



TOMIĆ STEVIĆ DULIĆ

ADVOKATSKA KANCELARIJA

# TSD NEWSLETTER

Advokatska kancelarija TOMIĆ STEVIĆ DULIĆ informiše o aktuelnostima u radu Kancelarije i u zakonodavnom reljefu RS / Die Rechtsanwaltskanzlei TOMIĆ STEVIĆ DULIĆ informiert über aktuelle Themen der Kanzlei und über den Rechtsrahmen der RS / The TOMIĆ STEVIĆ DULIĆ Law Office is informing about the actual activities of the Law office and the Law frame in RS/ Юридическая компания Tomić Stević Dulić информирует о самых актуальных событиях в работе компании и законодательном рельефе РС / Glavni urednik/ Chefredakteur / Editor-in-Chief / Главный редактор: Ljubica Tomić /Lektor/Lektor/Proof reader/Лектор: Ivana Radović, Vesna Gašić, Vojislava Tasić, Viktorija Topalović, Magda Braun / Br. 54/13

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## NEW FACTORING LAW (RS Official Gazette No. 62/2013)

### I Introduction

The National Assembly of the Republic of Serbia adopted the Factoring Law which came into force on 24 July 2013.

This is the first time that legal provisions have been made for factoring in Serbia. Truly enough, this type of financial transaction was present in Serbian business practice even before this Law was enacted, however, it was governed solely by the general provisions of the Law of Contracts and Torts related to sale and purchase of accounts receivables and the specific contractual provisions.

The Law aims to allow for smoother transactions and accelerated cash flows, as the economical development and growth of financial markets requires a faster collection of receivables and greater liquidity in economy.

The small and middle sized companies are expected to have the greatest benefit from factoring, as they have been experiencing problems in accessing bank loans due to low credit rating and inadequate collaterals. These companies may find factoring an alternative to the bank loan, as a factor's decision on purchase of receivables does not depend so much on the assignor's credit rating (although this may have an impact), but primarily on the quality of the receivables, *i.e.* debtor's creditworthiness.



### II Concept and Subjects of Factoring

Factoring is the financial service of selling and purchasing receivables, and any existing non - matured or future short - term receivables (being receivables maturing up to one year from the date of sale of goods or provision of services) arising from an **agreement on the sale of goods or provision of services entered into between legal entities and sole proprietors**, may be subject to factoring, either in whole or in part.

### III Parties to Factoring

Parties to factoring are (i) **assignor** which assigns to the factor its receivables against the debtor (ii) **factor** which purchases receivables from the assignor, and (iii) **debtor**.

Any bank, business entity or sole proprietor domiciled in the Republic of Serbia, or any such entity domiciled abroad and incorporated under legislation of its home country, may act as an assignor.

Any bank, business entity (whether set up as a joint - stock or a limited liability company), domiciled in Serbia and in possession of an authorisation issued by the Ministry of Finance and Economy to provide factoring services, may act as a factor, as well as any foreign bank



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or foreign business entity, however solely in matters of cross - border factoring.

## IV Conditions of Providing Factoring Services

Any business entity may provide factoring services ("factoring company") providing that (i) it holds capital stock amounting to **not less than RSD 40 million**, and (ii) is in possession of an **authorisation to provide factoring services** issued by the Ministry of Finance and Economy.

A factoring company may provide only factoring and factoring-related services.

## V Types of Factoring

Factoring may be **domestic** and **international**, depending on whether its subject is the sale of receivables arising from the sale of goods or provision of services between domestic entities in the internal market or arising from foreign trade in goods or services.

Based on the obligation to undertake the risk of collecting a receivable, factoring may be **with recourse** or **without recourse**.

Factoring without recourse entails the factor assuming the risk of collecting a receivable, while in case of factoring with recourse, the assignor is liable to the factor for collection of receivables on the day such receivables become due. Where factoring with recourse has been provided for in the factoring agreement, the factor may demand satisfaction from the debtor, the assignor, or both simultaneously, within the limits of the liability of the debtor and the assignor, if not otherwise agreed.

## VI Reverse Factoring

Reverse factoring is a specific type of factoring **contracted for between a factor and a debtor** under an agreement on the sale of goods or provision of services at home or abroad, whereby the factor assumes the debtor's invoices and thus also the debtor's payables owed to creditors, and acquires the right to collect the receivables due from the debtor by the deadline set in the agreement on the sale of goods or provision of services at home or abroad.

The debtor shall be required to secure the consent of the creditors.

## VII Factoring Agreements

Factoring services may only be provided pursuant to an agreement entered into in writing or electronically. A factoring agreement shall not be deemed a credit or loan agreement within the meaning of legislation in force in Serbia and sound business practice.

Factoring agreements entered into between one assignor and multiple factors that have as their subject the



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assignment of the same receivables **may not be allowed and any such agreement entered into subsequently shall be null and void.**

## **VIII Manner of Providing Factoring Services**

At the time the assignor sells each receivable designated in a factoring agreement, the assignor shall provide the factor with (i) **agreements and/or invoices** and other documents identifying and proving the existence of the receivables, and (ii) **notice to the debtor** of sale of receivables to the factor.

The assignor and the factor draw up a set of minutes regarding above transfer of documents.

The assignor is required to give the debtor notice of the sale of receivables in writing or electronically. Having received such notice, the debtor is required to remit the amount receivable to the factor.

The remittance of the amount receivable to the assignor shall not extinguish the liability of the debtor with the factor where notice of the sale of the receivables had been given prior to such remittance; the assignor is required to transfer such payment to the factor without delay.

A factor shall collect on receivables that have become due **for itself and on behalf of itself.**

## **IX Rights and Obligations of Parties to Factoring**

The assignor shall be liable to the factor for **the grounds and amounts of the receivables** subject to a factoring agreement.

The assignor shall guarantee to the factor that the receivables sold are free of pledges, contestations, burdens and other rights of third parties and that such receivables may not be contested on any grounds, except where otherwise agreed. Where any receivables sold are the subject of a pledge, or if such receivables have been contested in any manner whatsoever by a debtor or any third party, and where the factoring agreement does not exclude the assignor's guarantee, the factor shall have recourse against the assignor even where factoring without recourse has been agreed on.

Where the sale of receivables is prohibited under an agreement between the assignor and the debtor or the general operating conditions of the debtor, such prohibition **shall not have legal effect** on the sale of receivables to a factor subject to a factoring agreement and in compliance with this Law, except where otherwise provided for under an international treaty.

## **X Oversight of Factoring**

Oversight of factoring companies shall be performed by the Ministry of Finance and Economy and the National Bank of Serbia shall perform oversight of banks that



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provide factoring services.

## **XI Compliance with the Law**

Business entities providing factoring services, established prior to the entry into effect of the Factoring Law are required to align their operations with the provisions of the Law by applying for an authorisation to provide factoring services **within six months** from the entry into effect of the Law.

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