

FACTORING ASSIGNMENTS (ESTABLISHMENT, ETC) BILL, 2019

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A BILL

FOR

AN ACT TO ESTABLISH FACTORING ASSIGNMENTS ACT TO PROVIDE FOR PRINCIPLES AND TO ADOPT RULES RELATING TO THE ASSIGNMENT OF RECEIVABLES IN ORDER TO CREATE CERTAINTY AND TRANSPARENCY AND TO PROMOTE THE MODERNIZATION OF THE LAW RELATING TO ASSIGNMENTS WHILST PROTECTING EXISTING ASSIGNMENT PRACTICES AND FACILITATING THE DEVELOPMENT OF NEW PRACTICES AND ENSURING ADEQUATE PROTECTION FOR THE INTERESTS OF DEBTORS IN ORDER TO PROMOTE THE AVAILABILITY OF CAPITAL AND CREDIT AND TO FACILITATE DOMESTIC AND INTERNATIONAL TRADE AND FOR RELATED MATTERS

Sponsored by Hon. Ossai Nicholas Ossai

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 PART 1 - DEFINITIONS AND INTERPRETATION

2 1. -(1) In this Act unless the context otherwise requires: Definitions

3 "assignment" means the transfer by agreement from client to the factor of all
 4 or part of or an undivided interest in a receivable payable by a debtor and
 5 whether or not notice of the assignment has been given to the debtor. The
 6 creation of rights in a receivable as security of indebtedness or other
 7 obligation is deemed to be a transfer;

8 "client" (in business sometimes called an "assignor" but not in this Act)
 9 means the person who assigns a trade receivable to the factor, whether or not
 10 the trade receivable was initially payable to that person;

11 "competing claimant" means:

- 1 (a) a creditor of the client; or
- 2 (b) an insolvency administrator.
- 3 (c) another factor or assignee of the same trade receivable from the
- 4 same client, including a person who, by operation of law, claims a right in the
- 5 assigned trade receivable as a result of its rights in other property of the client;
- 6 "domestic assignment" means an assignment where the client and the factor are
- 7 located in the same country at the time that the factoring contract is concluded
- 8 between them;
- 9 "domestic trade receivable" means a trade receivable where, at the time
- 10 entering into the supply contract, the client and the debtor are located in the
- 11 same country when the supply contract is concluded between them;
- 12 "existing trade receivable" means a trade receivable that arises upon or before
- 13 the factoring contract is concluded between the client and the factor;
- 14 "factor" (in business sometimes called an "assignee" but not in this Act) means
- 15 the person to whom a receivable is assigned;
- 16 "factoring contract" means a contract concluded between a client and a factor
- 17 pursuant to which:
- 18 (a) the client assigns or will assign or will offer to assign to the factor
- 19 trade receivables arising from supply contracts between the client and its
- 20 debtors; and
- 21 (b) the factor is to perform at least one of the following functions:
- 22 (i) Providing or procuring finance for the client, including loans and
- 23 advance payments that are directly related to the value of each trade receivable
- 24 and its perceived credit risk at the time the receivable is created or at any time
- 25 thereafter;
- 26 (ii) maintenance of accounts (Ledgering) relating to the assigned
- 27 receivables; or
- 28 (iii) collection of assigned receivables and:
- 29 (a) unless otherwise agreed any collection is for its own account and
- 30 not as agent for the client;

1 (b) any collection made by the client for the benefit of the factor is
2 deemed to be made by the factor;

3 (c) protection against default in payment by debtors solely because
4 of their financial inability to pay may not be given; and

5 (d) notice of the assignment of the receivables may not be
6 given to debtors.

7 "Financial contract" means any spot, forward, future, option or swap
8 transaction involving interest rate, commodities, currencies, equities,
9 bonds, indices or any other financial instrument, any repurchase or
10 securities lending transaction, and any other transaction similar to any of
11 these transactions entered into in financial markets and any combination of
12 these;

13 "financial 'services" means any service of a financial nature, including (but
14 not limited to):

15 (a) transactions on a regulated exchange;

16 (b) Insurance - related services consisting of:

17 (i) direct life assurance;

18 (ii) direct insurance other than life assurance;

19 (iii) reinsurance and retrocession;

20 (iv) insurance intermediation, such as brokerage and agency;

21 (v) services auxiliary to insurance, such as consultancy, actuarial,
22 risk assessment and claim settlement services;

