

# **GUIDELINES ON INTERNATIONAL FACTORING**

PREPARED FOR:  
BANGLADESH BANK

PREPARED BY:  
CORE COMMITTEE ON FACTORING  
TECHNICAL COMMITTEE ON FACTORING

# **GUIDELINES ON INTERNATIONAL FACTORING**

## **Technical Committee on Factoring**

Dr. Prashanta Kumar Banerjee  
*Professor and Director (RD&C), Bangladesh Institute of Bank Management (BIBM)*

A. K. M. Mahmudul Hasan Khan  
*Trade Consultant, Ministry of Commerce*

Md. Zakir Hossain Chowdhury  
*Deputy General Manager, Foreign Exchange Policy Department, Bangladesh Bank*

Ataur Rahman  
*Secretary General, International Chamber of Commerce (ICC) Bangladesh*

Md. Golam Sarwar Milan  
*Bangladesh Garment Manufacturers and Exporters Association (BGMEA)*

Mansoor Ahmed  
*Bangladesh Knitwear Manufacturers & Exporters Association (BKMEA)*

Ahmed Shaheen  
*Deputy Managing Director, Prime Bank Ltd.*

Md. Ruhul Amin  
*Assistant Professor, Bangladesh Institute of Bank Management (BIBM)*

## Contents

Sl. No.	Particulars	Page Number
1.	Member of Technical Committee	ii
2.	Contents	iii
3.	Introduction	1
4.	International Factoring	3
5.	International Factoring: Procedures	4
6.	Benefits of International Factoring in Boosting Exports and Imports	8
7.	Organization and Sources of Finance	9
8.	Membership of Factors Chain International (FCI) +International Factors Groups (IFG)	10
9.	Rules for Governing International Factoring	11
10.	Documentation: Invoice Processing, Schedule of Debt and Others	13
11.	Assignment of the Export Invoice	13
12.	Pricing	14
13.	Legal Issues	16
14.	Risk Involved With International Factoring and Procedures to Minimize Risk	18
15.	Dispute, Fraud , Procedures for Handling and Arbitration	21
16.	Annexure	25

## **1. Introduction**

Most source documents available today indicate that the percentage of open account transaction in international trade payment is usually around 80 per cent of world trade. The survey conducted by ICC clearly observes that market momentum shifts towards open account terms and importers of North America, Europe and Asia clearly move from Letter of Credits (L/Cs) to open account settlement. Open account trade has also been experiencing accelerated growth in Asia in the recent years because exporters are facing insistence by importers that trade be conducted on open account terms.

Bangladesh is not an exception. Importers and exporters in Bangladesh like other countries are also growingly using documentary collection and open account trade payment system for international trade payment and finance. Both banks and corporate houses face challenges in case of documentary collection and open account trade. Open account trade means that payment is received many weeks or even months after delivery. Unsurprisingly, exporters find that open account terms may create cash flow and default risk problem.

On the other hand, banks face certain challenges in financing open account transactions. Banks usually take assignment/ownership of the receivable as the basis for funding. However, laws specific to this assignment are not available in all jurisdictions and this can cause differing opinions as to what constitutes a true sale of a receivable. Such mismatched expectations could potentially lead to expensive settlement methods for banks. Moreover, some jurisdictions insist that all counterparties be informed of the assignment before it is valid, adding additional work to the financing proposition. Additionally banks face troubles to collect money from the importers as documents do not go through banks rather documents go to the importer directly.

International factoring provides a simple solution of problems faced in case of open account trade regardless of whether the exporter is a small organization or a major corporation. The role of the factor/bank is to collect money owed from abroad by approaching importers in their own country, in their own language and in the locally accepted manner. A factor can also provide

exporters with 100% protection against the importer's inability to pay. As international factoring lets exporters safely offer of competitive credit terms to their foreign customers, this international financing mechanism is now popular among both exporters and importers. It is now a global industry with a vast turnover and is universally accepted as vital to the financial needs of all types of business. International factoring has become well established in developing countries as well as in those that are highly industrialized. The total amount of international factoring transacted by members of FCI in nearly 75 countries stood at Euros 352.44 billion in 2013 whereas the amount of total factoring accounted for Euros 2.1 trillion at the same time.

Several training programs and research works were conducted by BIBM for capacity building of bankers to launch this international financial service. Recently, International Chamber of Commerce (ICC) Bangladesh, Bangladesh Institute of Bank Management (BIBM), Factors Chain International (FCI), and Asian Development Bank (ADB) have jointly organized one seminar and workshop on International Factoring. These initiatives prompted regulator and policy makers to take actions for launching this financial service<sup>1</sup>. In this perspective, Bangladesh Bank has formed a core committee and a technical committee to check the nitty-gritty of this service. This document is the idea of these committees. It has been prepared with a view to providing policy as well as a framework of operation of international factoring for practitioners as well as for the users of international factoring

International factoring is much more complex than domestic factoring, as the banks/financial institutions in different countries need to deal with cross border trade transactions. As a result, a bank/ financial institution wanting/desiring to engage in international factoring needs to be a member of the factoring network<sup>2</sup> and follow procedures, rules and regulations stipulated by

---

<sup>1</sup> In Export Policy 2015-2018, International Factoring Services have been encouraged in financing international trade.

<sup>2</sup> Factors Chain International (FCI) and International Factors Group (IFG) have become a single organization since January 01, 2016 with over 400 members in 2016.

such a network. Therefore, engaging in international factoring without adequate knowledge could cause serious problems for banks/ financial institutions.

This document will serve as a useful reference and resource document for a bank/financial institution who wishes to start international factoring. However, once a bank/financial institution becomes a member of a factoring network that particular network will have its own guidelines and manuals which the factor needs to adopt.

These guidelines should not be considered as a rigid set of rules. Instead, banks/ financial institutions interested in offering factoring should make their own judgments that are best suited for the commercial environment they work. These guidelines may work as a possible checklist and a source of reference.

## **2. International Factoring**

International factoring started in the 1960s. European countries were the pioneers in introducing international factoring. International Factoring is a simple extension of the domestic factoring. International factoring means the seller and buyer are in different countries. Over the years, international factoring has taken various forms due to varying needs of the exporters and security to the factors besides price bearing capacity of the former. These are: (A) Two Factor System (B) Direct Export Factoring (C) Direct Import Factoring (D) Back to Back Factoring (Details in Annex-I).

The diplomatic conference of International Institute for Unification of Private Laws (UNIDROIT) , held at Ottawa, Canada in 1988, defined international factoring as an agreement between an exporter and a factor whereby the factor having purchased the trade debts from the exporter, would provide the services such as finance, maintenance of sales ledger , collection of debts, protection against credit risk, etc.

Services offered in international factoring include investigating the creditworthiness of buyers, assuming credit risk and giving 100% protection against write-offs, collection and management of receivables and provision of finance through immediate cash advances against outstanding receivables.

The most common method of conducting international factoring transactions is through the “Two Factor system” which means the participation of two factors in the transaction, one in the Importer’s Country and the other in the Exporter’s country.

Altogether, there are four parties involved in an international factoring transaction. These are:-

- The Exporter
- The Importer
- The Export Factor, (EF) the factor located in the exporter’s country
- The Import Factor, (IF) the factor located in the importer’s country

The two factors need to be members of an international association or a network of factors which is usually termed as a “Chain” (FCI +IFG). The two factors as members are required to abide by the rules and regulation of the Association.

### **3. International Factoring: Procedures**

Among the stated factoring systems, two factoring system is widely used in international trade. The procedure followed in case of Two Factor system is shown in details below in two-stage e.g. Process before Shipment and Process after Shipment. **Procedures of other systems of international factoring (Direct Export Factoring, Direct Import Factoring and Back to Back Factoring) detailing all steps are placed in Annex –I.**

#### **3.1. Process Before Shipment**

**3.1.1.** The Importer and the Exporter enter into an agreement whereby the Importer agrees to import and purchase goods from an Exporter as per certain specifications, quality, and price and **credit terms**. Based on these, the Exporter could estimate the maximum exposure or amount of credit that needed to be granted to the Importer at any given time. E.g. if the Importer has placed orders of US \$ 10,000 worth of goods each with a credit period of 4 months to be shipped every month then the required credit limit will be US\$ 40,000.

**3.1.2.** The Exporter then forwards details to the **EF** and requests for a credit line for that amount. In this example the credit line requested will be US\$ 40,000.

3.1.3. The EF briefly examines the past records of the exporter, his reputation and his ability to supply that amount and requests for a credit cover from an Import Factor (IF) for the specified amount. Generally, at this stage the IF would request the EF to sign an inter-factor agreement (Annex-II).

3.1.4. IF then carries out an appraisal of the importer/ debtor.

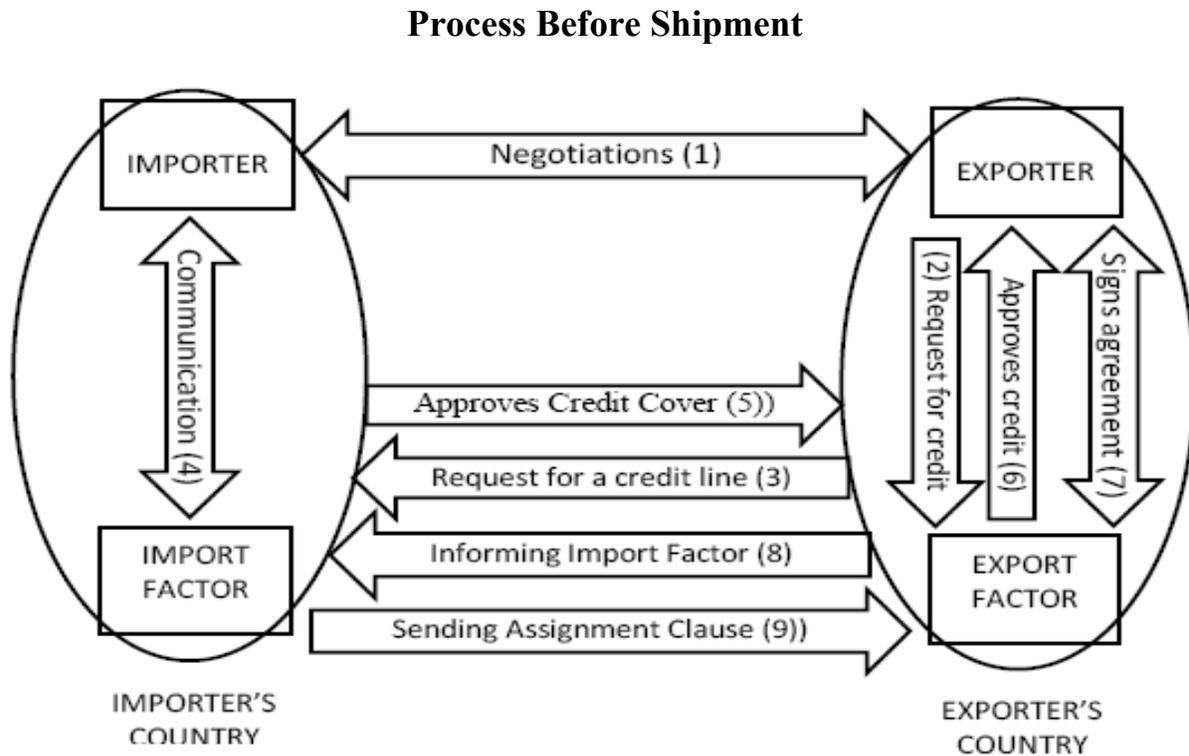
**3.1.5.** If the importer is creditworthy for the amount the EF has requested, IF approves the credit limit. On the contrary, if the importer is not creditworthy for the amount requested by the exporter then the IF may grant a lower amount or reject credit for the Importer. Along with the credit approval, the IF will also give his charges.

3.1.6. EF then informs the client/exporter in writing that the credit limit has been approved /rejected / or whether a lower credit limit has been given. At this stage, EF specifies any conditions that he wants to include in the agreement and also quotes his charges which will include IF's charges as well. Based on the credit cover given by the IF and the charges quoted by the EF, the exporter may decide to re- negotiate the terms with buyers.

**3.1.7.** If the Exporter agrees to the terms with EF, the Exporter enters into a formal **export factoring agreement** with the EF to use his services.

**3.1.8.** EF informs the IF that the Exporter has signed the export factoring agreement.

**3.1.9.** At this stage IF will also send the assignment clause that is needed to be affixed to each invoice prepared. EF then notifies the importer and the exporter that the invoices should be assigned in favor of the IF and the importer should make the payment to the IF and not to the exporter.



**3.2. Process After Shipment**

3.2.1. The Exporter ships the goods and sends the shipping documents to the importer with the assignment clause (given by the IF) printed / affixed to the invoice.

3.2.2. The Exporter then submits the copies of invoices, shipping documents, packing list, etc. to EF. Alternatively, exporter could send the original shipping documents to the EF

and EF could then post the documents to the Importer with the assignment clause properly affixed.

3.2.3. On submission of proof of shipment and assignment of invoices, the EF advances funds to the exporter on the agreed terms. EF also notifies the IF of the shipment.

