021 study (55%, e.g. Belgium, Finland, the Netherlands, Poland, Spain and Slovakia), no license at all was required for factoring.

The responses to the current 2024 study show a very similar picture: Out of the 27 EU member states and 6 non-EU responses, only 4 (approx. 12%) of the jurisdictions limit factoring activities to banks or credit institutions (Austria, Lithuania, Portugal and Norway), while 10 (approx. 30%) of the countries covered require a different or even special factoring license (e.g. Croatia, France, Germany, Hungary, Italy and Turkey), and the remaining jurisdictions (approx. 55%) still have no licensing or authorization requirements. In the 2017/2018 edition of this study, limiting the provision of factoring services to banks only applied just to Austria, while in 2024, three more countries have joined this strict approach, now including also Norway, where the licensing requirement was introduced in 2015 already, but apparently not properly explained in the responses provided to the previous versions of the EUF Legal Study.

In the USA, the situation was slightly ambivalent in 2021 and it remains unchanged in 2024: There is no licensing requirement on the federal level, but only in certain states (e.g. in New York and California), with varying standards and requirements connected to such licenses.

When comparing the responses from the 2013 edition with the current 2024 edition, the rather even distribution of licenses being required or not has remained, but there is still a clear tendency towards not requiring any licenses at all (42% require banking or other license, 55% require no license at all).

In those countries with licensing requirements, these are often also connected to supervisory regimes for factoring companies or to certain legal or supervisory requirements. These supervisory requirements cover a wide range, from having to comply with a minimum capital requirement to set up a factoring company (e.g. in Bulgaria and Greece) over being required to obtain a license as a financial institution and fulfil some out of a number of regulatory

requirements originally intended for credit institutions (e.g. in Germany) to being treated more or less like banks/credit institutions as e.g. in France and Italy, where factoring companies are subject to e.g. (nearly all) the Basel rules on regulatory capital, just like credit institutions. No capital requirements whatsoever apply in e.g. the Czech Republic and Denmark.

In contrast, the duty to comply with liquidity risk requirements has become more evenly distributed, also in comparison to 2021, with around 42% having to comply (40% in 2021) and approximately 48% not having to comply (57% in 2021). However, in more than 63% of the countries included in this updated study, some form of risk management, either factoring-specific or drafted for banks, applies also to factoring companies which are not (affiliated to) credit institutions.

With requirements regarding anti-money laundering and the prevention of terrorist financing (AML/CTF), contributions to the deposit guarantee scheme and data protection, there is (nearly) unanimity amongst all those that responded to this question: The AML/CTF-requirements and data protection rules generally apply to all factoring companies in all countries, with the only exception of Belgium, where the AML-rules currently do not apply to not licensed/registered factoring activities. Regarding deposit guarantee schemes, factoring companies which are not banks/credit institutions generally do not have to contribute to these schemes as they do not take deposits. For credit institutions, different rules apply, and in e.g. France, the balances of credit institutions' factoring operations are covered by the deposit guarantee scheme since 2019.

The applicability of other supervisory requirements such as the PSD II<sup>43</sup> (payment services) paint a far more heterogenous picture: PSD II requirements apparently apply also to factoring in 27% of the countries contained in the study, while the clear majority of 57% countries do not apply the PSD II to factoring companies as such.

The general trend of introducing more or more detailed regulation in order to make the financial sector more aware of certain risks and hence more stable and more resilient to recession and crises also affects the receivables financing and factoring industry. This is not only shown by the aforementioned examples from different jurisdictions, but it can also be noted in countries with less supervisory regulation for factoring such as the Netherlands, where there is a trend of financial institutions being held to an expanding duty of care with regards to e.g. clients' interests as well as transparency and information policies. The general aim behind this is laudable. However, the impact of more and new regulation ultimately still depends on the national level of (prudential) regulation and financial supervision, and there are examples of (national) regulatory developments for factoring companies which stand out and can be seen as disproportionate: In e.g. Germany, the national implementation of the DORA-Regulation<sup>44</sup> at the end of 2024 entailed "gold plating" in the form of an unexpectedly widened scope of application so that also factoring companies which are not credit institutions have to comply with most requirements of that EU regulation due to the national implementation law. In a similar vein, standalone factoring subsidiaries of banks in Greece which are not credit institutions themselves have to fulfil AnaCredit reporting obligations since mid-2024, even though they generally are not part of the reporting population under the AnaCredit-Regulation<sup>45</sup>.

