



Pursuant to Article 35, paragraph 1, subparagraph 1.1, and Article 65 of the Law No. 03/L-209 on the Central Bank of the Republic of Kosovo, Article 85 paragraph 1 and Article 114 of the Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Banking Financial Institutions, in relation to Articles 44 and 94 of the Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Banking Financial Institutions, the Board of the Central Bank of the Republic of Kosovo, in its meeting held on 29 October 2018, approved the following:

REGULATION ON FACTORING

Chapter I General Provisions

Article 1 Purpose and Scope

1. The purpose of this Regulation is to establish the general legal and regulatory requirements for the exercise of the financial activity of factoring by the entities that are licensed/registered by the Central Bank of the Republic of Kosovo to exercise this activity.
2. This Regulation shall define and govern the financial activity of factoring, types of factoring, factoring contract, the rights and obligations of the parties to a factoring transaction, as well as the reporting and supervision of licensed/registered entities by the Central Bank of the Republic of Kosovo to exercise this activity.
3. This Regulation shall apply to licensed/registered entities by the Central Bank of the Republic of Kosovo to exercise factoring activity.
4. This Regulation does not apply to regular assignment of receivables that is exercised by entities that are not financial institutions and do not offer factoring services as their regular business activity for profit, in accordance with the Law on Obligational Relationships.

Article 2 Definitions

1. Whenever used in this Regulation, the following terms shall have the meaning ascribed to them below:
 - 1.1 **Factoring** is a permitted financial activity whereby the factor purchases and/or accepts existing non-matured or future short-term receivables of up to one (1) year, deriving out

of an underlying contract for the sale and purchase of goods or services from the supplier of the underlying contract. A factoring transaction can be based on a sale/purchase of accounts receivable or on a simple transfer of receivables. A factoring transaction shall be deemed to be a purchase and/or assignment (acceptance) of receivables, unless the contract specifically states that the transaction relates only to a specific transfer of receivables.

- 1.2 **Participants to a factoring transaction** are the factor, the supplier and the purchaser.
- 1.3 **The factor** is the legal entity, duly licensed/registered for factoring by the Central Bank of the Republic of Kosovo, which on the basis of a factoring contract, purchases and/or receives the subject-matter of factoring from the supplier.
- 1.4 **The supplier** is a legal entity or a physical person, registered in accordance with Law on Business Organisations to exercise business activities, selling and/or transferring the subject-matter of factoring to the factor.
- 1.5 **The purchaser** is a legal entity or a physical person (except for consumers), registered in accordance with Law on Business Organisations to exercise business activities, which owes the subject-matter of factoring to the supplier.

Article 3

Financial Activity of Factoring

1. Factoring, as a financial activity, can be exercised only by legal entities that have been duly licensed/registered by the Central Bank of the Republic of Kosovo to engage in factoring activity.
2. Legal entities licensed /registered by the Central Bank of the Republic of Kosovo can exercise factoring only on the basis of a contract, concluded in writing and in accordance with the terms and conditions set forth in this Regulation.

CHAPTER II

Types of Factoring

Article 4

Basis for the Categorisation of Factoring

1. Factoring transactions are categorised on the basis of the origin of the parties to a factoring contract as well as the subject matter of factoring and the risks for the collection of the receivables that are assumed by the parties to factoring.
2. General types of factoring, are as follows:

- 2.1 domestic factoring;
 - 2.2 foreign factoring;
 - 2.3 factoring with recourse; and
 - 2.4 factoring without recourse.
3. A special type of factoring is reverse factoring.
 4. The type of factoring must be clearly stated in the factoring contract.

Article 5

Domestic Factoring

Domestic factoring is a factoring transaction the subject-matter of which is the sale and/or transfer of receivables arising from the sale of goods or provision of services between entities registered and validly existing in Kosovo and/or physical persons who reside in Kosovo and are duly registered for the exercise of business activities.

Article 6

Foreign Factoring

1. Foreign factoring is a factoring transaction the subject-matter of which is the sale and/or transfer of receivables arising from the sale of goods or provision of services between legal entities and/or physical persons of which one legal entity and/or physical person is non-resident in Kosovo.
2. If the foreign factoring includes more than one factor, the factor that is resident in Kosovo shall be required to conclude an inter-factor agreement, which shall regulate the relationship between the domestic factor and the foreign factor and which shall be in compliance with the applicable law in Kosovo.
3. Subject to the provisions of the applicable laws, in case of foreign factoring, the factoring contract shall be construed and governed by the laws of the Republic of Kosovo. This Regulation as well as the applicable laws of Kosovo, which apply to factoring as a financial activity, shall apply to foreign factoring even in cases when the factoring contract and/or the underlying contract that is the subject-matter of the factoring contract is governed by the laws of any other country.