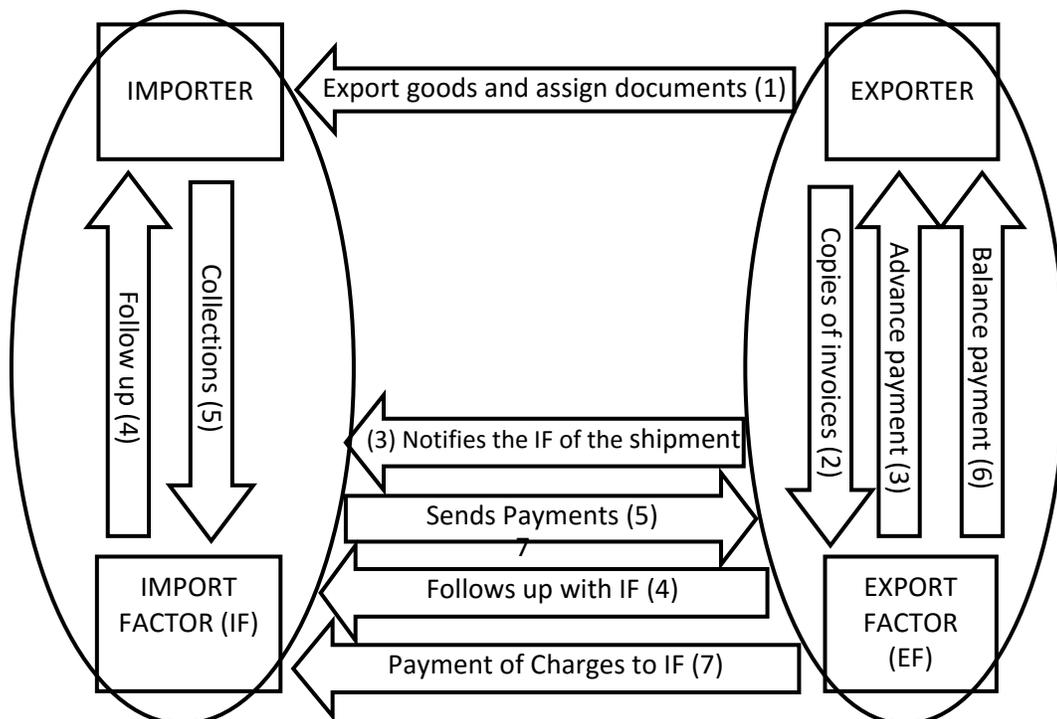
3.2.4. At this stage, EF follows up with IF and accordingly IF follows up the importer. If the Importer fails to pay within about 7 days after the due date IF will contact the importer and remind him of the payment. Thereafter, IF adopts a standard procedure on following up and collecting the proceeds from the importer

3.2.5. Once the IF collects the debt he is required to remit the money immediately to the EF. If there are delays in remitting the money, according to the standard practices of the factoring chains, the IF will become liable to pay penalty interest to the EF.

3.2.6. After receiving the proceeds EF will pay the exporter the balance due less the discount charge, the total service charge and any other charges mentioned in the agreement.

3.2.7. The EF will also remit the IF's charges which should be in the foreign currency.

### Process After Shipment



#### 4. Benefits of International Factoring in Boosting Exports and Imports

4.1. Factoring is actually designed to ease the traditional problems of exporting on non L/Cs mechanisms particularly open account. In summarized version, benefits of exporters and importers under international factoring are placed below.

**Table 1: Benefits for Exporters and Importers**

<b>Benefits for Exporters</b>	<b>Benefits for Importers</b>
Increases sales in foreign markets by offering competitive terms of sale.	Purchase on convenient ‘open terms’ terms.
Protection against credit losses on foreign customers.	No need to open L/Cs.
Accelerated cash flows through faster collections.	Expansion of purchasing power without blocking existing line of credits.
Lower costs than the aggregate charges for L/C transitions.	Orders can be placed swiftly without incurring delays , L/C opening charges, negotiation charges , etc.
Liquidity to boost working capital.	
Enhanced borrowing potential and an opportunity to make use of suppliers’ discounts.	

Source: Factors Chain International (FCI) + International Factors Group (IFG).

4.2. As mentioned earlier, importers are no more interested to import under L/C. Exporters face increasing insistence by importers that trade be conducted on open accounts terms in place of L/Cs. Importers have to provide required margin and sufficient security to their banks in order to

confirm L/Cs. Even for a successful importer, there comes a time when the growing requirements for L/Cs margin go beyond the importer's financing ability and L/Cs coverage exceeds the security available to give to the bank. Moreover, importers need to approach banks for issuing L/Cs on each occasion of importing goods from abroad, which is really time consuming. Under international factoring, an importer gets rid of these hassles of L/Cs because this financial product facilitates exporters to export under open accounts terms in place of L/Cs through solving the problems of cash flow and default risk associated. It also provides importers with opportunity for payment to exporters after selling imported products.

4.3. In open account terms, exporters receive payment many weeks and months after delivery, which can cause acute cash problems. Further problems can arise if the importers delay payment and make no payment at all because of financial failure. International factoring provides a simple solution under two-factor system regardless of whether exporter is a small or large organization. The exporter gets finance immediate after submitting the relevant documents to the export factor and the import factor collects money at the end of the approved period from the importers of the same country and in the locally accepted manner. The factor also provides with 100 per cent protection to the exporter against the importer's inability to pay. As a result, exporters can increase export by offering competitive credit terms of sales. Cost in 'international factoring' is lower than the aggregate charges for L/C transactions. International trade under L/C involves different parties namely issuing bank, confirming bank, negotiating bank, collecting bank, presenting bank, which increases aggregate charge for L/C. But 'international factoring' incurs less cost as it has only two parties, import factor and export factor.

## **5. Organization and Sources of Finance**

A major area for decision for offering factoring is to determine what types of organization can perform factoring activities. Some countries have no regulations or requirements of any kind on who may be factor. Countries without the involvement of banks/ financial institutions and with no capital requirements (such as Brazil) have seen a proliferation of thinly-capitalized and marginal entities offering factoring, which is undesirable.

In Bangladesh, it is expected that only banks and financial institutions can offer international factoring services. Three types of organizations namely (I) independent financial institutions offering factoring services jointly backed by a number of banks, financial institutions and insurance companies, (II) a subsidiary organization of a bank or financial institution, and (III) a division of a bank and financial institution can offer this financial service.

At the initial stage in Bangladesh, a few independent financial institutions jointly backed by a number of banks, financial institutions and insurance companies' seem more suitable because of limited scope of doing business as well as paucity of expert manpower on factoring at this stage. If it is so, participating financial institutions will provide seed capital for the organization. Later on, institutions can generate funds by issuing different money market instruments like commercial paper, certificate of deposits, etc. On the other hand, parent banks or financial institutions can provide the startup capital if it is started as a subsidiary or a division.

However, following standards can be set in creating organization for offering factoring:

1. The bank/ financial institution is to be a joint stock company. This would appear to be a prudent requirement to ensure proper governance, financial management and reporting.
2. Minimum capital for factoring should be fixed at or near the level required for participation in Factors Chain International (USD 2 million) + International Factors Group.

## **6. Membership of Factors Chain International (FCI) + International Factors Group (IFG)**

Bank or the financial institution needs to become a member of the international network of Factors commonly known as “Factoring Chains” in order to engage in international factoring. There were two such international chains namely the Factors Chain International (FCI) and the International Factors Group (IFG)<sup>3</sup>, which have become one organization (FCI+IFG) since January 1, 2016.

---

<sup>3</sup> FCI and IFG have already been merged and now become one factoring chain worldwide.

Once a bank becomes a member of FCI +IFG, the member has to agree to abide by the constitution of the Network and its rules and regulations. FCI+IFG usually considers the following in granting membership to a financial institution or a bank.

Financial institutions or banks or departments of such institutions applied for membership of FCI should be well-reputed. The bank or financial institution should have a minimum net worth of US\$ 2.0 million. However, even if the prospective member is unable to meet this net worth requirement, FCI could still consider the application provided that such a member is backed by a financial institution or bank of good financial standing and it is willing to give a commitment to FCI on behalf of the Institution applying for membership.

Initially a member is admitted as an “Associate Member”. The membership fee usually amounts to about US\$ 7,000. The full membership is granted only if the Seller is generating an annual international factoring volume of at least US\$20.0 million and is engaged in both aspects of international factoring import and export.

## **7. Rules for Governing International Factoring**

International factoring using the two-factor system requires a set of rules and procedures which govern the activities and basis for cooperation between two factors conducting the transaction in two jurisdictions. By joining FCI, a factor signs “Inter-factor Agreement (Annex –II)” in which it commits to be governed by following sets of rules and procedures.

1. The General Rules for International Factoring (GRIF) (Annex-III)
2. The edifactoring.com Rules (Annex-IV)
3. The Rules of Arbitration (Annex-V)
4. Specific Issues Relating to Regulation of Factoring

The General Rules for International Factoring (GRIF): The GRIF is a uniform set of rules and regulations issued by FCI consisting of VIII sections and 32 articles. It governs transactions between FCI members. The GRIF is a comprehensive set of rules, which covers the following areas:

Factoring Contracts and Receivables, Parties Taking Part in Two-Factor International Factoring, Receivables Included, Common Language, Time Limits, “Writing”, Deviating Agreements, Numbering System, Commission/Remuneration, Settlement of Disagreements between Export Factor And Import Factor, Good Faith and Mutual Assistance, Assignment, Validity of Assignment, Validity of Receivables, Reassignment of Receivable, Definition of Credit Risk, Approvals and Requests for Approvals, Reduction or Cancellation, Obligation of Export Factor to Assign, Rights of The Import Factor, Collection, Unapproved Receivables, Transfer of Payments, Payment under Guarantee, Prohibitions Against Assignments, Late Payments, Disputes, Representations and Warranties, Communication and Electronic Data Interchange (EDI), Accounts and Reports, Indemnification ,Breaches of Provisions Of These Rules.

**The edifactoring.com Rules:** The edifactoring.com Rules govern how members communicate with each other, the obligations of the respective factors, and matters of security, confidentiality and storage of records. Transactions between the respective factors are validly concluded by the exchange of edifactoring.com messages without any written documentation.

**The Rules of Arbitration:** The FCI Rules of Arbitration provide for a method of resolving disputes between FCI members through an FCI arbitration process, which involves appointing arbitrators whose decisions are binding. **It consists of 18 articles** and includes FCI Arbitration, Choice of Arbitrators, Request for Arbitration, Answer to the Request, Transmission File to the Arbitrator, Rules Governing the Proceedings, Place of Arbitration, Terms of Reference, The Arbitration Proceedings, Award by Consent, Time Limit for Awards, Decisions to Cost of Arbitration, Making of Award, Notification of Award to Parties, Settlement of Arbitration Costs, Distribution of Award, Language of Arbitration, General Rules.

**Specific Issues Relating to Regulation of Factoring:** If any country has specific legal and regulatory settings particularly for contracts between parties and assignment of receivables among others, factors need to follow these rules too.

## **8. Documentation: Invoice Processing, Schedule of Debt and Others**

In factoring, invoice is the only document that gives right to the debt. Accuracy of the invoice is, therefore, utmost important. Additionally, Schedule of Debt is also an important document. Exporters formally offer the debt stated in the Invoice for factoring by sending Debt Schedule (Annex-VI).

Documents should include the following:

- I. A covering letter to the Importer indicating that all documents are in order.
- II. Invoices – with the required number of copies and signed and prepared as specified by the importer.
- III. Notification (Format is provided by the IF).
- IV. Bill of lading and the necessary copies.
- V. Packing list – As specified by the importer.
- VI. Insurance Documents, Certificates of Origin, Quality certificates and other documents required by the Importer or the authorities of the importers and exporters country.
- VII. Schedule of Debts. (A sample Schedule of Debts is given in Annex-VI).

## **9. Assignment of the Export Invoice**

Exporter needs to assign the invoice to the IF very carefully. The Exporter affixes the assignment clause on the invoice. Through this assignment, exporter notifies the importer about the export factoring transaction.

The assignment of the invoice gives the right to the IF to recover the money from the importer, which in turn enables IF to provide the guarantee to the EF on behalf of the importer. This guarantee is what enables EF to advance funds to the exporter at the post shipment stage. As the invoice originates from the exporter's country, the EF has to ensure that the invoice is properly assigned to the importer.

The Assignment clause will vary according to different countries' legal requirements. Example of an assignment clause is placed n below.

“The debt shown in this invoice has been assigned to ABC Factors (Name of IF) who alone is entitled to receive payment. The payment must be in the invoice currency and made by bank transfer to XYZ Bank .....(Address of Bank)... to the credit no 123456 (Name of IF's Bank, address and account number) quoting your exporter's name. If you have any claims or queries about this invoice or a general enquiry please telephone xxxxx (Tel no of XYZ Bank , i.e. IF's bank)”

## **10. Pricing**

In a factoring transaction there are two cost components, Service Charge and the Discount Charge. Service charges include the IF's and the EF's charges and are generally computed as a percentage of invoice value. The Exporter needs to bear these charges. In quoting prices for the importer, the exporter could always incorporate these factoring charges into his selling prices.

The EF gives his charges at the time of approving the credit line. The total service charge and the discount charge should be separately quoted by the EF to the exporter and should be included

in the export factoring agreement which the EF signs with the exporter. However, it is not obligatory for the EF to give the exporter the respective services charges of IF and EF separately.

A detailed description as well as the basis of computation of these charges is given in the following Table.

