

## REGULATION ON TERMS AND CONDITIONS APPLICABLE TO FACTORING OPERATIONS

### SECTION ONE

#### Purpose, Scope, Basis and Definitions

##### Objective and Scope

**ARTICLE 1 – (1)** The objective of this Regulation is; to define terms and conditions applicable to factoring operations to be carried out by factoring companies and banks.

##### Basis

**ARTICLE 2 – (1)** This Regulation, has been prepared on the basis of the 1<sup>st</sup> Article, second paragraph of the 9th Article and first paragraph of the 38<sup>th</sup> Article of the Financial Leasing, Factoring and Financing Companies Law, Law No. 6361 dated 21/11/2012.

##### Definitions

**ARTICLE 3 – (1)** The following terms used in this Regulation shall have the meanings expressly designated to them below:

- a) Association: means Association of Financial Leasing, Faktoring and Financing Companies;
- b) **(Supplemented: Official Gazette (OG)-6/10/2017-30202)**<sup>(1)</sup> Electronic Archive (E-archive): electronic-keeping and electronic-submit of invoices issued electronically in line with terms and conditions set out in the General Communiqué on Tax Procedures Law No. 433 published in the Official Gazette issued on 30/12/2013 under *bis no.* 28867.
- c) **(Supplemented:OG-6/10/2017-30202)**<sup>(1)</sup> Electronic Invoice (E-invoice); an electronically issued invoice in line with the terms and conditions set out the General Communiqué on Tax Procedures Law No 397 published in the Official Gazette issued on 5/3/2010 under *bis no.* 27512;
- ç) The Law: The Law no. 6361 on Financial Leasing, Factoring and Financing Companies
- d) Board: Banking Regulation and Supervision Board;
- e) Company: Banks and factoring companies based in Turkey;
- f) Agency: Banking Regulation and Supervision Agency,

### SECTION TWO

#### Prevention of Double Invoice Usage and Cancellation of Invoice

##### No Transaction without Invoice

##### ARTICLE 4 – (1)

Financing shall be provided to only the customer against the presentation of the invoice issued by the customer for the sales of goods or services or any document substituting it, except for payments made to public agencies and institutions.

(2) The aggregate sum of the funding provided by the company and the revenues from this transaction such as interest and commission fees may not exceed the amount of the invoice or invoice-like documents. Where payment ratio is one hundred percent, revenues such as interest and commission fee shall be further collected from the customer.

(3) No additional invoice shall be received from the customer for negligible differences that may arise from the rounding of sums upwards as between the invoice sum and the amount of the bill of exchange or any other note or, in case of foreign currency payment instruments, any FX rate difference on the actual payment date.

##### Intelligence Works

**ARTICLE 5 – (1)** The Company is under the obligation to proceed with intelligence works to know the customer adequately and to avoid any operation merely upon the declaration or verbal confirmation of the customers. Such an intelligence work shall include the following as a minimum, and where these fall short of meeting requirements, additional methods shall be implemented;

- a) First, details on the invoice shall be checked by taking into account the invoice description, manner and form of the invoice as defined in the applicable legislation,
- b) Internal control system shall be set up in a manner to ensure that required intelligence and research works shall be carried out for the invoices taken over and that these invoices shall not be

used without completing the control to see that these invoices are not double-issued at the Central Invoice Registration System,

c) Methods shall be developed to ensure that Customer's financial standing shall be evaluated and by taking into its credibility and transactional background and, where necessary, upon consultation with the invoice debtor and the drawer of the bill of exchange or other notes, the debt shall be confirmed; accordingly, all relevant and possible databases shall be made use of.

#### **Prevention of Using Double-issued Invoices**

**ARTICLE 6 – (1) (Amended:OG-6/10/2017-30202)** Notification of transfer of receivables which shall be signed by the customer's authorized officers and invoice details shall be obtained by the Company before funding in the course of factoring operations. The invoice shall be checked to see if it is double issued, and this control shall be made by entering the invoice details with the Central Invoice Registration System. E-invoice and e-archive practices shall be further confirmed from the Revenue Administration.

(2) **(Amended:RG-6/10/2017-30202)** The Company shall keep the images of original invoice copies for use as an evidence in audits excluding images of invoices created under the e-invoice and e-archive policy.

#### **Invoice cancellation**

**ARTICLE 7 – (1)** In case of the cancellation of an invoice, it is required to obtain a commitment from the customer during the factoring transaction that the customer will notify the Company about cancelled invoices and new invoices shall be presented to the Company if cancelled invoices are replaced by new ones,.

(2) Provided that the Company shall fulfill the requirements set out in the first paragraph, the customer shall be duly notified and the standard Notification and Transfer of Receivables form designed by the Association shall be used to get all necessary warranties.

