

# LAW ON FACTORING

## CHAPTER I. GENERAL PROVISIONS

### Article 1 (Subject of the Law)

This Law regulates factoring, types of factoring, factoring agreements, conditions for the establishment, business operations, and cessation of operations of factoring companies, risk management, financial reporting, audit and supervision of factoring companies' business operations.

### Article 2 (Concepts)

In terms of the provisions of this Law, the following concepts have the following meanings:

- (1) Factoring is a legal business of buying and selling existing unmatured or future short-term monetary claims arising from an agreement on the sale of goods or provision of services in the country and abroad, which is transferred to the factor through an agreement, with the factor assuming the claim from the seller in order to collect it in their own name and for their own account.
- (2) A short-term monetary claim is a claim that is due for collection within 180 days from the date of the sale of goods or provision of services, and it is defined by the agreement on the sale of goods or provision of services.
- (3) The subject of factoring is the purchase of any existing and/or future, complete or partial, unmatured short-term monetary claim arising from an agreement on the sale of goods or provision of services in the country and abroad, concluded between entities which enter into a mutual debtor-creditor relationship by carrying out their activities.
- (4) An advance is a part of the claim the factor pays to the seller of the claim after an agreement is concluded.
- (5) A factoring guarantee fund is a part of the unpaid claim the factor retains up to the collection from the debtor as a guarantee for the collection of interest on the advance paid and fees paid to the factor for factoring services provided, and it corresponds to the paid advance.
- (6) The factoring limit is the amount of the factoring claim transferred from the buyer to the factor in accordance with the regulation on obligations, and it is covered by a payment security instrument acceptable for the factoring company.
- (7) The interest is the interest rate on the advance paid until the collection of the claim from the buyer, calculated to the seller of the claim by the factor.
- (8) The fee is the amount the factor calculates on the principal of the nominal amount of the purchased claim.
- (9) The administrative fee is a fee for operational activities related to the provision of factoring services (record keeping, negotiation and monitoring of the repayment of the factoring object, data collection, analysis, and provision of information on the creditworthiness of the debtor of the factoring object, etc.).
- (10) The buyer is a business entity which is the debtor of the factoring object.
- (11) The seller is the seller of the claim and creditor of the factoring object.
- (12) The provider of factoring services is any entity entitled to provide factoring services in accordance with the provisions of this Law.
- (13) Business entities are legal entities that act independently in legal transactions and participate in the process of the turnover of goods and services by entering into mutual debtor-creditor relationships, and these are:

a) companies that independently produce and sell products and provide services on the market for profit in accordance with the provisions of the regulations governing the operations of companies,

b) independent contractors (small businesses) that carry out activities in accordance with regulations on trade and related activities, and

c) entities that are organised as for-profit corporations, and their operations are governed by regulations on public companies.

(14) Irregularities are conditions and procedures that are not in accordance with either the operating policies and rules adopted by the factoring company or with the standards and rules of the profession, or they are not applied consistently, thereby jeopardising business operations, particularly in connection with organisational requirements and risk management.

(15) The parent company is a company that has a controlling interest in that factoring company.

(16) A subsidiary is any legal entity:

a) in which the factoring company owns the majority of voting rights of shareholders or members;

b) in which the factoring company has the right to appoint or remove a majority of Management Board and Supervisory Board members, provided that it is simultaneously a shareholder or a stakeholder;

c) over which the factoring company has the right to exercise a dominant influence on managing and conducting operations based on the basis of the rights the shareholder or stakeholder draws from the status of shareholder, i.e. stakeholder or on the basis of an agreement concluded in accordance with the regulation governing companies;

d) in which the factoring company only has control over majority ownership and voting rights pursuant to an agreement with other shareholders or members of that legal entity.

(17) A qualified stake constitutes a direct or indirect investment in the factoring company which represents 10% or more of capital or voting rights, or which enables the exercise of significant influence over the management of that company.

(18) A significant share exists when one entity has a direct or indirect right or ability to achieve at least 20% of voting rights in the company, i.e. direct or indirect ownership of at least 20% of that company's capital.

(19) A controlling share exists when one entity has a direct or indirect right or ability to achieve at least 50% of voting rights in the company, i.e. direct or indirect ownership of at least 50% of that company's capital.

(20) Having a share means one entity having a share in another legal entity if:

a) they have a direct or indirect investment on the basis of which they have a share of 20% or more in the capital of that legal entity or in the voting rights in that legal entity, or

b) they have a share in the capital of that legal entity or voting rights in that legal entity lower than 20%, and acquired with the intention of enabling the impacting of its business operations on the basis of a lasting connection with that legal entity.

## CHAPTER II. FACTORING

### Article 3

#### (Application of Regulations)

The provisions of the law governing obligations are applied to factoring operations, unless otherwise specified by this Law.

### Article 4

#### (Factoring Objectives and Factoring Entities)

(1) The factoring referred to in Article 2, paragraph (1) of this Law is a financial service through which the factoring company:

- a) finances the seller on the basis of transferring a claim,
- b) records, manages and supervises claims,
- c) evaluates the risk as well as the insurance of collecting the claim.

(2) The entities in domestic factoring are:

- a) the seller of the goods and/or services,
- b) the company for the provision of factoring services, and
- c) the buyer of the goods and/or services.

## Article 5

### (Elements of Factoring and Documentation in Factoring)

(1) The elements of factoring are:

- a) the claim,
- b) the advance,
- c) the factoring guarantee fund,
- d) the factoring limit,
- e) the interest rate that cannot be higher than the applicable bank interest rate for short-term loans,
- f) the fee that cannot be higher than 2% of the nominal amount of the purchased claim.

(2) In factoring, an administrative fee can also be contracted, which, depending on the amount of the invoice, cannot exceed KM 50 per invoice.

(3) The factoring business is carried out on the basis of the following documentation:

- a) the factoring agreement between the factoring entities through which the transfer and purchase of the claim to the factor, i.e. creditor is carried out,
- b) the invoice for the delivery of goods and services performed, together with the orders, bills of lading, and goods receipt notes, records of services provided, carrier load lists, excerpts of open items with notifications of debt maturation on collection and payment reminders, and also export and import customs documentation, statement of paid VAT and customs, as well as proof of an open letter of credit in the case of international factoring,
- c) insurance and reinsurance policies, if agreed upon,
- d) financial statements and audit reports, as well as other documentation related to the seller's correspondence with the buyer, such as calls and payment reminders, documentation related to the assessment of the debtor's creditworthiness,
- e) other documentation which could serve as a basis for proving that the goods were actually delivered or the services provided, as well as documentation proving the transfer of the claim.

(4) The documentation referred to in paragraph (3) of this Article shall be used when determining the merit of the buyer's claim as well as the basis for the transfer of the claim from the seller to the factor.

## Article 6

### (Types of Factoring)

(1) Factoring can be: domestic factoring and international factoring, recourse factoring and non-recourse factoring, discount factoring and advance factoring, credit factoring and non-credit factoring, disclosed factoring and undisclosed factoring, non-participation factoring and participation factoring, one-off factoring and split factoring.

(2) A special type of factoring is reverse factoring (supply chain finance).

## Article 7

### (Domestic Factoring and International Factoring)

- (1) Depending on the legal and economic environment in which it is performed:
- a) domestic factoring is a financial service in which all entities are residents in terms of the regulations governing foreign exchange operations,
  - b) international factoring is a financial service in which at least one entity is a non-resident in terms of regulations governing foreign exchange operations.
- (2) The factoring company may pay the resident for the subject of factoring in a foreign currency and charge the non-resident for the subject of factoring in a foreign currency when purchasing the subject of factoring, which is properly denominated in a foreign currency in accordance with the relevant regulations.
- (3) The provisions of regulations governing foreign exchange operations apply to international factoring in an appropriate manner.

#### Article 8

##### (Recourse Factoring and Non-Recourse Factoring)

- (1) Recourse factoring implies the factor's right to, in case of an inability to collect the claim from the buyer, request a settlement from the seller of the claim on the date the claim matures and thus compensate for the advance payment, interest on the advance, as well as the fee of the factor.
- (2) When a factor does not collect the claim from the buyer in the maturity period, then they shall, within eight days from the date the claim matured, notify the seller of the claim that the collection of the claim has not taken place in the maturity period.
- (3) The seller of the claim shall, within five days of receiving the notice of default from the buyer, refund the factor as referred to in paragraph (1) of this Article.
- (4) Non-recourse factoring means that the factor assumes a collection risk with respect to the claim and in case of an inability to collect the claim from the buyer, the claim cannot be collected from the seller of the claim. The collection risk with respect to the claim includes the risk of the buyer's inability to pay.
- (5) In the event that it cannot be determined with certainty whether recourse factoring or non-recourse factoring was contracted, it is understood that recourse factoring was contracted.

#### Article 9

##### (Discount Factoring and Advance Factoring)

- (1) Discount factoring implies the payment of the total amount of the purchased claim net of the fee paid to the factor and the discount rate. The fee is paid to the factor after the signing of the factoring agreement.
- (2) Advance factoring implies the factor's advance payment to the seller of the claim in the agreed percentage of the sold claim, net of the fee and immediately after signing the factoring agreement. The factor pays the seller of the claim the remaining amount after the collection of the claim from the buyer, net of the interest paid on the advance.

#### Article 10

##### (Credit Factoring and Non-Credit Factoring)

- (1) Credit factoring implies the factor's advance payment to the seller of the claim immediately after signing the agreement, i.e. before the factor collects the claim from the buyer.
- (2) Non-credit factoring implies the factor's payment of funds to the seller of the claim only after the factor's collection of the claim from the buyer and does not have the function of financing from the factor, but only securing payment, managing claims, and collecting claims.

#### Article 11

##### (Disclosed Factoring and Undisclosed Factoring)

(1) Disclosed factoring includes the factor's obligation to acquaint themselves with the buyer in written form through the agreement on the purchase of the claim.

(2) In the case of undisclosed factoring, the seller of the claim reserves the right to have the collection of the claim fully realised in their own name and for the account of the factor. On the date of maturity, the buyer pays the seller, not the factor. The seller of the claim shall transfer to the factor the difference between the claim and the advance payment minus the interest on the basis of the advance and the fee paid to the factor.

#### Article 12

##### (Participation Factoring and Non-Participation Factoring)

(1) Non-participation factoring implies the assumption of a 100% collection risk by the factor with respect to the claim, i.e. the factor shall pay the entire amount of the purchased claim, net of the interest on the advance payment and the fee paid to the factor, regardless of the fact whether the buyer previously paid them for the purchased claim.

(2) Participation factoring implies the assumption of the majority of the collection risk by the factor with respect to the claim, i.e. the factor shall pay the amount of the agreed risk covering the purchased claim, net of the interest on the advance payment and the fee paid to the factor.

#### Article 13

##### (One-Off Factoring and Split Factoring)

(1) One-off factoring involves the purchase of individual claims on a case-by-case basis as needed by the seller.

(2) Split factoring implies the purchase of claims from several buyers, at least five in one year.

#### Article 14

##### (Concept and Subject of Reverse Factoring)

(1) Reverse factoring (supply chain finance) is a special type of factoring contracted between the factor and the buyer as debtor, where the factor assumes the obligation of paying the buyer's unmatured future short-term cash debt to suppliers on the basis of an agreement on the sale of goods or provision of services at home and abroad.

(2) Reverse factoring is performed in accordance with the provisions of regulations governing obligations.

(3) In reverse factoring, the debtor is not required to seek the creditor's approval for the assumption of debt fulfillment.

(4) In reverse factoring, the factor is entitled to collect interest, fees, administrative fees, and other contractually determined factoring costs.

(5) The factor is entitled to collection from the debtor within the period defined in the reverse factoring agreement.

(6) Only the entities defined in Article 2, paragraph (1) of this Law can practise reverse factoring.

(7) The subject of reverse factoring cannot be the assumption of debt fulfillment arising from the sale of goods or services for personal, family or household purposes, or any kind of cash sale.

(8) The provisions of this Law regulating factoring accordingly apply to reverse factoring.