Essentially, factoring companies endeavour to ensure an adequate and appropriate level of regulation and supervision, first and foremost because factoring differs so much from "traditional" forms of financing such as loans. Therefore, the financial supervision and rules which properly apply to banks/credit institutions are often inappropriate for factoring companies. Over the years, the EUF has identified and addressed a number of examples of this potential mismatch. Following our intervention, a factoring adequate practical implementation of the long term liquidity ratio (NSFR) was adopted in 2019, whilst the EBA's current guidelines on the application of the definition of default are another example where the EUF has been advocating

<sup>43</sup> Directive (EU) 2015/2366 of 25 November 2015 on payment services in the internal market

<sup>44</sup> Regulation (EU) 2022/2554 of 14 December 2022 on digital operational resilience for the financial sector

<sup>45</sup> Regulation (EU) 2016/867 of the ECB of 18 May 2016 on the collection of granular credit and credit risk data (ECB/2016/13)

for and working on a factoring-adequate resolution for a long period of time.

### ESG and sustainability

With a view to sustainability and ESG-related measures, the 2024 update of the EUF Legal Study shows a clear increase in relevance of ESG and sustainability regulations, with an almost 50-50 division of (non-)applicability, in comparison to 2021, when these regulations were only applicable to factoring companies in nearly 1/3 of the surveyed countries, while in more than 45% of the countries, factoring companies were not subject to any sustainability or ESG requirements other than those that they themselves decided to follow. Therefore, within less than 5 years, the applicability of rules and laws on sustainability has increased and also widened. Accordingly, some of the responses contained in the 2024 Legal Study (e.g. from the Czech Republic, Germany, Italy, France, Finland and Portugal) state that sustainability and ESG-issues have become increasingly relevant issues also for the factoring industry due to new laws and regulations coming into force: In Germany, prudential minimum requirements for ESG-risk management became binding in 2023, while the Finnish Accounting Act since lately also covers ESG reporting obligations, and France started adopting a legislative and regulatory framework on corporate social responsibility in 2019.

On the other hand, ESG and sustainability have also become increasingly relevant topics in some countries where no such binding legislation yet exists (e.g. in Portugal) – the general debate and political occurrences over the last years will likely have contributed to this development. Recent EU legislation such as the EU Taxonomy, Corporate Sustainability Due Diligence Directive and the Corporate Sustainability Reporting Directive as well as the ongoing incorporation of ESG and sustainability aspects into the works of e.g. the Basel Committee, the ECB and the EBA show that further increase in this regulatory area is imminent - ESG and sustainability are by far no longer just “buzz words” or a short-lived trend. However, it remains to be seen whether the current discussions within EU institutions about adopting certain omnibus directives and regulations will actually delay or lessen the regulatory and administrative requirements also in this regard, or whether the proponents of more and/or stricter regulation, including e.g. brown penalising and green supporting factors in the context of regulatory capital requirements, will gain the upper hand.

### Factoring in international law

Even though this study focuses mainly on national legal frameworks, international legal aspects cannot be totally disregarded since they also influence national laws and cross border factoring relationships. As factoring is widely used in international trade relations, questions on the conflict of laws and on which law is applicable to e.g. the assignment and the underlying receivable frequently arise. This is where the UNIDROIT Convention on International Factoring from 1988 (also called the Ottawa convention) and the United Nations' UNCITRAL Convention on the Assignment of Receivables in International trade from 2001 come in: They are to provide helpful rules by which all the parties of these conventions are supposed to abide.

However, the responses to this updated study as well as the online status reports on the signatures and ratifications of both conventions show that their practical impact is very limited, to say the least: The Ottawa convention of 1988 has only been signed and/or ratified by 9 EU member states as well as United Kingdom, Russia and the USA, with the other countries included in this study apparently showing no intention of signing and/or ratifying it. The UNCITRAL convention of 2001 has neither been ratified nor come into force in any of the reviewed countries. For factoring companies from and operating within the EU, the regulation (EC) 593/2008 on the law applicable to contractual obligations (also called the Rome I-regulation due to its predecessor, the EU [Convention on the Law Applicable to Contractual Obligations signed in Rome in 1980](#)) is currently surely of more use and practical relevance than the two aforementioned international conventions, notwithstanding the lacunae and shortcomings of the Rome I-regulation, some of which also affect assignments and hence receivables financing and factoring.

