

Unidroit Convention on International Factoring (28 May 1988)

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1 **Unidroit Convention on International Factoring (28 May 1988)**

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[Preamble]

2 THE STATES PARTIES TO THIS CONVENTION,

3 CONSCIOUS of the fact that international factoring has a significant role to play in the development of international trade,

4 RECOGNISING therefore the importance of adopting uniform rules to provide a legal framework that will facilitate international factoring, while maintaining a fair balance of interests between the different parties involved in factoring transactions,

5 HAVE AGREED as follows:

6 **CHAPTER I - SPHERE OF APPLICATION AND GENERAL PROVISIONS**

7 **Article 1**

8 1. - This Convention governs factoring contracts and assignments of receivables as described in this Chapter.

9 2. - For the purposes of this Convention, "factoring contract" means a contract concluded between one party (the supplier) and another party (the factor) pursuant to which:

10 (a) the supplier may or will assign to the factor receivables arising from contracts of sale of goods made between the supplier and its customers (debtors) other than those for the sale of goods bought primarily for their personal, family or household use;

11 (b) the factor is to perform at least two of the following functions:

- finance for the supplier, including loans and advance payments; 12

- maintenance of accounts (ledgering) relating to the receivables; 13

- collection of receivables; 14

- protection against default in payment by debtors; 15

(c) notice of the assignment of the receivables is to be given to debtors. 16

3. - In this Convention references to "goods" and "sale of goods" shall include services and the supply of services. 17

4. - For the purposes of this Convention: 18

(a) a notice in writing need not be signed but must identify the person by whom or in whose name it is given; 19

(b) "notice in writing" includes, but is not limited to, telegrams, telex and any other telecommunication capable of being reproduced in tangible form; 20

(c) a notice in writing is given when it is received by the addressee. 21

Article 2 22

1. - This Convention applies whenever the receivables assigned pursuant to a factoring contract arise from a contract of sale of goods between a supplier and a debtor whose places of business are in different States and: 23

(a) those States and the State in which the factor has its place of 24

business are Contracting States; or

25 (b) both the contract of sale of goods and the factoring contract are
governed by the law of a Contracting State.

26 2. - A reference in this Convention to a party's place of business
shall, if it has more than one place of business, mean the place of
business which has the closest relationship to the relevant contract
and its performance, having regard to the circumstances known to
or contemplated by the parties at any time before or at the conclu-
sion of that contract.

27 **Article 3**

28 1. - The application of this Convention may be excluded:

29 (a) by the parties to the factoring contract; or

30 (b) by the parties to the contract of sale of goods, as regards re-
ceivables arising at or after the time when the factor has been given
notice in writing of such exclusion.

31 2. - Where the application of this Convention is excluded in accor-
dance with the previous paragraph, such exclusion may be made
only as regards the Convention as a whole.

32 **Article 4**

33 1. - In the interpretation of this Convention, regard is to be had to its
object and purpose as set forth in the preamble, to its international
character and to the need to promote uniformity in its application
and the observance of good faith in international trade.

34 2. - Questions concerning matters governed by this Convention
which are not expressly settled in it are to be settled in conformity
with the general principles on which it is based or, in the absence

of such principles, in conformity with the law applicable by virtue of
the rules of private international law.

CHAPTER II - RIGHTS AND DUTIES OF THE PARTIES

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Article 5

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As between the parties to the factoring contract:

37

(a) a provision in the factoring contract for the assignment of exist-
ing or future receivables shall not be rendered invalid by the fact
that the contract does not specify them individually, if at the time of
conclusion of the contract or when they come into existence they
can be identified to the contract;

38

(b) a provision in the factoring contract by which future receivables
are assigned operates to transfer the receivables to the factor when
they come into existence without the need for any new act of trans-
fer.

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Article 6

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1. - The assignment of a receivable by the supplier to the fac-
tor shall be effective notwithstanding any agreement between the
supplier and the debtor prohibiting such assignment.

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2. - However, such assignment shall not be effective against the
debtor when, at the time of conclusion of the contract of sale of
goods, it has its place of business in a Contracting State which has
made a declaration under Article 18 of this Convention.