SL. NO.	Particulars		Components of costs	Range
A.	Service Charge	I. IF's Charges	*Credit appraisal cost *Administration costs *Follow up costs *Premium to cover the credit risk	Typically range from 0.8% to 1.2% of the invoice value. <sup>4</sup>
		II. EF's Charges	*Administration cost: Cost of initiating the transaction, documentation, appraisals and follow up. * Amount for risk of recouping the debt in case of dispute <sup>5</sup> .	EF's service charge generally is around 0.5 % of the invoices value

<sup>4</sup>These charges will depend on the volumes that the exporter is expected to generate. Some of the above costs are of fixed nature. Therefore, a high trading volume with a regular turnover will make IF's functions very cost effective. Further, if the debtor is strong the risk premium could be low. In such a scenario, the service charge could be on the lower threshold. On the other hand, the percentage charge could be high if the turnover is inconsistent, if the export volumes are of small values and if the buyer carries a high credit risk.

<sup>5</sup> When EF advances a percentage of the invoice value to the exporter, the EF expects to recover this amount from the importer or from the IF's guarantee. However, if the importer refuses to pay the debt due to a dispute then the EF is exposed to a credit risk. Although in this event the EF has the right of recourse to the Seller this credit risk has to be factored into these charges. Usually, only a part of this risk is covered in the service charge while the major part of this risk is covered in the discount charge.

<b>B.</b>	<b>Discount Charges</b>		This is charged by the EF as a percentage on the amount advanced to the exporter. This is similar to the interest rates charged by EF as a financial institution.	Discount charge = Cost of fund + Client's credit risk+ Expected margin <sup>6</sup>
<b>C.</b>	<b>Total Charges (A+B)</b>		<ul style="list-style-type: none"> <li>• Service charge</li> <li>• Discount charges (Like B)</li> </ul>	<b>Total service charge :</b> <ul style="list-style-type: none"> <li>• The composite service charge – which usually works out to be around 1.5 % of the invoice values.</li> <li>• Minimum Service charge – A monthly fee including both IF's and EF's charge.<sup>7</sup></li> <li>• Document handling charge – usually per invoice<sup>8</sup></li> </ul>

## 11. Legal Issues in the Context of Bangladesh

In case of local rules and regulations, some countries do not have any comprehensive legal framework for operation of international factoring and it is being operated under country's existing legal and fiscal framework. However, some countries have specific legal framework for

<sup>6</sup> This is usually calculated daily on the end of day balance and the cumulative charge is debited to the client account at the end of the month.

<sup>7</sup> IF may levy **Minimum Service charge**. It is not unusual for the IF to have a minimum charge in order to discourage the exporter for not providing regular orders. This could be monthly charge or an annual charge. It has to be noted that even if the Exporter does not transact the minimum volumes as agreed, the EF will become liable to pay the minimum service fee to the IF. In this case, the EF should ensure that such charges are transferred to the exporter. These charges should be included in the agreement. It is also not uncommon for EF to charge a minimum service charge to ensure that the exporters adhered to their sales commitments.

<sup>8</sup> The IF may impose a Document Handling Charge to discourage small orders or make them cost effective for the IF.

operating international factoring. If Bangladesh follows the first approach, the following issues are required to be accommodated in our existing rules, regulations, Act and policies.

**11.1.1.** Compulsion of repatriation of export proceeds within 120 days of shipment: As per Gazette Notification issued under Section 12 of Foreign Exchange Regulation Act (FERA), 1947, export proceeds must be received within 4 months of shipment<sup>9</sup>. In case of export under international factoring, this rule will equally be applicable. As a result, currently foreign account receivables that have more than 120-day credit terms will not be allowed in case of international factoring. However, in case of increasing days for repatriation of exports proceeds from the current 120 days if the importer fails to pay to import factor on time, BB needs to bring change accordingly in FERA.

**11.1.2.** Ministry of Commerce (MoC) has allowed international factoring in boosting export from Bangladesh in its recently promulgated export policy 2015-2018<sup>10</sup>. As per export policy 2015-2018, BB will create a congenial export-financing environment and international factoring will be encouraged to promote export from Bangladesh.

**11.1.3.** Making of shipping Documents/ title to the document: Unless proceeds are received in advance, title to cargo should be drawn only to the order of an AD (bank)<sup>11</sup>. In international factoring, title to the document must be favoring the name of the importer/ buyer. BB may consider relaxing this policy in case of open account trade/international factoring<sup>12</sup>.

---

<sup>9</sup> Notification no FE1/77-BB, April 16, 1977 (Appendix-3/4, Guidelines for Foreign Exchange Transactions, 2009 (Vol-1)).

<sup>10</sup> Export Policy, 2015-2018, page 7157.

<sup>11</sup> Guidelines for Foreign Exchange Transactions, 2009 (Vol-1). Para 8, Chapter 8 (ii & II).

<sup>12</sup> Initially documents can be sent through export factor to the importer for avoiding any inconsistencies in documents.

**11.1.4. International Rules:** ICC’s Uniform Customs and Practices for Documentary Credits (UCP 600) are used traditionally for export. But international factoring is governed by General Rules for International Factoring (GRIF) (Annex-III). BB and MoC may think to accept GRIF for introducing international factoring.

**11.1.5. Permission for working as the Export Factor:** Currently, banks/other financial institutions are not allowed to work as the export factor. As a result, BB needs to allow banks/financial institutions to work as a factor.

However, if Bangladesh wants to launch international factoring through having a comprehensive legal framework for operating this financial service like China indicating description and rules about definition of factoring and the parties to factoring contracts, specify the notification process, and who can engage in factoring, etc, then we need to frame a separate law for it. However, it is desirable that law and/or regulation might be framed in order to make factoring a workable activity in practice not to create inappropriate regulatory confusion.

## **12. Risk Involved With International Factoring and Procedures to Minimize Risk**

### **12.1. Export Factoring**

Export Factoring involves two primary risks – **performance risk of the exporter and credit and payment risk of the import factor**. The other generic risks include defective/false/fake invoices, direct payment by the importer to exporter in spite of assignment of receivables and not to routing all invoices of exporter through the factor.

#### **12.1.1. Performance Risk of the Exporter**

Selection of the right exporter is of utmost importance to the Export Factor (EF) for the successful conduct of international factoring transactions. Some probable risks involved with the performance of exporter and possible guidelines to minimize these risks are placed below.

<b>SL. No.</b>	<b>Risks</b>	<b>Guideline to Minimize Risks</b>
----------------	--------------	------------------------------------

1.	Poor Management Risk	Checking reputation and the management capabilities of the Board of Directors, CEO and the Senior Management of the Exporter.
2.	Hidden Connection	Determining whether any undisclosed connections exist between the importer and exporter e.g. through common ownership or directors, involvement of relatives, transactions other than factoring, etc.
3.	Risk of Under Performance of Exporter and Inferior Quality of Export Products	<p>I. Understanding the exporter's line of business.</p> <p>II. Knowing the experience of exporters in producing current export products as well as getting knowledge about the importer's portfolio and the products the exporter is planning to export under the factoring arrangement.</p> <p>III. Assessing whether the products the Exporter planning to export are one of his main line of products or whether it is new product. If it is a new product, the exporter may not have adequate knowledge or experience.</p> <p>IV. Ascertaining whether the products are factorable, and prone to disputes and claims.</p>
4.	Potential to Grow	Forecasting long term potential of the exporter to generate sufficient volumes and be profitable for the EF.
5.	Misusing Funds	Ascertaining the purpose of the transaction. EF needs to ascertain whether the Exporter will be benefited by the export factoring arrangement. EF must ensure that the funds raised through the transaction are put to proper use.

#### 12.1.2. Credit and Payment Risk of the Import Factor

EF normally asks exporter to submit the information like name and address of the importer, product description, estimated prices and volumes and general terms and conditions especially the credit terms for obtaining a credit cover from the Import Factor (IF). Once the client/exporter forwards the above information, the EF should select an IF best suited for this transaction. At the initial stage of introducing export factoring, selection of proper Import Factor (IF) is very important. The following risks and procedures to minimize risks are required to be taken into consideration in selecting IF.

SL. No.	Risks	Guideline to Minimize Risks
1.	Financial Risk	Examining financial information of Import Factor. All import factors are required to submit their up to date financials to the factoring network. EF has the right to request FCI+IFG for financial information of the IF.
2.	Risk of Collection	Checking IF's reputation to collect quickly. EF should select an experienced IF who can professionally guide the EF.

3.	Risk of Disputes	<p>I. IF should be having the ability to minimize the risk of disputes and resolving dispute to identify whether a dispute is genuine or fake.</p> <p>II. EF will be required to sign an Inter-factor Agreement (Annex-II) with the IF whereby both parties, the IF and EF agree to abide by the rules and regulations of the Factoring Network.</p> <p>III. EF should request IF for the Import Factor Information Sheet (IFIS) containing his business, the industries in which IF specializes, the general terms and conditions on which it is willing to transact.</p>
4.	Risk of Inappropriate Credit Cover	<p>I. Checking the IF's decision with regard to the credit limit. Is it based on the risk assessments given by a standard rating agencies or an insurance company?</p> <p>II. Examining order cover, if any, instead of a general credit line. This will be valid only for a particular shipment.</p>

## 12.2. Import Factoring

An import factor provides exporters 100% protection against the importer's inability to pay to EF. After 90 days past due date, if an approved invoice remains unpaid, the import factor needs to pay 100% of the invoice value under guarantee. So, IF factor needs to determine whether importers are sufficiently creditworthy and check their payments record using reliable, up-to-date information on solvency, payment ethics and organizational structure.

SL. No.	Risks	Guideline to Avoid Risks
I.	Risk of Non-payment of Importer	Checking payment ethics by examining period and types of relationship between exporter and importer, payment record of importer with the respective exporter.
II.	Risk of Insolvency of the Importer	Doing financial assessment through analyzing history of liquidity and solvency of importers and checking aging of debt of importers.

III.	Risk of Poor Management	Like performance risk of the exporter
IV.	Hidden Connection	Like performance risk of the exporter
V.	Risk of Inappropriate products.	<p>I. Understanding the importer's line of business and how old it is.</p> <p>II. Having knowledge about the current import products, the importer's portfolio and the products the importer's is planning to importer under the factoring arrangement.</p> <p>III. Ascertaining whether the products are factorable, prone to disputes and claims, etc.</p> <p>IV. Checking whether products are growing, matured and stagnating.</p>
VI.	Potential to Grow	Forecasting long term potential of the importer to increase import and competitive position in the industry

Providing guarantee to importer is a sensitive issue. Banks and financial institutions will have to pay the money from their own funds to export factor in case of inability of importer to pay. Therefore, if decision will be taken for introducing both export and import factor from the beginning of launching factoring, bank /financial institution may develop its own model to avoid the nonpayment risk of the importer.

It is expected that Banks and Financial institutions should be well equipped with the risk management techniques. However, when factoring is introduced the exporter may not be willing to give all his importers for factoring at once. In this perspective, some of these principles may not be applicable at the initial stages.

### **13. Dispute, Fraud, Procedures for Handling and Arbitration**

#### **13.1. Dispute**

EF has to bear in mind that although the IF guarantees the credit risk it does not guarantee the importer will not raise disputes. FCI defines DISPUTE in its Article 27 (i) of the General Rules for International Factoring (GRIF).

“A dispute occurs whenever a debtor (*Importer*) fails to accept the goods or the invoice or raises a defense, counterclaim or set-off including (but not limited to) any defense arising from a claim to the proceeds of the receivable by any third party.”

Dispute usually arises out of importer failing to perform the sales contract he has with the exporter. In such instances, the EF will have to recourse its liability to the exporter.

Dispute may arise due to the reasons like exporter’s lack of technical capability to manufacture the required quality, not paying attention to the required documentation, failing to meet the delivery deadlines, not adhering to the terms of the contract, lack of good quality management and quality control systems capable of meeting required quality standards, inferior quality of raw material used in production and poor track record of exporters.

### **13.2.Frauds**

Disputes could be in fact deliberately done by the Importer and Exporter on mutual understanding with the objective of cheating the EF. There is always a possibility of an exporter committing a fraud. Some of the common reasons for committing frauds

- I. Using factoring funds for purposes other than what it was intended for
- II. Circumventing the exchange control regulations and transferring funds out of the country
- III. Money laundering

### **13.3.Consequence of Disputes and Frauds**

13.3.1. If IF suffers a loss due to EF's negligence, such a situation could harm the reputation and the credibility of the EF and consequently other IF would not be willing to transact with the EF in the future. This could even affect the image of the other EF's of the country.

13.3.2. If an exporter commits a fraud or a criminal activity such as foreign exchange fraud and /or money laundering activity, EF will face great difficulties and suffer a serious loss of reputation both among the factoring network and the government of the exporter's country. Also the EF could become liable for fines imposed by the government which could lead to considerable financial losses

#### **13.4. Handling Disputes and Frauds**

13.4.1. EF should at all times ensure that his client (the Exporter) will take all possible actions to ensure that the exporter performs the sales contract, avoid disputes and frauds.

13.4.2. Very often the frauds are committed with the connivance of both parties. The EF has a great responsibility to always check the true intention of the exporter's transaction. This is especially valid when the exporter and importer are prepared to accept the facility under any terms and conditions.