The main regulatory gap in the Rome I-regulation lies in its lack of provisions on the law



applicable to the priority of several assignments of the same receivable and to the effectiveness of assignments against third parties. Since its foundation in 2009, the EUF has advocated for a legislative proposal to close the regulatory gap in the Rome I-regulation, being in favour of applying the law at the assignor's centre of main interest as the most well-balanced solution especially for cases of factoring and receivables financing. Therefore, the EUF supported the Commission's aforementioned proposal for a regulation when it was first published in 2018 and also throughout the (drawn-out and complicated) negotiations in the following years. Unfortunately, the new EU Commission which came into office in December 2024 announced the formal withdrawal of this proposal for a regulation on the law applicable to the third-party effects of assignments of claims in February 2025. The reason given was that the proposal was blocked and that further progress was unlikely. Therefore, the hope for an adoption of a gap-filling regulation in the near future which was expressed in the 2021 version of the EUF Legal Study has been dashed for now and it remains to be seen whether any similar legislative projects can be successfully prompted in the years to come.

Even though the Rome I-regulation has this rather prominent position in practice (at least within the EU), it has to be noted that the Ottawa and the UNCITRAL conventions were up until recently unique and historic attempts at finding a common approach on a global level and therefore have a distinct level of at least theoretical importance with regard to factoring and receivables financing. Then in May 2023, the UNIDROIT Model Law on Factoring was adopted after approximately three years of working group meetings and deliberations as well as a public consultation process. This Model Law provides a complete and standalone legal framework aimed at facilitating factoring transactions. It is primarily aimed at countries that have not yet fully implemented a legal framework for factoring, but it can also be used by states with already existing legal rules on factoring which wish to foster factoring and other forms of receivables or trade finance further. The responses regarding the implementation or just relevance of the UNIDROIT Model Law on Factoring in the countries included in the 2024 EUF Legal Study support this rationale: So far, the Model Law has not been implemented in any of these countries, and in a significant number of countries, it is not (yet) seen as relevant (e.g. in Hungary, Italy, Latvia, the Netherlands, Portugal and Switzerland), but in some countries such as Croatia, Romania and the UK, the Model Law is considered a possible point of reference for future legal developments regarding factoring and even linked to expectations of positive effects on the respective national factoring markets. It could be that the concerns expressed e.g. in the Slovakian response from 2021 about Slovakian courts and (tax) authorities not knowing how to handle factoring due to a lack of regulation and a latent risk of future negative regulation of factoring can be addressed by referring to the Model Law and/or the approach of neighbouring European jurisdictions. However, the relevance of the Model Law as such a reference point for future legal developments may well also depend on how well it is suited for forms of factoring which are popular in that particular country. Hence, e.g. the idea of introducing a register for assignments is likely to clash with non-notification or confidential factoring, which is a popular form of factoring in some European countries, as noted in the response for France.

## Conclusion

Just like in the last editions of the EUF Legal Study, the answers to the final question of the questionnaire on which this study is based generally provide good starting points for an overarching conclusion. Even though only around a third of the respondents submitted answers to this last question regarding others matters idiosyncratic to the national legal framework which are worth pointing out, it is possible to draw the following general conclusions from both these "closing remarks" as well as from the other responses given.

In some countries, the industry of factoring and other forms of receivables financing still faces difficulties as factoring is a very specific product: Legislators and public authorities may not be familiar with all the details and subtleties of factoring, or the national legislation, judiciary and/or authorities such as financial supervisors may not establish standards suitable for and adapted to factoring, i.e. proportionate to the level of risk. Such legal uncertainties were already reported for e.g. Slovakia in 2021 where there apparently hardly are any laws on factoring and the assignment of receivables and where courts and authorities appear unsure how to assess

and judge this financial instrument. The Swedish response (unchanged since 2021) also referred to laws which are not really suitable for factoring, stating that Swedish conflict of laws rules apply the law of the country where the debtor is domiciled to the question whether a sale of receivables has been perfected vis à vis third parties, thus leading to practical difficulties for factoring companies that deal with a number of debtors each based in different countries. The Portuguese response (also unchanged since 2021) made it clear that a legal change from applying the stamp tax to implementing VAT on factoring commissions and interest is still hoped for in Portugal.