Article 7

Factoring with Recourse

1. Factoring with recourse is a factoring transaction in which the supplier assumes the risk for the collection of receivables, which the factor collects from the purchaser, including but not limited to the risk related to insolvency of the purchaser.

2. In factoring with recourse, the supplier guarantees the existence, validity and collection of the receivables to the factor.
3. In factoring with recourse, both the supplier and the purchaser shall be liable to the factor for the payment/collection of the receivables in accordance with the terms and conditions set forth in this Regulation.
4. Unless otherwise provided in the factoring contract, in factoring with recourse, the factor shall first demand the payment of the receivables from the purchaser. Unless otherwise provided by contract, only if the purchaser fails to pay the receivables within five (5) calendar days from the date when such receivables became due and payable, the factor shall be entitled to demand the payment of the receivable from the supplier and/or both, the supplier and the purchaser. Once the factor has received the payment of the receivables from any of the supplier and/or the purchaser or both, in proportionate amounts, the obligation of the supplier and/or the purchaser to pay the receivables towards the factor shall be considered as satisfied.
5. Unless a factoring contract is named as factoring contract with recourse, such a factoring contract shall be deemed to be a factoring contract without recourse.
6. For the avoidance of doubt, unless otherwise provided in the factoring contract, the recourse that the factor has towards the supplier for the collection of the receivables, shall not have any legal or other impact on the validity of the sale and/or the transfer of the receivables from the supplier to the factor. Indeed, and unless otherwise provided in the factoring contract, in spite of the existence of the recourse of the factor towards the supplier for the collection of the receivables, the sale and/or the transfer of the receivables shall be deemed to have occurred and completed at the moment when the factoring contract has been signed.

Article 8

Factoring without Recourse

1. Factoring without recourse is a factoring transaction in which the factor assumes the risk for the collection of the receivables, including but not limited to the risk related to the insolvency of the purchaser.
2. In factoring without recourse, the supplier shall not have any liability towards the factor for the collection of the receivables from the purchaser.
3. Notwithstanding paragraphs 1 and 2 of this Article, the supplier shall be directly and fully liable to the factor with respect to the existence and the identification of the receivables that are the subject-matter of factoring without recourse and shall guarantee to the factor that the receivables are free of any liens of any kind.
4. If the receivables that are the subject-matter of factoring without recourse turnout to have a lien, of any kind, the factoring contract shall be considered as factoring contract with recourse and, in this case, Article 7 of this Regulation shall apply with respect to the liability of the supplier towards the factor.

Article 9
Reverse Factoring

1. Reverse factoring is a special type of factoring whereby the factor and the purchaser negotiate a payment plan, and execute it in the form of a binding contract, for the payment of the purchaser's debts towards its supplier(s) whereby the factor:
 - 1.1 at the request of the supplier or as instructed by the purchaser, undertakes to pay the claims which the supplier(s) of the purchaser have towards the purchaser prior to maturity or at the maturity of the subject-matter of the factoring; and
 - 1.2 obtains the right to collect receivables due from the purchaser by a specific deadline agreed between the purchaser and the factor, as well as the right to charge factoring fees and interest.
2. In cases of reverse factoring, the consent of the supplier of the purchaser is required.
3. Provisions of this Regulation related to other types of factoring shall apply to reverse factoring accordingly.

CHAPTER III
Factoring Contract

Article 10
Form and Scope of the Factoring Contract

1. Factoring can be exercised only on the basis of a factoring contract, concluded in written form.
2. The factoring contract must include in its title the name of the type of factoring, which is the subject matter of the respective factoring contract.
3. Under a factoring contract, the factor assumes the obligation to provide factoring to a supplier, namely to pay the invoice of the supplier issued to a purchaser, in exchange for the sale and/or transfer by the supplier of its receivables towards the purchaser to the factor as well as the payment by the supplier to the factor of a factoring fee and all of the costs of factoring.
4. The factoring contract shall not be deemed to be a loan contract under the applicable laws.

