

# FACTORING

## CURRENT SITUATION

The development of factoring in Serbia began at the beginning of the 21st century, and it obtained its legal basis in 2013 with the adoption of the Law on factoring ("Official Gazette of RS", No. 62/2013 and 30/2018), which remains in force today with amendments from 2018. Factoring has become an important financing instrument for small and medium-sized enterprises, enabling them to secure liquidity by selling their receivables before maturity.

In Serbia, 23 companies have been authorized to perform factoring operations, including the Export Credit and Insurance Agency and about ten commercial banks, in accordance with the law. Since 2014, when the first company for factoring operations was registered, there has been a continuous trend of registering several new factoring companies each year, indicating the interest of business entities in engaging in this activity.

One interesting fact is that factoring in Serbia is not only a tool for improving liquidity but also for reducing receivables collection risk. Factoring companies take on the risk of non-payment, allowing businesses to focus on the growth and development of their core activities. Additionally, factoring has become particularly popular among exporters, enabling them to quickly obtain funds for financing new orders and reducing risks associated with international transactions.

Moreover, factoring in Serbia is recognized as one of the more effective ways to combat liquidity issues and payment delays, common problems in the domestic economy. However, challenges still exist, particularly regarding educating business entities about the advantages and opportunities that factoring provides.

## POSITIVE DEVELOPMENTS

As the operations of factoring companies are being considered for the first time within the framework of the White Book this year, there are no conditions for analysing improvements compared to recommendations, considering that there were none.

## REMAINING ISSUES

### 1. Ambiguity of legal provisions regarding the possibility of concluding contracts in electronic form

Article 19, paragraph 1 of the Factoring Act stipulates that

factoring can only be carried out based on a contract concluded in written or electronic form. Further, Article 23, paragraph 1 of the Law on factoring stipulates that the assignment of receivables by the assignor is done with the delivery of the contract to the factor (original or a copy certified by the competent authority) and/or invoices representing the basis of the receivable and notifying the debtor that the receivable has been assigned to the factor.

Documentation from Article 23, paragraph 1 of the Law on factoring, together with proof of the assignment of receivables, constitutes a credible document in enforcement proceedings.

Factoring companies that have organized their operations in accordance with the general trend of digital business solutions have encountered certain issues when initiating proceedings against debtors under factoring contracts concluded electronically, i.e., using electronic signatures and exchanging electronic documents. This has been particularly problematic for those factoring companies using their own software solutions based on two-factor authentication principles.

One of the main issues facing factoring companies is the lack of alignment between the Law on factoring and the Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business Operations ("Official Gazette of RS", N. 94/2017 and 52/2021). Although the introduction of the option to conclude contracts in electronic form is a significant step forward, the lack of precise instructions on electronic signing methods and methods for enforcing receivables in enforcement proceedings creates administrative obstacles. These obstacles can lead to unjustified prolongation of proceedings, which can have significant negative consequences for factoring companies, as they require funds that would otherwise be further deployed in the market.

Additionally, the use of different software solutions for electronic signing, which are not sufficiently standardized or recognized by relevant institutions, further complicates the process. Factoring companies often have to allocate additional resources to adapt their systems and train their staff, which can increase costs and reduce operational efficiency.

To address these issues, several measures have been proposed:

- Harmonization of legislation: Aligning the Law on fac-

toring with the Law on Electronic Document to ensure clear rules and procedures for electronic signing and enforcement of receivables.

- Standardization of software solutions: Introducing standardized software solutions for electronic signing that are recognized and compatible with the existing legal framework.
- Education and training: Providing education and training for factoring companies and their clients on the benefits and proper use of electronic contracts and documentation.

The introduction of the option to conclude contracts in electronic form without simultaneously specifying the method of electronic signing and more precise definitions of enforcement of receivables in enforcement proceedings discourages further development of digital factoring. However, with appropriate legislative amendments and alignment, digital factoring can significantly improve business efficiency and flexibility, providing faster and more secure financing for enterprises in Serbia.