However, with other countries that submitted a “closing remark” by answering question 15, the focus was very much on positive aspects such as the high level of legal certainty for factoring companies in Austria due to Austrian courts, insolvency administrators, etc. being more familiar with factoring now and thereby creating a high level of legal certainty for factoring in Austria, or the low dispute risk for factoring in Croatia due to the widespread use of assignments signed by debtors, thereby setting a clear cut-off date for the debtor’s counterclaims against the assignor being used against the assignee/factor according to Croatian law. In e.g. Ireland, England and Wales, the supportive role of the common law legal system and local tax treatment for receivables financing was mentioned as a positive aspect, and the response to question 15 for Germany pointed out the (moderate, yet still) increase in the German factoring turnover and GDP penetration rate in 2023. Some other countries such as e.g. the Netherlands, Malta and Scotland also highlighted expected or ongoing legislative processes for laws which are either factoring specific or are presumed to have a positive effect on factoring. While these legislative efforts as such are positive developments, the fact that these laws have apparently not been adopted but are still just plans or work in progress after more than 5 years gives less cause for factoring-related enthusiasm. This enthusiasm is regrettably further curbed by also considering the actual effects of some of the more recently adopted legislation originally also aimed at decreasing issues and hindrances for factoring such as the aforementioned Business Contract Terms (Assignment of Receivables) Regulations 2018 in the UK, which unfortunately only invalidates bans on assignment-clauses in a limited number of cases and necessitates a rather inconvenient level of due diligence for factoring and other receivables financing companies who wish to ensure a valid transfer of receivables.

With a view to the responses to the other questions contained in the questionnaire, the overall impression is that factoring is nearly exclusively effected through purchase agreements and assignments in writing, which more often than not allow for the assignment of future receivables and in the majority of cases also entail the debtor’s notification, although non-disclosed factoring is possible in many countries and is combined with measures to manage, mitigate or minimize the (legal) risks connected with such non-disclosed factoring operations. Payments are generally effected through cashless solutions, mostly by bank transfers, and late payments are penalized in all countries covered by this updated legal study. The main obstacles to factoring are still to be seen in third party rights of mainly the factoring clients’ suppliers and sometimes also tax and other public authorities as well as contractual prohibitions of assignments, even though (or perhaps exactly because?) their legal consequences vary greatly from country to country. Despite such a well- balanced and homogenous colouring of parts of the big painting that tries to depict all (law-related) aspects of factoring, other parts this painting are more blurred and full of contrasting colours, e.g. when looking at other legal issues such as the effects of the factoring client’s insolvency or licensing and capital requirements, and there are also some dark-coloured streaks to be found, especially when well-intentioned legislative efforts either are effectively diluted so far as to limit the original widespread positive impact, or are simply stuck in the legislative process and not adopted for several years.

As already mentioned in the introduction, this study brings together important information on the national legal frameworks for factoring in Europe and elsewhere around the world. More importantly, it also shows that there are general trends and similarities between a majority and sometimes even all of the reviewed countries, both within and outside the EU. Despite all the particularities and variations in different national legal systems - even within the EU and its wide radius of legal harmonisation – the parallels and similarities should always be kept in mind. In the end, these similarities in the legal basis for a transfer of receivables together with economic

similarities form the foundation on which the flexible original idea of factoring was built and which consequently allowed it to spread widely and become a popular alternative form of financing over recent decades, also in times of economic upheaval such as now in the aftermath of the Covid 19-pandemic, rising inflation rates and radical geo-political changes.

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## Factoring Turnover by Country 2023

Country	Total factoring turnover	of which international (in %)	GDP penetration
<b>EU countries</b>			
Austria	36.463	56,2%	7,0%
Belgium	135.734	n.a.	23,2%
Bulgaria	6.885	20,7%	7,3%
Croatia	1.401	12,2%	1,8%
Cyprus	4.775	10,5%	16,0%
Czech Rep.	11.668	28,7%	3,9%
Denmark	19.494	46,7%	5,2%
Estonia	3.900	0,8%	10,3%
Finland	28.000	10,7%	10,1%
France	426.588	35,5%	15,2%
Germany	384.444	28,2%	9,3%
Greece	24.690	12,6%	12,7%
Hungary	13.824	9,0%	7,0%
Ireland	28.617	22,3%	5,7%
Italy	298.678	6,0%	14,3%
Latvia	802	43,0%	2,0%
Lithuania	5.100	n.a.	7,1%
Luxemburg	339	n.a.	0,4%
Malta	696	59,5%	3,6%
Netherlands	168.528	n.a.	16,3%
Poland	103.489	15,9%	13,8%
Portugal	44.193	12,9%	16,6%
Romania	8.660	11,8%	2,7%
Slovakia	2.914	42,3%	2,4%
Slovenia	2.500	56,0%	4,0%
Spain	270.393	13,8%	18,5%
Sweden	21.473	n.a.	3,9%
<b>Non EU countries</b>			
Switzerland	2707	3,2%	0,1%
United Kingdom	363.182	6,4%	11,7%
Norway	26.173	n.a.	5,8%
Russia	78.299	n.a.	4,2%
Turkey	26.650	n.a.	2,8%
USA	89.700	4,5%	9,2%