23 (e) banking and other financial services consisting of:

24 (i) accepting deposits and other repayable funds;

25 (ii) lending (including consumer credit, mortgage credit, factoring
26 and financing of commercial transactions);

27 (iii) financial leasing;

28 (iv) payment and money transmission services (including credit,
29 charge and debit cards, travellers' cheques and bankers' drafts);

30 (v) providing guarantees or commitments;

- 1 (vi) financial trading (as defined in this Act);
- 2 (vii) participating in issues of any kind of securities (including
3 underwriting and placement as an agent, whether publicly or privately) and
4 providing services related to such issues;
- 5 (viii) money brokering;
- 6 (ix) asset management, such as cash or portfolio management, all
7 forms of collective investment management, pension fund management,
8 custodial, depository and trust services;
- 9 (x) inter-bank payment systems, inter-bank payment agreements,
10 settlement and clearing services for financial assets (including securities,
11 derivative products and other negotiable instruments);
- 12 (xi) providing or transferring financial information, and financial data
13 processing or related software (but only by suppliers of other financial
14 services);
- 15 (xii) providing advisory and other auxiliary financial services in
16 respect of any activity listed in sub-paragraphs (i) to (ix) (including credit
17 reference and analysis, investment and portfolio research and advice, advice on
18 acquisitions and on corporate restructuring and strategy).
- 19 "financial trading" means trading for own account or for account of customers,
20 whether on an investment exchange, in an over-the-counter market or
21 otherwise, in:
- 22 (a) money market instruments (including cheques, bills and
23 certificates of deposit) and other negotiable instruments and financial assets
24 (including bullion);
- 25 (b) foreign exchange;
- 26 (c) derivative products (including futures and options);
- 27 (d) exchange rate and interest rate instruments (including products
28 such as swaps and forward rate agreements);
- 29 (e) transferable securities;
- 30 "future trade receivable" means a receivable that arises after the factoring

- 1 contract is concluded between the factor and the client;
- 2 "insolvency administrator" means the person or body, including one
3 appointed on an interim basis, authorized in an insolvency proceeding to
4 administer the reorganization or liquidation of the client's assets or affairs;
- 5 "insolvency proceeding" means a collective judicial or administrative
6 proceeding, including an interim proceeding, in which the assets and affairs
7 of the client are subject to control or supervision by a court or other
8 competent authority or person for the propose of reorganization or
9 liquidation;
- 10 "international assignment" means an assignment of a trade receivable where
11 the client and the factor are located in different countries at the time of
12 conclusion of the factoring contract;
- 13 "international trade receivable" means a trade receivable where, at the time
14 the supply contract is concluded, the client and the debtor are located in
15 different countries;
- 16 "netting agreement" means an agreement between two or more parties that
17 provides for one or more of the following:
- 18 (a) the net settlement of payments due in the same currency on the
19 same date whether by novation or otherwise;
- 20 (b) upon the insolvency or other default by a party, the termination
21 of all outstanding transactions at their replacement or fair market values,
22 conversion of such sums into a single currency and netting into a single
23 payment by one party to the other;
- 24 (c) the set-off of amounts calculated, as set forth in sub-paragraph;
- 25 (b) immediately above in this definition, under two or more netting
26 agreements;
- 27 "notice of the assignment" means a communication in writing which
28 reasonably identifies the assigned receivable and the factor and states
29 expressly that the receivables has been assigned to the factor;
- 30 "priority" means the right of a person in preference to the right of another

1 person and, to the extent relevant for such purpose, includes the determination
2 whether the right is a personal or a property right, whether or not it is a security
3 right for indebtedness or other obligation, whether the assignment
4 accomplishes a true-sale of all right, title and ownership interest of the
5 assignor in the receivable to the assignee, and whether any requirements
6 necessary to render the right effective against a competing claimant have been
7 satisfied;

8 "proceeds" means whatever is received in respect of an assigned trade
9 receivable, whether in total or partial payment, discharge or other satisfaction
10 of the receivable; the term includes whatever is received in respect of proceeds;
11 the term does not include returned goods;

12 "prohibition against assignment" means:

13 (a) that part of any agreement between the initial or any subsequent
14 client and debtor or any subsequent factor which;

