

Pursuant to Article 9 and 25 of the Law on the Banking Agency of the Federation of Bosnia and Herzegovina ("Official Gazette of the FBiH", No. 9/96, 27/98, 20/00, 45/00, 58/02, 13/03, 19/03, 47/06, 59/06, 48/08, 34/12 and 77/12), Article 16, paragraph (2) of the Law on Factoring ("Official Gazette of the Federation of BiH", No. 14/16) and Article 18 of the Statute of the Banking Agency of the Federation of BiH ("Official Gazette of the Federation of BiH", No. 42/04), the Management Board of the Banking Agency of the Federation of BiH, at its 86th session held on 30 August 2016, adopted the

DECISION

ON MINIMUM STANDARDS FOR THE CONTENT OF FACTORING AGREEMENTS

I Introductory provisions

Article 1

(1) This Decision prescribes in detail the minimum content of factoring agreements concluded between factoring entities defined by the Law on Factoring (hereinafter: the Law).

(2) For the purpose of the provisions of this Decision, certain terms shall have the meaning prescribed in Article 2 of the Law.

(3) The provisions of the Law apply to matters related to the implementation of this Decision, which have not been regulated by this Decision.

II Form and content of factoring agreements

Article 2

(1) The agreement shall be concluded in written form and the provisions of the law regulating obligations shall apply to the agreement, unless otherwise specified by the Law.

(2) The agreement shall be written in a clear and understandable manner in order to enable the user of the factoring service to have access to all relevant information on the conditions of the agreement which shall clearly indicate the rights and obligations of the contracting parties.

(3) The factoring agreement shall not be considered a loan or credit agreement for the purpose of the regulations governing this area.

Article 3

Factoring agreements shall contain a minimum of the following:

- a) information on the contracting parties,
- b) the type of factoring,
- c) the basis and information on the claim which is the subject of the agreement,
- d) the amount and manner of payment calculation and the payment of the purchased claim,
- e) the amount and calculation of a factoring fee,
- f) the calculation of interests and other expenses,
- g) the obligation of notifying the buyer of the transfer of the claim,
- h) records and deadlines of the realisation of the provisions of the agreement,

- i) the manner of dispute settlement,
- i) the date of the agreement's conclusion, and
- j) the signatures of legal representatives of all contracting parties or other persons authorised to sign the agreements or attorneys of these entities.

Article 4

(1) For the purpose of Article 3, item a) of this Decision, the agreement shall include information on:

- a) the seller of the claim – the creditor of the factoring object,
- b) the factoring service provider.

(2) Information on the contracting parties shall, as a minimum, contain the following details on:

- a) the company and the abbreviated company name,
- b) the organisational form,
- c) the head office and address,
- d) the personal identification number/company registration number assigned for the contracting parties' tax purposes,
- e) the number from the Record of factoring companies, i.e. the Bank Register of the Banking Agency of the Federation of BiH.

(3) In the event of foreign factoring, it shall be specified in the agreement which entity is a non-resident, i.e. the country of non-resident's head office to which the foreign factoring operation refers, in addition to the data referred to in paragraph (2), item a) to d).

Article 5

(1) For the purpose of Article 3, item b) of this Decision, the agreement shall clearly and unambiguously specify the type of factoring with respect to the types referred to in Article 6, paragraph (1) of the Law.

(2) If reverse factoring (supply chain finance) is being contracted as a special type of factoring, it shall be clearly indicated in the title of the agreement.

(3) If a claim is not purchased in its entirety, it shall be indicated that it is partially purchased.

(4) In the case of a factoring agreement which includes the discounting (purchase) of bills of exchange, it shall be indicated in the agreement that it is a bill of exchange issued as a means to settle a claim which arose on the basis of the delivery of goods and provision of services in the country or abroad, along with providing information on the elements of the bill of exchange (drawer/issuer, drawee, remitter, place and date of issuance, date of maturity, bill of exchange number) as well as information on the basis of the claim arising as referred to in Article 7 of this Decision. In this case, it shall be indicated in the agreement that regulations governing bills of exchange are applied to the discounting of bills of exchange.

Article 6

(1) For the purpose of Article 3, item c) of this Decision, the agreement shall clearly specify the basis of the claim arising, based on:

- a) an agreement on the sale of goods and the provision of services in production, trade and services or

- b) an agreement on the performance of investment works or
- c) an agreement on the export of products or services provided.

(2) The basis of the arising of the claim which is being transferred to or purchased by the factor, i.e. creditor (invoice or other document based on which the supplier of goods or services calculates delivered goods and provided services) concluded between the persons referred to in Article 2, paragraph (1) of the Law, shall be defined in terms of:

- a) the date of arising,
- b) the date of maturity, and
- c) the amount of purchased monetary claim.

Article 7

(1) In the event that existing unmatured short-term monetary claims are the factoring object, it is necessary to emphasise the deadline of the claim's maturity which shall be no longer than 180 days from the day of the sale of goods, i.e. provided service, as established by the agreement on the sale of goods or provision of services.