### CHAPTER III. FACTORING AGREEMENTS

#### Article 15

##### (Form and Subject of the Agreement)

- (1) Factoring can be performed only on the basis of a written agreement, concluded between the factoring entities referred to in Article 4, paragraph (2) of this Law.
- (2) A factoring agreement regulates the assignment or transfer of an existing or future, complete or partial, unmatured short-term monetary claim arising from the agreement on the sale of goods or provision of services in production, trade, and services, as well as a claim made on the basis of performing investment activities and exporting goods and services, concluded between the entities referred to in Article 2, paragraph (1) of this Law.
- (3) A future claim may be the subject of factoring only if it is sufficiently determinable at the time of the conclusion of the factoring agreement, or if the factoring agreement specifies the creditor and the debtor, the maximum amount of those claims, and if the basis for the emergence of such future claims is indicated.
- (4) A future claim is sufficiently determined if the factoring agreement indicates the buyer of such a claim and the amount of that claim.
- (5) The provision in the agreement which transfers a future claim has legal effect the moment that claim emerges.
- (6) The subject of the factoring agreement cannot be a transfer of the claim on the basis of a sale of goods or services for personal, family or household purposes, or any kind of cash sale.
- (7) Within the meaning of the provisions of this Law, an agreement whose subject is not defined in accordance with Article 2, paragraph (2) of this Law shall not be considered a factoring agreement.
- (8) The factoring agreement is not considered a loan agreement or loan pursuant to the regulations governing this area.

#### Article 16

##### (Contents of Factoring Agreement)

- (1) The factoring agreement must contain the following elements:
  - a) data on the contracting parties,
  - b) the type of factoring,
  - c) the basis for and information on the claim that is the subject of the agreement,
  - d) the amount and method of calculating payment and the payment of the purchased claim,
  - e) the amount and calculation of the fee paid to the factor,
  - f) the calculation of interest and other expenses,
  - g) the obligation to inform the buyer about the transfer of the claim,
  - h) records and deadlines for the implementation of the provisions of the agreement,
  - i) the method of dispute resolution,
  - j) the date of the agreement's conclusion and
  - k) signatures of the legal representative of each of the contracting parties or any other person authorised to sign the agreement or an attorney of these entities.
- (2) The Banking Agency of the Federation of Bosnia and Herzegovina (hereinafter: the Agency) shall further prescribe the contents of the factoring agreement through a regulation.

#### Article 17

##### (Agreement Validity and Prohibited Agreements)

- (1) The factoring agreement shall cease to be valid after the expiration of the period of time for which it was concluded, and if it was not concluded for a certain period of time, it cannot be terminated before all sold claims are not paid or recouped by the seller.
- (2) If the seller is assigned the same claim to various factors, the claim belongs to the factor about which the seller first informed the buyer, i.e. which first contacted the buyer.
- (3) The provisions of the factoring agreement and general business conditions of the seller or the factor that predict a rule different to the rule referred to in paragraph (1) shall be void.

Article 18  
(Transfer of Claim)

- (1) On the basis of the agreement with the buyer and the received order, the seller delivers the goods and issues an invoice to the buyer.
- (2) The seller may transfer their claim to the factor through the agreement, except if such a transfer is prohibited by this Law or if the claim is related to the person of the creditor or does not, by its nature, lend itself to being transferred to another.
- (3) Together with the application for factoring services, the seller also submits the documentation referred to in Article 5, paragraph (3) of this Law to the factor.
- (4) The factor may request that the seller provide a statement from the buyer regarding the receipt of the goods and services according to the invoice issued, without objection to their material deficiencies.
- (5) The transfer of the claim from seller to factor does not require the consent of the buyer, but the seller shall inform the buyer of the completed transfer of the claim to the factor if that is provided for in the agreement or if it is not a case of undisclosed factoring.
- (6) The factoring agreement produces effects without the consent and statement of the buyer referred to in paragraph (4) of this Article, unless otherwise regulated by a special law.

Article 19  
(Notice of Transfer of Claim)

- (1) The seller shall, within five days of the date the agreement with the factor was concluded, inform the buyer of the aforementioned. The buyer shall, within the stipulated period of time, pay the factor instead of the seller.
- (2) If the agreement does not specify who is required to inform the buyer of the concluded agreement on the transfer of the claim, it shall be understood that it is the seller.
- (3) A notice of the transfer of the claim must be drafted in written form and contain information on the concluded factoring agreement, the date of conclusion of the agreement, information on the factor whom the buyer shall make the payment to, as well as payment instructions: account number or account numbers, the amount of the claim, the payment currency, etc.
- (4) The notice shall be considered submitted if sent via written correspondence, electronically or in another appropriate manner from which one can determine the identity of the sender and the receipt of the notice.

Article 20  
(Advance Payment)

- (1) After the conclusion of the agreement, the factor pays the seller an advance in the agreed percentage of the nominal value of the claim.
- (2) The amount of the advance shall be determined by the agreement for each individual transferred claim.
- (3) The advance payment referred to in paragraph (1) of this Article shall not be considered a loan within the meaning of the regulations governing obligations, banking operations and foreign exchange operations.
- (4) The factor shall pay an advance to the seller within the agreed period.
- (5) If the deadline for the advance payment is not agreed upon, it is understood that the agreed deadline for the advance payment is three days from the date the agreement on the transfer of the claim was signed.
- (6) In the event that the factor does not pay the advance within the agreed period, the seller has the right to unilaterally terminate the factoring agreement, of which they shall immediately inform the buyer.

Article 21  
(Collection of Claims)

- (1) Credible documents in the execution of the procedure of claim collection from the buyer by the factor are invoices with the bill of lading – goods receipt notes or other written records of delivery performed or service provided, evidence of the grounds for the transfer of the claim and the buyer's notice of the resulting obligation to the factor.
- (2) Upon receiving the notification referred to in Article 19, paragraph (1) of this Law, the buyer shall pay the claim to the factor, unless they are notified prior to the payment of the claim or it can be understood that they were informed of the priority of a third party to collect the transferred claim.
- (3) If the buyer was informed of the transfer of the claim to the factor prior to the payment of the claim and made a payment to the seller, they are not relieved of the obligation to the factor and the seller must immediately, but no later than within three days, transfer such a payment to the factor.
- (4) Claims based on an agreement are collected by the factor in their own name and for their own account, except in the case of undisclosed factoring when the seller reserves the right to have the collection of the claim fully realised in their own name and for the account of the factor.
- (5) In the case of undisclosed factoring, the seller shall, after the collection of the claim from the buyer, immediately, but no later than within three days, meet their obligations to the factor in accordance with the factoring agreement.
- (6) Following the collection of the claim from the buyer, the factor shall immediately, but no later than within three days, pay the seller the difference according to the invoice, up to the full amount, net of the advance payment, the agreed interest on the aforementioned advance, the fee and other costs, unless otherwise agreed.
- (7) The correspondence between the factoring participants must be in written form, to be submitted by fax or mail, including electronic correspondence by e-mail, scanned documentation, etc.

Article 22  
(Default Interest)

- (1) If the buyer is late with the payment, the default interest belongs to the factor in the case of non-recourse factoring and the default interest belongs to the seller in the case of recourse factoring, unless otherwise provided for by the factoring agreement.
- (2) If the seller does not transfer the amount collected from the buyer to the factor within the period referred to in Article 21, paragraph (3) of this Law, the default interest falls at the expense of the seller, starting from the following day of the prescribed deadline.
- (3) If the factor does not transfer the remaining amount collected from the buyer to the seller within the period referred to in Article 21, paragraph (6) of this Law, the default interest falls at the expense of the factor, starting from the following day upon the expiry of that deadline.

Article 23  
(Responsibility of the Seller)

- (1) When the seller assigns claims through a fee-based agreement, the seller is responsible for the existence of the claim at the time the assignment of the claim took place.
- (2) The seller always guarantees the factor that the transferred claims are free of lien, complaints, encumbrance, and other third-party rights, i.e. that they are indisputable on all grounds, unless otherwise contracted.



(3) If the transferred claims are burdened by lien, or if they are in any way disputed by the buyer or a third party, and the factoring agreement does not exclude the seller's guarantee referred to in paragraph (2) of this Article, the factor has a right of recourse against the seller in cases when non-recourse factoring was contracted as well.

Article 24  
(Sale of Claims)

(1) When the sale of the claim is prohibited by the agreement between the seller and the buyer or by the buyer's general terms and conditions, that prohibition has no legal effect on the sale of the claim to the factor, which was carried out on the basis of the factoring agreement and in accordance with this Law.

(2) In the event that a factoring agreement does not define otherwise, it is understood that the further sale of the claim by one factoring company to another factoring company is permitted in accordance with the provisions of this Law.

CHAPTER IV. CONDITIONS FOR THE ESTABLISHMENT, OPERATIONS, AND  
CESSATION OF OPERATIONS OF A FACTORING COMPANY

Article 25  
(Factoring Companies)

(1) Factoring operations may be performed by a company organised as a joint stock company (d.d.) or a limited liability company (d.o.o.) based in the Federation.

(2) In order to perform factoring operations, the company must have a licence issued by the Agency.

(3) The company cannot be entered into the court register before obtaining the licence referred to in paragraph (2) of this Article.

(4) In addition to the entities referred to in paragraph (1) of this Article, factoring operations may be performed by a bank whose business is organised in accordance with regulations governing the operations of banks in the Federation.

Chapter I, II., III., IV. (Article 26, paragraphs (3), (4), (5), and (7)), V, VI., VII., VIII. and IX. of this Law apply to the banks that perform factoring operations.

(5) Factoring operations may also be performed by a foreign bank and foreign legal entity, but only in the international two-factor system, with the aforementioned having a valid licence to perform factoring operations of the competent authority of the home country.

(6) Only the company which has obtained a license to perform factoring operations from the Agency may incorporate the term „factoring“ and its derivatives into the name of the legal entity or use it in legal transactions.

(7) Companies may join factoring companies associations set up as economic interest associations or as some other form of associations of business entities in accordance with a specific law.

(8) Companies may not enter into any written or oral agreements with other factoring companies or their associations, which could restrict the principle of free market competition.

(9) The companies association shall, at the request of the Agency and in the interest of implementing paragraph (7) of this Article, submit its statute, as well as all agreements, contracts, and other general acts to the Agency.

(10) The provisions of the law regulating the establishment, organisation, operations, management, and cessation of operations of companies apply to these companies, unless otherwise provided for by this Law.

## Article 26

### (Activity of Factoring Companies)

- (1) A factoring company established in the Federation to perform factoring operations may perform factoring operations defined in Article 2, paragraph (1) of this Law if it meets the conditions regarding the minimum amount of registered capital in cash under Article 27 of this Law.
- (2) The company referred to in paragraph (1) of this Article may perform only factoring operations and operations related to factoring, unless a special law prescribes that it may perform other financial services as well.
- (3) Related operations are understood to be particularly the assessment of creditworthiness of legal entities and natural persons performing independent activities, insurance of claims, invoice discounting, discounting (purchase) of bills of exchange, assignment of bill of exchange claims, issuance of guarantees and other types of security, as well as the sale of moveable and immovable assets taken as collateral on the basis of factoring operations, etc.
- (4) The factoring company may discount only those bills of exchange that are issued as a means of settling the claim arising from the basis of the delivery of goods and provision of services in the country or abroad.
- (5) The provisions of the regulations governing bills of exchange apply to the discounting of bills of exchange, unless otherwise provided for by this Law.
- (6) The factoring company must not approve loans.
- (7) The factoring company must not purchase past due uncollected facilities or purchase risks and benefits on the grounds of past due uncollected facilities of banks, as defined by the regulation governing the conditions for the establishment, operations, and cessation of operations of banks as well as the provision of financial services and relevant implementing acts of the Agency, nor must it purchase past due uncollected claims or purchase the risks and benefits of these claims arising from those financial services that have a basic feature and purpose of financing, but are also performed by other entities on the basis of regulations that apply to these entities.
- (8) The Agency shall prescribe the conditions and manner of performance of factoring companies' activities in more detail.

## Article 27

### (Core Capital of the Factoring Company)

- (1) The core capital of the factoring company established in the Federation to perform factoring operations cannot be lower than KM 750 000.00 and must be fully paid in cash.
- (2) The factoring company shall ensure that the amount of capital on the date the financial statements are drafted and presented be an amount that is not lower than the amount of capital referred to in paragraph (1) of this Article.
- (3) In the event that the capital of the factoring company is reduced to below the minimum amount of capital referred to in paragraph (2) of this Article, the Agency may impose one of the supervisory measures prescribed by the provisions of this Law on the factoring company.
- (4) The Agency shall prescribe criteria and/or rules and additional requirements for the capital of the factoring company through a by-law.