42

3. - Nothing in paragraph 1 shall affect any obligation of good faith
owed by the supplier to the debtor or any liability of the supplier to
the debtor in respect of an assignment made in breach of the terms
of the contract of sale of goods.

43

44 **Article 7**

45 A factoring contract may validly provide as between the parties
thereto for the transfer, with or without a new act of transfer, of
all or any of the supplier's rights deriving from the contract of sale
of goods, including the benefit of any provision in the contract of
sale of goods reserving to the supplier title to the goods or creating
any security interest.

46 **Article 8**

47 1. - The debtor is under a duty to pay the factor if, and only if, the
debtor does not have knowledge of any other person's superior
right to payment and notice in writing of the assignment:

48 (a) is given to the debtor by the supplier or by the factor with the
supplier's authority;

49 (b) reasonably identifies the receivables which have been assigned
and the factor to whom or for whose account the debtor is required
to make payment; and

50 (c) relates to receivables arising under a contract of sale of goods
made at or before the time the notice is given.

51 2. - Irrespective of any other ground on which payment by the
debtor to the factor discharges the debtor from liability, payment
shall be effective for this purpose if made in accordance with the
previous paragraph.

52 **Article 9**

53 1. - In a claim by the factor against the debtor for payment of a
receivable arising under a contract of sale of goods the debtor may
set up against the factor all defences arising under that contract of

which the debtor could have availed itself if such claim had been
made by the supplier.

2. - The debtor may also assert against the factor any right of set- 54
off in respect of claims existing against the supplier in whose favour
the receivable arose and available to the debtor at the time a notice
in writing of assignment conforming to Article 8(1) was given to the
debtor.

Article 10 55

1. - Without prejudice to the debtor's rights under Article 9, non- 56
performance or defective or late performance of the contract of sale
of goods shall not by itself entitle the debtor to recover a sum paid
by the debtor to the factor if the debtor has a right to recover that
sum from the supplier.

2. - The debtor who has such a right to recover from the supplier 57
a sum paid to the factor in respect of a receivable shall neverthe-
less be entitled to recover that sum from the factor to the extent
that:

(a) the factor has not discharged an obligation to make payment to 58
the supplier in respect of that receivable; or

(b) the factor made such payment at a time when it knew of the 59
supplier's non-performance or defective or late performance as re-
gards the goods to which the debtor's payment relates.

CHAPTER III - SUBSEQUENT ASSIGNMENTS 60

Article 11 61

1. - Where a receivable is assigned by a supplier to a factor pur- 62
suant to a factoring contract governed by this Convention:

63 (a) the rules set out in Articles 5 to 10 shall, subject to sub-
 paragraph (b) of this paragraph, apply to any subsequent
 assignment of the receivable by the factor or by a subsequent
 assignee;

64 (b) the provisions of Articles 8 to 10 shall apply as if the subsequent
 assignee were the factor.

65 2. - For the purposes of this Convention, notice to the debtor of the
 subsequent assignment also constitutes notice of the assignment
 to the factor.

66 **Article 12**

67 This Convention shall not apply to a subsequent assignment which
 is prohibited by the terms of the factoring contract.

68 **CHAPTER IV - FINAL PROVISIONS**

69 **Article 13**

70 1. - This Convention is open for signature at the concluding
 meeting of the Diplomatic Conference for the Adoption of the Draft
 Unidroit Conventions on International Factoring and International
 Financial Leasing and will remain open for signature by all States
 at Ottawa until 31 December 1990.

71 2. - This Convention is subject to ratification, acceptance or ap-
 proval by States which have signed it.

72 3. - This Convention is open for accession by all States which are
 not signatory States as from the date it is open for signature.

73 4. - Ratification, acceptance, approval or accession is effected by
 the deposit of a formal instrument to that effect with the deposi-
 tary.