13.4.3. The moment the EF comes to know about the possibility of disputes he should act very fast. Experience of the IF also plays a vital role in minimizing disputes. The possible steps the EF could take to minimize losses arising out of a dispute are:

- I. Trying to identify disputes early by keeping in touch with the IF.
- II. Informing the exporter about the dispute promptly.
- III. Trying to get the exporter and the importer to come to a negotiated settlement
- IV. Requesting the IF to ascertain the real reason for disputes

#### **13.5. Arbitration**

As per the article 10 of the **General Rules for International Factoring (GRIF) promulgated by Factors Chain International**, members of Factors Chain International + International Factors Group are obliged to refer disagreements relating to their mutual factoring arrangements which cannot be solved by an amicable settlement, to a process of FCI arbitration. The arbitration process is governed by **Rules of Arbitration promulgated by FCI. Rules of Arbitration include 18 articles on FCI arbitration, choice of arbitrators, request for arbitration, answer to the request, transmission of the file to the arbitrator, rules governing the proceedings, place of arbitration, terms of reference, the arbitration proceedings, award by consent, time-limit for awards, decision as to costs of arbitration, making of award, notification of award to parties, settlement of arbitration costs, distribution of award, language of arbitration and general rules.**

## **Annexure**

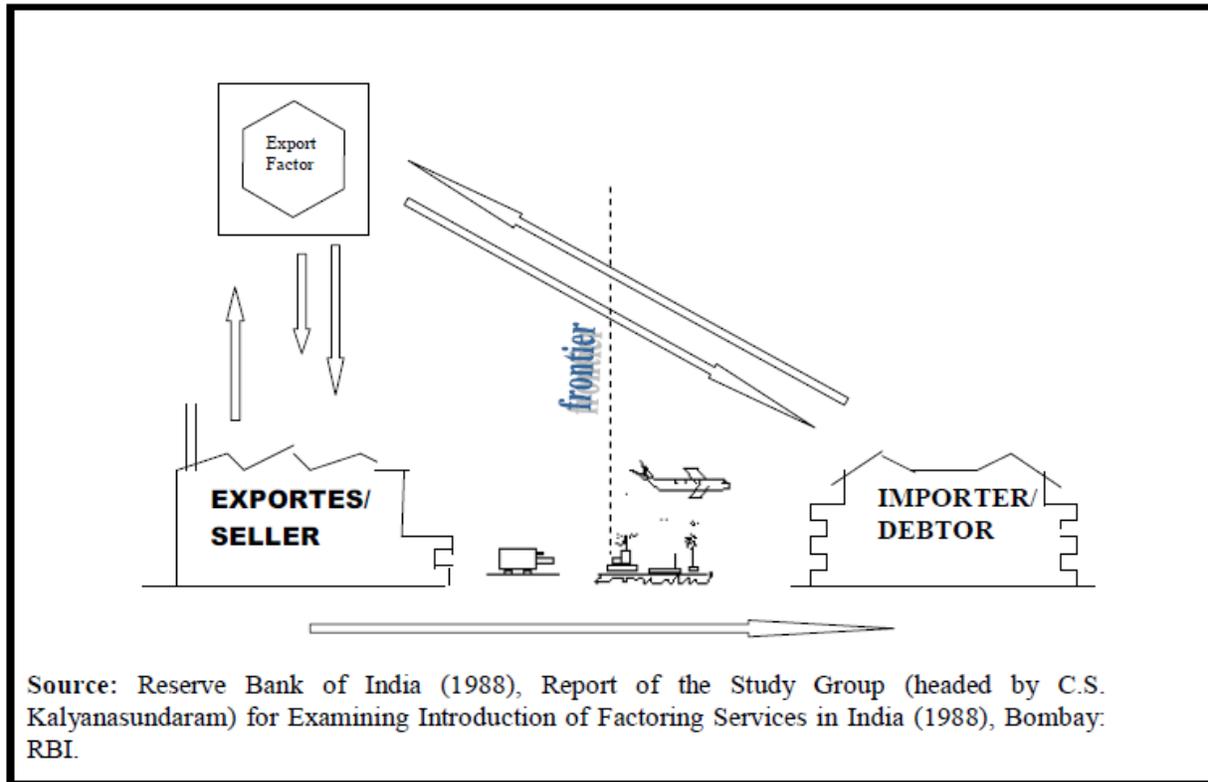
### **ANNEX-I: TYPES OF FACTORING**

**As stated in the report earlier, the following factoring systems are also being used in international trade apart from commonly used the two-factor system.**

#### **1. Direct export factoring**

The direct export factoring is mostly used when handling exports to countries where the corresponding factoring network does not reach. This form of direct export factoring is often provided in combination with outside credit insurance scheme and the traditional services offered by a banking net work. Mechanics of direct export factoring are placed in the following chart.

#### **Mechanics of Direct Export Factoring**

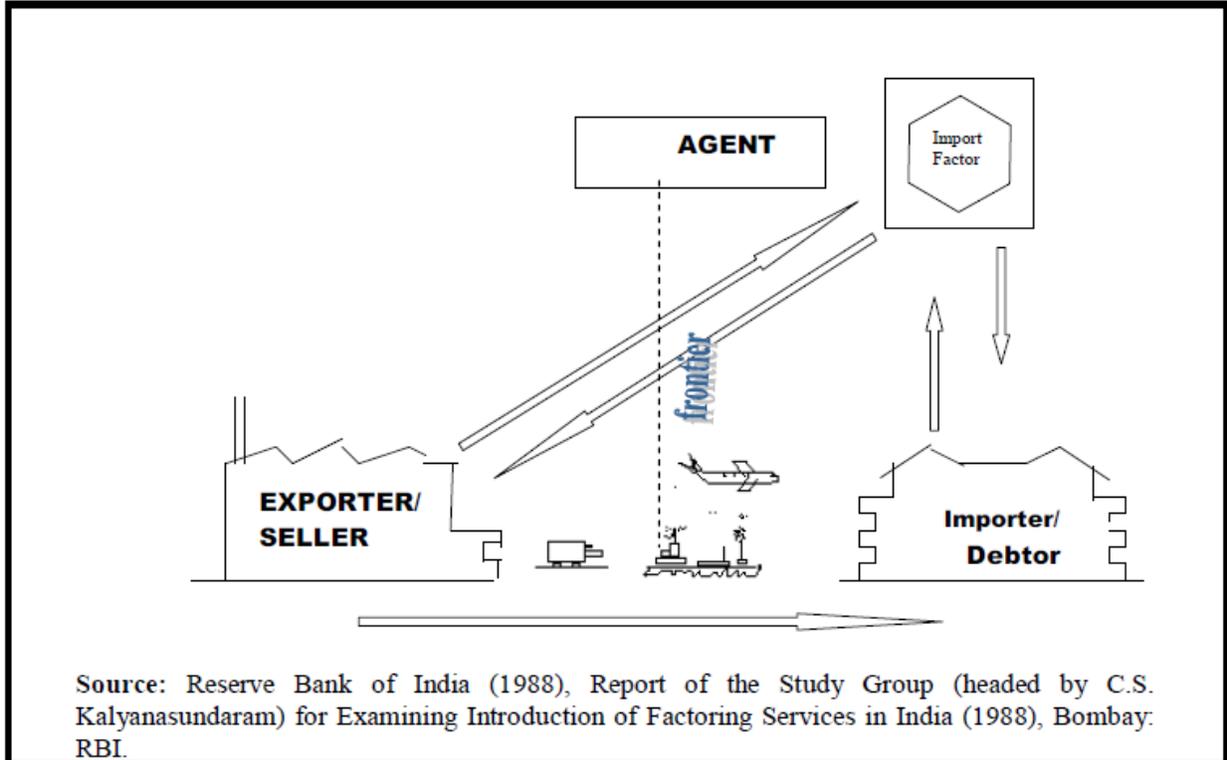


- 1) The exporter ships the goods to his importer/ debtor.
- 2) The exporter assigns his invoices to the export factor.
- 3) The export factor pays the seller the agreed advance.
- 4) The export factor handles the accounts receivable in accordance with the sale contract between the exporter and the importer.
- 5) The importer pays on the due date to export factor.
- 6) The export factor settles the advance with the funds received and forwards the balance to the seller.

## 2. Direct import factoring

Factors in an exporter's country are not sometimes perceived very active in marketing international factoring services. In that case, factors in importers' country offer their services directly to foreign suppliers. The exporter may also establish direct contact with factors in the importing country. The resultant arrangement will be of direct import factoring. The mechanism is placed in the following Chart.

## Mechanics of Direct Import Factoring



- 1) The exporter ships the goods to his importer.
- 2) The exporter assigns his invoices to the import factor, who assumes the credit risk, provided this has been agreed to beforehand.
- 3) The import factor handles the accounts receivable in accordance with the sales contract between the exporter and the importer.
- 4) The importer pays the import factor on the due date.
- 5) The import factor forwards the payment to the exporter, possibly deducting the agent's commission.

### **4.2.4. Back to back factoring**

This is a highly specialized form of international factoring. It is used when the supplier sells his goods through his subsidiary to the importers/ debtors in the import factors' country. This is done to avoid large volumes of sales to a few importers/ debtors for whom it is difficult for the import factor to cover the credit risk. In such a case, import factor can sign a domestic factoring agreement with the importer/ debtor. This agreement will facilitate to get debtors' receivables as



**ANNEX-II: SAMPLE COPY of FCI +IFG INTERFACTOR AGREEMENT**

**SAMPLE COPY of FCI +IFG INTERFACTOR AGREEMENT (Version June 2002)**

AGREEMENT made this.....day of.....,20XX ,.....

By and between

.....

.....

and.....of.....

.....

WITNESSETH:

WHEREAS, .....and.....will from time to time engage the services of the other to act as Import Factor with respect to sale of goods or rendering of services to debtors located in the country(ies) where the Import Factor's services are to be performed;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, it is hereby agreed between the parties as follows:

1. Each of the parties hereby subscribes to and agrees to be bound by all of the terms and provisions of the General Rules for International Factoring (GRIF), the edifactoring.com Rules and the Rules of Arbitration, all promulgated by the Factors Chain International as formally revised from time to time, subject to the following modifications:  
.....  
.....
2. The services to be performed by.....or.....as Import Factor shall be rendered with respect to sellers designated by the parties from time to time and at such commission rates or other compensation as may be mutually agreed upon with respect to each seller.
3. Neither of the parties shall be obliged to engage the services of the other exclusively but each party shall be free to engage the services of any other factoring organizations located in the country (ies) where the parties perform factoring services.
4. This Agreement shall take effect as of the date set out above and shall continue indefinitely, subject to termination by either party on 60 days' prior written notice to the other but such termination shall not apply to, modify or otherwise affect the obligations of the parties hereunder or under the GRIF, the edifactoring.com Rules and the Rules of Arbitration with respect to transactions occurring, accounts receivable transferred or indebtedness incurred prior to the effective date of such termination.

Except in relation to assignments of receivables made before 1 July 2002, this Agreement contains all the matters agreed between the parties in relation to the receivables included by Article 3 of the GRIF and all agreements, warranties, representations and other statements made by the Import Factor or the Export Factor to the other before the making of this Agreement and the reliance on any usages or practices are excluded.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective corporate officers thereunto duly authorized as of the day and year first above written.

Authorized Person of EXPORT FACTOR

By: .....Name.....

Title: .....Designation.....

Authorized Person of IMPORT FACTOR

By: .....Name .....

Title: .....Designation.....

**ANNEX-III: GENERAL RULES FOR INTERNATIONAL FACTORING  
(PRINTED JULY 2005)**

**TABLE OF CONTENTS**

**SECTION I GENERAL PROVISIONS**

- Article 1 Factoring contracts and receivables**
- Article 2 Parties taking part in two-factor international factoring**
- Article 3 Receivables included**
- Article 4 Common language**
- Article 5 Time limits**
- Article 6 Writing**
- Article 7 Deviating agreements**
- Article 8 Numbering system**
- Article 9 Commission/Remuneration**
- Article 10 Settlement of Disagreements between Export Factor and Import Factor**

**Article 11 Good faith and mutual assistance**

**SECTION II ASSIGNMENT OF RECEIVABLES**

**Article 12 Assignment**

**Article 13 Validity of assignment**

**Article 14 Validity of receivables**

**Article 15 Reassignment of receivables**

**SECTION III CREDIT RISK**

**Article 16 Definition of credit risk**

**Article 17 Approvals and requests for approvals**

**Article 18 Reduction or cancellation**

**Article 19 Obligation of Export Factor to assign**

**SECTION IV COLLECTION OF RECEIVABLES**

**Article 20 Rights of the Import Factor**

**Article 21 Collection**

**Article 22 Unapproved receivables**

**SECTION V TRANSFER OF FUNDS**

**Article 23 Transfer of payments**

**Article 24 Payment under guarantee**

**Article 25 Prohibitions against assignments**

**Article 26 Late payments**

**SECTION VI DISPUTES**

**Article 27 Disputes**

**SECTION VII REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

**Article 28 Representations, warranties and undertakings**

## **SECTION VIII MISCELLANEOUS**

**Article 29 Communication and electronic data interchange (EDI)**

**Article 30 Accounts and reports**

**Article 31 Indemnification**

**Article 32 Breaches of provisions of these Rules**

## **SECTION-I: General provisions**

### **Article 1 Factoring contracts and receivables**

A factoring contract means a contract pursuant to which a supplier may or will assign accounts receivable (referred to in these Rules as “receivables” which expression, where the context allows, also includes parts of receivables) to a factor, whether or not for the purpose of finance, for at least one of the following functions:

- Receivables ledgering
- Collection of receivables
- Protection against bad debts

### **Article 2 Parties taking part in two-factor international factoring**

The parties taking part in two-factor international factoring transactions are:

- i. the supplier (also commonly referred to as client or seller), the party who invoices for the supply of goods or the rendering of services;
- ii. the debtor (also commonly referred to as buyer or customer), the party who is liable for payment of the receivables from the supply of goods or rendering of services;
- iii. The Export Factor, the party to which the supplier assigns his receivables in accordance with the factoring contract;
- iv. the Import Factor, the party to which the receivables are assigned by the Export Factor in accordance with these Rules.