(2) In the event that future claims are the factoring object, the basis of the arising of future claims shall be defined only as the provision of a certain type of services or delivery of a certain type of goods irrespective of whether there is a contractual basis for the provision of such services or delivery of that type of goods at the moment of concluding the factoring agreement. The transfer of future claims produces legal effect the moment these claims arise.

(3) The transfer of claims on the basis of the sale of goods or services for personal, family or household needs, i.e. any type of sale for cash shall not be the subject of a factoring agreement.

Article 8

(1) For the purpose of Article 3, item d) of this Decision, the factoring agreement shall include information on:

- a) the total nominal amount of the claim,
- b) information on the amount of the contracted percentage of the advance payment for each individual claim decreased by the factoring fee and administrative fee (in the case of factoring which includes the factor's obligation to make an advance payment to the seller),
- c) the deadline for the advance payment to the seller,
- d) credible documentation proving the existence of the claim,
- e) the seller's account number,
- f) the buyer's account number to which the advance payment shall be made, in the case of reverse factoring (supply chain finance).
- g) the manner of calculation and the amount of interest rate on the advance payment,
- h) the deadline for the payment of the remaining amount after the collection of the claim from the buyer decreased by the interest rate on the advance payment,

i) the manner of discount calculation and the amount of discount interest, in the case of discount factoring,

j) after the collection of the claim from the buyer, the factor shall, immediately or within three days at the latest, pay the seller the invoice difference up to the full amount decreased by:

1) the advance payment, if an advance payment was contracted;

2) the contracted interest on the granted advance payment;

3) the factoring fee, which shall not be higher than 2% of the nominal amount of the purchased claim, plus VAT;

4) the administrative fee (if contracted) on the basis of keeping a record of, negotiating and monitoring the repayment of the factoring object, collecting information, conducting analyses and providing information on the creditworthiness of the debtor of the factoring object, etc., and which shall not be more than BAM 50 for each individual invoice, plus VAT, as well as

5) other contracted factoring costs.

Article 9

A factoring agreement shall contain provisions on detailed criteria for recognition, i.e. non-recognition of invoices from the perspective of the maturity, i.e. non-maturity of the claims which are subject matter of the agreement in relation to the moment of the agreement's entry into force.

Article 10

A factoring agreement shall contain a clause according to which the factor collects the claim in their own name and for their own account, except in the case of undisclosed factoring, when the seller retains the right to realise the complete collection of the claim in their own name and for the factor's account, where the seller shall, after collecting the claim from the buyer, immediately and within three days at the latest, settle the obligations to the factor in accordance with the provisions of the agreement.

Article 11

In the case of foreign factoring, concluded between the seller and the export factor, the agreement shall specify the following:

a) the advance payment amount of the nominal value of the export claim which is paid to the seller,

b) the interest on the advanced payment made, calculated by the export factor,

c) the fee and costs of the factor, as well as

d) the manner of payment of the interest and fee.

Article 12

(1) For the purpose of Article 3, item e) of this Decision, a factoring agreement shall contain provisions on the amount of the factoring fee for the provision of the factoring service expressed as a percentage amount in relation to the nominal amount of the purchased claim, with it being noted that it shall not be more than 2% of the nominal amount of the purchased claim.

(2) The agreement shall indicate the manner of payment of the factoring fee, depending on whether the fee is paid as a single payment or in multiple installments, by specifying the payment deadlines,

after signing the agreement or by reducing the advance payment when making the payment or in some other manner.

(3) The agreement shall contain provisions on the amount, the manner of calculation, documentation, and the manner of payment of other costs declared through the administrative fee (if contracted) on the basis of keeping a record of, negotiating and monitoring the repayment of the factoring object, collecting information, conducting analyses and providing information on the creditworthiness of the debtor of the factoring object, etc., depending on whether the calculation of the agreed administrative fee is fixed – lump sum or calculated on the basis of actual costs, which shall not be more than BAM 50 for each individual invoice.

(4) The factoring agreement or a special written agreement between the factoring service provider and cost bearer may define how the factoring fee, administrative fee and/or other costs defined by the agreement shall be borne by some other entity as cost bearer.

(5) In the case of a special written agreement as referred to in the previous paragraph of this Article, a factoring agreement shall also contain a note that the factoring fee, administrative fee and/or other costs are defined by a special agreement between the factoring service provider and the cost bearer.

Article 13

(1) For the purpose of Article 3, item f) of this Decision, the agreement shall specify the amount of the interest rate which will be calculated on the advance payment amount, i.e. discount rate, if discount factoring is contracted.

(2) A factoring agreement shall specify the type, amount and manner of calculation, deadlines for the maturity and collection of the interest which the factoring service provider charges on the paid advance payment part of the claim for the period between the advance payment and the maturity date of the collection of the claim from the buyer.