15 (i) prohibits, restricts, or requires the consent of the debtor to the
16 assignment or transfer of, or the creation, attachment, perfection, or
17 enforcement of a right or interest in the receivable; or

18 (ii) provides that the assignment or transfer or the creation,
19 attachment, perfection or enforcement of the security interest may give rise to a
20 default, breach, right of set-off, claim, defence, termination, right of
21 termination, or remedy under the supply contract; and

22 (b) any rule of law, statute, order or regulation which, in respect of the
23 assignment of, or the creation, attachment, perfection, or enforcement of a right
24 or interest in the receivable which:

25 (i) prohibits, restricts, or requires the consent of the government, a
26 governmental body or official, or debtor; or

27 (ii) provides that the same may give rise to a default, breach, right of
28 set-off, claim, defence, termination, right of termination, or remedy;

29 "receivable" means a contractual right to payment of a monetary sum;

30 "related right" means a personal or property right which secures or assists in

1 payment of the assigned receivable and without prejudice to the generality
2 of the foregoing it includes:

- 3 (a) right of lien and stoppage in transit;
- 4 (b) guarantees and indemnities;
- 5 (c) documents of title;
- 6 (d) credit and other insurances;
- 7 (e) Evidence of the amount and existence of a receivable;
- 8 (f) Right to compromise disputes and issues receipts.

9 "subsequent assignment" means a further assignment of a receivable by the
10 initial or any other factor to another person, including an assignment of a
11 receivable back to the client;

12 "supply contract" means a contract between the client and the debtor from
13 which an assigned receivable arises;

14 "trade receivable" means any of the following receivables:

15 (a) a receivable representing the payment obligation for a credit
16 card transaction;

17 (b) a receivable representing the amount owed to the client upon
18 net settlement of payments due pursuant to a netting agreement involving
19 more than two parties; or

20 (c) a receivable arising from supply contract that is:

21 (i) for the supply or lease or license of goods or services other than
22 for financial services;

23 (ii) for a construction;

24 (iii) for the sale or lease of real property; or

25 (iv) for the sale, lease or license of industrial or other intellectual
26 property or of proprietary information or of intangibles;

27 But it does not include a receivable arising out of any transactions
28 specifically excluded from the ambit of this Act by sections 4.1 and 4.2
29 (exclusions and limitations).

30 "writing" means any form of information that is accessible so as to be usable

Rules of
Interpretation

1 for subsequent reference and where this Law requires a writing to be signed
2 then that requirement is met if, by generally accepted means or a procedure
3 agreed to by the person whose signature is required, the writing identifies that
4 person and indicates that person's approval of the information contained in the
5 writing;

6 **2.**-(1) A person is located in the country in which it has its place of
7 business. If the client or the factor has a place of business in more than one
8 countries, the place of business is that place where the central administration of
9 the client or the factor is exercised. If the debtor has a place of business in more
10 than one country, the place of business is that which has the closest relationship
11 to the supply contract. If a person does not have a place of business, reference is
12 to be made to the habitual residence of that person in the case of an individual
13 this is his principal residence. In case of a person registered under law to
14 undertake business this is the place shown in such registration as its address.

15 (2) Unless the context otherwise provides, the singular includes the
16 plural and vice versa and a reference to any gender includes any other gender;

17 (3) The headings to any section or part of this Act are for convenience
18 only and are to be ignored in its interpretation;

19 (4) Any reference to a "person" is to any individual, firm, company,
20 unlimited partnership, limited liability partnership, corporation or partnership,
21 unincorporated body, government, government agency or public authority, as
22 the case may be;

23 (5) The meaning of general words either introduced or followed by
24 the words "other" or "including" is not to be limited by reference to any
25 preceding word indicating a particular class of acts, matters or things;

26 (6) Reference to a section or to a part is to the appropriate section or
27 part of this Act.

28 PART 2 - SCOPE OF APPLICATION AND LIMITATIONS

Scope of
application

29 **3.**-(1) This Act applies to domestic or international assignments of
30 domestic trade receivables or international trade receivables made under or

1 pursuant to a factoring contract.

2 (2) This Act also applies to subsequent assignments of the
3 receivables referred to in section 3.1 provided that either:

4 (a) the initial assignment was made under or pursuant to a factoring
5 contract; or

6 (b) Any prior assignment is governed by this Act.