Source: FCI Factors Chain International, EUF EU Federation, World Bank  
(Data in Millions of Euro; non-Euro currencies were converted into Euro)

# Breakdown per question

(answers in red indicate changes since 2021)

## Question 1 - Legal and Regulatory Requirements to operate

Y = Yes N = No D = see Country Details - = no answer given/not applicable

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
Factoring limited to Licenced Banks and CI	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	Y	N	N	N	N	N	N	Y	N	N	D
If not, diff licence reqd?	-	N	N	Y	Y	N	Y	N	N	N	N	Y	Y	Y	N	Y	N	N	N	Y	N	N	-	N	N	N	N	N	N	-	N	Y	D
Passport	-	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	-	Y	N	N	N	N	Y	N	N	N
Sole Proprietor Specifics	N	Y	N	N	N	N	Y	N	N	N	N	N	N	Y	Y	Y	N	N	N	N	N	Y	N	N	N	N	N	N	Y	-	N	N	D
AML requirements	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	-
Capital requirements	Y	N	Y	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	D	Y	Y	N	N	Y	D	N	Y	Y	N	N	N	N	N	Y	N	Y	-
Data Protection	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	-
Liquidity Risk	N	N	N	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	D	Y	Y	N	N	Y	D	N	Y	Y	N	N	N	N	N	Y	N	N	-
IAS/ IFRS Principles	N	N	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	N	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y	-
Transparency	Y	N	N	Y	Y	N	N	N	N	N	-	Y	N	Y	N	Y	Y	N	N	Y	N	N	Y	D	Y	N	N	Y	N	Y	Y	Y	-
Risk Management	Y	N	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	N	Y	D	N	Y	Y	Y	N	Y	N	N	Y	N	Y	-
Deposit Guarantee	Y	N	N	Y	N	N	N	N	N	Y	N	Y	D	D	N	D	N	N	N	D	N	D	N	D	Y	N	N	N	N	N	N	N	-
Reporting (ANA NSFR)	N	N	Y	Y	N	N	Y	N	Y	Y	-	Y	Y	Y	N	Y	Y	N	N	Y	N	D	Y	N	Y	N	N	N	N	-	N	-	-
PSD II	N	N	D	Y	N	N	N	N	Y	Y	D	Y	Y	Y	N	Y	Y	N	N	Y	N	D	Y	N	N	N	N	N	Y	-	N	-	-
Sustainability ESG	N	N	N	Y	Y	N	Y	N	Y	-	Y	Y	Y	Y	N	Y	Y	N	N	D	N	D	Y	N	N	N	N	N	Y	Y	Y	-	-
Local Authorities	D	-	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	-	D	-	D	N	D	D	-	D	N	-	D	D	D	D	D

## Question 2 – Transfer of Receivables

Y = Legal Requirements N = No Legal Requirements D = see Country Details - = no answer given/ not applicable

