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FACTORING AGREEMENT

In Ukraine the process of formation of modern democratic society with the developed market economy is not possible without appropriate changes in the legal regulation of public relations related to property turnover. These changes in domestic law are reflected in a substantial number of novelties of civil law, among which is the factoring agreement. Factoring agreement has drawn lawyers' and businessmen's attention since the development of the corresponding chapter of Civil Code of Ukraine which takes into account the latest achievements of lawyers of countries and rules of UNIDROIT Convention on International Factoring.

Widespread dissemination of factoring transactions in the world takes place due to their economic advantage for many businesses. For the time being, there are no unified comprehensive organizational and methodological approaches relevant to the display of factoring operations in domestic practice. In order to understand and grasp the essence of factoring, it is important to go back to its history. The history of factoring development helps us to realize its current status and assess the possible areas of its development. It is necessary to analyze the importance of public relations, covered by the factoring agreement as well as its characteristics.

While analyzing the stages of factoring development, it should be noted that in its initial stages, factoring was used as a tool for insurance against the risk of non-payment for the delivered products and collection of debts, and later on the function of financing under subtraction of the right of claim was added. Moreover, additional services were attached as well, like accounting receivables, monitoring of customers' shipments and consulting services. All these changes in factoring functions are due to timing requirements, external economic and political factors.

Nowadays, factoring is known as a financial transaction in which an adherent (the client) sells its accounts receivable to a third party (called the factor) at a discount.

By factoring agreement, payment liability of the assigned debtor is transferred from the adherent to the factoring company, the debtor being forced to pay all the amounts recorded in invoices only to the factoring company. The payment shall be made starting from the date the receivables become due. In case the debtor refuses to make the payment, even though it is not part of the factoring contract it can be directly taken to court by the factor and, consequently, in its turn, the debtor will be able to defend himself by invoking all the exceptions and defences that he could apply against the adherent. The party, who sells its accounts receivable, is released from the credit risk associated with possible non-payment of debt for goods, works, services, and accelerates the circulation of their funds by obtaining

early payment for goods, works and rendered services. In its turn, the entities that have the right to conduct factoring transactions (factors), extend the range of services they provide, and receive additional benefits through this agreement.

In the Civil Code of Ukraine factoring agreement is defined as a contract in which one party (factor) transfers or undertakes to transfer the funds at the disposal of the other party (the client) for the fee (in any manner stipulated by the contract), and the client assigns or undertakes to assign to factor their right of pecuniary claim against the third party (debtor).

The subject of factoring agreement may be the right of pecuniary claim, on the date when receivables are due (the claim is available) and a claim that will occur in the future (future claim). The form of factoring agreement is the same as in the original transaction on the basis of which the right of pecuniary claim was concluded.

Taking into consideration the definitions existing in the literature on the national and international levels, the parties to the factoring agreement consists of adherent, factor and assigned debtor. The adherent is a natural or legal person who is the subject of entrepreneurship. The factor is a bank or other financial institution which has the right to factoring under the law. The assigned debtor is any party of civil relations. Their legal status is defined in the Civil Code of Ukraine and Ukrainian legislation as well as directly by the agreement.

The right of pecuniary claim to the debtor, is transferred according the content of the agreement. That means that the latter is obliged to make payment to the factor, in case he has received written a notice of assignment of pecuniary claim with defined pecuniary claim that has to be executed and the factors, who receive the payment. Otherwise, the debtor can fulfill obligations to a customer and obligations will be deemed to be performed properly. The rights and obligations of the parties under the factoring agreement are reciprocal and depend on the type and form of factoring, although some of them are gained by the factor and the customer according to any factoring agreement.

The final decision on whether cession agreement has features of factoring agreement can be based on the following criteria: entering into a contract, the subject of the contract, the rights and duties of the parties.

Thus, we can state, taking into consideration the current economic situation, factoring is the most available tool, representing the only financing source through which the financing increases simultaneously with the sales, being the cheapest form of short-term financing as well. Given the fact that factoring is not only financial product of financing without guarantees but also a highly complex commercial management product, this type of contract can represent the rescue solution for the companies that cannot support themselves from the financial point of view, but that have a well-developed business plan.