7 **4. -(1) This Act does not apply to assignments made:**

Exclusions and
Limitations

8 (a) to an individual for his or her personal, family or household
9 purposes; or

10 (b) As part of the sale or change in the ownership or legal status of
11 the business out of which the assigned receivables arose.

12 (2) This Act does not apply to assignments of receivables arising
13 under or from:

14 (a) transactions on a regulated exchange;

15 (b) financial contracts governed by netting agreements, except a
16 receivable owed on the termination of all outstanding transactions;

17 (c) Inter-bank payments systems, inter-bank payment agreements
18 or clearance and settlement systems relating to securities or other financial
19 assets or instruments;

20 (d) the transfer of security rights in, sale, loan or holding of or
21 agreement to repurchase securities or other financial assets or instruments
22 held with an intermediary;

23 (e) a letter of credit or independent guarantee;

24 (f) financial services, including financial trading;

25 (g) security interests created by other statutes;

26 (h) landlord's liens except as to fixtures;

27 (i) receivables assigned from the sale or lease of real property;

28 (j) transfer of interests in or a claim under a policy of insurance;

29 (k) transfers of claims for wages or compensation by employees;

30 (l) the sale of a business;

1 (m) set-off claims;

2 (n) claims in court proceedings.

3 (3) Nothing in this Act affects the rights and obligations of any person
4 under the law governing negotiable instruments.

5 (4) Nothing in this Act affects the rights and obligations of the client
6 and the debtor under laws governing the protection of parties to transactions
7 made for personal, family or household purposes.

8 (5) Nothing in this Act:

9 (a) affects the application of the laws of any state in which real
10 property is situated to either:

11 (i) an interest in that real property to the extent that under that law the
12 assignment of receivable confers such an interest; or

13 (ii) the priority of a right in a receivable to the extent that under that
14 law an interest in the real property confers such a right; or

15 (b) makes lawful the acquisition of an interest in the real property not
16 permitted under the law of the state in which the real property is situated.

17 PART 3 - PARTY AUTONOMY.

Party Autonomy

18 **5.** The client, the factor and the debtor may derogate from or vary by
19 agreement between them any or all provisions of this Act relating to their
20 respective rights and obligations except that the client and the debtor may not
21 derogate from the provisions of sections 7.1 and 7.2 (nullification of
22 prohibitions on assignment) or 8.2 (assignment of rights securing payment).
23 Such an agreement does not affect the rights of any person who is not a party to
24 the agreement.

25 PART 4 - EFFECTS OF ASSIGNMENT

Effects of
assignment

26 **6.**-(1) Assignments of trade receivables are valid and effective unless
27 states otherwise in this Act.

28 (2) An assignment is still effective as between the client and the factor
29 or as against the debtor or as against a competing claimant, and the right of an
30 factor may not be denied priority, on the ground that it is an assignment of more

1 than one receivable, or of future receivable or of parts of a receivable or of an
2 undivided interest in receivables, provided that the receivables are
3 described:

4 (a) individually as receivables to which the assignment relates; or
5 (b) in any other manner, provided that they can be identified as
6 receivables to which the assignment relates either at the time of the
7 assignment or, in the case of future receivables, at the time the supply
8 contract is concluded.

9 (3) Unless otherwise agreed, an assignment of one or more future
10 trade receivable is effective without a new act of transfer being required to
11 assign each receivable.

12 (4) This Act does not affect any limitations on assignments arising
13 from any other laws except as stated in section 6.1, sections 7.1 and 7.2
14 (nullification of prohibitions against assignment) and sections 8.2 and 8.3
15 (transfer of related rights).

16 7.-(1) An assignment of a receivable is effective notwithstanding a
17 prohibition against assignment. The debtor may not avoid the supply
18 contract or its payment obligations because the client is in breach of such a
19 prohibition.

Nullification of
prohibitions
against
assignments

20 (2) Neither the client nor the factor shall have any liability to the
21 debtor for a breach of prohibition against assignment nor may the same be
22 raised by the debtor as a defence or set-off to any claim for payment of an
23 assigned debt.

24 (3) Neither the Government, nor any governmental body or official
25 may take any action against the client or the factor for an assignment of a
26 receivable in breach of any prohibition against assignment.

27 8.-(1) Upon the assignment of a receivable its related rights are also
28 transferred to the factor without any new act of transfer. If such a right, under
29 the law governing it, is transferable only with a new act of transfer, the client
30 is obliged to transfer such right and any proceeds to the factor.