The proposal should include an amendment to the Law on factoring to further specify the mechanisms and conditions under which a contract is considered to be concluded in the appropriate form, thereby reducing the possibility of arbitrariness by courts and standardizing judicial practice.

## **2. Providing a mechanism to protect against double financing of invoices**

Although double financing of invoices does not occur frequently in practice, the negative consequences for factoring companies can be significant. This problem can manifest as financial losses, undermining client trust, and adding to administrative costs. It should also be noted that with further development of digital factoring and streamlining of factoring contract procedures and documentation exchange, such situations may become more common in the future.

The lack of an institutional legal framework regulating the exchange of information between factoring companies has been somewhat mitigated by the development of a platform by one of the leading factoring companies in Serbia. This platform enables faster and more efficient information exchange among market participants, reducing the risk of double financing of invoices. Despite

these initiatives, we believe that a centralized solution under the supervision of state authorities would be a better approach. A centralized system would provide equal access to all market participants and ensure additional protection against fraudulent actions by unscrupulous assignors. State supervision would also enable better regulation and monitoring of transactions, reducing the risk of financial fraud and ensuring transparency in business operations.

Furthermore, the introduction of a centralized information exchange system could enhance overall efficiency of the factoring market. Such a system would enable quicker identification of potential frauds and enable factoring companies to make informed decisions when approving financing. This would also contribute to strengthening trust among market participants and improving overall stability and security of the financial system.

Further development of digital factoring in Serbia requires continuous adaptation of the legal framework to ensure adequate protection for all participants and ensure business efficiency. With appropriate legislative amendments and the introduction of a centralized information exchange solution, factoring companies would be better equipped to address challenges in modern business and provide higher-quality services to their clients.

## **3. Developing a mechanism for better assessment of the assignor's and/or debtor's creditworthiness**

Factoring companies currently have extremely limited options for assessing the creditworthiness of assignors and/or debtors of assigned receivables, which discourages cooperation with relatively “young” companies or those lacking sufficient indicators to establish their creditworthiness. Such a situation could significantly limit the potential for expansion and growth of new business entities in the market.

This issue could be addressed by introducing a kind of marketplace based on access to a central invoice registry, where the Ministry of Finance would allow registered users – factoring companies to purchase company credit reports. This centralized invoice registry would provide factoring companies with faster and more reliable insight into the financial status and creditworthiness of potential clients.

The introduction of such registries and data availability would not only improve the level of information available

to factoring companies and increase the percentage of concluded contracts, but also positively impact the awareness of business entities about the importance of responsible business practices. Business entities would be encouraged to respect all deadlines and promptly fulfill their obligations to creditors, thereby further improving the overall business climate in the country.

Implementing such solutions would require close cooperation between government agencies, factoring companies, and other relevant institutions. However, the long-term benefits in terms of increased liquidity, reduced risk, and improved business efficiency would certainly justify the initial efforts and investments in this system.

#### 4. Enabling electronic issuance of promissory notes

Despite years of announcements regarding the implementation of electronic promissory notes through the IT solu-

tion of the National Bank of Serbia and the establishment of the Central Register of E-notes for legal entities and entrepreneurs, there is still no possibility of issuing electronic promissory notes. This deficiency represents a significant obstacle to the complete digitalization of factoring company operations. The current practice, where contracts are concluded online and assignors must send registered promissory notes by mail, is paradoxical and creates unnecessary administrative complications.

The introduction of electronic promissory notes, combined with the legal possibility of electronic signing of contracts, could lead to complete digitalization of factoring company operations and significantly increase the interest of assignors in this form of financing. The introduction of electronic promissory notes also increases legal certainty regarding the identity of the promissory note debtor and thereby enhances the ability of factoring companies to successfully collect their receivables.

### FIC RECOMMENDATIONS

- Removing ambiguities in legal provisions regarding the possibility of concluding contracts in electronic form.
- Providing a mechanism to protect against double financing of invoices.
- Developing a mechanism for better assessment of the assignor's and/or debtor's creditworthiness.
- Enabling electronic issuance of promissory notes.