## Article 28

### (Shares and Stakes in the Factoring Company)

- (1) The stake of a factoring company member is proportionate to their role in the core capital.
- (2) Shares or stakes of the factoring company must be fully paid in cash prior to the entry into the court register of the establishment or increase in capital of the factoring company.

(3) Preferred shares of the factoring company established as a joint stock company can be up to 25% of total shares.

#### Article 29

##### (Indirect Investments and Stakes in a Legal Entity)

(1) Indirect investments are investments in the capital of a legal entity or the acquisition of voting rights in that legal entity through a third party.

(2) The indirect holder of shares, business stakes or other rights that ensure a stake in the company's capital or voting rights in that company's is a person:

a) for whose account another person (the direct holder) has acquired the shares, business stakes or other rights in that company,

b) who is related to the direct holder of shares, business stakes or other rights in the company just like members of the immediate family, or

c) a person who is a member of the immediate family of the direct holder.

(3) Members of the immediate family are:

a) the spouse of that person, or the person with whom they live in the same household, which, according to the law governing marriage and family relations, has the same legal status as marriage,

b) children or adopted children,

c) other persons who are under the custody of that person.

(4) Other forms of relations pursuant to the regulations governing the establishment, organisation, and operations of companies are also considered to be related persons.

#### Article 30

##### (Change of Holder of Qualified Stake in the Factoring Company)

(1) Any natural person or legal entity (the intended acquirer) that intends to directly or indirectly acquire or increase their stake in the factoring company, which would result in the amount of capital or voting rights reaching or exceeding 10%, 20%, 30% or 50% or in the factoring company becoming a subsidiary of the intended acquirer, shall previously submit a request to the Agency for the issuance of an approval in written form and obtain approval for that acquisition.

(2) The request referred to in paragraph (1) of this Article shall contain:

a) data on the amount of that stake intended to be acquired,

b) the documentation referred to in Article 32 of this Law.

#### Article 31

##### (Notifying the Agency of Alienation of Qualified Stake)

(1) Any legal entity or natural person that intends to alienate a qualified stake in the factoring company shall notify the Agency of that in written form, stating the amount of stakes they intend to alienate.

(2) The entity referred to in paragraph (1) of this Article shall notify the Agency of its intention to reduce its qualified stake in such a manner that the share capital or voting rights fall below the threshold of 10%, 20%, 30% or 50%, or that the factoring company ceases to be a subsidiary of that entity.

(3) If the factoring company learns of the acquisition or alienation of the qualified stake in the company which exceeds or is below the threshold of 10%, 20%, 30%, or 50%, it shall immediately notify the Agency of it.

#### Article 32

##### (Request for Issuance of Approval for Acquisition of Qualified Stake)

(1) The prescribed documentation referred to in paragraph (3) of this Article is to be submitted to the Agency for the issuance of an approval for the acquisition or increase in a qualified stake.,

(2) In the case of an acquisition of a qualified stake which allows dominant influence or control over the operations of the factoring company, the intended acquirer shall, at the request of the Agency and in addition to the request and documentation referred to in paragraph (1) of this Article, also submit:

a) a business plan and strategy for the factoring company in which they are acquiring a qualified stake, with the projected balance sheet and income statement for the first three business years,

b) changes in the management, organisational, and personnel structure, if planned,

c) an action plan in the area of information technology, if there are changes planned.

(3) The Agency shall adopt a by-law prescribing a list of the documents referred to in paragraph (1) of this Article, with criteria on the basis of which the adequacy and financial condition of the intended acquisition of a qualified stake is to be assessed, as well as the decision-making process on the approval for the acquisition of a qualified stake.

### Article 33

#### (Decision-Making Process Regarding Approval for Acquisition of Qualified Stake)

(1) The Agency shall, within two working days of receiving a proper request for the acquisition of a qualified stake, inform the requester in written form of the receipt of the request and indicate the date on which the deadline for the implementation of the decision-making process expires.

(2) The Agency shall, within 60 days from the date on which the requester receives the notice referred to in paragraph (1) of this Article on the receipt of the request and all documentation that must accompany the request, implement a decision-making process regarding the approval for the acquisition of a qualified stake.

(3) After making a decision regarding the request, the Agency shall, within two working days of the decision being made, inform the requester of this in written form.

(4) If the Agency does not make a decision regarding the request referred to in paragraph (2) of this Article, it is understood that it has issued an approval for the acquisition of a qualified stake.

(5) In the case referred to in paragraph (4) of this Article, the Agency shall, at the request of the acquirer of the qualified stake, issue an approval for the acquisition of a qualified stake within eight days of receiving that request.

(6) Notwithstanding the provisions of paragraphs (1) to (4) of this Article, if the request for the acquisition of a qualified stake is submitted together with a request for a licence to perform factoring operations, the Agency shall make a decision regarding the request within the period referred to in Article 39, paragraph (5) of this Law.

(7) If the Agency has received two or more requests for the acquisition of a qualified stake, it shall treat all intended acquirers equally.

(8) A person who has obtained approval for the acquisition of a qualified stake shall carry out the acquisition with respect to which the approval was issued within six months from the date of the issuance of the approval for this acquisition. If not, the approval for the acquisition of a qualified stake ceases to be valid upon the expiry of that deadline.

(9) If the reason referred to in paragraph (8) of this Article sets in and the approval ceases to be valid, the Agency shall revoke the approval for the acquisition of a qualified stake.

### Article 34

#### (Making a Decision Regarding the Approval for Acquisition of Qualified Stake)

When making a decision regarding the issuance of an approval for the acquisition of a qualified stake, the Agency assesses the adequacy and financial condition of the intended acquirer of the qualified stake according to the following criteria:

- a) the reputation of the intended acquirer,
- b) the reputation, experience and relevant abilities of the persons who will conduct the operations of the factoring company after the acquisition,
- c) the financial condition of the intended acquirer,
- d) the ability of the factoring company to comply with or continue to comply with the provisions of this Law and other laws and regulations applicable to the operations of the factoring company,
- e) whether there are reasonable grounds for suspicion in accordance with regulations on preventing money laundering and terrorism financing, whether money laundering or terrorism financing is carried out or attempted to be carried out through the given acquisition of a qualified stake, or whether the given acquisition of a qualified stake may increase the risk of money laundering or terrorism financing.

#### Article 35

##### (Rejection of Request for Acquisition of Qualified Stake)

The Agency shall reject a request for the issuance of an approval for the acquisition of a qualified stake if:

- a) it assesses that the adequacy or financial condition of the acquirer of the qualified stake does not meet the criteria referred to in Article 34 of this Law,
- b) it can be concluded that the operations of the factoring company might be jeopardised based on the legal or financial position of the intended acquirer of the qualified stake or due to activities or operations performed by the intended acquirer of the qualified stake or their related persons or due to the actions of the intended acquirer of the qualified stake,
- c) it would be made impossible or significantly more difficult to supervise the operations of the factoring company due to activities or operations performed by the future acquirer of the qualified stake,
- d) the acquirer of the qualified stake submitted false or incomplete information or information that is misleading, with this information being important for making a decision regarding the issuance of an approval.

#### Article 36

##### (Additional Information and Documentation for Issuance of Approval for Acquisition of Qualified Stake)

(1) In addition to the documentation referred to in Article 32 of this Law, the Agency may request additional information or documentation it deems necessary to decide on the issuance of the approval while processing the request, including information required by the law governing the prevention of money laundering and terrorism financing, collected by those bound by that law.

(2) When deciding whether to issue an approval for the acquisition of a qualified stake, the Agency shall examine the sources of funding through which the acquirer intends to acquire a qualified stake in the factoring company.

(3) In order to obtain information necessary for making a decision on the issuance of an approval for the acquisition of a qualified stake, the Agency may verify the information submitted by the intended acquirer of a qualified stake.

#### Article 37

##### (Legal Consequences of Acquisition of Qualified Stake without Approval of the Agency and Revocation of Approval for Acquisition of Qualified Stake)

(1) A person who acquires or holds a business stake or shares contrary to the provisions of this Law shall does not have voting rights or the right to participate in the management of the factoring company on the basis of a business stake or shares acquired without the approval of the Agency.

(2) In the case referred to in paragraph (1) of this Article, the Agency shall order the sale of shares or business stakes acquired in such a manner.

(3) The Agency shall revoke the approval for the acquisition of a qualified stake in the following cases:

a) if the holder of the qualified stake received the approval by providing incorrect, inaccurate information, information that is misleading or in some other improper manner,

b) if the conditions prescribed by the provisions of this Law on the basis of which the approval for the acquisition of a qualified stake was issued cease to be.

(4) In the case referred to in paragraph (3) of this Article, a person whose approval for the acquisition of a qualified stake has been revoked has no voting rights from shares or business stakes for which their approval was revoked. In that case, the Agency shall order the sale of the acquired shares or business stakes for which the approval for the acquisition of a qualified stake of the holder of the qualified stake was revoked.

(5) The cost of the sale of shares or business stakes referred to in paragraph (4) of this Article is settled by the holder of the qualified stake.

#### Article 38

##### (Approval for Acquisition of Qualified Stake in Another Legal Entity)

(1) Prior to the acquisition of a stake in another legal entity on the basis of which it directly acquires or increases its stake in another legal entity, which would result in the amount of the stake in capital or voting rights reaching or exceeding 10%, 20%, 30% or 50% or in that legal entity becoming a subsidiary of the factoring company, the factoring company shall submit a request to the Agency in written form regarding the issuance of an approval and obtain the Agency's approval for that acquisition.

(2) The documentation required for the assessment of the legal entity in which the factoring company is acquiring or increasing a qualified stake and the effect of the intended acquisition on the operations of the factoring company, which must be submitted to the Agency together with a request for the issuance of an approval for the acquisition or increase of the qualified stake, must be adjusted and appropriate to the legal entity in which the factoring company is acquiring or increasing a qualified stake.

(3) The Agency shall adopt a by-law prescribing a list of the documents referred to in paragraph (2) of this Article and the criteria on the basis of which the adequacy and financial condition of the legal entity in which the factoring company is acquiring or increasing a qualified stake is assessed.

(4) If the factoring company intends to sell or otherwise alienate the stake in the other legal entity in order to thereby reduce its stake to below the threshold specified in paragraph (1) of this Article, it shall notify the Agency of its intention in written form.

(5) The provisions of Articles 34, 35, 36, and 37 of this Law accordingly apply to the approval for the acquisition of a qualified stake in another legal entity for the factoring company.

#### Article 39

##### (Operating Licence of Factoring Company in Domestic Factoring)

(1) The Agency shall issue a decision granting a licence to perform factoring operations to legal entities on a permanent basis and it is not transferable to another entity or legal successor, while

also being the condition for entry into the court register. The factoring company acquires legal personality upon entry into the court register.

(2) The operating licence shall not be issued to those companies which have arrears on taxes and contributions.

(3) A request for the issuance of a licence to perform factoring operations is submitted by the founder of the factoring company or a person authorised by them.

(4) In addition to the request referred to in paragraph (3) of this Article, the following is also to be submitted:

a) Memorandum of Association of the factoring company;

b) information on the founders of the factoring company, namely:

1) for founders – natural persons: a certified copy of the ID card or a certified copy of the passport for foreign nationals as well as proof – a certificate of the competent authority, not older than three months from the date the request was submitted, that the founder has not been sentenced to imprisonment for more than six months by a final judgment, that there are no ongoing criminal proceeding against them, and that they have not been prohibited from exercising their profession, activity or duty,

2) the founders – legal entities that are holders of qualified stakes: excerpt from the court register or another appropriate public register, but not older than six months from the date the request was submitted, and audited financial statements for the last two business years, and if the founder as a subject has operated for less than two business years, it is necessary to attach the last audited financial statement,

3) for founders – foreign legal entities: a certified copy of the decision or another document on the entry into the register of bodies that is, according to the regulations of the country the founder is seated in, in charge of keeping the register of economic entities, i.e. legal entities, not older than six months from the date the request was submitted,

4) a certified statement of the founder on the nominal amount of their shares or business stakes of each founder and their stake in the capital of the factoring company that is being established,

5) if the founder is a joint stock company, shareholder deregistration, and if the founder is a limited liability company, a list of its company members,

6) proof of secured funds for the establishment of the company and the payment of the core capital referred to in Article 27, paragraph (1) of this Law,

7) a certified statement of origin of the funds referred to in item 6) of this paragraph,

8) a certificate of the competent tax authority that there are no arrears on taxes and contributions,

9) a business plan for the first three business years, which includes the projected balance sheet and income statement and a description of the information system,

10) a proposal of Management Board members and the composition of the Supervisory Board with the following documents:

A certified copy of the ID card or a certified copy of the passport for foreign nationals as well as proof, i.e. a certificate of the competent authority, not older than three months from the date the request was submitted, that that person has not been sentenced to imprisonment for more than six months by a final judgment, that there are no ongoing criminal proceeding against them, and that they have not been prohibited from exercising their profession, activity or duty.