Transfer or
related rights

1 (2) A related right transferred under Sub-section 8.1 even though
2 there may be an agreement between the client and the debtor or some other
3 person granting that right which prohibits, limits, makes impossible or imposes
4 a condition or other restriction on the client's right to assign either the
5 receivable or the right securing payment of the assigned receivable.

6 (3) The client shall have no liability to the debtor or other person
7 referred to in section 8.2 for breach of any agreement referred to in that section.
8 The other party to that agreement may not avoid the supply contract or the
9 assignment contract or the right securing payment on the sole ground of such
10 breach.

11 (4) The transfer of a possessory property right under section 8.1 does
12 not affect any obligations of the client to the debtor or the person granting the
13 property right with respect to the property transferred existing under the law
14 governing that property right.

15 (5) Section 8.1 does not affect any requirement under rules of law
16 other than this Law relating to the form of registration of the transfer of any
17 rights securing payment and/or evidencing ownership of the assigned
18 receivable.

19 PARTS - RIGHTS, OBLIGATIONS AND DEFENCES

20 (A) AS BETWEEN CLIENT AND FACTOR

Rights and
obligations of
client and factor

21 **9.** The mutual rights and obligations of the client and the factor arising
22 from their agreement are determined by the terms and conditions set forth in
23 that agreement, including any rules or general conditions referred to therein.

Representations
by the Client

24 **10.**-(1) Unless otherwise agreed between the client and the factor, the
25 client shall be deemed to represent and warrant to the factor that at the time of
26 conclusion of the factoring contract and in respect of each trade receivable to
27 which the factoring contract applies:

28 (a) the client has and will continue to have the right to assign each
29 existing trade receivable and each future trade receivable free of all
30 encumbrances including prohibitions on the assignment of the receivable and

1 its related rights; and

2 (b) the client has not previously assigned any existing trade
3 receivable or future trade receivable to another person; and

4 (c) the debtor does not and will not have any defences, rights of set-
5 off and of the nature referred to in Section 16.1 or counterclaims

6 (d) no prohibition against the assignment of the receivable

7 (2) Unless otherwise agreed between the client and the actor, the
8 client does not represent that, in respect of any receivable to which the
9 factoring contracts applies, the debtor has, or will have, the ability to pay or
10 otherwise discharge any receivable.

11 **11.**-(1) Unless otherwise agreed between the client and the factor,
12 notice of the assignment and a payment instruction may be sent to the debtor
13 by either the client or the factor or both. However after notice of the
14 assignment has been sent only the factor may sent a payment instruction.

Right to give
notice of the
assignment

15 (2) Notice of the assignment or payment instruction sent in breach
16 of any agreement referred to in section 11.1 is still effective for the purpose
17 of section 15 (debtor discharged by payment).

18 (3) However, nothing in section 11.1 or 11.2 affects any obligation
19 or liability of the party in breach of such agreement for any consequent
20 damages.

21 **12.**-(1) As between the client and the factor, unless otherwise
22 agreed and whether or not notice of the assignment has been sent:

Rights of
payment

23 (a) If payment in respect of the assigned receivable is made to the
24 factor, then the factor is entitled to retain the proceeds and any goods
25 returned in respect of the assigned receivable; and

26 (b) If payment in respect of the assigned receivable is made to the
27 client, then the factor is entitled to payment of the proceeds and also to any
28 goods returned to the client in respect of the assigned receivable; and

29 (c) If payment in respect of the assigned receivable is made to
30 another person over whom the factor has priority, then the factor is entitled

1 to payment of the proceeds and also to goods returned to such person in respect
2 of the assigned receivable;

3 (d) However the factor may not retain more than the value of its right
4 in the receivable.

5 (B) POSITION OF DEBTOR

Protection for
the Debtor

6 **13.**-(1) Except as otherwise provided in this Act, an assignment does
7 not, without the consent of the debtor, affect the rights and obligations of the
8 debtor, including the payment terms contained in the supply contract. This Act
9 does not affect the rights and obligations of the debtor unless, at the time of
10 conclusion of the Supply Contract, the debtor is located in Nigeria or the law
11 governing the supply contract is that of Nigeria.

12 (2) A payment instruction may change the person, address or account
13 to which the debtor is required to make payment but may not change:

14 (a) The currency of payment specified in the supply contract; or

15 (b) The country specified in the supply contract in which payment is
16 to be made to a country other than that in which the debtor is located.