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
Specific Assignment Law	Y	Y	D	Y	N	Y	Y	Y	Y	-	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y	D	Y	Y	Y	Y	Y	Y	Y	D
Assignment Process																																	
Writing	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	-	Y	Y	Y
Verbal	Y	Y	N	-	-	N	N	-	-	-	-	-	-	-	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	-	N	N	N
Assignment Requirement																																	
Registration	N	N	-	N	N	-	N	D	-	N	-	N	D	Y	N	N	-	N	N	N	D	N	N	Y	N	N	N	N	D	Y	Y	Y	D
Stamp duties or taxes	N	N	-	N	Y	-	N	D	-	N	-	-	N	-	-	N	-	N	N	-	N	D	D	-	N	N	N	N	N	-	N	N	D
Notification	D	Y	Y	Y	Y	Y	N	Y	Y	Y	D	Y	Y	N	D	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	Y	Y	N	Y	Y	Y	N	D
Any other	-	N	-	-	N	-	Y	D	-	-	-	D	-	D	D	D	-	-	-	-	D	-	-	-	-	-	-	N	-	-	D	-	D
Assignment in Advance	Y	Y	-	Y	N	Y	Y	D	Y	Y	Y	Y	Y	Y	-	Y	Y	Y	Y	Y	D	Y	Y	Y	Y	D	Y	D	D	-	Y	Y	Y
Subrogation possible	Y	Y	-	Y	-	D	-	Y	-	N	-	Y	D	Y	-	Y	Y	Y	-	N	Y	N	D	Y	Y	N	Y	Y	-	-	N	Y	-
Partial Assignment	D	Y	-	Y	-	Y	-	N	-	D	-	D	-	-	N	Y	Y	-	-	N	Y	-	D	Y	-	D	Y	N	-	-	-	Y	-
True sale	D	D	-	-	-	D	-	D	D	D	D	Y	D	-	-	Y	N	-	-	-	D	N	D	D	N	-	N	D	D	D	N	D	D

### Question 3 – EDI

Y = Yes

N = No

D = see Country Details

- = no answer given/not applicable

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
Is EDI allowable?	Y	Y	Y	Y	Y	D	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	D	Y	Y	Y	N	D	Y	Y	D	Y
Special Requirements	N	D	D	-	N	D	N	D	D	D	N	D	Y	D	-	Y	N	-	D	D	D	D	D	D	D	N	D	-	D	D	Y	Y	N
E invoicing Directive	-	D	Y	-	-	N	Y	-	-	-	Y	Y	-	Y	-	D	Y	Y	Y	D	-	Y	Y	Y	Y	D	Y	N	D	Y	N	N	-
See Country detail		D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D

### Question 4 – VAT

Y = Yes

N = No

D = see Country Details

- = no answer given/not applicable

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
VAT issues?	N	N	Y	Y	D	N	Y	N	-	N	Y	N	N	N	N	Y	N	N	N	N	N	Y	N	N	N	Y	N	Y	Y	N	N	D	N
VAT on Fact. Commission and Service Charge	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	D	Y	Y	Y	D	Y	-	Y	Y	Y	Y	D	Y	D	Y	Y	D	Y	Y	Y	D	N
VAT on Interest / Discount	Y	N	N	D	D	D	D	N	N	N	N	D	Y	N	N	N	Y	-	N	-	N	N	N	Y	D	Y	D	N	N	N	Y	D	D
VAT Difference between Bank/Non-Bank	D	N	N	N	N	N	N	N	-	N	-	-	N	N	N	N	N	-	-	-	-	D	N	N	N	N	N	N	N	-	D	N	-
Split Payments	N	Y	-	N	N	N	N	N	-	-	N	N	N	-	-	Y	D	-	-	-	N	Y	N	-	-	N	D	N	D	-	N	-	-
Other Measures	N	N	-	N	N	Y	N	N	-	-	-	-	N	D	-	D	N	-	-	-	N	Y	N	-	-	N	N	D	N	-	N	-	-
See Country detail	D	D	D	D	D	D	D	D	D	D	D	D		D	D	D	D			D	D	D	D	D	D	D	D	D	D	D	D	D	

### Question 5 – Third Party Rights

Y = Yes

N = No

D = see Country Details

- = no answer given/not applicable

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
Can 3 <sup>rd</sup> party rights affect receivables?	Y	Y	Y	Y	-	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	D	Y	D	Y
Any difference between products?	N	N	N	N	-	D	D	Y	-	N	-	N	-	N	N	N	N	-	-	Y	-	-	N	-	D	-	N	N	N	N	N	Y	D
Do rights have to be registered/notified?	N	D	-	Y	-	D	N	Y	-	Y	N	-	-	-	-	N	-	-	D	N	-	N	N	Y	D	Y	Y	-	D	N	D	D	D
See Country detail	D	D	D			D	D	D	D	D	D	D	D	D	D	D	-	D	D	D	D	D		D	D	D	D	D	D	D	D	D	D



**Question 6 – Prohibitions against Assignments**
**Y = Yes**
**N = No**
**D = see Country Details**
**- = no answer given/not applicable**

