

EFSA Chairman Decision No. 120/2010
On
Factoring Activity Regulatory Controls

EFSA Chairman

After reviewing:

The Civil Law,
Investment Incentives and Guarantees Law No. 8/1997 and its Executive Regulations,
as amended,
Joint Stock, Limited-by-Shares and Limited Liability Companies Law No 159/1981,
and its Executive Regulations,
Non-Banking Markets and Financial Instruments Supervision Law No. 10/2009,
The EFSA Statutes issued by Presidential Decree No. 192/2009, and
The EFSA Board's Approval issued on 18/10/2010, it was

Decided

Article One

The provisions of this Decision shall apply to the factoring activity.

Factoring activity shall be defined as an agreement between the factoring company and the commodities sellers and/or the service providers, whereby the financial rights arising out of sale of commodities and/or provision of services shall be assigned to the factoring company which shall in turn render a number of services regarding administration of such rights.

The factoring company to which financial rights are assigned shall be defined as "factoring service provider"; the good seller or service provider, i.e. the financial right assignor, shall be defined as the "customer"; the goods purchaser or services recipient whose debt is assigned shall be defined as "the debtor", and Egypt Financial Supervisory Authority shall be defined as the "EFSA ".

Factoring shall be defined as "local factoring" when the customer and the debtor are both registered and/or residents in the Arab Republic of Egypt, and shall be defined as "international factoring" when either of them is registered or resident outside the borders of the Arab Republic of Egypt. International factoring shall also be defined as "export factoring" if the debtor is a resident or registered outside the borders of the

Arab Republic of Egypt while the customer is a local resident, and is defined as "import factoring" if the debtor is a resident or registered in Egypt while the customer is an international company.

The factoring service provider may re-factor the assigned rights by assigning same to another factoring service provider. Re-factoring process shall be subject to the provisions set out herein.

Article Two

The factoring service provider shall:

- 1- Be in the form of a joint stock company,
- 2- Be recorded in the factoring service providers register duly prepared for this purpose by the EFSA,
- 3- Have one or more financial institutions from among its shareholders
- 4- Have issued and paid capital of not be less than Five Million Egyptian Pounds or the equivalent in Egyptian Pound, payable in cash,
- 5- Limit services to the factoring activity. Notwithstanding the foregoing, the factoring service provider may add other activities after obtaining a pertinent EFSA approval. Moreover, the factoring activity may be added to other EFSA controlled activities performed by existing companies after obtaining a pertinent EFSA approval, provided that the newly introduced factoring activity shall be subject to separate accounts if the company has diversified activities.
- 6- Not be subject to court judgments previously been issued against any of the company's founders, managers or board members, ruling for criminal punishment, a punishment for committing a misdemeanor of theft, fraud, swindle, breach of trust, forgery or allegation of bankruptcy, or any other punishments provided for in Articles 261, 361, and 461 of the Joint Stock, Limited-by-Shares and Limited Liability Companies Law referred to herein above, and
- 7- Have a managing director or executive manager enjoying high qualifications and at least ten-year experience in the fields of finance, banking, commerce or insurance.

Article Three

Carrying out factoring services shall be subject to the following conditions:

- 1- The factoring service provider shall prepare internal regulations controlling the work systems and procedures required to be applied by factoring service managers and staff. Internal regulations shall include at least the following data:

- a) The documentation cycle to be applied under the internal control system, starting from the applications submitted by customers to deal with the factoring service provider up to the full settlement of customers' accounts,
 - b) The organizational structure of the factoring service provider, the mandates of main organizational sections thereof, and the mandates and responsibilities of the senior staff and representatives assigned to deal with third parties,
 - c) The relationship between the factoring service provider's head office and its branches if any, the scope of activities performed by these branches and the persons responsible for managing same, and
 - d) The policies and procedures for managing the local and international factoring risks.
- 2- The factoring service provider shall hold books to record the details of the transactions carried out, the nature and value of the contracted activity, the credit term, the means for settlement of outstanding dues and the documents proving same.
 - 3- The factoring service provider shall further undertake the arrangements appropriate for practicing activities in the foreign markets where no international factoring services are available.
 - 4- With respect to the companies practicing international factoring, the factoring service provider shall get, within one year from the date of its incorporation, a membership in one of the international factoring companies groups that organize the practice of international factoring activities, including but not limited to, the "Factors Chain International" (FCI), and the "International Factors Group" (IFG).