(5) The Agency shall issue a decision on the request referred to in paragraph (3) of this Article within 60 days of receiving a proper request, if the requester has previously submitted proof of payment of the core capital in cash to the Agency.

(6) The decision referred to in paragraph (5) of this Article shall be final in administrative proceedings and shall not be subject to administrative dispute.

(7) The founder of the factoring company or a person authorised by them shall request the entry of the factoring company into the Register of Companies no later than ten days after receiving

the Agency's decision, through which the factoring company is issued a licence to perform factoring operations.

(8) The founder of the factoring company or a person authorised by them shall submit the decision on the entry into the Register of Companies to the Agency within five days of receiving the decision on entry into the court registry.

(9) The founder of the factoring company or a person authorised by them shall immediately submit to the Agency any change in the information referred to in paragraph (4) of this Article, but no later than ten days from the date of the change.

(10) The Agency shall adopt a by-law prescribing in more detail additional documentation, conditions and manner of issuing licences for factoring companies in domestic factoring.

#### Article 40

##### (Rejection of Request for Issuance of Licence to Perform Factoring Operations)

The Agency shall reject the request for the issuance of a licence to perform factoring operations:

- a) if it can be concluded from the Memorandum of Association and other documentation of the factoring company, i.e. the company that is being established, which is submitted together with the request in accordance with Article 39 of this Law, that the factoring company, i.e. the company that is being established does not meet all the conditions in accordance with this Law and regulations adopted on the basis of this Law for the operations of factoring companies,
- b) if the provisions of the Memorandum of Association of the factoring company, i.e. the company that is being established are at odds with the provisions of this Law and regulations applicable to factoring companies,
- c) if there exists any of the reasons referred to in Article 35 of this Law to reject the request for the acquisition of a qualified stake,
- d) if the persons proposed as Management Board members do not meet the conditions for approval, i.e. if the Agency refuses to issue an approval for the Management Board members, and
- e) if supervising the factoring company, in accordance with the provisions of this Law, would be more difficult or impossible due to the close connection of the factoring company with other entities or if there are other reasons why supervision is impossible.

#### Article 41

##### (Revocation of Licence to Perform Factoring Operations)

(1) The Agency shall adopt a decision revoking the licence to perform factoring operations:

- a) if the factoring company decides to cease operations as a factoring company,
- b) with the onset of the legal effects of the transfer of factoring operations to another factoring company,
- c) on the day bankruptcy proceedings against the factoring company are initiated,
- d) with the initiation of liquidation proceedings against the factoring company,
- e) if the factoring company ceases operations, and
- f) in other cases provided for by this Law.

(2) The factoring company can make a decision to cease operations as a factoring company provided that it has no valid factoring agreements in its portfolio, or provided that it transfers its factoring operations to another factoring company.

(3) The company referred to in paragraph (2) of this Article shall, prior to the decision on the change in business activity being entered into the court register, obtain a decision from the Agency on the revocation of the licence to perform factoring operations.

(4) The Agency shall issue a decision on the revocation of the approval when, together with the other conditions required for the cessation of operations as a company, it determines that the



factoring company has no valid factoring agreements in its portfolio or that it has transferred its factoring operations to another factoring company.

(5) If the company referred to in paragraph (2) decides to cease operations as a factoring company, but has valid factoring agreements in its portfolio and has not found a factoring company and transferred its factoring operations to it, it shall initiate liquidation proceedings. The provisions of the law governing bankruptcy and liquidation proceedings apply to the bankruptcy and liquidation of factoring companies.

(6) In the event of the transfer of factoring operations referred to in paragraph (2) of this Article, companies participating in these proceedings shall inform the Agency of their intention in written form, carry out prior consultations with the Agency, and obtain the Agency's approval for that transfer.

(7) In the event that the licence to perform factoring operations ceases to be valid for the reason specified in paragraph (1), item e) of this Article, the Agency shall issue a decision on the revocation of the licence to perform factoring operations and notify the competent registration court of it.

## Article 42

### (Status Changes of Factoring Company)

(1) If the factoring company is involved in a consolidation, merger or division of the company, it needs to obtain the Agency's approval for any status change.

(2) The provisions of this Law for the issuance of a licence to perform factoring operations accordingly apply when deciding whether to issue the approval for status changes referred to in paragraph (1) of this Article.

(3) If a new factoring company is formed as a result of the status change of the factoring company, that company must obtain a licence to perform factoring operations from the Agency prior to the entry of the status change into the court register.

(4) The factoring company can be involved in other status changes as well, to which paragraphs (1) to (3) of this Article apply accordingly.

## Article 43

### (Records of Factoring Companies)

(1) The records of companies regarding issued and revoked licences for performing factoring operations are kept by the Agency.

(2) The records must include:

a) the name of the factoring company, address and registration number,

b) the legal form,

c) the ownership structure, names and business addresses of members/shareholders with more than 5% of the shares,

d) the contact details, details on contact person, and web address,

e) the address of organisational units in the country or abroad,

f) the names and business addresses of all members of the Management Board or Supervisory Board,

g) a network membership and the names and addresses of member companies and affiliated companies, or instructions on where such information is publicly available.

## Article 44

### (Bodies of Factoring Company)

(1) The managing bodies of the factoring company are:

a) the assembly,

b) the Supervisory Board, and

c) the administration.

(2) The provisions of regulations governing the operations of companies accordingly apply to the managing bodies referred to in paragraph (1) of this Article, unless otherwise provided for by this Law.

#### Article 45

##### (Assembly of Factoring Company)

(1) The assembly of the factoring company consists of the shareholders or all members of the company.

(2) In a factoring company with one shareholder or with one member who has a stake, the powers of the assembly are exercised by the shareholder or company member with one stake.

#### Article 46

##### (Supervisory Board of Factoring Company)

(1) The factoring company must have a Supervisory Board.

(2) The Supervisory Board of the factoring company consists of at least three members.

(3) The Memorandum of Association of the factoring company can determine that the Supervisory Board have more members, but their number must be odd.

#### Article 47

##### (Requirements for Performing the Function of Supervisory Board Member of Factoring Company)

(1) A person who has a good reputation, the appropriate professional qualifications, and the experience for supervising the business operations of the factoring company can be selected or appointed a member of the Supervisory Board of the factoring company.

(2) It is understood that the requirement referred to in paragraph (1) of this Article is met if the person has the relevant experience gained while managing the operations or while supervising the operations of a factoring company or another company whose activities are comparable to the activities of the factoring company.

(3) The Agency may order the factoring company to convene the assembly of the factoring company and to propose the removal of a Supervisory Board member of the factoring company if:

a) the Supervisory Board member violates or fails to discharge their duties as specified by this and other laws and regulations adopted on the basis of those laws,

b) there exists or appears a barrier to the appointment or selection of the Supervisory Board member,

c) the Supervisory Board member does not meet the requirements referred to in paragraphs (1) and (4) of this Article.

(4) The Agency shall prescribe the requirements to be met by Supervisory Board members of the factoring company in more detail.

#### Article 48

##### (Competences and Powers of Supervisory Board of Factoring Company)

In addition to the competences and powers the Supervisory Board has under the provisions of the law governing the establishment and operations of companies, the Supervisory Board of the factoring company is also responsible for issuing approvals to the Management Board of the company with respect to:

a) determining the business policy of the factoring company,

b) the financial plan of the factoring company,

c) the organisation, internal controls system, and risk management system,

d) the annual plan of the factoring company, as well as with respect to deciding on other issues specified by this Law.

#### Article 49

##### (Duties and Responsibilities of Supervisory Board of Factoring Company)

In addition to the competences and powers referred to in Article 48 of this Law, the Supervisory Board of the factoring company shall:

- a) review the adequacy of the practices and the effect of the work of the internal audit,
- b) give its opinion to the Agency on the Agency's orders in supervisory proceedings of the company within 30 days of receiving the Agency's report on the supervision that was carried out as well as supervise the practices of the factoring company in accordance with the orders and decisions of the Agency,
- c) submit a report to the company's assembly regarding the Agency's orders and the procedures referred to in item b) of this Article,
- d) decide on the issuance of approvals of financial statements and inform the factoring company's assembly of them in written form,
- e) explain its opinion on the annual report of the internal audit and the annual report of the Management Board to the assembly.

#### Article 50

##### (Management Board of Factoring Company)

- (1) The Management Board organises and manages the operations, represents the factoring company, and is responsible for the legality of operations.
- (2) The Management Board of the factoring company must have at least two members leading the operations and representing the company, consisting of the director and at least one executive director, who conduct business operations and represent the company.
- (3) The members of the Management Board of the factoring company must be full-time employees in the company.
- (4) The Management Board of the factoring company may authorise the procurator (one or more) to represent the company, i.e. conclude agreements and perform legal actions in the name and on behalf of the company, which arise from the company's activities, but only together with at least one member of the Management Board.
- (5) The Memorandum of Association of the factoring company determines the requirements to be met by a person granted procuracy, the body authorised to grant procuracy, the type and manner of granting procuracy, the scope of authorisations of procuracy, including the procurator's limitations in taking action.

#### Article 51

##### (Requirements for Management Board Member of Factoring Company)

- (1) A Management Board member of the factoring company can be a person who meets the following requirements:
  - a) has the relevant professional qualifications, ability and experience necessary for managing the operations of the factoring company,
  - b) was not a member of the Supervisory Board, a member of the Management Board or a person in another leadership position in the factoring company or another company when bankruptcy proceedings were initiated against it, a decision on liquidation was made or whose operating licence was revoked, unless the Agency assesses that that person has not affected the occurrence of the bankruptcy, liquidation or revocation of the operating licence with their careless or improper work and conduct,

- c) has not been the subject of a conviction by final judgment for a misdemeanor or a criminal act which constitutes a serious violation of the following regulations: regulations governing the establishment and operations of companies, regulations governing the securities market, regulations governing the operations of banks, regulations governing the area of insurance, regulations governing the area of leasing, regulations governing the establishment and operations of investment funds and companies for the management of the aforementioned, regulations governing the establishment and operations of mandatory and voluntary pension funds and companies for the management of the aforementioned, regulations governing pension insurance companies, regulations governing the takeover of joint stock companies, regulations governing the area of accounting, regulations governing taxes,
- d) has a good reputation,
- e) has not been the subject of a conviction by final judgment neither for a criminal act against the values protected by international law nor for any of the following criminal acts: fraud, against property, where criminal proceedings are initiated ex officio, against the economy, against justice, forgery, malfeasance, for disclosure of classified information, for money laundering, for terrorism financing, as well as against humanity and human dignity,
- f) about whom it can be reasonably concluded, based on past behaviour, that they will fairly and conscientiously discharge the duties of a Management Board member of the factoring company,
- g) meets the requirements for Management Board member prescribed by the law governing the establishment and operations of companies,
- h) is not a Management Board member or procurator of another company,
- i) is not a person to whom the Agency has refused to issue a licence to serve as a Management Board member, namely at least one year from the date of the decision rejecting the request for the issuance of a licence to serve as a Management Board member,
- j) has not been dismissed as a Management Board member of the factoring company by the Agency's order in accordance with Article 93 of this Law.

(2) A Management Board member or procurator of the factoring company cannot be a Management Board member, Supervisory Board member or procurator of any other legal entity that operates on the basis of a licence or approval from the Agency.

(3) The Agency shall prescribe in more detail the conditions referred to in paragraph (1) of this Article regarding the membership in the Management Board of the factoring company, the issuance of approvals and the documentation submitted together with the request for the issuance of an approval to serve as a Management Board member of the factoring company.

## Article 52

### (Approval to Perform Function of Management Board Member of Factoring Company)

(1) Only a person who obtains a decision on the issuance of an approval to perform the function of a Management Board member of the factoring company from the Agency can be appointed a Management Board member.

(2) An request for the issuance of the approval referred to in paragraph (1) of this Article is to be submitted by the candidate for Management Board of the factoring company, together with an obligatory enclosed written decision or approval of the company body responsible for the appointment of Management Board members for a term which may not be longer than four years.