Article 11
Content of the Factoring Contract

1. The factoring contract shall include the following minimum information:

- 1.1 basic information of the parties, including but not limited to their names, registration number and/or identification, registered address and the information on the legal/authorised representatives of the parties;
 - 1.2 name of the type of factoring, which is the subject-matter of the factoring contract;
 - 1.3 basic information on the underlying contract, which is the subject matter of the factoring contract;
 - 1.4 specification of the subject-matter of factoring, in general, and invoice(s), including its number(s) and amount(s), which shall be paid to the supplier by the factor under the factoring contract, specifically, as well as the deadline for the payment of such invoice(s) and/or obligations;
 - 1.5 specification of the factoring fee, including the manner and the deadline for its payment;
 - 1.6 specification of all of the costs of factoring, including the manner and the deadline for their payment;
 - 1.7 duration of the factoring contract;
 - 1.8 list of attached documentation;
 - 1.9 date of the factoring contract; and
 - 1.10 signature of the parties' legal and/or authorised representatives.
2. The parties to a factoring contract may add additional provisions to the factoring contract, provided that such provisions are not in contradiction with this Regulation.
 3. If a factoring contract does not specify its duration, the factoring contract shall remain valid and in effect until the date when the receivables that are the subject-matter of factoring are collected by the factor.

Article 12

Nullity and Voidance of the Factoring Contract

A factoring contract which as a subject-matter has the sale of the subject-matter of another factoring contract shall be null and void.

Article 13

Accompanying Documentation to a Factoring Contract

1. Upon the conclusion of the factoring contract, the supplier shall provide to the factor the original or notarized copies of the following documents in relation to the subject-matter of factoring:

- 1.1 agreement(s) from which the receivable(s) of the supplier derives, including but not limited to any and all invoice(s) issued under such an agreement at the time of the conclusion of the factoring contract; and
 - 1.2 unless the parties otherwise agree, written notice of the supplier to the purchaser for the sale and/or transfer to the factor of any and all of the receivables that the supplier has towards the purchaser.
2. The documentation mentioned under paragraph 1 of this article shall be attached to the factoring agreement as an annex and shall represent a constitutive part of it.
3. If the documentation mentioned under paragraph 1, of this article was not attached to the factoring agreement for any reason, including but not limited to it not being available at the time of the conclusion of the factoring contract, the transfer of such documentation from the supplier to the factor shall be recorded by written minutes signed by both parties, which shall be attached to the factoring contract as an annex.
4. The date when the factor receives from the supplier the documentation mentioned under paragraph 1 of this article shall be the date when the sale and/or transfer of the receivables has taken place.

Article 14

Notice for the Sale and/or the Transfer of the Receivables

1. Unless otherwise provided in the factoring contract between the parties, upon the conclusion of the factoring contract, and not later than three (3) calendar days from the conclusion of the factoring contract, the supplier shall notify in writing the purchaser about the sale and/or transfer of its receivables deriving out of the underlying contract to the factor.
2. The notice for the sale and/or transfer of the receivables from the supplier to the factor may be general, including any and all respective receivables that are the subject-matter of factoring, or specific, including only explicitly identified receivables.
3. If the notice for the sale and/or transfer of receivables is general, such a notice shall include only the name and the date of the agreement from which such receivables derive.
4. If the notice for the sale and/or transfer of receivables is specific, such a notice shall, in addition to the name and the date of the contract from which such receivables derive, include the number of the invoices identifying the specific receivables that are the subject-matter of factoring.
5. The notice, mentioned under paragraphs 1, 2, 3 and 4 of this article shall include the name of the factor and the details of the bank account of the factor in which the receivables should be paid by the purchaser.
6. The notice, mentioned under paragraphs 1, 2, 3 and 4 of this article shall be communicated to the purchaser in writing.

7. Written notification requirement, foreseen under paragraph 1, of this article shall be deemed to have been satisfied if the notice is sent by the supplier to the purchaser through any of the following means of communication:
 - 7.1 regular mail;
 - 7.2 registered mail,
 - 7.3 email;
 - 7.4 telefax; or
 - 7.5 any other means of communication recognised and valued acceptable as written communication by the applicable laws.

Article 15

Payment of the Receivables

1. Upon the receipt of the notice for the sale and/or transfer of the receivables, the purchaser is required to pay the receivables to the factor at the bank account specified in the notice.
2. The receivables shall be paid to the factor as they become due and payable under the contract out of which the receivables derive.
3. Payment of the receivables by the purchaser to the supplier after the purchaser received the notice for the sale and/or transfer of receivables shall not release the purchaser from its obligation to pay the respective receivables to the factor.