### **SECTION THREE**

#### **Bills of Exchange or other Notes received**

##### **Bills of Exchange or other Notes received**

**ARTICLE 8 – (1)** Where bills of exchange or other notes are received related to the invoiced receivable, in case of series of endorsement on the received bill of exchange or other note, the person who endorses the bill of exchange or note to the Company shall be the same person who appears as the creditor on the assigned invoices and the endorser or drawer immediately preceding that person shall be the same person who appears as the debtor on the invoice. Attention shall be paid to the requirement that the invoice sum shall be equal to the amount on the bill of exchange or other note. Factoring software to be used by the Company shall be structured in a manner that such conformity shall be checked and in case of non-conformity, transactions will not be permitted.

(2) **(Supplemented:OG-6/10/2017-30202)<sup>(2)</sup>** In case of guaranteed import or export factoring operations, the first sentence of the first paragraph shall not be applicable on the condition that an exclusive contract shall have been executed between the Company and the invoiced debtor with a reference to the invoice or contract underlying the business transaction as basis for the factoring operation and that this contract shall include the details of the bill of exchange drawn or endorsed by the debtor of the invoice received by the Company.

(3) Following conditions shall have been met to collect any bill of exchange or other note which is received from the customer as additional collateral and which is not related to the invoice or invoice-like document:

- a) The receivable shall be overdue and non-performing;
- b) No financing shall have been provided to the parties to the bill of exchange and other note against the bill of exchange or other note;
- c) A reservation shall be entered with the Company's transaction and accounting records stating that the this additional collateral bill of exchange or other note shall have been received against the security for the applicable debt

(4) Collection of any bill of exchange or other note which is received from the customer as additional collateral and which is not related to the invoice or invoice-like document shall be possible only if the Company shall categorize the overdue receivable and other debts of the customer in the Account for Receivables to be Settled or Lost Credits, depending on the customer's solvency to pay the credit in line with the applicable legislation and that accordingly, it shall set aside a special provision and that legal proceedings shall have been initiated by it.

#### **SECTION FOUR**

##### **Assignment of Any Future Receivable**

###### **Conditions to assign a future receivables**

**ARTICLE 9** – (1) Factoring operations shall be carried out for receivables to arise only if the assigned receivables may be evidenced by an invoice or invoice-like instrument and the Company shall monitor that as soon as the receivable arises, this shall be evidenced by an invoice or invoice-like instrument

(2) In order to take over the receivable that may arise from the sales of goods or services:

a) a contract shall be executed between the Company and the customer for the assignment of the potential receivable; this contract shall expressly define the description of the work, the nature of the receivable, the amount, or where it is not possible to calculate the amount, the maximum factoring limit set in line with data underlying the calculation as well as payment terms.

b) Any issue related to the potential receivable in the contract shall be evidenced by the contract to be signed as between the customer and debtor, the order form, the proforma invoice or letters of credit and, in addition, any other document showing that a potential receivable may arise.

c) It should be evidenced that there is a commercial relation arising from the sales of goods or services and all documents evidencing that the receivable to arise shall be from this commercial relation should be checked as a whole to see their accuracy and consistency and they should be documented in a manner ready for audit.

ç) Invoice or invoice-like documents to be issued following the accrual of receivable shall be received by the Company and placed in the transaction file.

#### **SECTION FIVE**

##### **Miscellaneous and Final Provisions**

###### **Document Storage**

**ARTICLE 10** – (1) The Company shall be obliged to keep the invoice or invoice-like documents for such term required under the applicable legislation which should not be less than five years to evidence any review, inspection, audit or intelligence results for such documents.

###### **Effectiveness**

**ARTICLE 11** – (1) This Regulation shall become effective upon its publication with effect from 1/1/2015,

###### **Enforcement**

**ARTICLE 12** – (1) The provisions of this Regulation shall be enforced by the President of the Banking Regulation and Supervision Agency.

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<sup>(1)</sup> *Subparagraphs (b) and (c) have been added to the first paragraph of Article 3 of the Regulation by means of an amendment published in the Official Gazette issued on 6/10/2017 under no. 30202 and other paragraphs are successfully numbered accordingly.*

<sup>(2)</sup> *By virtue of an amendment as published in the Official Gazette issued on 6/10/2017 under no. 30202, the second paragraph has been added to Article 8 of the Regulation to follow the first paragraph and other paragraphs have been successively numbered accordingly.*

| <b>Details of the Official Gazette in which the Regulation was published</b> |               |
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| <b>Date</b>  | <b>Number</b> |
| 4/2/2015   | 29257         |

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