(3) In the decision-making process, Agency will issue the approval referred to in paragraph (1) of this Article for the term of the proposed mandate.

(4) The request referred to in paragraph (2) of this Article shall be accompanied by evidence of meeting the requirements from Article 51 of this Law.

(5) A person who has received a decision on the issuance of the Agency's approval to serve as a Management Board member of the factoring company prior to being appointed a Management Board member of another factoring company must obtain the Agency's approval again.

(6) In the event that the competent body of the factoring company wishes to re-appoint a person who has already received a decision on the issuance of an approval to perform the function of a Management Board member of the company, the candidate for Management Board member of the factoring company shall submit to the Agency a request for the issuance of the approval referred to in paragraph (2) of this Article regarding a new term, at least three months before the expiry of the term of the Management Board member, together with an enclosed written decision or approval of the factoring company body responsible for the appointment of Management Board members.

(7) A person who has already received a decision on the issuance of an approval to serve as Management Board member of the factoring company and whom the competent body of the factoring company wishes to re-appoint shall again undergo the procedure prescribed by this Law.

#### Article 53

##### (Rejection of Request for Issuance of Approval to Perform Function of Management Board Member of Company)

The Agency shall reject the request for the issuance of an approval to perform the function of a Management Board member of the factoring company if:

- a) the proposed person does not meet the requirements prescribed by the provisions of Article 51 of this Law,
- b) the Agency has objective and verifiable reasons on the basis of which it can be assumed that the activities and operations the person engages in or has engaged in would pose a threat to the management of the factoring company,
- c) the information provided in the request for the issuance of an approval is inaccurate, false or misleading.

#### Article 54

##### (Revocation of Approval to Perform Function of Management Board Member of Factoring Company)

(1) The Agency shall issue a decision on the revocation of the approval to perform the function of a Management Board member of the factoring company if:

- a) the person is not appointed and does not take office as a Management Board member of the company within six months from the date of issuance of the approval to perform the function of a Management Board member, with the process of issuing the approval having been connected to the process of issuing the licence to perform factoring operations,
- b) the person is not appointed and does not take office as Management Board member within three months from the issuance of the approval to perform the function of a Management Board member,
- c) the person's function as Management Board member of the factoring company to which the approval refers is terminated,
- d) the person's employment with the factoring company to which the approval refers is terminated on the date of the termination of employment, i.e. the expiry of their term as Management Board member to which the approval refers,
- e) the Management Board member does not meet the requirements under which their approval was issued,
- f) the approval was issued as a result of an omission of important facts or on the basis of inaccurate, false or misleading information provided, or in some other improper manner,

- g) the Management Board member of the factoring company committed a serious violation of the duties of a Management Board member referred to in Article 56 of this Law, regulations adopted on the basis of this Law and other legislation, particularly if that led to the liquidity or the maintenance of the capital of the factoring company being jeopardised,
  - h) the Management Board member failed to ensure the implementation of or failed to implement the supervisory measures ordered by the Agency,
  - i) the Management Board member did not ensure an adequate organisational structure or risk management system of the factoring company,
  - j) the requirements from the provisions of the regulation on companies have ceased to exist for the Management Board member,
  - k) it is determined that the Management Board member has a conflict of interest due to which they are unable to fulfill obligations and discharge duties with the diligence of an orderly and conscientious businessman,
  - l) the Management Board member regularly fails to fulfill the obligation of identifying and assessing the impact of policies, measures and internal procedures related to the compliance of the factoring company with the provisions of this Law or fails to take appropriate measures to rectify the shortcomings or correct irregularities in the operations of the factoring company.
- (2) Exceptionally, in the cases referred to in paragraph (1), items h), i), k) and l) of this Article, the Agency may, instead of revoking the decision, issue a decision that will temporarily prohibit them from serving as a Management Board member of the factoring company.

#### Article 55

##### (Legal Consequences of Revocation of Approval to Perform Function of Management Board Member of Factoring Company)

- (1) If the Agency revokes the approval to perform the function of a Management Board member, the factoring company shall, without delay, issue a decision on the revocation of the appointment of that Management Board member.
- (2) If the Management Board member had their approval to perform the function of a Management Board member revoked or in other cases of early termination of the Management Board member's term, the competent body according to the Memorandum of Association of the factoring company shall, within 90 days from the date of termination of office of a member or members of the Management Board, obtain the approval of the Agency and appoint a new member or new members of the Management Board, if the factoring company were not to have the minimum number of Management Board members in accordance with the Memorandum of Association and/or this Law.
- (3) The Agency shall combine both procedures if proceedings to revoke the approval of the Management Board member as referred to in Article 54, paragraph (1), item g) of this Law have been initiated against the Management Board member, due to which proceedings to revoke the licence to perform factoring operations have been initiated against the factoring company.
- (4) In the event that the Management Board of the factoring company is not in full session or that members of the Management Board of the factoring company cannot perform their functions for reasons other than those specified in paragraph (2) of this Article, the competent body according to the Memorandum of Association of the factoring company may, without prior approval of the Agency, appoint members of the Supervisory Board as deputy members of the Management Board on a one-time basis, for a period of three months at the most, if that is necessary to ensure the factoring company's operations and the elimination of harmful effects to the factoring company. It is to inform the Agency of this in written form within 3 days of the appointment date.

(5) In the case referred to in paragraph (4) of this Article, the members who are appointed as deputy members of the Management Board must meet the requirements referred to in Article 51 of this Law.

#### Article 56

##### (Duties and Responsibilities of Management and Supervisory Board Members of Factoring Company)

The factoring company, i.e. the members of its Management Board and Supervisory Board shall:

- a) act in a conscientious and fair manner when carrying out activities or discharging their duties, in accordance with the rules of the profession and the best interests of clients, as well as protect the integrity of the factoring market,
- b) act with the diligence of a conscientious businessman when discharging their duties,
- c) obtain and effectively use resources and procedures necessary for carrying out the activities of the factoring company,
- d) comply with the provisions of this Law and the regulations adopted on the basis of this Law as well as the provisions of other laws governing the operations of factoring companies and the regulations adopted on the basis of those laws.

#### Article 57

##### (Audit Board)

- (1) In factoring companies registered as joint stock companies, an audit board shall be formed.
- (2) The Audit Board consists of at least three members.
- (3) The process regarding the selection, appointment, dismissal, composition and manner of decision-making of the Audit Board shall be determined by the statute of the joint stock company.

### CHAPTER V. INTERNATIONAL FACTORING

#### Article 58

##### (Types of International Factoring)

Depending on the purpose of international factoring, there are two types of factoring:

- a) export factoring constitutes a financial deal through which the domestic factor conducts the purchase and payment of the claim from the exporter – seller and further sells it to the correspondent factor in the country of the importer – buyer who carries out the collection and transfer to the domestic export factor in the country of the exporter,
- b) import factoring constitutes a financial deal through which the domestic factor in the role of the correspondent factor collects the claim from the buyer in the maturity period and transfers the collected claim to the export factor in the country of the seller.

#### Article 59

##### (Systems in International Factoring)

- (1) International factoring can be performed:
  - a) in a single-factor system, when the domestic factor assumes the responsibility to collect the claim themselves from a buyer that is seated abroad,
  - b) in a two-factor system, when the domestic factor transfers the claim or assumes the debt of a factor that is seated abroad in accordance with the terms of the factoring agreement and this Law.
- (2) If the performance of factoring referred to in paragraph (1), item b) of this Article is regulated differently by another law, the provisions of this Law apply.

Article 60  
(Entities of International Factoring)

(1) The entities in international factoring are:

- a) the seller – exporter of goods who transfers their claim, arising from an agreement on the sale of goods or provision of services, from the buyer to the export factor,
- b) the export factor that is in the country of the seller as the buyer of the claim,
- c) the import factor that is in the country of the buyer as a correspondent factor,
- d) the buyer – importer of goods.

(2) The entities in international factoring shall comply with the general rules and deadlines applied by professional associations for international factoring, especially Factors Chain International (hereinafter: FCI) and/or International Factors Group (hereinafter: IFG).

Article 61  
(Responsibilities of Export Factor in Two-Factor System)

(1) The export factor performing international factoring and seated in the Federation in the two-factor system shall:

- a) conclude an interfactor agreement with the factor seated abroad, which must be within internationally recognised and accepted legal and technical frameworks developed by the international professional associations FCI and IFG,
- b) take actions and measures of customer due diligence in accordance with regulations governing the prevention of money laundering and terrorism financing.

(2) The export factor shall conscientiously manage the transferred claims with the diligence of a conscientious businessman.

Article 62  
(Transfer of Claim in Export Factoring)

(1) On the basis of the order received from the buyer and the agreement on the sale of goods, the seller delivers the goods to the buyer and issues an export invoice. Together with the application for an export factoring service, the seller also submits the purchase order and bill of lading for review to the export factor.

(2) The export factor determines the merit and validity of the seller's claim to the buyer, expresses interest in purchasing the offered claim and forwards the received documentation referred to in paragraph (1) of this Article to the import factor.

(3) The import factor shall check the solvency and creditworthiness of the buyer and approve coverage, i.e. issue a statement on the responsibility of the buyer to the export factor for the collection of the export claim.

Article 63  
(Two-Factor Factoring Agreement in International Factoring)

(1) The export factor asks the seller to complete the documentation in accordance with Article 5, paragraph (3) of this Law and to approach the conclusion of the export factoring agreement.

(2) The date of the conclusion of the agreement on the transfer of the claim between the seller and the export factor is considered to be the date of the transfer of the claim to the export factor.

(3) Following the conclusion of the agreement referred to in paragraph (2) of this Article, the export factor shall inform the correspondent import factor in the buyer's country of the signing of the agreement with the seller, and then conclude a two-factor factoring agreement with them.

(4) The import factor shall inform the buyer of the signed interfactor agreement with the export factor, as well as of their obligation to pay the transferred claim to the import factor within the agreed period, rather than to the seller.



(5) The factoring agreement between the seller and the export factor contracts the amount of the advance payment based on the nominal value of the export claim to be paid to the seller, the interest on the advance payment charged by the export factor, the fee and costs of the factor, as well as the method of payment of the interest and fees.

#### Article 64

##### (Advance Payment, Collection and Payment of Claims in Export Factoring)

- (1) Following the signing of the agreement with the seller, the export factor shall pay the seller the agreed amount of the advance payment as a percentage of the nominal value of the transferred export claim within the period defined by the agreement.
- (2) On the date the export claim matures, the buyer shall make a payment to the import factor.
- (3) In the maturity period, the import factor collects the claim from the buyer and remits it to the export factor based in the Federation, net of the agreed fee and costs.
- (4) After collecting the claim from the import factor, the export factor shall pay the seller the difference in the export invoice and the full amount, net of the advance payment, interest, fee and other expenses of the export factor.
- (5) The collection and payment of transferred claims and assumed debt in international factoring is carried out in accordance with regulations governing foreign exchange operations.

### CHAPTER VI. RISK MANAGEMENT, FINANCIAL REPORTING AND AUDIT

#### Article 65

##### (Risk Management)

- (1) The company performing factoring operations must have elaborate strategies, policies and procedures for risk management, which involve identifying, measuring or assessing and monitoring risks, including reporting on the risks the factoring company is exposed to or could be exposed to during its business operations as well as a division of responsibilities in relation to risk management, and it shall implement regular risk management measures and act in accordance with the rules of the financial profession with respect to that.
- (2) The factoring company that has assumed the right and responsibility of keeping records, collection and management of claims shall in particular do the following to protect the collection of claims:
  - a) specify in the agreement that the seller has the obligation to send a written notice to the buyer regarding the existence of debt to the seller, as well as the obligation of the buyer to pay the transferred claim to the factor on the basis of the agreement on the transfer of the claim, except in the case of undisclosed factoring as referred to in Article 11, paragraph (2) of this Law,
  - b) if necessary, assess the buyer in order to ensure payment by taking blank bills of exchange with a bill of exchange statement of the debtor on accepting the obligation to pay the debt in the maturity period and up to the amount (transferred) from the account or up to the approved factoring limit,
  - c) if necessary, assess the buyer as well as the need to ensure the transferred claim with an insurance company.
- (3) The Agency shall prescribe the criteria and manner of risk management in more detail.