### **Article 3 Receivables included**

These Rules shall cover only receivables arising from sales on credit terms of goods and/or services provided by any supplier who has an agreement with an Export Factor to or for debtors located in any country in which an Import Factor provides factoring services. Excluded are sales based on letters of credit (other than standby letters of credit), or cash against documents or any kind of sales for cash.

### **Article 4 Common language**

The language for communication between Import Factor and Export Factor is English. When information in another language is provided an English translation must be attached.

### **Article 5 Time limits**

Except as otherwise specified the time limits set forth in these Rules shall be understood as calendar days. Where a time limit expires on a non-working day or any declared public holiday of the Export Factor or the Import Factor, the period of time in question is extended until the first following working day of the factor concerned.

### **Article 6 Writing**

“Writing” means any method by which a communication may be recorded in a permanent form so that it may be re-produced and used at any time after its creation. Where a writing is to be

signed, that requirement is met if, by rules accepted among the parties, the writing identifies the originator of the writing and indicates his approval of the communication contained in the writing.

#### **Article 7 Deviating agreements**

An agreement in writing made between an Export Factor and an Import Factor (and signed by both of them), which conflicts with, differs from or extends beyond the terms of these Rules, shall take precedence over and supersede any other or contrary condition, stipulation or provision in these Rules relating to the subject matter of that agreement but in all other respects shall be subject to and dealt with as part of these Rules.

(N.B.: Article 7 amended June 2004)

#### **Article 8 Numbering system**

In order to identify exactly all suppliers, debtors, Import Factors and Export Factors, an appropriate numbering system must be agreed upon between Export Factor and Import Factor.

#### **Article 9 Commission / Remuneration**

- i. The Import Factor shall be entitled to commissions and/or charges for his services on the basis of the structure and terms of payment as promulgated by the FCI Council from time to time.
- ii. The agreed commissions and/or charges must be paid in accordance with those terms of payment in the agreed currencies. A party delaying payment shall incur interest and the equivalent of any exchange losses resulting from the delay in accordance with Article 26.
- iii. In case of a reassignment of a receivable the Import Factor has nevertheless the right to the commission or charges.

#### **Article 10 Settlement of disagreements between Export Factor and Import Factor**

- i. All disagreements arising between an Export Factor and an Import Factor in connection with any international factoring transactions shall be settled under the

Rules of Arbitration provided that both are members of FCI at the time of the inception of the transaction.

- ii. Furthermore any such disagreement may be so settled if only one of the parties is a member of FCI at the time of request for arbitration provided that the other party accepts or has accepted such arbitration.
- iii. The award shall be final and binding.

### **Article 11 Good faith and mutual assistance**

Under these Rules all duties shall be performed and all rights exercised in good faith. Each of the Export Factor and Import Factor shall act in every way to help the other's interest and each of them undertakes to the best of his ability to assist the other at all times in obtaining any document that may assist the other to carry out his duties and/or to protect his interests. Each of the Import Factor and the Export Factor undertakes that each will inform the other immediately of any fact or matter which comes to his attention and which may adversely affect the collection of any receivable or the creditworthiness of any debtor.

## **SECTION-II: Assignment of receivables**

### **Article 12 Assignment**

- i. The assignment of a receivable implies and constitutes the transfer of all rights and interest in and title to such receivable by any means. For the purpose of this definition the granting of a security right over a receivable is deemed to be its transfer
- ii. All assignments of receivables must be in writing.

### **Article 13 Validity of assignment**

- i. The Import Factor is obliged, as regards the law of the debtor's country, to inform the Export Factor of:

- a) the wording and formalities of the notice of assignment; and
- b) any elements in an assignment that are necessary to safeguard the Export Factor against claims of third parties.

The Import Factor warrants the effectiveness of his advice.

- ii. The Export Factor, whilst relying on the Import Factor's advice under paragraph of this Article as regards the law of the debtor's country, shall be responsible for the effectiveness of the assignment to him by the supplier and of his assignment to the Import Factor including their effectiveness against the claims of third parties and in the insolvency of the supplier.
- iii. If the Export Factor requests a particular assignment, enforceable against third parties, the Import Factor is obliged to act accordingly as far as he is able to do so in accordance with the applicable law, at the expense of the Export Factor.
- iv. Whenever the assignment of a receivable needs special documentation or a confirmation in writing in order to be valid and enforceable, at the request of the Import Factor the Export Factor must provide such documentation and/or confirmation in the prescribed way.
- v. If the Export Factor shall fail to provide such documentation or confirmation in relation to that receivable within 30 days of the receipt of the Import Factor's request, then the Import Factor may reassign such receivable.

(N.B.: Paragraphs (i) and (ii) amended June 2004)

#### **Article 14 Validity of receivables**

- i. The Import Factor must receive details of invoices assigned to him without undue delay and in any event before the due date of the receivable. In addition he must receive details of credit notes relating to such invoices.
- ii. The Import Factor may require that the original documents evidencing title, including the negotiable shipping documents and/or insurance certificate, are forwarded through him.
- iii. At the request of the Import Factor and if then needed for the collection of a receivable the Export Factor must promptly provide any or all of the following as proof and in any event within the following time periods:

- a) 10 days from the receipt of the request, an exact copy of the invoice issued to the debtor;
- b) 30 days from the receipt of that request:
  - 1. evidence of shipment;
  - 2. evidence of fulfilment of the contract of sale and/or services where applicable; any other documents which have been requested before shipment.
- iv. If the Export Factor:
  - a) does not provide the documents referred to in Article 14 (iii); or
  - b) fails to provide a reason for that delay and a request for further time, both acceptable to the Import Factor; within the prescribed time limits, then the Import Factor shall be entitled to reassign the relevant receivable.
- v. The time limit for the Import Factor to be entitled to request these documents from the Export Factor shall be 270 days after due date of the receivable.

(N.B.: Paragraph (iv) added June 2004 - previous (iv) moved to Paragraph (v), Paragraph (i) amended June 2005)

### **Article 15 Reassignment of receivables**

- i. Any reassignment of a receivable under Article 13 (v) or Article 14 (iv) must be made by the Import Factor no later than the 60th day after his first request for the relevant documents, or the end of any extended time granted by the Import Factor.
- ii. In the event of any reassignment of a receivable permitted to the Import Factor under these Rules, the Import Factor shall be relieved of all obligations in respect of the reassigned receivable and may recover from the Export Factor any amount paid by the Import Factor in respect of it.
- iii. Every such reassignment must be in writing.

(N.B.: Paragraph (i) amended June 2004)

## **SECTION-III: Credit Risk**

### **Article 16 Definition of credit risk**

- i. The credit risk is the risk that the debtor will fail to pay a receivable in full within 90 days of its due date otherwise than by reason of a dispute.
- ii. The assumption by the Import Factor of the credit risk on receivables assigned to him is conditional upon his written approval covering such receivables.

#### **Article 17 Approvals and requests for approvals**

- i. Requests of the Export Factor to the Import Factor for the assumption of the credit risk must be in writing and must contain all the necessary information to enable the Import Factor to appraise the credit risk and the normal payments terms.
- ii. If the Import Factor cannot confirm the exact identification of the debtor as submitted to him he may amend these details in his reply. Any approval shall apply only to the exact identity of the debtor given by the Import Factor in that approval
- iii. The Import Factor must, without delay and, in any event, not later than 10 days from receipt of the request, advise the Export Factor of his decision in writing. If, within the said period, the Import Factor cannot make a decision he must, at the earliest, and before the expiry of the period so advise the Export Factor.
- iv. The approval shall apply up to the amount approved to the following receivables owed by the debtor:
  - a) those on the Import Factor's records on the date of approval;
  - b) those arising from shipments made or services completed up to 30 days before the date of request for approval; and shall be conditional in each case, upon the receipt by the Import Factor of the invoice details and the documents as stipulated in Article 14.
- v. The approval of a credit line binds the Import Factor to assume credit risk on those receivables up to the approved amount for shipments made before cancellation or expiry date of the line.

Shipment occurs when the goods are placed in transit to or to the order of the debtor whether by common carrier or the debtor's or supplier's own transport.

- vi. A credit line is a revolving approval of receivables on a debtor's account with one supplier up to the amount of the credit line. Revolving means that, while the credit line remains in force, receivables in excess of the line will succeed amounts within the line which are paid by the debtor or the Import Factor or credited to the debtor. The succession of such receivables shall take place in order in which they are due for payment and shall be limited at any time to the amount then so paid or credited.

- vii. All approvals are given on the basis that each account receivable is in conformity with the terms of payment (with a permissible occasional variation of 100% or 45 days whichever period is shorter) contained in the pertinent information upon which such approval was granted.
- viii. The approval shall be given in the same currency as the request. However, the credit line covers receivables represented by invoices expressed not only in that currency, but also in other currencies; but in all cases the risk to the Import Factor shall not at any time exceed the amount of the original approval.
- ix. There shall be only one credit line for each supplier on each debtor and any new credit line shall cancel and replace all previous credit lines for the same supplier on the same debtor in whatever currency denominated.
- x. If it is known to the Import Factor that it is the practice of the debtor to prohibit assignments of receivables owing by him then the Import Factor shall so inform the Export Factor in giving his approval or as soon as it is known to the Import Factor if later.

#### **Article 18 Reduction or cancellation**

- i. For good reason the Import Factor shall have the right to reduce or cancel the credit line. Such cancellation (which expression includes a reduction) must take place in writing or by telephone (to be confirmed in writing). Upon receipt of such notice of cancellation the Export Factor shall immediately notify the supplier and such cancellation shall be effective as to shipments made after the supplier's receipt of such notice. On or after the sending of any such notice of cancellation to the Export Factor, the Import Factor shall have the right to send such notice also direct to the supplier, but he shall inform the Export Factor of such an action. The Export Factor shall cooperate, and shall ensure that the supplier shall cooperate, with the Import Factor to stop any goods in transit and thus minimise the Import Factor's loss. The Export Factor undertakes to give the Import Factor all assistance possible in such circumstances.
- ii. On the effective date of the termination of the contract between supplier and Export Factor all credit lines are immediately cancelled without notice, but shall remain valid for any receivable relating to a shipment made and services completed before the time of termination provided that the receivable is assigned to the Import Factor within 30 days of that date.
- iii. When the cancellation of the credit line is effective as in paragraph (i) of this Article, or the credit line has expired then:
  - a) the right of succession as described in paragraph (vi) of Article 17 ceases and thereafter, except as provided in sub-paragraphs (b) and (c) of this paragraph, any payment or credit (other than a payment or credit in

connection with a transaction excluded in Article 3) may be applied by the Import Factor in satisfaction of approved receivables in priority to unapproved receivables;

- b) if any such credit relates to an unapproved receivable and the Export Factor establishes to the satisfaction of the Import Factor that the credit arose solely from the failure to ship or a stoppage in transit, the credit shall be applied to such unapproved receivable; and
- c) any monies subsequently received by the Import Factor resulting from a general distribution from the estate of the debtor in respect of receivables assigned by the Export Factor or the relevant supplier shall be shared between the Import Factor and the Export Factor in proportion to their respective interests in the amount owing by the debtor as at the date of the distribution.

(N.B. Paragraph (iii) (b) and (c) amended June 2003)

#### **Article 19 Obligation of Export Factor to assign**

- i. Subject to the provisions of paragraph (iii) of this Article the Export Factor must offer the Import Factor all receivables owing by debtors in the Import Factor's country which have been assigned to the Export Factor.
- ii. The Export Factor shall inform the Import Factor whether or not the Export Factor's agreement is to include the whole turnover on credit terms to the Import Factor's country.
- iii. In exceptional cases, the Export Factor may withhold from the Import Factor receivables in respect of any debtor, for which the Import Factor is not prepared to assume any risk or a substantial part of it or is prepared to do so only at a factoring commission unacceptable to the Export Factor, but this exception shall not apply to any debtor referred to in paragraph (iv) below.
- iv. When the Import Factor has approved a credit line on a debtor and an invoice owing by that debtor has been assigned to the Import Factor, then all subsequent receivables of that supplier in respect of that debtor must be assigned to the Import Factor, even when the receivables are only partly approved or not approved at all.
- v. When the Import Factor decides to cancel a credit line, the obligation for the Export Factor continues to exist until all approved receivables have been paid or otherwise provided for; in other words, until the Import Factor is "out of risk". However, after cancellation of the contract between the Export Factor and the supplier, further assignments of receivables cannot be expected.