(3) A factoring agreement or a special written agreement between the factoring service provider and the cost bearer may define how the interest cost shall be borne by some other entity as cost bearer.

(4) In the case of a special written agreement as referred to in paragraph (3) of this Article, a factoring agreement shall also contain a note that the interest rate and the manner of calculation are defined by a special agreement between the factoring service provider and the interest cost bearer.

Article 14

(1) For the purpose of Article 3, item g) of this Decision, the seller shall transfer their claims to the factor by a factoring agreement, unless the transfer is prohibited by the Law or the claim is connected to the creditor, or the claim, in its nature, is not transferable to some other entity.

(2) A factoring agreement may specify an obligation of the seller to ensure to the factor and a statement of the buyer that the goods and services based on the issued invoice were received, without objection to their material deficiencies, as well as to submit to the factor documentation based on which the factoring agreement is being realised, which includes a minimum of:

a) invoices on delivered goods and provided services containing

1) orders,

2) dispatch notes and goods receipt notes,

3) records on provided services,

- 4) carrier load lists,
- b) statements on open item balances with
 - 1) a notice on the maturity of the debt which is to be collected and
 - 2) payment reminders.
- c) export and import customs documentation, in the case of foreign factoring,
- d) statements on paid VAT and customs as well as proof of an open letter of credit, if such documentation exists,
- e) insurance and reinsurance policies, if contracted,
- f) financial statements and audit reports, as well as
- g) other documentation pertaining to the correspondence between the seller and the buyer (such as calls and payment reminders, documentation regarding the assessment of the debtor's solvency and creditworthiness), and
- h) other documentation which could serve as a basis for proving that the goods were actually delivered or the service provided, as well as documentation proving the transfer of the claim.

Article 15

A factoring agreement shall also specify the cases in which the buyer's consent is required for the transfer of the claim from the seller to the factor.

Article 16

(1) The agreement shall specify the seller's obligation to notify the buyer in written form and within five days of the performed transfer of the claim to the factor, except in the event of undisclosed factoring.

(2) The written notice referred to in paragraph (1) of this Article shall contain information on the concluded factoring agreement, the date of the agreement's conclusion, information on the factor to which the buyer shall make the payment, as well as payment instructions: account number or account numbers, claim amount, payment currency, etc.

(3) The written notice referred to in paragraph (1) of this Article shall be considered delivered if submitted via written correspondence, electronically or in some other appropriate manner from which the identity of the sender as well as receipt of the notice can be established.

(4) A factoring agreement shall also specify that it produces effects without the consent or statement of the buyer, unless otherwise regulated by a special law.

Article 17

(1) For the purpose of Article 3, item h) of this Decision, in the event that the agreement has led to the factoring service provider assuming the right and obligation of recording, collecting and managing the claim in order to protect the collection of the claim, the agreement shall specify in particular the seller's obligation to send a written notice to the buyer regarding the existing debt to the seller, as well as the buyer's obligation to pay the factor the transferred claim based on the agreement on the transfer of the claim, except in the event of undisclosed factoring as referred to in Article 11, paragraph (2) of this Law.

(2) Based on the factoring agreement, the factoring service provider that has assumed the right and obligation of recording, collecting and managing the claim, shall specify, if needed and in order to secure the collection of the claim, the obligation of assessing the buyer by taking blank bills of exchange with a statement of the debtor on accepting the obligation to pay the debt within the maturity deadline and up to the (transferred) amount or up to the approved factoring limit, i.e. the need to insure the claim with an insurance company.

Article 18

A factoring agreement shall, as a minimum, contain provisions on the obligation of the factoring service provider to notify the seller on the realisation of individual provisions of the factoring agreement and on the obligation to submit documents for accounting purposes, with the contracted dynamics and deadlines for notifying and delivery.

Article 19

(1) A factoring agreement shall specify the period for which the agreement is concluded.

(2) Otherwise the agreement shall contain a provision that the agreement shall not cease to be valid before all the sold claims are collected or regressed by the seller.

III Special provisions on anti-money laundering

Article 20

An interfactor agreement on foreign factoring, in which a factoring company seated in the Federation of BiH is a contracting party with the role of the export factor in a two-factor system, shall as a minimum:

a) be in accordance with internationally recognised and accepted legal and technical frameworks developed by the international professional associations Factors Chain International (FCI) and/or International Factors Group (IFG),

b) contain identification of the foreign import factor, as well as

c) contain elements and measures for documented party recognition and monitoring in accordance with regulations governing anti-money laundering and the financing of terrorist activities.

IV Other contractual provisions

Article 21

In addition to the information referred to in Article 3 of this Decision, the agreement may also contain other provisions through which the contracting parties regulate their relations, and which shall be harmonised with positive legal provisions which factoring service providers must apply in their business operations.

V Transitional and final provisions

Article 22

This Decision shall enter into force on the eighth day following its publication in the "Official Gazette of the Federation of BiH".

Sarajevo, 30 August 2016

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