Article 14

74

1. - This Convention enters into force on the first day of the month
 following the expiration of six months after the date of deposit of
 the third instrument of ratification, acceptance, approval or acces-
 sion. 75

2. - For each State that ratifies, accepts, approves, or accedes
 to this Convention after the deposit of the third instrument of ratifi-
 cation, acceptance, approval or accession, this Convention enters
 into force in respect of that State on the first day of the month fol-
 lowing the expiration of six months after the date of the deposit of its
 instrument of ratification, acceptance, approval or accession. 76

Article 15

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This Convention does not prevail over any treaty which has already
 been or may be entered into. 78

Article 16

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1. - If a Contracting State has two or more territorial units in which
 different systems of law are applicable in relation to the matters
 dealt with in this convention, it may, at the time of signature, ratifi-
 cation, acceptance, approval or accession, declare that this Con-
 vention is to extend to all its territorial units or only to one or more
 of them, and may substitute its declaration by another declaration
 at any time. 80

2. - These declarations are to be notified to the depositary and
 are to state expressly the territorial units to which the Convention
 extends. 81

3. - If, by virtue of a declaration under this article, this Convention 82

extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

83 4. - If a Contracting State makes no declaration under paragraph 1, the Convention is to extend to all territorial units of that State.

84 **Article 17**

85 1. - Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply where the supplier, the factor and the debtor have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

86 2. - A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply where the supplier, the factor and the debtor have their places of business in those States.

87 3. - If a State which is the object of a declaration under the previous paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph 1, provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

88 **Article 18**

89 A Contracting State may at any time make a declaration in accor-

dance with Article 6(2) that an assignment under Article 6(1) shall not be effective against the debtor when, at the time of conclusion of the contract of sale of goods, it has its place of business in that State.

Article 19

90

1. - Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval. 91

2. - Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary. 92

3. - A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under Article 17 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary. 93

4. - Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary. 94

5. - A withdrawal of a declaration made under Article 17 renders inoperative in relation to the withdrawing State, as from the date on which the withdrawal takes effect, any joint or reciprocal unilateral declaration made by another State under that article. 95

96	Article 20		
97	No reservations are permitted except those expressly authorised in this Convention.		
98	Article 21		
99	This Convention applies when receivables assigned pursuant to a factoring contract arise from a contract of sale of goods concluded on or after the date on which the Convention enters into force in respect of the Contracting States referred to in Article 2(1)(a), or the Contracting State or States referred to in paragraph 1(b) of that article, provided that:		
100	(a) the factoring contract is concluded on or after that date; or		
101	(b) the parties to the factoring contract have agreed that the Convention shall apply.		
102	Article 22		
103	1. - This Convention may be denounced by any Contracting State at any time after the date on which it enters into force for that State.		
104	2. - Denunciation is effected by the deposit of an instrument to that effect with the depositary.		
105	3. - A denunciation takes effect on the first day of the month following the expiration of six months after the deposit of the instrument of denunciation with the depositary. Where a longer period for the denunciation to take effect is specified in the instrument of denunciation it takes effect upon the expiration of such longer period after its deposit with the depositary.		
		Article 23	106
		1. - This Convention shall be deposited with the Government of Canada.	107
		2. - The Government of Canada shall:	108
		(a) inform all States which have signed or acceded to this Convention and the President of the International Institute for the Unification of Private Law (Unidroit) of:	109
		(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;	110
		(ii) each declaration made under Articles 16, 17 and 18;	111
		(iii) the withdrawal of any declaration made under Article 19(4);	112
		(iv) the date of entry into force of this Convention;	113
		(v) the deposit of an instrument of denunciation of this Convention together with the date of its deposit and the date on which it takes effect;	114
		(b) transmit certified true copies of this Convention to all signatory States, to all States acceding to the Convention and to the President of the International Institute for the Unification of Private Law (Unidroit).	115
		[Post Provisions]	
		[Post Clauses (If any: Signed; Witnessed; Done; Authentic Texts; & Deposited Clauses)]	
		IN WITNESS WHEREOF the undersigned plenipotentiaries, being	116

duly authorised by their respective Governments, have signed this Convention.

¹¹⁷ DONE at Ottawa, this twenty-eighth day of May, one thousand nine hundred and eighty-eight, in a single original, of which the English and French texts are equally authentic.

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