## **SECTION-IV: Collection of receivables**

### **Article 20 Rights of the Import Factor**

- i. By reason of the assignment to the Import Factor of full ownership of each receivable, the Import Factor shall have the right of bringing suit and otherwise enforcing collection either in his own name or jointly with that of the Export Factor and/or that of the supplier and the right to endorse debtor's remittances for the collection in the Export Factor's name or in the name of such supplier and the Import Factor shall have the benefit of all rights of lien, stoppage in transit and all other rights of the unpaid supplier to goods which may be rejected or returned by debtors.
- ii. If any cash, cheque, draft, note or other instrument in payment of any receivables assigned to the Import Factor is received by the Export Factor or any of his suppliers, the Export Factor must immediately inform the Import Factor of such receipt. It shall be held in trust by the Export Factor or such supplier on behalf of the Import Factor and shall, if so requested by the Import Factor, be duly endorsed and delivered promptly to him.
- iii. If the sales contract contains a prohibition of assignment the Import Factor shall have the same rights as set forth in paragraph (i) of this Article as agent for the Export Factor and/or the supplier.
- iv. If the Import Factor:
  - a) is unable to obtain judgement in respect of any receivable assigned to him in the courts of the debtor's country by reason only of a term relating to jurisdiction in the contract of sale between the supplier and the debtor which gave rise to that receivable; and
  - b) informs the Export Factor of that inability within 365 days of the due date of the invoice representing that receivable; then the Import Factor may immediately reassign that receivable and recover from the Export Factor any amount paid in respect of it under paragraph (ii) of Article 24.

(N.B.: Paragraph (iv) amended June 2004)

### **Article 21 Collection**

- i. The responsibility for collection of all receivables assigned to the Import Factor rests with him and he shall use his best endeavours promptly to collect all such receivables whether approved or unapproved.
- ii. Except as provided in Article 27 when the total amount of receivables owing by a debtor at any one time is approved in part:

- a) the Import Factor shall be entitled to take legal proceedings for the recovery of all such receivables without obtaining the prior consent of the Export Factor but the Import Factor shall inform the Export Factor of such action;
- b) if the Export Factor notifies the Import Factor of his disagreement with such legal proceedings, which are then accordingly terminated, the Import Factor shall be entitled to reassign all receivables then owing by the debtor and to be reimbursed by the Export Factor with the amount of all costs and expenses incurred by the Import Factor in such proceedings and the provisions of paragraphs (ii) and (iii) of Article 15 will apply to that reassignment; and
- c) except as provided in paragraph (ii) b) of this Article the costs and expenses of such legal proceedings shall be borne by the Import Factor and the Export Factor in proportion to the respective amounts of the approved and unapproved parts of the outstanding receivables.

#### **Article 22 Unapproved receivables**

- i. When all receivables owing by a debtor at any one time are wholly unapproved:
  - a) the Import Factor shall obtain the consent of the Export Factor before incurring legal and other costs and expenses (other than the Import Factor's own and administrative costs and expenses) relating to their collection;
  - b) such legal and other costs and expenses shall be the responsibility of the Export Factor and the Import Factor shall not be responsible for any loss and/or costs which are attributable to any delay in the giving of such consent by the Export Factor;
  - c) If the Export Factor does not answer the Import Factor's request for consent within 30 days, the Import Factor is entitled to reassign the receivables then or any time thereafter;
  - d) The Import Factor shall be entitled on demand to a deposit from the Export Factor to cover fully or partly the amount of the estimated costs to be incurred in the collection of such receivables.

### **SECTION-V: Transfer of funds**

#### **Article 23 Transfer of payments**

- i. When any payment is made by the debtor to the Import Factor in respect of any receivable assigned to him he shall pay in the currency of the invoice the equivalent of the net amount received in his bank to the Export Factor immediately after the value date or the date of the Import Factor's receipt of the Bank's notification of the amount received whichever is later except to the extent of any previous payment under guarantee.
- ii. All payments, irrespective of the amount, shall be transferred daily via SWIFT.
- iii. Not later than the day of the transfer the Import Factor shall provide a report showing the allocation of the amount transferred.
- iv. The Export Factor shall repay to the Import Factor on his demand:
  - a) any payment made by him to the Export Factor if the debtor's payment to the Import Factor was made by a payment instrument subsequently dishonoured (cheque or equivalent) provided that:
    - (i) the Import Factor notified the Export Factor of this possibility with the payment advice (payment under reserve); and
    - (ii) the Import Factor's demand has been made within 10 banking days in the Import Factor's country from the date of his transfer of the funds to the Export Factor; and
    - (iii) repayments demanded by the Import Factor will not affect his other obligations;
  - b) without any time limit, any payment made by the Import Factor to the Export Factor in respect of any unapproved Receivable or unapproved part of a Receivable to the extent that payment by the debtor or any guarantor of the receivable is subsequently recalled under the law of the country of the payer and such recall is either paid or settled by the Import Factor provided that any such settlement is effected in good faith.

(N.B.: Paragraph (iv) (a) adjusted and Paragraph (iv) (b) added October 2002)

#### **Article 24 Payment under guarantee**

Except as provided in Articles 25 and 27:

- i. the Import Factor shall bear the risk of loss arising from the failure of the debtor to pay in full any approved receivable on the due date in accordance with the terms of the relevant contract of sale or service; and
- ii. to the extent that any such receivable shall not be paid by or on behalf of the debtor by the 90th day after the due date as described above, the Import Factor shall on such 90th day make payment to the Export Factor ("payment under guarantee").

- iii. For the purpose of paragraphs (i) and (ii) of this Article, payment by the debtor shall mean payment to any one of the Import Factor, the Export Factor, the supplier or the supplier's insolvent estate.
- iv. In the event of payment to the supplier or the supplier's insolvent estate the Import Factor shall co-operate with and assist in the debtor's country the Export Factor to mitigate any potential or actual loss to the Export Factor.
- v. If an approved receivable is expressed in a currency other than that of the corresponding credit line, in order to determine the approved amount that receivable shall be converted to the currency of the credit line at the rate of exchange ruling at the date on which the payment under guarantee is due. In all cases the risk of the Import Factor shall not exceed at any time the amount of the original approval.

### **Article 25 Prohibitions against assignments**

- i. In respect of any approved receivable arising from a contract of sale or for services which includes a prohibition of its assignment the Import Factor's obligation for a payment under guarantee shall arise on the official insolvency of the debtor or when the debtor makes a general declaration or admission of his insolvency, but, in any event, not earlier than the 90th day after the due date as described in paragraph (i) of Article 24.
- ii. After any payment under guarantee in respect of any approved receivable referred to in paragraph (i) of this article the Import Factor shall have the sole right to claim in the insolvent estate of the debtor in the name of the supplier.
- iii. The Export Factor shall obtain from the supplier and deliver to the Import Factor any document that may be required by him for the purpose of making any claim as described in paragraph (ii) of this Article.
- iv. The provisions of this article shall apply, in spite of anything to the contrary elsewhere in these rules.

(N.B.: Paragraph (iv) added June 2003, Paragraph (i) amended June 2004)

### **Article 26 Late payments**

- i. If the Import Factor or the Export Factor fails to make payment of any amount when it is due to be paid to the other he shall pay interest to that other.
- ii. Except as provided in paragraph (iii) of this Article, if the Import Factor does not initiate a payment to the Export Factor according to the requirements of Article 23 or Article 24, the Import Factor shall:
  - a) be liable to pay to the Export Factor interest calculated for each day from the date on which such payment shall be due until actual payment at twice

- the 3-months-LIBOR as quoted on such due date in the relevant currency, provided that the accrued amount of interest exceeds EUR 50; and
- b) reimburse the Export Factor with the equivalent of any currency exchange loss suffered by him and caused by the delay in payment.

If there shall be no LIBOR quotation for the relevant currency, twice the lowest lending rate for such currency available to the Export Factor on such date shall apply.

- iii. If as a result of circumstances beyond his control the Import Factor is unable to make any such payment when due:
  - a) he shall give immediate notice of that fact to the Export Factor;
  - b) he shall pay to the Export Factor interest at a rate equivalent to the lowest lending offer rate available to the Export Factor in the relevant currency calculated for each day from the day when his payment shall be due until actual payment, provided the accrued amount of interests exceeds EUR 50

## **SECTION-VI: Disputes**

### **Article 27 Disputes**

- i. A dispute occurs whenever a debtor fails to accept the goods or the invoice or raises a defence, counterclaim or set-off including (but not limited to) any defence arising from a claim to the proceeds of the receivable by any third party. However, where there is a conflict between the provisions of this Article and those of Article 25 the latter shall prevail.
- ii. Upon being notified of a dispute the Import Factor or the Export Factor shall immediately send to the other a dispute notice containing all details and information known to him regarding the receivable and the nature of such dispute. In either case the Export Factor shall provide the Import Factor with further information regarding the dispute within 60 days of the receipt by the Export Factor or his sending it as the case may be.
- iii. Upon receipt of such dispute notice the approval of that receivable shall be deemed to be suspended.

If a dispute is raised by the debtor and the dispute notice is received within 90 days after the due date of the invoice to which the disputed receivables relates, the

Import Factor shall not be required to make payment under guarantee of the amount withheld by the debtor by reason of such dispute.

If a dispute is raised by the debtor and the dispute notice is received after payment under guarantee, but within 180 days of the due date of the invoice, the Import Factor shall be entitled to reimbursement of the amount withheld by the debtor by reason of such dispute.

iv.

- a) The Export Factor shall be responsible for the settlement of the dispute and shall act continuously to ensure that it is settled as quickly as possible. The Import Factor shall co-operate with and assist the Export Factor, if so required, in the settlement of the dispute including the taking of legal proceedings.
- b) If the Import Factor declines to take such proceedings or if the Export Factor requires a reassignment of the disputed receivables so that proceedings may be taken in his or the supplier's name, then, in either case, the Export Factor is entitled to such reassignment.
- c) Whether or not any such reassignment has been made the Import Factor shall again accept as approved, within the time limits specified in paragraph (v) of this Article, such disputed receivable to the extent that the dispute is settled in favour of the supplier (including an admission by the person responsible for the administration of the debtor's insolvent estate) provided that:
  - 1) the Export Factor has complied with his obligations under paragraph (iv) a) of this Article;
  - 2) the Import Factor has been kept fully informed about the status of negotiations or proceedings at regular intervals; and
  - 3) the settlement provides for payment by the debtor to be made within 30 days of the date of the settlement, if amicable, or the date of the coming into effect of the judgement in the case of a legal settlement.
- d) For the purpose of this Article, "legal settlement" means a dispute settled by way of a decision of a court or other tribunal of competent jurisdiction (which, for the avoidance of doubt, shall include arbitration) provided such legal proceedings have been formally commenced by proper service of legal process or demand for arbitration prior to the term set for an amicable settlement; and "amicable settlement" means any settlement which is not a legal settlement.

- v. The time limits referred to in paragraph (iv) c) above, for the Import Factor to accept again as approved a disputed receivable, are as follows:
  - a) in the case of an amicable settlement, 180 days; and
  - b) in the case of a legal settlement, 3 years;in each case after the receipt of the dispute notice in accordance with paragraph (ii) of this Article. If, however, during such periods, the debtor becomes officially insolvent or makes a general declaration or admission of his insolvency, the Import Factor shall remain at risk until the dispute has been settled.
- vi. In the case of a disputed receivable which the Import Factor has accepted again as approved in accordance with paragraph (iv) of this Article:
  - a) if the receivable has been reassigned to the Export Factor the Import Factor shall have the right to an immediate assignment to him of all the Export Factor's or (as the case may be) the supplier's rights under the settlement;
  - b) in every such case any payment under guarantee, which is to be made in accordance with Article 24, shall be made within 14 days of the date on which payment is to be made by the debtor according to the settlement provided that:
    - 1) any assignment required by the Import Factor under paragraph (vi) a) of this Article has been made effectively by the Export Factor within that period; and
    - 2) the end of that period of 14 days is later than the original due date for the payment under guarantee.
- vii. If the Export Factor does not comply with all his obligations under this Article the Import Factor shall have the right to reassign to the Export Factor the disputed receivable and the Export Factor shall promptly reimburse the Import Factor with the amount of the payment under guarantee; such payment shall include interest from date of payment under guarantee to date of reimbursement as calculated in accordance with paragraph (iii) (b) of Article 26.
- viii. If the dispute is solved in full in favour of the supplier, all related costs shall be the responsibility of the Import Factor. In all other cases the costs will be the responsibility of the Export Factor.

(N.B.: Paragraph (iv) (b) amended June 2004)

## **SECTION-VII: Representations, warranties and undertakings**

### **Article 28 Representations, warranties and undertakings**

- i. The Export Factor warrants and represents for himself and on behalf of his supplier:
  - a) that each receivable represents an actual and bona fide sale and shipment of goods or provision of service made in the regular course of business and in conformity with the description of the supplier's business and terms of payment;
  - b) that the debtor is liable for the payment of the amount stated in each invoice in accordance with the terms without defence or claim;
  - c) that the original invoice bears notice that the receivable to which it relates has been assigned and is payable only to the Import Factor as its owner or that such notice has been given otherwise in writing before the due date of the invoice, any such notice of assignment being in the form prescribed by the Import Factor.
  - d) that each one at the time of his assignment has the unconditional right to assign and transfer all rights and interest in and title to each receivable (including any interest and other costs relating to it which are recoverable from the debtor) free from claims of third parties;
  - e) that he is factoring all the receivables arising from sales as defined in Article 3 of any one supplier to any one debtor for which the Import Factor has given approval; and
  - f) that all such duties, forwarder's fees, storage and shipping charges and insurance and other expenses as are the responsibility of the supplier under the contract of sale or service has been fully discharged.
  
- ii. The Export Factor undertakes for himself and on behalf of his supplier:
  - a) that he will inform the Import Factor of any payment received by the supplier or the Export Factor concerning any assigned receivable; and
  - b) that as long as the Import Factor is on risk the Export Factor will inform the Import Factor in general or, if requested, in detail about any excluded transactions as defined in Article 3.
  