	AT	BE	BU	C R	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
Is Prohibition valid?	D	Y	Y	Y	D	Y	Y	Y	D	Y	D	N	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	Y	N	D	D
Any difference between products?	-	D	-	-	-	N	-	-	-	-	-	N	-	-	-	N	-	-	-	-	-	-	-	-	-	-	-	N	N	-	N	-	N
Action required to make effective?	D	D	-	Y	D	D	D	D	-	N	-	-	D	D	D	D	-	-	-	-	D	-	D	D	D	D	D	Y	D	Y	-	D	D
Registration required?	N	N	-	N	-	-	N	D	-	N	N	N	N	D	N	N	-	-	-	N	N	N	N	-	N	N	N	N	N	N	N	N	-
Other Issues	N	N	N	N	N	N	D	N	N	N	-	-	D	D	N	-	N	N	N	D	D	D	N	-	-	N	N	-	D	-	D	-	-
See Country detail	D	D	D		D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D

**Question 7 – Security Interests**
**Y = Yes**
**N = No**
**D = see Country Details**
**- = no answer given/not applicable**

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
<b>Is a "Fixed or Floating Charge" possible</b>	N	Y	N	Y	Y	D	D	Y	-	D	Y	D	Y	Y	Y	Y	Y	D	Y	Y	D	Y	Y	Y	Y	D	D	D	Y	Y	N	Y	D
on Receivables only...	D	Y	-	Y	N	D	-	Y	-	D	N	-	Y	D	Y	D	D	-	-	Y	D	D	D	Y	N	N	-	Y	Y	N	D	D	-
All assets	D	Y	-	Y	Y	Y	-	Y	-	N	Y	-	-	D	Y	D	D	-	-	Y	D	D	D	-	Y	N	-	Y	Y	Y	D	D	-
<b>Registration required?</b>	N	D	-	Y	Y	Y	N	Y	-	D	Y	N	Y	Y	Y	Y	-	N	Y	-	D	Y	D	D	Y	Y	N	-	Y	Y	D	Y	D
<b>Normally taken?</b>	N	D	-	D	N	N	-	N	-	N	-	N	N	D	D	N	-	-	D	-	D	-	D	-	N	N	-	-	Y	Y	D	Y	D
See Country detail	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D

**Question 8 – Undisclosed Operations**
**Y = Yes**
**N = No**
**D = see Country Details**
**- = no answer given/not applicable**

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
Do risk minimisation options exist?	Y	Y	Y	-	Y	D	Y	-	-	Y	Y	Y	Y	Y	Y	Y	N	Y	D	Y	Y	Y	Y	Y	N	N	Y	-	Y	Y	Y	Y	Y
GDPR impact	D	D	-	-	N	N	D	-	-	-	-	N	-	D	N	N	-	-	-	N	-	-	N	-	-	N	N	-	-	-	N	-	-
See Country detail	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D		D	D		D	D	D	D	D

### Question 9 – Purpose of Assignment

Y = Yes

N = No

D = see Country Details

- = no answer given/not applicable

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
Any difference in status if receivables are																																	
Assigned in factoring	Y	Y	D	N	N	D	Y	N	N	D	N	N	Y	D	Y	N	Y	N	N	Y	D	D	N	Y	N	N	Y	N	D	N	N	Y	D
Assigned to collateralise	Y	Y	Y	N	N	D	Y	N	N	D	N	N	-	D	Y	N	Y	N	N	Y	D	D	N	Y	N	N	Y	N	D	N	N	D	D
Pledged to collateralise	Y	Y	Y	N	N	D	Y	N	Y	D	N	N	Y	D	D	N	Y	N	N	Y	D	D	N	Y	N	Y	Y	N	D	N	Y	D	D
See Country detail	D	D	D	D		D	D		D	D		D	D	D	D	D	D			D	D	D	D	D	D	D	D	D		D	D	D	

### Question 10 – Payments

% distribution

D = see Country Details

- no answer given

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
Type and percentage																																	
Bank Transfer	90	100	-	99	50	99	-	-	100	-	100	MOST USED	D	100	95	79,50%	100	95	100	-	MAJOR	MAJOR	95	MAJOR	92	100	90	90	99	-	97	53	-
Cheque	3	0	-	0	45	0.1	-	-	0	-	0	-	D	0	5	D	0	0	0	-	MINOR	0	<5	NONE	0	0	0	0	1	-	1	47	-
Bill of Exchange	1	0	-	1	0	0.9	-	-	0	-	0	-	0	0	0	D	0	0	0	-	MINOR	MINOR	<1	MINOR	0	0	5	0	0	-	1	0	-
Other	6	0	-	0	5	9	-	-	0	-	0	-	0	0	0	D	0	5	0	-	D	MINOR	<1	-	8	0	5	10	0	-	1	0	-
See Country detail				D		D	D	D				D				D					D	D		D	D		D	D		D		D	