Notice of the
assignment to
the Debtor

17 **14.**-(1) Notice of the assignment or a payment instruction is effective
18 when received by the debtor if it is in a language that is reasonably expected to
19 inform the debtor about its contents. It is sufficient if notice of the assignment
20 or a payment instruction is in the language of the supply contract.

21 (2) Notice of the assignment or payment instruction may relate to
22 trade receivable arising after the notice.

23 (3) Notice of a subsequent assignment shall be deemed to constitute
24 notice of all prior assignments.

Debtor discharged
by payment

25 **15.**-(1) Until the debtor receives notice of the assignment, the debtor
26 is entitled to discharge a trade receivable by paying in accordance with the
27 supply contract.

28 (2) After the debtor receives notice of the assignment then, subject to
29 sections 15.3 to 15.8, the debtor can only discharge the trade receivable by
30 paying the factor. However if there are alternative payment instructions in

1 either the notice of the assignment or in a writing received by the debtor
2 subsequent to the notice of the assignment, then the debtor is discharged by
3 payment in accordance x with such instructions.

4 (3) If the debtor receives more than one payment instruction
5 relating to a single assignment of the same trade receivable by the same
6 client, then the debtor is discharged by paying in accordance with the last
7 payment instruction received from factor before payment.

8 (4) If the debtor receives notification of more than one assignment
9 of the same trade receivable made by same client, then the debtor is
10 discharged by paying in accordance with the first notification received.

11 (5) If the debtor receives notice of one or more subsequent
12 assignments, then the debtor is discharged by paying in accordance with the
13 notice of the assignment in respect to the last of such subsequent
14 assignments.

15 (6) If the debtor receives notice of the assignment of a part of or an
16 undivided interest in one or more trade receivables, then the debtor is
17 discharged by either paying in accordance with such notice or in accordance
18 with the provisions of this section 15 as if the debtor had not received the
19 notice. If the debtor pays in accordance with the notice, then the debtor is
20 discharged only to the extent of the part of undivided interest paid.

21 (7) If the debtor receives a notice of the assignment from the factor,
22 then the debtor is entitled to request that the factor provide within a
23 reasonable period of time adequate proof of the assignment from the initial
24 client to the initial factor and of any intermediate assignments having been
25 made. Unless the factor does so, the debtor is discharged by paying in
26 accordance with section 19 (non-recovery of payments) as if notice of the
27 assignment from factor had not been received. Adequate proof of an
28 assignment includes but is not limited to any writing emanating from the
29 client and indicating that the assignment has taken place or authorizing
30 payment to the factor.

1 (8) Sections 15.1 to 15.7 do not affect any other ground upon which
2 payment by the debtor to the person entitled to payment or to a competent
3 judicial or other authority or to a public deposit fund discharges the debtor.

Debtor's defences
and rights of
set-off

4 **16.** In a claim by the factor against the debtor for payment of the
5 assigned trade receivable, the debtor may raise against the factor all defences
6 and rights of set-off arising from the supply contract, or any other contract that
7 was part of or closely connected with the same transaction, of which the debtor
8 could avail itself, as if the assignment had not been made and such claim were
9 made by the client.

10 (2) The debtor may raise against the factor any other right of set-off,
11 provided that it was available to the debtor at the time notice of the assignment
12 was received by the debtor.

Agreement not
to raise defences
or rights of set-off

13 **17.-(1)** The debtors may agree with the client in a writing signed by
14 the debtor not to raise against the factor any defences and rights of set-off that it
15 could raise pursuant to sections 16.1 and 16.2. Such an agreement precludes the
16 debtor from raising against the factor such defences and rights of set-off. Such
17 an agreement may be modified only by an agreement in a writing signed by the
18 debtor. The effect of such modification as against the factor is determined by
19 Section 18.2 (modification of the supply contract).

20 (2) The debtor may not waive defences or rights of set-off:

21 (a) arising from fraudulent acts on the part of the factor; or

22 (b) based on debtor's incapacity.

Modification
of the supply
contract

23 **18.-(1)** An agreement between the client and the debtor concluded
24 before notice of the assignment is received by the debtor which affects the
25 factor's rights is also effective as against the factor, whose rights are
26 correspondingly affected.