#### Article 66

##### (Internal Audit)

- (1) The factoring company shall organise the performance of an internal audit to independently and objectively evaluate the internal controls system, provide an independent and objective expert opinion on improving business operations in order to improve the operations of the

factoring company by introducing a systematic, disciplined approach to evaluating and improving risk management, control, and corporate governance.

(2) The Agency shall prescribe the manner of conducting internal audit affairs in the factoring company in detail.

#### Article 67

##### (Prevention of Money Laundering)

(1) The factoring companies referred to in Article 25 of this Law, which have obtained the licence to perform factoring operations from the Agency, shall take measures and actions prescribed in accordance with regulations on the prevention of money laundering and terrorism financing in their operations.

(2) The factoring companies referred to in Article 25 of this Law shall have elaborate policies and procedures for detecting and preventing transactions involving criminal activities, money laundering or activities supporting terrorism and shall take measures to determine the identity of all entities they enter into business relationships with.

#### Article 68

##### (Financial Reporting)

(1) The factoring company shall draft and present financial statements in accordance with the provisions of the regulations on accounting and auditing in the Federation as well as in accordance with International Accounting Standards and International Financial Reporting Standards.

(2) The factoring company shall organise its operations and keep business books, business documentation and other records in a manner that enables a review of whether the company operates in accordance with applicable regulations and professional standards.

(3) The factoring company shall:

a) maintain proper and up-to-date records, which it shall show in the process of supervision of the company's operations,

b) inform the seller of the implementation of certain provisions of the factoring agreement and submit to them documents that are to be entered into the books.

(4) The factoring company and seller shall, on the basis of the documentation referred to in Article 5, paragraph (3) of this Law, make their respective bookkeeping entries and keep and archive them in accordance with the accounting regulations of the Federation.

#### Article 69

##### (Audit of Financial Statements)

(1) The annual financial statements of the factoring company must be audited by an audit firm in the manner and under the conditions set out by regulations governing accounting and auditing as well as the rules of the auditing profession, unless otherwise specified by this Law and regulations adopted on the basis of this Law.

(2) The factoring company shall submit to the Agency the audited annual financial statements referred to in Article 68, paragraph (1) of this Law within 15 days from the date of issuance of the audit report.

(3) The same audit firm may audit up to five consecutive annual financial statements of the factoring company.

(4) The Agency may request additional explanations from the auditor regarding the audited annual financial statements or other audited reports of the factoring company.

(5) If the Agency determines that an audit of the factoring company's statements has not been performed or that the audit report was not prepared in accordance with this Law, the regulations adopted on the basis of this Law, the regulations governing accounting and auditing, and the

rules of the auditing profession, or if it determines that the audit report on the factoring company's statements is not based on true and objective facts through the conducted supervision of the company's operations or in any other manner, it may reject the audit report and request that the factoring company have the audit performed by authorised auditors of another audit firm, at the expense of the company.

(6) The same audit firm cannot audit the financial statements of the factoring company if it provided services to the same factoring company in the area of finance, accounting, internal audit, valuation of the factoring company, its assets and liabilities, tax and business consulting, and acted as a court expert witness for it in the year for which the financial statements were prepared.

(7) The same audit firm cannot take over nor can the factoring company entrust it with auditing its financial statements if the audit firm generated more than half of its total revenue in the previous year by auditing the financial statements of that company.

(8) The factoring company shall inform the Agency of the audit firm it has selected to audit the financial statements for the business year to which the audit refers, no later than eight days from the decision on the selection being made.

#### Article 70

##### (Reporting to the Agency)

(1) The factoring company shall report to the Agency about:

- a) the entry and change of data entered into the court registry,
- b) a convocation of the Assembly and all decisions adopted by the Assembly,
- c) holders of business shares or company shares, and the acquisition or modification of qualified stakes,
- d) the planned opening, relocation, closing or temporary cessation of operations of a subsidiary, or other organisational changes,
- e) investments on the basis of which the factoring company is directly or indirectly acquiring a qualified stake in another legal entity as well as about any further investment in that legal entity,
- f) changes in the capital structure,
- g) the cessation of certain factoring operations.

(2) The factoring company shall submit a report and information on all operations relevant to conducting supervision, at the Agency's request.

(3) The Agency shall prescribe the structure, content, manner and deadlines for the submission of the report referred to in paragraphs (1) and (2) of this Article, which the companies are required to draft for the purposes of the Agency.

### CHAPTER VII. SUPERVISION OF FACTORING COMPANIES

#### Article 71

##### (Supervision of Factoring Companies)

(1) Within the meaning of the provisions of this Law, supervision constitutes a review of whether the entities performing factoring operations act in accordance with the provisions of this Law, as well as with secondary legislation adopted on the basis of them, in accordance with regulations on risk management, their own rules and standards, the rules of the profession in a manner that enables the proper functioning of the factoring company and the implementation of measures and activities aimed at eliminating the identified illegalities and irregularities.

(2) The main objectives of supervision are reviewing legality, assessing the factoring company's security and stability in the interest of protecting the client's interests and public interest, contributing to the stability of the financial system, and establishing and maintaining trust in the factoring market.

## Article 72

### (The Agency's Competences with Respect to Conducting Supervision)

- (1) The Agency conducts the supervision of factoring companies.
- (2) The provisions of this chapter of the Law apply to the proceedings the Agency conducts within its competences.
- (3) The provisions of regulations on administrative proceedings apply to the proceedings referred to in paragraph (1) of this Article, unless otherwise provided for by this Law. As a rule, proceedings conducted by the Agency are usually decided without a hearing.
- (4) The Agency shall have access to all information and documentation kept in factoring companies.

## Article 73

### (Subject of Supervision)

- (1) When conducting supervision, the Agency shall in particular:
  - a) review the organisational requirements, strategies, policies and procedures the factoring company established in order to harmonise its operations with the provisions of this Law and the regulations adopted on the basis of this Law,
  - b) review and assess the financial stability and position of the factoring company, as well as the risks the factoring company is exposed to or could be exposed to in its operations.
- (2) The Agency shall take into account the scope and complexity of the factoring company's operations when reviewing and assessing the financial stability and position as well as when assessing the risks the factoring company is exposed to or could be exposed to in its operations.
- (3) On the basis of the supervision, reviews and assessments referred to in paragraph (1) of this Article, the Agency shall determine whether the factoring company operates in accordance with legal regulations, whether that company has established an appropriate organisation and a stable management system in the factoring company, as well as capital that ensures an appropriate system for managing and covering the risks the company is exposed to or could be exposed to in its operations.
- (4) When determining the frequency and intensity of the supervision of a particular factoring company, the Agency shall be guided by the size, influence and significance of the factoring company as well as by the nature, type, scope, complexity, and indicators of its business operations.

## Article 74

### (Manner of Conducting Supervision)

- (1) The Agency shall conduct supervision *ex officio*:
  - a) through on-site supervision, on the factoring company's premises, by examining original documentation, reviewing and assessing the overall business performance, interviewing Management Board members, Supervisory Board members and other relevant persons,
  - b) through indirect supervision, on the Agency's premises, by analysing the reports that factoring companies are to submit to the Agency within the prescribed deadlines and by monitoring, collecting and reviewing documentation, notices and data obtained at the Agency's special request, as well as by monitoring, collecting and reviewing data and information from other sources and by reviewing and assessing business operations on the basis of submitted reports and collected information, by interviewing Management Board members, Supervisory Board members and other relevant persons.
- (2) The on-site supervision referred to in paragraph (1), item a) of this Article may be regular or extraordinary.

## Article 75

### (Authorised Persons for Conducting Supervision)

- (1) The supervision referred to in Article 71 of this Law is conducted by Agency employees who are authorised by the Agency (authorised persons).
- (2) Exceptionally, the Agency may request the professional involvement of an auditor, an audit firm or another professionally qualified person to perform tasks related to the supervision of the factoring company.
- (3) The rules on confidentiality that apply to Agency employees authorised to conduct supervision accordingly apply to the professionally qualified person referred to in paragraph (2) of this Article.
- (4) The authorisation to conduct supervision referred to in paragraph (1) of this Article is granted by the Agency.

## Article 76

### (Submission of Data to the Agency)

- (1) The factoring company shall submit to the Agency at its request or make available documentation, reports and data of all circumstances necessary for supervision or for exercising other competences and measures the supervisory authority has on the basis of this Law and on the basis of adopted secondary legislation.
- (2) Management Board members and other relevant persons of the factoring company as well as Supervisory Board members and procurators shall submit the documentation, reports and data referred to in paragraph (1) of this Article.
- (3) The Agency is authorised to request a written statement on the circumstances referred to in paragraph (1) of this Article from the persons referred to in paragraph (2) of this Article or to invite them to give an oral statement on the circumstances.
- (4) The Agency's authorised person may interview the persons referred to in paragraph (2) of this Article in order to obtain information necessary for conducting supervision and meeting supervisory objectives.

## Article 77

### (Notice of On-Site Supervision)

- (1) Prior to beginning to conduct on-site supervision of the factoring company, a written notice of the on-site supervision is submitted, which includes at least:
  - a) the subject of the supervision,
  - b) information on the persons authorised to conduct supervision,
  - c) an indication of the location at which the supervision will be conducted,
  - d) the starting date of the supervision,
  - e) the period of time that is to be supervised.
- (2) The notice referred to in paragraph (1) of this Article may also contain the type of information the factoring company shall prepare for the Agency persons for the purpose of conducting on-site supervision.
- (3) In the course of the supervision, the Agency may supplement the notice of the supervision. The provisions of paragraph (1) of this Article accordingly apply to supplementing the notice of the supervision.
- (4) The notice of the on-site supervision shall be submitted to the factoring company in a period which may not be shorter than three days prior to the start of the supervision.
- (5) Notwithstanding the provisions of paragraph (4) of this Article, the authorised person may submit a notice of the on-site supervision on the starting date of the supervision at the latest, if it is not possible to achieve the purpose of an individual supervision in any other way.

(6) The notice of the on-site supervision must also contain information on the consequences that may occur if the factoring company were to not comply with a request for the supervision of business operations, or if the Agency were to not allow the supervision of business operations to be conducted in a manner prescribed by the provisions of this Law.

#### Article 78

##### (Direct Supervision of Operations of Factoring Company)

(1) After receiving notice of the supervision, the factoring company shall enable the Agency's authorised person to conduct on-site supervision in the factoring company's headquarters and other places in which they or another person authorised by them are carrying out activities and tasks in connection with which the Agency's authorised person is conducting supervision.

(2) The factoring company shall enable the Agency's authorised person, at their request, to examine business books, business documentation, administrative or business records and to supervise the information system and technologies enabling the functioning of the information system to the extent needed for conducting supervision.

(3) The factoring company shall present the Agency's authorised person, at their request, with all requested business documentation, calculation printouts, copies of business books, phone records and recordings of phone conversations, fax-machine records, administrative or business records as hard copies or in the form of electronic records on the medium and in the form requested by the authorised person. The factoring company shall ensure the authorised person's access to the system for managing databases used for the purpose of conducting supervision assisted by computer programmes.

(4) The Agency's authorised persons may, together with the issuance of a certificate, temporarily seize the documentation, printouts, records and recordings referred to in paragraph (3) of this Article, financial instruments, money or items that may serve as evidence in criminal or misdemeanor proceedings, but only until such proceedings are initiated, which is when they shall submit them to the competent authority for conducting said proceedings.

(5) The factoring company's authorised persons shall conduct an interview with the Agency's authorised person and provide information essential for conducting supervision and meeting supervisory objectives.

#### Article 79

##### (Conditions for Conducting On-Site Supervision)

(1) The factoring company shall provide the Agency's authorised person with adequate facilities in which it is possible for them to supervise operations undisturbed and without the presence of other persons.

(2) At the request of the Agency's authorised person, the factoring company shall provide expert and technical assistance, necessary clarifications and other conditions necessary for conducting supervision.

(3) The supervision of operations referred to in paragraphs (1) and (2) of this Article is conducted by the Agency's authorised person during the working hours of the company. If necessary due to the volume or nature of the work, the factoring company shall enable the Agency's authorised person to conduct the supervision of operations outside working hours as well.

#### Article 80

##### (Information System Control)

(1) The factoring company that uses an information system in its operations shall, at the request of the Agency's authorised person, provide the conditions for a review of the information system

and the possibility of examining whether data was processed by using information technology in an appropriate manner.