### Question 11– Supplier Insolvency

Y = Legal Requirements N = No Legal Requirements

D = see Country Details - no answer given/not applicable

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US	
Rights of financier																																		
Debt pre-insolvency	Y	Y	D	D	Y	D	D	Y	Y	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	Y	Y	Y	D	Y	D	
Post insolvency	D	D	D	D	D	D	D	D	D	D	N	D	D	D	D	D	Y	-	D	D	D	D	D	D	D	D	D	N	D	D	D	D	D	
Product differences?	D	D	-	Y	N	D	Y	D	Y	N	-	Y	-	Y	D	-	Y	-	D	D	D	D	-	-	D	Y	N	Y	N	D	D	N	D	D
Impact of a Charge	D	D	D	D	N	D	D	D	-	N	D	-	D	D	D	D	-	-	D	D	D	D	D	D	D	D	D	D	-	D	D	D	D	D
Restructuring Directive	N	D	N	D	-	D	Y	N	N	N	Y	D	Y	Y	-	-	D	-	N	D	D	D	Y	-	N	Y	-	N	D	-	N	-	N	
Claim by estate possible	N	N	N	N	-	Y	N	D	N	Y	N	D	N	D	-	-	N	N	Y	D	D	D	N	N	-	N	D	D	N	-	D	-	-	
See Country detail	D	D	D	D	D	D	D	D	D	D	N	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	

### Question 12 – Late Payments

Y = Yes

N = No

D = see Country Details

- = no answer given/not applicable

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
Do penalties exist?	Y	Y	Y	Y	Y	D	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
See Country detail	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D

### Question 13 – International Conventions

Y = Yes

N = No

D = see Country Details

- = no answer given/not applicable

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
UNIDROIT 1988	N	Y	N	N	N	N	Y	-	N	N	Y	Y	N	Y	-	Y	N	N	Y	N	N	N	N	N	N	Y	N	N	N	N	Y	N	D
If NO, intention to?	N	-	N	N	N	N	-	-	N	-	-	-	N	-	-	-	N	N	-	N	N	D	N	N	N	-	N	N	N	N	-	N	D
UNCITRAL 2001	N	N	N	N	N	N	N	-	N	N	N	N	N	N	-	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y
If No, Intention to?	N	N	N	N	N	N	N	-	N	-	N	N	N	N	-	N	N	-	N	N	N	D	N	N	N	N	N	N	N	N	N	N	-
See Country Detail re Law	D	D	-	D		D	D	-	D	D	D	D	D	D	-	D		D		D	D	D		D	Q15		D	D	D		D	D	D
UNIDROIT Model Law on Factoring 2023	-	N	N	D	-	-	D	-	-	-	-	D	D	N	-	D	N	N	N	-	N	N	D	D	N	-	-	N	D	-	-	-	N

### Question 14 – Public Administration

Y = Yes

N = No

D = see Country Details

- = no answer given/not applicable

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
Special Requirements for PA assignment?	N	N	N	N	N	Y	Y	N	N	Y	N	Y	Y	N	N	Y	N	N	N	N	N	N	Y	Y	N	D	N	N	N	N	Y	Y	D
Can PA refuse assignment?	N	N	-	Y	N	N	N	N	N	N	Y	N	Y	N	N	Y	N	N	N	Y	N	N	Y	Y	N	Y	N	N	Y	N	N	Y	D
See Country detail			D			D	D			D	D	D	D	D	D	D				-		D	D	D		D			D		D	D	D

### Question 15 – Any other matters?

Y = Yes

N = No

D = see Country Details

- = no answer given/not applicable

	AT	BE	BU	CR	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SL	CH	GB	NO	RU	TK	US
Other comments?	Y	N	N	Y	Y	N	Y	N	N	N	N	Y	N	N	Y	N	N	N	N	N	Y	N	Y	N	Y	Y	N	N	Y	N	Y	N	Y
See Country detail	D			D	D		D					D		D	D						D	D	D		D	D			D		D		D

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