- iii. In addition to the provisions of Article 32, in the event of a breach of the warranty given in paragraph (i) e) or the undertaking given in paragraph (ii) b) of this Article the Import Factor shall be entitled to recover from the Export Factor
  - a) the commission and/or charges as agreed for that supplier on the receivables withheld, and
  - b) compensation for other damages, if any.

## **SECTION-VIII: Miscellaneous**

## **Article 29 Communication and electronic data interchange (EDI)**

- i. Any written message as well as any document referred to in these Rules, which has an equivalent in the current EDI Standard can or, if so required by the Constitution and/or the Rules between the Members whenever either of them is applicable, must be replaced by the appropriate EDI-message.
- ii. The use of EDI is governed by the edifactoring.com Rules.
- iii. The originator of a communication shall assume full responsibility for the damages and losses, if any, caused to the receiver by any errors and/or omissions in such communication.

## **Article 30 Accounts and reports**

- i. The Import Factor is responsible for keeping detailed and correct debtor ledgers and for keeping the Export Factor informed about the accounts showing on such ledgers.
- ii. The Export Factor shall be entitled to rely upon all information and reports submitted by the Import Factor provided that such reliance is reasonable and in good faith.
- iii. If for any valid reason the Import Factor or the Export Factor will not be able to make use of the EDI then the Import Factor shall account and report at least once a month to the Export Factor with respect to all transactions and each such monthly account and report shall be deemed approved and accepted by the Export Factor except to the extent that written exceptions are taken by the Export Factor within 14 days of his receipt of such account and report.

## **Article 31 Indemnification**

- i. In rendering his services, the Import Factor shall have no responsibility whatsoever to the Export Factor's suppliers.
- ii. The Export Factor shall indemnify the Import Factor and hold him harmless against all suits, claims, losses or other demands which may be made or asserted against the Import Factor:
  - a) by any such supplier by reason of an action that the Import Factor may take or fail to take; and/or
  - b) by any debtor in relation to the goods and/or services, the invoices or the underlying contracts of such supplier;provided that in either case the Import Factor's performance in his action or failure to act is reasonable and in good faith.

- iii. The Import Factor shall indemnify the Export Factor against any losses, costs, interest or expenses suffered or incurred by the Export Factor by reason of any failure of the Import Factor to comply with his obligations under paragraph (i) of Article 13 or any breach of his warranty given in that paragraph. The burden of proof of any such loss, costs, interest or expense lies with the Export Factor.
- iv. Each of the Export Factor and the Import Factor shall reimburse the other for all losses, costs, damages, interest, and expenses (including legal fees) suffered or incurred by that other by reason of any of the matters for which the indemnities are given in paragraphs (ii) and (iii) of this Article.

### **Article 32 Breaches of provisions of these Rules**

- i. If the Export Factor has substantially breached any provision of these Rules, the Import Factor shall not be required to make payment under guarantee to the extent that the breach has seriously affected the Import Factor to his detriment in his appraisal of the credit risk and/or his ability to collect any receivable. The burden of proof lies with the Import Factor. If the Import Factor has made payment under guarantee the Import Factor shall be entitled to reimbursement of the amount paid.
- ii. A substantial breach of paragraphs (i) a) and b) of Article 28 that results only from a dispute shall not be subject to the provisions of this Article and shall be covered by the provisions of paragraphs (i) to (viii) of Article 27.
- iii. A substantial breach must be asserted within 365 days after the due date of the invoice to which it relates.
- iv. The Export Factor shall promptly reimburse the Import Factor under this Article; such payment shall include interest from date of payment under guarantee to date of reimbursement as calculated in accordance with Article 26 (ii).
- v. The provisions of this Article are additional to and not in substitution for any other provisions of these Articles.

## **ANNEX-IV: RULES FROM EDIFACTORING.COM (Version March 2002)**

### **Article 1. Definitions**

For the purposes of the edifactoring.com Rules, hereinafter called the "Rules", the following definitions shall apply:

**edifactoring.com:** The proprietary communication system of FCI (and any of its future updated versions) used for all two-factor system business messages exchanged by the members of FCI.

**edifactoring.com Message:** A coherent set of data, structured according to agreed message standards, for transmission by electronic means, prepared in a computer readable format and capable of being automatically and unambiguously processed.

**Trading Partners:** Any two members of FCI who exchange edifactoring.com messages.

**User Guide:** The edifactoring.com User Guide, as revised from time to time, that includes the technical specifications, the User Guide proper, the procedural and

organizational issues, and the business rules and specifications for the use of edifactoring.com and the exchange of edifactoring.com messages.

**Business Day:** Any day, except non-working days or any declared public holiday, in the intended place of receipt of an edifactoring.com message.

**Digital Signature:** A method of authentication by means of data appended to, or a cryptographic transformation of, a data unit that allows a sender or receiver of the data unit to prove the source and integrity of the data unit and to protect against forgery.

**Code:** The Code of International Factoring Customs promulgated by Factors Chain International, until superseded by the GRIF.

**GRIF:** The General Rules for International Factoring promulgated by Factors Chain International, as revised from time to time.

## **Article 2. Object and Scope**

The provisions contained herein shall govern the exchange of edifactoring.com messages between the Trading Partners.

The edifactoring.com User Guide forms an integral part of the Rules. Accordingly, the breach of any of the provisions and message business rules contained within the User Guide shall be a breach of the Rules.

## **Article 3. Message Standards, Systems Operation, Method of Transmission and Specifications.**

### **3.1 Message standards.**

All edifactoring.com messages shall be transmitted in accordance with the specifications of the User Guide.

There will be only one official version of each message type at any one time as described in User Guide. Any reference in formal FCI documents and other FCI

documentation (including seminars, training courses, etc.) will relate only to the official version.

New message versions and new message types will become the official edifactoring.com message standard on a date agreed to by the Council following the release to all FCI members of the related technical specifications.

As from the official implementation date of a new edifactoring.com message standard, any member of FCI has the right and obligation to use the new official standard with all Trading Partners.

### **3.2 Systems Operation.**

The Trading Partners shall provide and maintain, to the level specified in the User Guide, the equipment, software and Internet connection services necessary to effectively transmit, receive, log and store edifactoring.com messages.

Should a failure occur such as that one Trading Partner is unable to exchange edifactoring.com messages for more than two business days, the Trading Partner affected by failure shall be obliged to inform all his Trading Partners of such a failure, and subsequently of its resolution, without undue delay.

### **3.3 Method of Transmission.**

The Trading Partners agree to exchange edifactoring.com messages through the edifactoring.com system.

Any other method of transmission is not covered by the Rules.

### **3.4 Specifications.**

All specifications and details regarding sections 3.1, 3.2 and 3.3 of the Rules shall be as set out in the User Guide.

#### **Article 4. Transmission of edifactoring.com Messages.**

##### **4.1 Responsibility of the Sender.**

The sender shall assume full responsibility for the damages and losses, if any, caused to the receiver by the incorrectness and incompleteness of the information contained within each and every edifactoring.com message sent.

##### **4.2 Time of Delivery.**

Each and every edifactoring.com message sent shall be considered to be delivered to the receiver as soon as the message is delivered to the receiver's own mailbox.

##### **4.3 Proof of Delivery.**

The "Message Audit Trail Report" shall serve as the proof of delivery of all edifactoring.com messages. The sender shall be obliged to retrieve the Message Audit Trail Report on each and every business day and to ensure that all messages sent have been delivered with no error status to the receiver. The sender shall take immediate action to correct and/or retransmit all messages rejected that contain errors.

##### **4.4 Responsibility of the Receiver.**

The receiver shall be responsible to retrieve all edifactoring.com messages delivered to him. The receiver shall also be obliged to retrieve the Message Audit Trail Report on each and every business day and to ensure that he has retrieved all messages delivered to him.

If an edifactoring.com message retrieved appears not to be in good order, correct and complete in form, and if the receiver does not inform the sender without undue delay, then the message shall be deemed accepted by the receiver.

If the receiver of an edifactoring.com message understands that the message is not intended for him, he should take reasonable action to inform the sender without undue delay, and must disregard the information contained therein.

#### **Article 5. Processing of edifactoring.com Messages.**

The Trading Partners undertake to process or ensure that their system processes the edifactoring.com messages retrieved without undue delay and within any time limits specified in the User Guide.

#### **Article 6. Security of edifactoring.com Messages.**

##### **6.1 Standard Security.**

The Trading Partners undertake to implement and maintain control and security procedures and measures necessary to ensure adequate protection of edifactoring.com messages, reports and other information against the risk of unauthorised access, alteration, loss or destruction.

##### **6.2 Additional Security.**

edifactoring.com encrypts all business messages sent and retrieved. Message verification includes the identification, authentication and verification of the integrity and origin of a message by the use of log-in validation and 128 bit encryption of business messages during transmission.

#### **Article 7. Confidentiality**

The Trading Partners shall ensure that edifactoring.com messages that contain information specified to be confidential by the sender, or agreed to be confidential between the Trading Partners, are maintained in confidence and are neither disclosed nor transmitted to any unauthorised persons or used for any purposes other than those intended by the Trading Partners.

Messages shall not be regarded as containing confidential information to the extent that such information is in the public domain.

The same degree of confidentiality, as specified in this article, shall be respected by any third party who, in the course of his duties, becomes aware of such confidential information. The Trading Partners are solely responsible to mark clearly as “confidential” such information before disclosing it to any third party.

## **Article 8. Logging, Recording and Storage of edifactoring.com Messages and Reports.**

### **8.1 Logging and Storage.**

Unless prohibited by national legislation, each Trading Partner shall keep a complete and chronological record of all edifactoring.com messages and reports sent and retrieved to/from edifactoring.com. The Trading Partners shall store these records in either printed or in electronic file format.

### **8.2 Period of Retention.**

The Trading Partners shall maintain the records referred to in article 8.1 unaltered and securely, for at least five calendar years.

### **8.3 Reproduction of edifactoring.com Messages and Reports.**

In addition to any relevant national legislative or regulatory requirements, the Trading Partners shall ensure that the stored edifactoring.com messages and reports are readily accessible and that they can be reproduced in a readable form and, if required, can be printed.

## **Article 9. Intermediaries.**

If a Trading Partner uses the services of an intermediary (such as an Internet Service Provider or a software vendor) in order to transmit, retrieve or process

edifactoring.com messages and reports, that Trading Partner shall be responsible towards the other Trading Partner or Trading Partners for any acts, failures or omissions of the intermediary in its provision of the said services as though they were his own acts, failures or omissions. For the purposes of these Rules, the intermediary shall be deemed to be acting on behalf of that Trading Partner.

If a Trading Partner instructs any other Trading Partner to use the services of an intermediary for transmitting, retrieving or processing an edifactoring.com message or report, then the instructing Trading Partner shall be responsible towards the other Trading Partner for such intermediary's acts, failures or omissions.

The Trading Partner shall ensure that it is a contractual responsibility of the intermediary that no change is made to the substantive data content of the edifactoring.com messages and reports, and that such edifactoring.com messages and reports are not disclosed to any unauthorised person.

#### **Article 10. Electronic Transactions.**

The Trading Partners accept that transactions are validly concluded and contracts are validly formed by exchange of edifactoring.com messages without any written documentation. The Trading Partners shall expressly waive any rights to bring an action declaring the invalidity or avoidability of a transaction concluded or contractformed between themselves on the sole ground that the transaction was concluded or the contract formed by the use of edifactoring.com.

A contract made by edifactoring.com will be considered to be formed at the time and the place where the edifactoring.com message constituting the acceptance of an offer or the taking of a commitment is delivered to the receiver.

## **Article 11. Assignment of Accounts Receivable.**

### **11.1 Assignment.**

Each account receivable, represented by the edifactoring.com message type 9 (Invoice and Credit Notes), shall be deemed to be assigned when such same message is delivered to the receiver.

Each edifactoring.com message type 9 shall always be deemed to bear the following text of assignment:

"Pursuant to the Agreement between us, we hereby notify you of transactions entered into by our client (seller) here mentioned with its customer (debtor) as represented by this invoice. We hereby transfer to you all rights, title and interest in and to the account receivable concerning such invoice".

### **11.2 Reassignment**

Each account receivable, represented by the edifactoring.com message type 16 (Charge Back and Reassignment), with message function code = 2 – Reassignment, shall be deemed to be reassigned when such same message is delivered to the receiver.

Each edifactoring.com message type 16 with message function code = 2 – Reassignment shall always be deemed to bear the following text of reassignment:

"Pursuant to the Agreement between us, we hereby transfer back to you all rights, title and interest in and to the account receivable concerning the here mentioned invoice".

### **11.3 Confirmation of Assignment**

Whenever the assignment of account receivables, under special circumstances, needs a confirmation in order to be valid and enforceable, each Trading Partner undertakes to provide such confirmation in the form prescribed by the other Trading Partner.

## **Article 12. Admissibility and Evidential Value of edifactoring.com Messages.**

### **12.1 Evidential Value.**

In the event of a disagreement, the Trading Partners shall not bring into question the admissibility as evidence of edifactoring.com messages exchanged and stored according to the provisions of the Rules.

Unless otherwise agreed, edifactoring.com messages exchanged on the basis of the Rules and in accordance with the provisions herein, shall have, between the Trading Partners, a comparable evidential value to that accorded to written documents.

