



Position Paper

Factoring Assignments (Establishment, Etc) Bill, 2019

This position paper is developed as part of the mapping and analysis of national legislations, regulations and policies relevant for business enabling environment, trade and competitiveness, MSMEs and value chains development in Nigeria, commissioned by Nigeria Competitiveness Project (NICOP) and implemented in partnership with Centre for Trade and Business Environment Advocacy (CTBA) and Federal Ministry of Industry, Trade and Investment. NICOP is co-funded by the European Union (EU) and the German Government; and implemented by GIZ SEDIN Programme with the Federal Ministry of Industry, Trade and Investment (FMITI) as national partner.

Overview

Overall, the Factoring Assignments Bill presents one of the best opportunities to introduce something new and impactful into the regulatory environment for MSMEs in Nigeria. Despite the increasing prominence of factoring globally and in Africa, Nigeria is yet to tap into this financing mechanism. According to the Afreximbankⁱ, which is the major promotor of factoring in Africa, the continent accounted for less than 1 per cent of global factoring volumes in 2017. The Bank also noted that factoring volumes in Africa grew from Euro 14.9 billion in 2009 to approximately Euro 22.3 billion in 2017, with most of those volumes concentrated in South Africa, Tunisia, Morocco, Egypt, Mauritius, and Kenya. Enacting this Bill into law is a critical step in positioning Nigeria to take advantage of the African factoring market which is projected to reach about Euro 200 billion by 2021. This would go a long way in closing the trade/MSMEs finance gap in the country.

the Factoring Assignments Bill is one of the Bills that got to an advance stage (Committee stage in the House of Representatives) but could not be passed by the 8th Assembly. The rather unwieldy Long Title of the Bill says it is a “Bill for 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 modernisation of the law relating to assignments whilst protecting the 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”.

Factoring is recognised as “a type of supplier financing in which firms sell their credit-worthy accounts receivable at a discount (equal to interest plus service fees) and receive immediate cash”ⁱⁱ. Basically, it is the practice whereby a company, having supplied goods to a buyer then goes ahead to “sell” the invoice to a third party who assumes the responsibility of collecting the debt owed to the supplier by the buyer. The value of factoring is that the supplier goods does not have to wait for the buyer to pay as it (the supplier) would collect the amount due on the invoice from the factor (third party) with some discount. This allows companies to maintain their cash flow and finance their production without disruption. The Bill is an attempt to promote the practice of factoring as alternative source of MSMEs financing in Nigeria.



The Bill defines “factoring contract” as a contract concluded between a client and a factor pursuant to which:

- a) the client assigns or will assign or will offer to assign to the factor trade receivables arising from supply contracts between the client and its debtors; and
- b) the factor is to perform at least one of the following functions:
 - i. Providing or procuring finance for the client, including loans and advance payments that are directly related to the value of each trade receivable and its perceived credit risk at the time the receivable is created or at any time thereafter.
 - ii. maintenance of accounts (Ledgering) relating to the assigned receivables; or
 - iii. collection of assigned receivables and:
 - a) unless otherwise agreed any collection is for its own account and not as agent for the client;
 - b) any collection made by the client for the benefit of the factor is deemed to be made by the factor;
 - c) protection against default in payment by debtors solely because of their financial inability to pay may or may not be given; and
 - d) notice of the assignment of the receivables may or may not be given to debtors.

The Bill is proposed to apply to the assignment of domestic trade receivables and international trade receivables made pursuant to or under a factoring contract, as well as the subsequent assignment of same (Section 3).

Key issues

There is a gap that needs to be closed in the Bill: the need to make provision for a central “receivables registry” where receivables/invoices that have been assigned to a Factor are registered and made accessible to the public. This would ensure that a business is not able to fraudulently assign the same invoice/receivable to more than one Factor simultaneously..

Conclusion and Recommendations

Enactment of the factoring Bill into law would assist in closing the financing gap for MSMEs in Nigeria as well as creating new tradable financial instruments. It is recommended that the National Assembly expedites the process of passing a version of the Bill that addresses the noted gap. In this regard, it is suggested that the Bill be modified to mandate the CBN to establish and operate a “receivables registry” in the mode of the National Collateral Registry established and operated under the Secured Transactions in Moveable Assets Act 2017

It is further recommended that other private sector stakeholders engage the process of passing this Bill into law by forging partnerships with the existing promoters in Nigeria, notably, the Nigeria Export-Import (NEXIM) Bank as well as the Afreximbank Country Office. Other relevant partners include the CBN and private finance institutions.



ⁱ <https://www.afreximbank.com/afreximbank-proffers-factoring-to-ease-access-to-financing-for-african-smes/>

ⁱⁱ <https://openknowledge.worldbank.org/bitstream/handle/10986/8939/wps3593.pdf?sequence=1&isAllowed=y>

ⁱⁱⁱ The supplier of the goods or services is the “client” of the “factor” (the company ‘buying’ the invoice) under a factoring contract.