27 (2) An agreement between the client and the debtor concluded after
28 notice of the assignment is received by the debtor which affects the factor's
29 rights is ineffective as against the factor unless:

30 (a) The factor at any time consents to it; or

1 (b) The trade receivable is not fully earned by performance and
2 either:

3 (i) the modification is provided for in the supply contract; or

4 (ii) In the context of the supply contract, a reasonable factor would
5 consent to the modification.

6 (3) Sections 18.1 and 18.2 do not affect any rights or obligations of
7 the clients or the factor arising from breach of any agreement between them.

8 **19.** Failure of the client to perform the supply contract does not
9 entitle the debtor to recover from the factor a sum paid by the debtor to the
10 client or the factor. However the rights of the debtor against the client in
11 respect of such sum paid are unaffected.

Non-recovery of
payments

12 (C) POSITION OF THIRD PARTIES

13 **20.**-(1) If more than one assignment is made by the same client of
14 the same trade receivable then priority amongst the factors of their
15 entitlement to the trade receivable will be determined by general rules of law
16 and in the absence thereof then the first factor to give notice to the debtor
17 shall have priority.

Law applicable
to competing
rights in a trade
receivable

18 (2) With the exception of matters that are settled in section 20.1
19 and elsewhere in this Act the law of the state in which the client is located
20 governs the priority of the right of a factor in the assigned trade receivable
21 over the right of a competing claimant.

22 **21.**-(1) if proceeds are received by the factor, then the factor is
23 entitled to retain those proceeds to the extent that the factor's right and
24 interest in the assigned trade receivable however arising has priority over the
25 right if a competing claimant in the assigned trade receivable.

Special rules on
proceeds

26 (2) If proceeds are received by the client, then the right of the
27 factor in those proceeds has priority over the right of a competing claimant
28 in those proceeds to the same extent as the factor's right had priority over the
29 right in the assigned trade receivable of that claimant if:

30 (a) The client received the proceeds under instructions from the

1 factor to hold the proceeds for the benefit of the factor; and

2 (b) The proceeds are held by the client for the benefit of the factor
3 separately and are reasonably identifiable and segregated from the other assets
4 of the client, such as in the case of a separate deposit or securities account
5 containing only proceeds consisting of cash or securities.

6 (3) Nothing in section 21.1 affects the priority of a person having
7 against the proceeds a right of set-off or a right created by agreement and not
8 derived from a right in the trade receivable.

Subordination

9 **22.** A factor entitled to priority may at any time subordinate its
10 priority unilaterally or by agreement in favour of any existing or future factors.

Form of a
factoring contract

11 **23.-(1)** A factoring contract concluded between persons who are
12 located in the same country is formally valid as between them if it satisfies the
13 requirements of either the law which governs such contract or the law of the
14 country in which it is concluded.

15 A factoring contract concluded between persons who are located in different
16 countries is formally valid as between them if it satisfies the requirements of
17 either the law which governs such contracts or the law of one of those
18 countries.

19 PART 6 - INTERNATIONAL FACTORING

Relations between
factors in
International
Factoring
Transactions

20 **24.-(1)** Relations between factors concerning the assignment
21 between them of international trade receivables in international factoring
22 transactions and which are commonly known as:

23 (a) export factoring;

24 (b) import factoring;

25 Shall be governed by the rules (if any) of an association established for such
26 purposes of which the factors are both members and in the absence of such
27 rules, by the law agreed to between them.

28 Unless agreed otherwise by the factors involved or regulated by the rules of an
29 association of which the factors are both members, the law set out in Parts 1 to 5
30 of this Act shall apply accordingly. To the extent that any of the same shall not

1 apply to any aspect of their relationship then the applicable law shall be that
2 of the county in which the factor giving the assignment is located.

3 PART 7 - ENTRY INTO FORCE AND APPLICATION

4 25. This Bill may be cited as the Factoring Assignments Citation
5 (Establishment, etc) Bill, 2019.

6 (2) This Law applies only to assignments if the factoring contract
7 is concluded on or after the date when this Law comes into force.

EXPLANATORY MEMORANDUM

This bill seeks to create an avenue where interest of contractual rights to payment of a monetary sum by a debtor is transferred by agreement to a third party called the factor. It is a service involving a financial transaction receivables (i.e invoices) to a third party called the factor, with the factor assuming full credit and collection of responsibilities.