If edifactoring.com messages are transmitted in accordance with an authentication procedure such as a digital signature, they shall have, between the Trading Partners, a comparable evidential value to that accorded to a signed written document.

### **12.2 Retention of Original Documentation.**

Each Trading Partner shall have the obligation to retain the original documentation of all documents listed in article 10 of the Code or in article 14 of the GRIF (whichever is applicable), as well as any other document specified before the assumption of credit risk, and to make available the same to the other Trading Partner upon request and not later than ten business days from such request.

The minimum period of retention shall be the same as that stipulated in article 8.2 of the Rules.

**Article 13. Protection of Personal Data.**

Where edifactoring.com messages that contain personal data are sent or received, for purposes other than the normal course of the factoring business, in countries where no data protection legislation is in force, each Trading Partner agrees, as a minimum standard, to respect the latest provisions of the European Union on the protection of the individual with regard to the automatic processing of personal data.

**Article 14. Applicable Law and Dispute Resolution.**

The applicable law governing the Rules shall, in all respects and for each edifactoring.com message, be the Code or the GRIF and the law of the sender's country for matters not regulated by the Code or by the GRIF.

In the event of a conflict of law between the governing law of any contract being effected by edifactoring.com and the Rules, the Rules will prevail.

Any disagreement arising in connection with the provisions of these Rules shall be settled in accordance with the provisions of article 2 of the Code or of article 10 of the GRIF (whichever is applicable).

**ANNEX –V: RULES OF ARBITRATION PROMULGATED BY FACTORS CHAIN  
INTERNATIONAL+INTERNATIONAL FFACTORS GROUP (June 2003 edition)**

**Article 1 FCI + IFG Arbitration**

1. In accordance with article 10 of the General Rules for International Factoring (GRIF) promulgated by Factors Chain International and as amended from time to time, members of Factors Chain International are obliged to refer disagreements relating to their mutual factoring arrangements which cannot be solved by an amicable settlement, to a process of FCI arbitration.
2. The arbitration award shall be final and binding.
3. By submitting the disagreement to arbitration by Factors Chain International, the parties shall be deemed to have undertaken to carry out the resulting award without delay and to have waived their right to any form of appeal or objection, whether as to procedures or otherwise, in so far as such waiver can validly be made.

**Article 2 Choice of Arbitrators**

1. The Executive Committee of Factors Chain International does not itself settle disputes. It appoints, if necessary, arbitrators in accordance with the provisions of this article. The Committee shall have regard to the proposed arbitrator's

nationality, residence and other relationships with the countries of which the parties or the other arbitrator(s) are nationals.

2. The dispute may be settled by a sole arbitrator or by three arbitrators. In the following articles the word "arbitrator" denotes a single arbitrator or three arbitrators as the case may be except where the context otherwise requires.
3. Arbitrators shall be executives of FCI member companies. In case a tribunal is being used, the last arbitrator to be appointed must be selected from a regularly updated list, containing names of suitable arbitrators, nominated by the member companies. Among the nominations, former factoring executives are acceptable as well (see Appendix 1).
4. All Arbitrators shall be and remain independent of the parties. Executives and former executives of either of the parties, or any company related to either of them, shall be deemed to be not independent. Any challenge to the independence of an arbitrator shall be referred to the Secretariat and shall be dealt with and decided upon by the Executive Committee, which decision shall be final.
5. If the arbitrator, appointed by the claimant in the Request for Arbitration is acceptable to the respondent as the sole arbitrator, no other arbitrators will be appointed. An arbitrator has the right, however, to accept his nomination on the condition that he will not be a sole arbitrator. For cases over EUR 100,000 three arbitrators are required.
6. If the respondent cannot agree to the arbitrator proposed as the sole arbitrator, or when for other reasons the dispute is to be referred to three arbitrators, the respondent shall have a period of 30 days within which to appoint an arbitrator.
7. If the respondent fails to appoint an arbitrator and if more than one arbitrator is needed, the Executive Committee will make the appointment instead.
8. The third arbitrator, who will act as chairman of the arbitration tribunal, shall be appointed by the two arbitrators selected by claimant and respondent within a fixed time limit of 30 days. Should the two arbitrators fail within the fixed time period to reach agreement on the third arbitrator, he shall be appointed by the Executive Committee.

9. If an arbitrator is prevented from carrying out his functions, or has to resign for any reason, or if the Executive Committee decides that the arbitrator is not fulfilling his functions in accordance with the rules or within the prescribed time limits, he shall be replaced. A new appointment will be made according to the rules of this article

### **Article 3 Request for Arbitration**

1. A party wishing to settle a dispute by way of FCI arbitration shall submit its request for arbitration to the FCI Secretariat. The date when the request is received shall, for all purposes, be deemed to be the date of commencement of arbitration proceedings.
2. The request for arbitration shall inter alia contain the following information:
  - a) names in full of the parties;
  - b) a statement of the claimant's case;
  - c) the amount of the sum in dispute;
  - d) all relevant particulars concerning the arbitrator of the claimant's choice in accordance with the provisions of Article 2 above.
3. The Secretariat shall send a copy of the request and the documents annexed thereto to the respondent for his answer.

### **Article 4 Answer to the Request**

1. The respondent shall within 30 days from the receipt of the documents referred to in paragraph 3 of Article 3, inform the Secretariat, whether he accepts the arbitrator appointed by the claimant as the sole arbitrator and if not, and also in those cases where one arbitrator is considered to be insufficient, appoint a second arbitrator.  
He shall at the same time set out his defence and any counterclaim and supply relevant documents. In exceptional circumstances the respondent may apply to the Secretariat for an extension of time for the filing of his defence and his documents. The application must, however, include the respondent's comments

on the arbitrator appointed by the claimant and where appropriate, mention the appointment of the second arbitrator. If the respondent fails to do so, the Secretariat shall report to the Executive Committee, which shall proceed with the arbitration in accordance with these rules.

2. A copy of the answer and of the documents annexed thereto, if any, shall be communicated to the claimant for his information.
3. The claimant shall file a reply to any counterclaim within 30 days from the date of receipt of the counterclaim(s) communicated by the Secretariat.

#### **Article 5 Transmission of the file to the Arbitrator**

1. The Secretariat shall transmit the file to the arbitrator as soon as it has received the defendant's answer to the request for arbitration. In case two arbitrators have been appointed, the Secretariat shall request them to submit within 30 days (after receipt of that request) the name of the chairman of the arbitration tribunal. The chairman in turn will receive a copy of the file from the Secretariat.
2. When no more arbitrators are to be appointed, all further communications are to be sent directly to the arbitrator in a number of copies sufficient to provide one copy for each party, plus one for each arbitrator, and one for the Secretariat.

#### **Article 6 Rules governing the proceedings**

The rules governing the proceedings before the arbitrator shall be those resulting from these rules and, where these rules are silent, any rules which the parties in conjunction with the arbitrator may agree upon.

#### **Article 7 Place of Arbitration**

The place of arbitration shall be fixed by the arbitrator unless agreed upon by the parties. Ideally such a location will be chosen which minimizes the total travel expenses for the arbitrator and the parties concerned.

#### **Article 8 Terms of Reference**

1. Before proceeding with the preparation of the case, the arbitrator shall draw up, on the basis of the then available information, or in the presence of the parties and in the light of their most recent submissions, a document defining his terms of reference. This document shall include the following particulars:
  - a) the full names and description of the parties;
  - b) the addresses of the parties to which notifications or communications arising in the course of the arbitration may validly be made;
  - c) a summary of the parties' respective claims;
  - d) definition of the issues to be determined;
  - e) the arbitrator's full name, function and address;
  - f) the place of arbitration;
  - g) particulars of the applicable procedural rules (see article 6);
  - h) a statement indicating that the parties will accept the award as final in view of their agreement, resulting from FCI membership, to submit to FCI arbitration.
2. The document mentioned in paragraph 1 of this article shall be signed by the parties and the arbitrator. The drawing up and the signing of the document will have to be completed within 30 days of the date when the file has been transmitted to the arbitrator. Should one of the parties refuse to take part in the drawing up of said document or to sign the same, the Executive Committee shall take such action as is necessary for its approval. Thereafter, the Executive Committee shall set a time limit for the signature of the statement by the defaulting party and on expiry of that time limit the arbitration shall proceed and the award shall be made.

## **Article 9 The Arbitration Proceedings**

1. The arbitrator shall proceed within as short a time as possible to establish the facts of the case by all appropriate means. After study of the written submissions of the parties and of all documents relied upon, the arbitrator shall hear the parties

together in person if one of them so requests; and failing such a request he may of his own motion decide to hear them.

2. The arbitrator may appoint one or more experts, agree upon their remuneration, receive their reports and/or hear them in person.
3. The arbitrator may decide the case on the relevant documents alone if the parties so request or agree.
4. At the request of one of the parties or if necessary on his own initiative, the arbitrator, giving reasonable notice, shall summon the parties to appear before him on the day and at the place appointed by him and shall so inform the Secretariat.
5. If one of the parties, although duly summoned, fails to appear, the arbitrator, if he is satisfied that the summons was duly received and the party is absent without valid excuse, shall have power to proceed with the arbitration, and such proceedings shall be deemed to have been conducted in the presence of all parties.
6. The arbitrator shall be in full charge of the hearings, at which all the parties shall be entitled to be present.
7. The parties may appear in person or through duly accredited representatives. In addition, they may be assisted by advisers.
8. At any time during the proceedings either of the parties shall, at the request of the arbitrator, pay to the Secretariat a deposit on account of the costs of the arbitration.

#### **Article 10 Award by Consent**

If the parties reach a settlement after the file has been transmitted to the arbitrator in accordance with Article 5, the same shall be recorded in the form of an arbitration award made by consent of the parties.

#### **Article 11 Time-limit for Awards**

1. The arbitrator shall make his award within three months of the date of signing the document mentioned in Article 8.

2. The Executive Committee may, in exceptional circumstances and pursuant to a reasoned request from the arbitrator, or if need be on its own initiative extend this time limit if it decides that it is necessary to do so.
3. Where no such extension is granted, the Executive Committee shall determine the manner in which the dispute is to be resolved.

#### **Article 12 Decision as to costs of arbitration**

1. The arbitrator's award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration and decide which of the parties shall bear the costs or in what proportions the costs shall be borne by the parties.
2. The costs of the arbitration shall include the arbitrator's fees (see appendix 2), the expenses, if any, of the arbitrator and the fees and expenses of any experts.
3. The costs of the arbitration shall normally not include the travel expenses and the legal costs incurred by the parties. The arbitrator may decide differently, however, provided that the amounts involved are known to the arbitrator before the award is given.
4. The Executive Committee may fix the arbitrator's fees at a figure higher or lower than that from the application of the annexed tariff if in the exceptional circumstances of the case this appears to be necessary.

#### **Article 13 Making of award**

The arbitration award shall be deemed to be made in the Netherlands and on the date when it is signed by the arbitrator.

#### **Article 14 Notification of award to parties**

Once an award has been made, the arbitrator shall submit the signed award to the Secretariat, which in turn will notify the parties of the decision of the arbitrator.

#### **Article 15 Settlement of arbitration costs**

The Secretariat will settle the arbitration costs (see Article 12) in accordance to the decisions as put down in the award. The parties agree to pay their share to the Secretariat without delay.

#### **Article 16 Distribution of award**

For each case the terms of reference in combination with the award will be published among the members of Factors Chain International with omittance of any names.

#### **Article 17 Language of arbitration**

English will be the principle language of arbitration. Only in cases where the arbitrator and the two parties agree to another language, the hearings may be conducted in that language. The terms of reference and the award will under any circumstances be presented to the Secretariat in the English language.

#### **Article 18 General rules**

1. The arbitrator shall not be bound by any strict rules of law or procedure or evidence. He shall be entitled to make his decisions in accordance with what he thinks is fair and equitable between the parties in accordance with normal commercial practice and the customs of international factoring based on the GRIF.
2. No liability on the grounds of negligence or otherwise shall attach to
  - a) any arbitrator;
  - b) the Executive Committee;
  - c) the Secretariat;
  - d) any member of the Executive Committee or of the Secretariat; in respect of any act or omission on his part in connection with any proceedings under these articles.
3. All decisions made by the Executive Committee shall be made by a simple majority of votes (excluding members, if any, who are officials or parties to the

dispute). In the event of an equal vote the Chairman shall have two votes. the latter rule shall apply also to the arbitration tribunal.

4. In all matters not expressly provided for in these Rules, the arbitrator and the Executive Committee shall act in the spirit of these Rules and shall make every effort to make sure that the award is enforceable at law.

**ARBITRATION FEES (as of June 2003)**

1. A fixed amount of EUR 500,- is to be paid to the FCI Secretariat as compensation for expenses related to the arbitration procedure.
2. The arbitrator(s) are to be paid EUR 500, - per day for attending meetings and for the time it takes to travel to and from the place of arbitration.

**ANNEX-VI: SCHEDULE OF DEBTS**

FROM - (Name of Seller)

Schedule No .....

TO - (Name of Export Factor)

Schedule Date.....

Customer Name	Code	Invoice No	Invoice Date	Amount In US \$
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

**Total Value and Currency .....** **Number of Invoices .....**

In accordance with the factoring agreement you have with our company we hereby notify and offer the above mentioned invoices to be made payable to the (name of Export Factor)

Signed for and on behalf of the .....(Name of Seller).....

Authorized Signatory.....