Article Four

The factoring service provider shall submit an application for listing in the factoring register, which application shall be accompanied by the following documents:

- 1) An updated version of the factoring service provider's statutes,
- 2) An updated official extract from the commercial registry,
- 3) A statement of the factoring activities requested to be performed by the factoring service provider, and the criteria to be applied for practicing such activities,
- 4) A list of the names, addresses, qualifications and experiences of the board members and managers,
- 5) Declarations made by the founders, managers and board members, stating that no one of them has been subject to any court judgments ruling for criminal punishments or punishments for committing misdemeanors set forth in Clause (2) of Article (5) of the Decision, and
- 6) A declaration to be issued by the managing director, stating that the factoring service provider shall apply a risk management system suitable for the factoring services rendered. In case the factoring service provider desires to practice international factoring, a statement describing the its international factoring

- management plan and the means for covering international factoring risks, i.e. , the foreign entities' debts,
- 7) The internal regulations provided for in the above Article, provided that these regulations shall be approved by the factoring service provider's board of directors, and
 - 8) A declaration of the factoring service provider's managing director, stating that the data contained in the articles of incorporation and the commercial register are valid, sound and correct at the time of submission of documents to the EFSA.

Article Five

The financial rights shall be transferred from the customer to the factoring service provider in accordance with the provisions of the Civil Law and without prejudice to the terms, conditions and controls stated herein.

Article Six

The debtor shall be a trader, not an end consumer, and the debtor' data must be clearly defined, i.e., on whom a complete commercial data shall be available.

Article Seven

The right assigned to the factoring service provider shall meet the following additional conditions:

- a) The assigned right shall arise out of commercial transactions linked to the main activity(s) of the customer and/or the debtor, and not based on private or cash-lending transactions,
- b) The transactions shall be supported by the required documents as per the trade practice, including the contracts and agreements concluded between the customer and the debtor as well as the purchase orders, the debtors account and the commercial instruments.
- c) The assigned rights shall not be subject to mortgage or have previously been assigned to a third party, and
- d) The assigned rights shall not be conditional, unless otherwise agreed between the customer and the factoring service provider.

Article Eight

In case notice is agreed to be served on the debtor regarding assignment of a right, such notice shall be in form of an official documents describing assignment of the right, the value of the right and the pertinent guarantees to be assigned to the factoring service provider. The notice shall further contain the factoring service provider's data, the means for settlement of the right to the factoring service provider. Moreover, in case the debtor approves assignment of the right, such approval shall have a fixed date and shall clarify whether or not the debtor has any preservations regarding such assignment.

Without prejudice to the above paragraph, assignment of a right shall not result in the lapse of the debtor's right to insist upon the pleas that would have been raised against the customer at the time of applying assignment, and the debtor shall further be entitled to insist upon the pleas that may be grounded on the assignment of rights contract.

Article Nine

The customer may agree to act as guarantor with respect to the assigned rights, the related guarantees and the solvency of the debtor both at the time of transfer and in future, all in accordance with the provisions of the Civil Law. In all cases, the customer shall be liable for the debtor's personal acts that may detract or remove the assigned right.

Article Ten

The customer shall provide the factoring service provider with the documents upholding the assigned right with relevant guarantees, such as the purchase order, invoices, delivery bills and all other means proving such right with relevant guarantees, thus enabling the factoring service provider to gain its entitlements.

In case the customer fails to provide the factoring service provider with the above-mentioned documents, the latter shall be entitled to recourse the customer for the value of assigned rights under dispute and to further undertake the legal proceedings required to collect the value of debit accounts and commercial instruments subject of factoring service.

Article Eleven

The customer and the factoring service provider may agree that a notice is necessarily be served on the customer prior to undertaking any legal proceedings against the debtor in case of the latter's failure to settle its debt.

Article Twelve

The factoring service contract concluded between the factoring service provider and any customer shall contain at least the following conditions:

- a) The customarily applied rules that determine the rights approved to be assigned to the factoring service provider, and the minimum limit of documents supporting the right assigned to the latter.
- b) The rules under which the right shall be assigned, including:

- The scope of guarantees proving existence of the right and solvency of the debtor,
- The customer's or the factoring service provider's scope of commitment to notify the debtor of the assigned right and obtain the latter approval thereof.
- c) The nature of the services to be rendered by the factoring service provider, such as the collection, following up, guarantee and finance services.
- d) The validity term of the factoring service contract and the conditions for renewal and/or termination thereof,
- e) The rules for settlement of accounts,
- f) Any guarantees provided by the customer to the factoring service provider, other than the guarantees to be assigned with the right, if any
- g) The rights and obligations of contracting parties,
- h) The rules for settlement of any disputes that may arise out of the factoring service contract, and
- i) The scope of confidentiality of the information to be obtained by the factoring service provider from the customer regarding the customer's identity, commercial activities, present and future debtors, terms and conditions of the latter's transactions, as well as the limits of disclosing any confidential information by the factoring service provider to the re-factoring entities, insurance companies, collection companies and licensed credit bureaus. In this respect, it is conditional that the customer must be authorized by the debtor to disclose information or required to do so in accordance with the laws of the State where the debtor is a resident or registered.

Article Thirteen

The factoring service provider shall submit to the EFSA the forms of factoring service contracts and transfer of rights contracts intended to be concluded with customers. These forms shall be accompanied by a written declaration to be issued by the factoring service provider's chairman stating that these contracts properly conform to the provision of this Decision. The EFSA may review these forms at any time to confirm their full compliance with the provisions of the Egyptian Law in general and the herein terms and conditions in particular. The EFSA, after a review is made, may request that amendments be added to these forms.