Article 16

Rights and Obligations of the Parties to a Factoring Contract

1. The factor shall be required to keep orderly and up-to-date records and shall be required to make such records available to the Central Bank of the Republic of Kosovo.
2. The factor shall be required to exercise due care in the registration of purchased receivables.
3. The supplier shall guarantee to the factor that any and all receivables legally and factually exist, are free of pledges, contestations, burdens and other rights of third parties and that such receivables may not be contested on any grounds, except when otherwise agreed.
4. If any receivables sold are the subject of a pledge, or if such receivables have been contested in any manner whatsoever by a purchaser or any third party, and where the factoring agreement does not explicitly exclude the supplier's liability towards the factor, the factor shall have recourse against the supplier even if factoring without recourse has been contracted.
5. If the sale and/or transfer of receivables is prohibited by the underlying contract between the supplier and the purchaser, such prohibition shall not have legal effect on the sale and/or transfer of receivables made to a factor under this Regulation by the supplier.

6. The documents referred to in Article 13, paragraph 1, of this Regulation shall be considered authentic documents for the purposes of enforcement, in accordance with Law on Enforcement Procedure.

CHAPTER IV

Reporting and Supervision of Factoring Activities

Article 17

General Requirements

1. Factoring, as a financial activity, can be exercised only by legal entities that have been duly licensed/registered to engage in factoring by the Central Bank of the Republic of Kosovo.
2. Factoring, as a financial activity, can be exercised either by duly licensed banks and/or non-banking financial institutions, in accordance with the applicable law.
3. Legal entities that seek to engage in factoring can be incorporated/organized only as limited liability companies or joint stock companies.
4. Legal entities that are engaged solely in the exercise of the financial activity of factoring shall include in their names the term “factoring” and/or “factor.”
5. The procedures for the registration, licensing, reporting supervision and revocation of licensing of entities engaged in factoring shall be governed by the laws and subsidiary legal instruments that apply to the respective legal entity that holds a factoring license, i.e. bank or a non-banking financial institution.

Article 18

Licensing / Registration and Supervision of Legal Entities Engaged in Factoring

1. The licensing criteria and the capital requirements for Non-Bank Financial Institutions engaged in factoring are provided in the Regulation for the Registration, Supervision and the Activities of Non-Banking Financial Institutions. In case factoring is provided by banks, legal framework for licensing of banks is applicable.
2. Banks engaged in factoring activities should report according to the Regulation on Banks Reporting. Non-Bank Financial Institutions engaged in factoring activities should report according to the Regulation on Reporting of Non-Bank Financial Institutions.
3. Risk management for factoring, including the classifications and possible provisions for this activity, will be defined by specific regulation by the Central Bank of the Republic of Kosovo.

Article 19
Other Allowed Activities of Legal Entities Licensed for Factoring

1. Legal entities licensed for factoring by the Central Bank of the Republic of Kosovo may also engage in the following activities, which are necessary for the exercise of factoring as a financial activity:
 - 1.1 the gathering, producing, analysis and giving of information about the creditworthiness of legal entities and natural persons which are organized as business organization;
 - 1.2 managing the client's receivables arising on the basis of goods sold and services provided and consultations in relation to these;
 - 1.3 collection of receivables;
 - 1.4 export financing on the basis of a purchase with a discount and without recourse to long-term, still undue claims on secured financial instruments (forfeiting); and
 - 1.5 issuing credit cover when performing foreign factoring.
2. An entity licensed for factoring by the Central Bank of the Republic of Kosovo cannot engage in the following activities:
 - 2.1 purchase non-performing loans, as such loans are defined under the applicable law; and
 - 2.2 purchase risks or benefits on the basis of non-performing loans portfolio of credit institutions, as such risks and benefits are defined under the applicable law.

Article 20
Final and Transitional Provisions

All factoring contracts that have been concluded prior to the entry into effect of this Regulation shall continue to be governed by the applicable law on factoring and/or the law specified in those contracts that was in effect prior to the entry into effect of this Regulation, unless the parties to such contracts explicitly agree to govern their relationships by this Regulation.

Article 21
Enforcement, Remedial Measures and Civil Penalties

Any violation of the provisions of this Regulation shall be subject to remedial and punitive measures, as defined in the Central Bank Law and the Law on Banks, Microfinance Institutions and non-bank Financial Institutions.

Article 22
Entry into Effect

This Regulation enters into effect 15 days from the date of approval by the Board of the Central Bank of the Republic of Kosovo.

Flamur Mrasori,
The Chairman of the Board of the Central Bank of the Republic of Kosovo