(2) The factoring company shall, at the request of the Agency's authorised person, submit documentation from which a transparent and complete description of the information system is evident. The components of the information system must be transparently defined in the documentation. The documentation must grant the authorised person access to:

- a) software solutions,
- b) procedures for data processing through the use of information technology,
- c) controls ensuring proper data processing, and
- d) controls ensuring confidentiality, integrity and availability of data.

#### Article 81

##### (End of On-Site Supervisory Procedure)

(1) Minutes are drafted on the on-site supervisory procedure, which are submitted to the factoring company together with a detailed description of the established facts.

(2) The factoring company has the right to file a complaint against the submitted minutes within eight days of receiving them.

(3) If illegalities and/or irregularities were identified in the course of the supervisory procedure, with respect to which an appropriate supervisory measure would be adopted, or if they were identified and eliminated before the drafting of the minutes, this shall be entered into the minutes.

(4) In the cases referred to in paragraph (3) of this Article, the Agency shall issue a decision establishing that the supervisory procedure has ended.

(5) If the illegalities and/or irregularities identified by the minutes, with respect to which an appropriate supervisory measure should be taken, were eliminated after the drafting and submission of the minutes to the factoring company and prior to issuing a decision to impose an appropriate supervisory measure, the Agency shall supplement the minutes and, if all identified illegalities and/or irregularities have been eliminated, issue a decision upon the expiry of the deadline for a statement, determining that the illegalities and/or irregularities identified in the minutes and supplemented minutes have been eliminated and that the supervisory procedure has ended.

#### Article 82

##### (Complaint against Minutes on Conducted Supervision)

A complaint against the minutes on the conducted supervision is permitted particularly for the following reasons:

- a) if the minutes incorrectly or incompletely established facts,
- b) if a regulation was wrongly applied and a measure imposed on the basis of that,
- c) if the Agency overstepped its authority when conducting supervision.

#### Article 83

##### (Content of Complaint)

(1) The complaint shall contain:

- a) a reference to the minutes against which the complaint is filed,
- b) a statement refuting assertions from the minutes in their entirety or partly,
- c) the reasons for the complaint to which the filer refers,
- d) other information to be included in every filing in accordance with the Law on Administrative Proceedings.

(2) In the complaint, the factoring company may cite facts from which it can be concluded that the shortcomings, illegalities and irregularities mentioned in the minutes do not exist and

present evidence. If the company refers to documents in its statement, it shall enclose them with the complaint as evidence.

#### Article 84

##### (Off-Site Supervision of Operations)

- (1) In the course of off-site supervision, the Agency's authorised person determines:
- a) whether the prescribed reports and other data were submitted within the prescribed deadline and in the prescribed form,
  - b) whether the data in the reports or other requested documentation is true, accurate and correct,
  - c) whether the factoring company operates in accordance with risk management regulations, in accordance with regulations prescribed by this Law and regulations adopted on the basis of this Law, and other laws governing the operations of the factoring company and regulations adopted on the basis of them,
  - d) reviews and assesses the financial stability and position, and the risks the factoring company is exposed to or could be exposed to in its operations.
- (2) When reviewing and assessing the financial stability and position, and when assessing risks the factoring company is exposed to or could be exposed to, the Agency shall consider the type, scope and complexity of the factoring company's operations.

#### Article 85

##### (Minutes on Off-Site Supervision)

- (1) In the case of identified shortcomings, illegalities and irregularities in the factoring company's operations in the course of the off-site supervisory procedure, the Agency's authorised person shall draft minutes.
- (2) The minutes on the conducted supervision shall be submitted to the factoring company with a detailed description of the facts established in the course of the supervisory procedure.
- (3) The provisions of Articles 81, 82 and 83 of this Law accordingly apply to the minutes on the off-site supervision.
- (4) Based on the findings from the minutes referred to in this Article, the Agency is authorised to take all supervisory measures, as is the case when it comes to on-site supervision as well.

#### Article 86

##### (Supervisory Measures)

- (1) On the basis of the conducted supervisory procedure, the Agency may impose supervisory measures prescribed by this Law on the company for the purpose of lawful and orderly operations of supervised entities and the protection of public interest, and in the case of identified irregularities and illegalities, the Agency shall issue a misdemeanor warrant for misdemeanors or file a report with the competent authority.
- (2) When the Agency establishes the existence of reasonable suspicion that a criminal act or offence has been committed, it shall file a report with the competent authority.

#### Article 87

##### (Types of Supervisory Measures)

Under the conditions stipulated in this Law, the Agency may impose the following supervisory measures on the factoring company:

- a) recommendations to the Management Board and Supervisory Board of the factoring company,
- b) a warning,
- c) the elimination of irregularities,
- d) special supervisory measures,



e) the revocation of the operating licence.

#### Article 88

##### (Recommendations to Management Board of Factoring Company)

- (1) The Agency shall express recommendations to the Management Board of the factoring company when it, as part of the supervision and the review and assessment of the financial stability and position of the company, as well as the review and assessment of the risks the company is exposed to or could be exposed to in its operations, identifies weaknesses, shortcomings, deficiencies and irregularities that do not constitute a violation of this Law.
- (2) The recommendations include both identified and assessed significant risks and problems the company is exposed to or could be exposed to, or identified weaknesses, shortcomings, deficiencies and irregularities that do not constitute a violation of the regulations of this Law, as well as guidelines for the Management Board of the factoring company in the interest of eliminating them and in the interest of improving operations, the financial stability and position, as well as reducing the risks the factoring company is exposed to or could be exposed to in its operations.
- (3) The company's Management Board shall submit to the Agency a plan, deadlines and the dynamics of complying with the recommendations of the supervisory authority.
- (4) In order to determine an improvement in the operations, financial stability and situation, and in order to reduce the risks the factoring company is exposed to or could be exposed to in its operations, the Agency may conduct another supervision of the factoring company.

#### Article 89

##### (Warning)

- (1) When the Agency identifies illegalities and irregularities in the course of supervision, and the nature and scope of the identified illegalities and irregularities have no significant impact and consequences on the business operations of the factoring company, the supervisory authority may issue a warning to the factoring company.
- (2) The Agency may make the warning public.
- (3) The Agency's warning may include an order that the factoring company rectify the identified illegalities and irregularities, the deadlines within which the company is to comply with the aforementioned, and the dynamics of informing the supervisory authority of the actions and activities taken.
- (4) If the factoring company fails to comply with the order of the Agency referred to in paragraph (3) of this Article within the deadline referred to in paragraph (3) of this Article, the Agency shall issue a decision on the elimination of the illegalities and irregularities.
- (5) The Agency is authorised to conduct another supervision of the factoring company to the extent and in the scope necessary to determine whether the factoring company has complied with the order of the Agency referred to in paragraph (3) of this Article and whether the identified illegalities and irregularities have been eliminated in an appropriate manner and to an appropriate extent.

#### Article 90

##### (Elimination of Identified Illegalities and Irregularities)

- (1) When, in the course of supervision, the Agency identifies illegalities and irregularities that are in violation of the provisions of this Law or regulations adopted on the basis of it, as well as other laws governing the company's operations and regulations based on them, it shall issue a decision imposing on the factoring company measures for the elimination of the illegalities and irregularities or the cessation of activities which constitute a breach of the provisions of

this Law or regulations adopted on the basis of it, as well as other laws governing the operations of the factoring company and regulations based on them.

(2) In the decision referred to in paragraph (1) of this Article, the Agency shall specify the deadlines within which the company is to eliminate the identified illegalities and irregularities.

#### Article 91

##### (Report on Elimination of Identified Illegalities and Irregularities)

(1) The factoring company shall eliminate the identified illegalities and irregularities, and submit a report to the Agency on the measures it has taken to eliminate them within the deadline determined by the Agency.

(2) Together with the report referred to in paragraph (1) of this Article, the factoring company shall submit the documentation and other evidence clearly showing whether the identified illegalities and irregularities have been eliminated.

(3) If the report referred to in paragraph (1) of this Article is incomplete or if it cannot be concluded from the documentation enclosed with it that the illegalities have been eliminated, the Agency shall order the report to be supplemented within a deadline within which the report must be supplemented.

(4) If the Agency does not order the report referred to in paragraph (3) of this Article to be supplemented within 60 days of the submission of the report referred to in paragraph (1) of this Article, it shall be understood that the illegalities and irregularities have been eliminated.

#### Article 9

##### (Decision on Elimination of Identified Illegalities and Irregularities)

(1) If, based on the report referred to in Article 91 of this Law, the enclosed documentation and other evidence, the Agency concludes that the identified irregularities and illegalities have been eliminated by actions taken in accordance with the supervisory measures referred to in Article 90 of this Law, it shall issue a decision determining that the illegalities and irregularities have been eliminated.

(2) Prior to issuing the decision referred to in paragraph (1) of this Article, the Agency may conduct another supervision of the factoring company to the extent and in the scope necessary to determine whether the identified illegalities and irregularities have been eliminated in an appropriate manner and to an appropriate extent.

#### Article 93

##### (Special Supervisory Measures)

(1) The Agency is authorised to impose the special supervisory measures referred to in paragraph (2) of this Article on the factoring company if:

- a) the factoring company has failed to act in accordance with the Agency's decision ordering measures for eliminating irregularities referred to in Article 90 of this Law, and/or
- b) if the capital of the factoring company is below the prescribed minimum referred to in Article 27 of this Law.

(2) If the circumstances referred to in paragraph (1) of this Article set in, the Agency may impose the following special supervisory measures:

- a) order the factoring company to increase capital to the level provided for under Article 27 of this Law,
- b) order the competent body of the factoring company to dismiss a member or members of the Management Board and to appoint a new member or members of the Management Board,
- c) order the factoring company to convene the Assembly and propose appropriate solutions,
- d) order the factoring company to improve risk management strategies, policies and processes,

- e) order the factoring company to reduce the risks associated with the company's operations in further operations,
  - f) impose on the factoring company other proportionate measures needed to keep the company operating in accordance with the provisions of this Law and regulations adopted on the basis of this Law or on the basis of other laws governing the company's operations and regulations adopted on the basis of them,
  - g) temporarily prohibit the factoring company from:
    - 1) making business deals with individual shareholders or members, Management Board members, Supervisory Board members, procurators, and companies closely associated with the factoring company,
    - 2) concluding new factoring agreements in some or all factoring operations,
    - 3) performing factoring operations with certain entities,
    - 4) prohibit or restrict the company's access to assets managed by the factoring company.
- (3) The Agency shall issue a decision imposing the special supervisory measures referred to in paragraph (2) of this Article and set an appropriate deadline for taking the measures referred to in paragraph (2) of this Article.
- (4) The factoring company shall submit to the Agency a report on the implementation of the imposed measures referred to in paragraph (2) of this Article, to which the provisions of Article 91, paragraphs (1) to (3) of this Law apply accordingly.

#### Article 94

##### (Decision on Revocation of Operating Licence)

- (1) The Agency shall issue a decision revoking the decision on the operating licence of the factoring company if it determines:
- a) that the licence to perform factoring operations was issued on the basis of false, incorrect information or omitted information or misleading information or in some other improper manner,
  - b) that the factoring company no longer meets the requirements under which the licence was issued,
  - c) that the factoring company's operations are no longer conducted with the diligence of an orderly and conscientious businessman and in accordance with good business practices,
  - d) that the factoring company has seriously and/or systematically violated the provisions of this Law, regulations adopted on the basis of this Law or other regulations which are to be complied with,
  - e) that the factoring company has not acted in accordance with the Agency's decision imposing measures for eliminating irregularities referred to in Article 90 of this Law or the special supervisory measures referred to in Article 93 of this Law,
  - f) that the factoring company has violated the provisions on timely and accurate reporting to the Agency several times in a period of three years, or that it has otherwise prevented the Agency from supervising its operations,
  - g) that the factoring company performs operations in a manner that can worsen or jeopardise its liquidity or solvency,
  - h) that the factoring company has not organised its business operations and does not keep its business books or the books it manages or administrative and other business documents in a manner that would at any given moment enable a review of whether the company operates in accordance with the rules and regulations on risk management, whether the company's management is in accordance with the provisions of this Law, other laws governing the factoring company and regulations adopted on the basis of them, as well as other regulations which are to be complied with,
  - i) that the company does not perform activities in accordance with the provisions of Article 26,

- j) that a reason has appeared for abolishing the decision on the licence to perform factoring operations prescribed by other provisions of this Law,
  - k) that the factoring company has not begun performing activities within one year from the date of issuance of the licence to perform factoring operations, i.e. that not a single factoring agreement was concluded upon the expiry of the deadline,
  - l) that the factoring company has ceased to generate income from factoring operations for more than six months.
- (2) The Agency shall submit the decision referred to in paragraph (1) of this Article to the company within eight days from the date of the decision's issuance.
- (3) The Agency shall publish the decision referred to in paragraph (1) of this Article in the „Official Gazette of the Federation of B&H“, submit it to the competent registration court and issue a press release on the aforementioned.
- (4) The factoring company must not make any new business deals related to the performance of factoring operations from the date of receipt of the decision referred to in paragraph (1) of this Article, except for those activities aimed at and ensuring the dissolution of the company in the manner prescribed by the provisions of the regulations on companies.