Article Fourteen

Factoring service provider shall, at all time, meet the following capital adequacy criteria:

- 1- The capital base, in proportion to debtors' accounts and the then purchased commercial instruments, shall not be less than 10% at any time. For the purpose of calculating this percentage, the debtors' accounts and the purchased commercial instruments shall not be subject to any debts whose risks are not covered by payment guarantees given by EFSA-approved factoring correspondents, banks, credit guarantors, defaulters risk guarantors, or any debts whose minimum credit rating is less than investment degree or not issued by EFSA-approved local or international credit bureaus.

- 2- Ownership rights, i.e., the total shareholders rights and supporting loans, shall not be less than 75% of the capital base.
- 3- The rate of end-obligator's failure risk exposure rate shall not exceed 20% of the capital base in case no debtor solvency guarantees are given by the customer or 25% if affiliate entities are present. In this respect, calculation of total risks shall include the balance of debit accounts and commercial instruments contained in the factoring service provider's balance sheet, as well as the potential risks that are not included in the financial statements but appears in the related complementary clarifications, provided that these calculations shall be made after deduction of the risks properly covered the said obligator or its affiliate group.

The supporting loans shall be recognized upon calculation of the capital base of the factoring service provider, if the following conditions are met:

- The remaining term up to the maturity date of supporting loan shall not be less than 12 calendar months.
- The loan shall be fully paid in cash.
- The loans shall not be subject to guarantees or rights of priority except over other supporting loans.
- Settlement of the loan value shall not result in reduction of the capital base of the factoring service provider to less than minimum percentage stated in clause one in this Article.

When a supporting loan is first included in the capital base and when the limited quarterly audit report of the annual financial statements is submitted to the EFSA, the factoring service provider shall submit, to the EFSA, an auditor's certificate proving that the above conditions have been met with respect to that supporting loan.

Article Fifteen

If the capital base is reduced to less than the minimum percentage stated in above Article, the factoring service provider shall, within three months at most, raise the net ownership rights and supporting loans value to reach the said minimum percentage, or to submit an application to the EFSA requesting extension of the said grace period.

The EFSA shall undertake the required procedures against the factoring service provider, if found a lack of seriousness with respect to raising the capital base up to the minimum percentage stated herein.

Article Sixteen

The factoring service's financial statements shall be prepared in accordance with the Egyptian Accounting Standards, and latter is required to provide the EFSA with the duly audited quarterly financial statements within forty five days from the expiry date

of the accounting period and to submit the duly audited annual financial statements within ninety days from the expiry date of the fiscal year. The EFSA may pass remarks about the annual financial statements and serve a pertinent notice on the factoring service provider one week prior to convocation of the general assembly of shareholders thereof. The EFSA may request the factoring service provider to raise these remarks to the general assembly duly convened to approve the annual financial statements.

Article Seventeen

Factoring service providers shall appoint one or more auditors for review of their accounts in accordance with the Egyptian Accounting Standards, provided they shall be EFSA-listed auditors. The factoring service provider shall further serve notice on the EFSA regarding the auditor's name within thirty days at most from the date of the auditor's appointment.

The auditor's report, attached to the annual financial statements, shall include a declaration stating that the factoring service provider has already met all the conditions contained in this Decision, particularly those related the financial requirements and capital adequacy.

Article Eighteen

The factoring service provider is required to notify the EFSA of any change that may occur to the following items, within two weeks at most from the date of change:

- 1) The factoring activities performed by the factoring service provider. In this respect, the notice shall be accompanied by a plan regarding the factoring service provider's management of these activities and the means for covering the factoring risks related to foreign debtors.
- 2) The factoring service provider's board of directors, senior managers and internal regulations.
- 3) The internal regulations of the factoring service provider.

Article Nineteen

The factoring service provider shall serve notice on the EFSA regarding any violations of the provision of this Decision, any legal proceedings undertaken or court judgments issued against the factoring service provider or any of its board members, managers or employees in the process of performing factoring services. The factoring service provider is particularly required to notify the EFSA of any judgment declaring any of them bankrupt or ruling for a criminal punishment or a punishment for committing a misdemeanor involving moral turpitude, provided that such notice shall be served on the EFSA within three days from the date of the factoring service provider's knowledge thereof.

Article Twenty

The EFSA may undertake the legally prescribed procedures in case of the factoring service provider's failure to comply with the terms and conditions stated in this Decision.

Article Twenty One

The entities that render factoring service on the date of enforcement of this Decision shall conciliate their positions within a maximum grace period of six months from the date of enforcement.

Article Twenty Two

This Decision shall be published in the Egyptian Gazette and shall be enforceable thirty days as of the date of publication.

Dr Ziad Bahaa El-Din
EFSA Chairman