#### Article 95

##### (Supervision of Other Entities and Supervisory Measures)

- (1) The Agency is authorised to conduct supervision of other entities that, in addition to other activities or as the sole activity, perform factoring operations without the Agency's licence.
- (2) If the Agency determines that the entity is performing factoring operations without the Agency's licence, that entity shall be prohibited from performing these activities.
- (3) In the case referred to in paragraph (2) of this Article, the Agency may previously carry out a review of the business books and other documentation of that entity and collect evidence in order to determine whether that entity is performing factoring operations.

#### Article 96

##### (Cooperation of Supervisory Authorities, Data Processing and Providing Information)

- (1) The Agency processes data on facts and circumstances that are relevant to exercising the competences provided for by this Law, especially those related to:
- a) the licence to perform factoring operations and other licences issued by the Agency on the basis of this Law,
  - b) the Management Board and Supervisory Board members of the factoring company,
  - c) the holders of qualified stakes in the factoring company,
  - d) the audited financial statements referred to in Articles 68 and 69 of this Law,
  - e) the taken supervisory measures referred to in Article 86 of this Law,
  - f) the information the Agency collects as part of the exchange of information with other agencies and institutions.
- (2) The Agency may submit the data referred to in paragraph (1) of this Article to other agencies or institutions in accordance with the provisions of regulations governing the Agency's operations.

#### Article 97

##### (Collecting, Managing, Using and Storing Confidential Information)

- (1) The factoring company shall keep as confidential all information, data, facts and circumstances learned on the basis of providing services to clients or other parties of the factoring agreements.

(2) The factoring companies collect, process, keep, submit and use the confidential information referred to in paragraph (1) of this Article in accordance with regulations governing the protection of personal data and other regulations on data protection.

(3) The members of the factoring company, shareholders of the factoring company, as well as members of managing bodies and factoring company employees, or other entities to whom the information referred to in Article 96 of this Law was made available in relation to their work in the company or while providing services to the company in any way must not disclose that information to third parties, use them against the interests of the company and its clients, or allow it to be used by third parties.

(4) There is no obligation to keep data confidential in the following cases:

a) if the client or third party in written form expressly consents to certain confidential information being disclosed,

b) if that enables the realisation of the factoring company's interests with respect to the resale and/or transfer of the factoring object,

c) if the confidential information is exchanged within the group of banks and/or financial institutions defined in accordance with regulations governing the conditions for the establishment, operations and cessation of operations of financial institutions as well as for providing banking and/or financial services for risk management purposes,

d) if the confidential information is exchanged among financial institutions about clients who have not fulfilled their outstanding obligation within the deadline and the confidential information is communicated to the legal entity established to collect and exchange this information in accordance with the laws applicable to this activity,

e) if the competent court or another competent authority in written form requests or orders that information to be presented in order to determine the facts in criminal or misdemeanor proceedings or for the purpose of determining the facts necessary for the initiation of such proceedings,

f) in cases determined by certain regulations governing the prevention of money laundering and terrorism financing,

g) if that information is necessary in order to clarify the legal relationship between the factoring company and the client, or supplier, or other right holders under the factoring arrangement as well as between the client and third parties in judicial proceedings, arbitration proceedings, and conciliation proceedings,

h) if the competent court in written form requests or orders that information to be presented for the purposes of probate proceedings, bankruptcy proceedings and other judicial proceedings,

i) if the competent court or another competent authority in written form requests or orders that information to be presented for the execution of assets of the client or another right holder under the factoring arrangement or of third party assets,

j) if that information is submitted to the Agency for the purpose of supervision conducted by the Agency or another supervisory authority within its competences,

k) if that information is submitted to the tax authorities for the purpose of proceedings they conduct within their competences,

l) the disclosure of information to insurance companies in the process of securing the company's claims,

m) the disclosure of information when concluding legal affairs that have the effect of securing the company's claims, such as bank guarantees and other similar transactions,

n) if that information is disclosed to a legal entity registered to collect and provide information on obligations from factoring operations;

k) if it is prescribed by a special law.

(5) The obligation of confidentiality continues to exist for entities referred to in paragraph (3) of this Article after they cease to work in the factoring company, or after they cease to be a

member or shareholder of the company or a member of a factoring company body, as well as after the termination of the contractual relationship regarding the performance of tasks for that company.

(6) The supervisory authority or other authorities and courts may use the information collected on the basis of paragraph (4) of this Article only for the purpose for which it was collected.

## CHAPTER VIII. VIOLATION PROVISIONS

### Article 98

#### (Serious Violations Committed by Factoring Company)

(1) A fine in the amount of KM 50 000.00 to KM 100 000.00 shall be imposed on the factoring company if:

- a) it performs activities contrary to the provisions of Article 26 of this Law,
- b) it acquires a qualified stake in another legal entity contrary to the provision of Article 38, paragraph (1) of this Law,
- c) it transfers factoring operations contrary to the provisions of Article 41, paragraph (6) of this Law,
- d) it fails to obtain the Agency's approval in accordance with the provisions of Article 42, paragraph (1) of this Law,
- e) the function of a Management Board member of the factoring company is performed by a person who has failed to obtain the Agency's approval for performing the function of a Management Board member of the factoring company in accordance with Article 52, paragraph (1) of this Law,
- f) a Management Board member of the factoring company does not fulfill their obligations in accordance with the provisions of Article 56 of this Law,
- g) it does not manage business risks in accordance with the provisions of Article 65 of this Law,
- h) it does not organise an internal audit in accordance with Article 66 of this Law,
- i) it does not organise business operations and bookkeeping nor does it draft annual financial statements in accordance with the provisions of Article 68 of this Law,
- j) it does not submit audited annual financial statements in accordance with Article 69, paragraph (2) of this Law,
- k) it does not enable the Agency's authorised persons to conduct supervision in accordance with the provisions of Article 72, paragraph (4) of this Law,
- l) it does not enable the Agency's authorised persons to conduct supervision in accordance with the provisions of Articles 78, 79 and 80 of this Law,
- m) it fails to comply with the Agency's decision on the elimination of determined illegalities and irregularities or on the cessation of illegal conduct referred to in Article 90 of this Law,
- n) it fails to comply with the Agency's decision referred to in Article 93 of this Law,
- o) transfers factoring operations contrary to the provisions of Article 41, paragraph (5) of this Law.

(2) A fine in the amount of KM 5 000.00 to 15 000.00 shall be imposed on the responsible person in the factoring company for the violations referred to in paragraph (1) of this Article.

### Article 99

#### (Minor Violations Committed by Factoring Company)

(1) A fine in the amount of KM 10 000.00 to KM 25 000.00 shall be imposed on the factoring company if:

- a) the factoring agreement is not drawn up in accordance with the provisions of Article 16 of this Law,

- b) it fails to inform the Agency of the knowledge of an acquisition and alienation of a qualified stake in the factoring company in accordance with Article 31 of this Law,
  - c) it acts contrary to the provisions of Article 46 of this Law when appointing Supervisory Board members,
  - d) it acts contrary to the provisions of Article 47 of this Law when appointing Supervisory Board members,
  - e) it fails to ensure the filing of a request for the issuance of an approval to perform the function of a Management Board member by adopting a decision or issuing an approval in accordance with Article 52, paragraph (2) of this Law,
  - f) it fails to comply with the provisions of Article 52, paragraph (7) of this Law,
  - g) it fails to inform the Agency of the selected audit firm in accordance with Article 69, paragraph (8) of this Law,
  - h) it fails to inform the Agency in accordance with the provisions of Article 70 of this Law,
  - i) it fails to comply with the provisions of Article 104, paragraphs (1), (3) and (4) of this Law.
- (2) A fine in the amount of KM 2 000.00 to KM 5 000.00 shall be imposed on the responsible person in the factoring company for the violations referred to in paragraph (1) of this Article.

#### Article 100

##### (Violations Committed by Other Entities)

- (1) A fine in the amount of KM 10 000.00 to KM 20 000.00 shall be imposed on a legal entity that:
- a) is acquiring or acquires a qualified stake in the factoring contrary to the provision of Article 30, paragraph (1) of this Law,
  - b) performs factoring operations without the Agency's licence to perform factoring operations referred to in Article 39 of this Law,
  - c) does not enable the Agency's authorised persons to review the business books and other documentation in order to collect evidence in accordance with the provision of Article 96, paragraph (1) of this Law.
- (2) A fine in the amount of KM 2 000.00 to KM 5 000.00 shall also be imposed on the responsible person in the factoring company for the violations referred to in paragraph (1) of this Article and committed by a legal entity.
- (3) A fine in the amount of KM 10 000.00 shall be imposed on a legal entity using the term „factoring“ or its derivative contrary to the provision of Article 25, paragraph (6) of this Law.
- (4) A fine in the amount of KM 2 000.00 shall also be imposed on the responsible person in the legal entity for the violation referred to in paragraph (3) of this Article.

#### Article 101

##### (Violations Committed by Natural Persons)

A fine in the amount of KM 2 000.00 to KM 5 000.00 shall be imposed on:

- a) a natural person who is acquiring or acquires a qualified stake in the company contrary to the provision of Article 30, paragraph (1) of this Law,
- b) Management Board members of the factoring company if they do not manage factoring operations in accordance with Article 56 of this Law.

#### Article 102

##### (Statute of Limitations and Right of Party to Legal Remedy)

- (1) The provisions on the statute of limitations of the regulations from the Federal Law on Misdemeanors apply to the violations referred to in this Law.
- (2) The Agency's decision may not be appealed, but an administrative dispute may be initiated before the competent court.

## CHAPTER IX. TRANSITIONAL AND FINAL PROVISIONS

### Article 103

#### (Adoption of Regulations)

The Agency shall, within six months from the date of this Law's entry into force, adopt the regulations referred to in: Article 16, paragraph (2); Article 26, paragraph (8); Article 27, paragraph (4); Article 32, paragraph (3); Article 38, paragraph (3); Article 39, paragraph (10); Article 47, paragraph (4); Article 51, paragraph (3); Article 65, paragraph (3); Article 66, paragraph (2), and Article 70, paragraph (3) of this Law.

### Article 104

#### (Harmonisation with Provisions of this Law)

(1) Legal entities entered into the court register and performing factoring operations on the date of this Law's entry into force shall continue to operate as factoring companies in accordance with the provisions of this Law.

(2) Legal entities referred to in paragraph (1) of this Article shall, within 12 months from the date of this Law's entry into force, harmonise their operations with the provisions of this Law.

(3) If the legal entities referred to in paragraph (1) of this Article fail to act within the deadline and in the manner determined by the provisions of paragraph (2) of this Article, they shall cease to perform factoring operations and remove the activity of factoring from the court register.

(4) The legal entity referred to in paragraph (1) of this Article shall, within one month after the expiry of the deadline referred to in paragraph (2) of this Article, submit to the Agency a report on harmonisation with the provisions of paragraph (2) of this Article. The following is to be enclosed together with the report:

a) the Memorandum of Association in the form of a notarial act,

b) a list of shareholders or members of the company, along with their data and appropriate documentation in accordance with Article 39 of this Law,

c) a list of entities related to holders of qualified stakes and a description of the type of relation.

(5) If it can be concluded that the legal entity referred to in paragraph (1) of this Article complies with the provisions of paragraph (2) of this Article based on the report referred to in paragraph (4) of this Article and the enclosed evidence, the Agency shall issue a licence to perform factoring operations in accordance with the provisions of Article 39 of this Law.

### Article 105

#### (Entry into Force)

This Law will enter into force on the eighth day following its publication in the "Official Gazette of the Federation of B&H".

Chairwoman  
of the House of Peoples  
of the Parliament of the Federation of B&H

Lidija Bradara

Chairman  
of the House of Representatives  
of the Parliament of the Federation of B&H

Edin Mušić