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NOTE

from:	Presidency
to:	Working Party on Tax Questions - Indirect Taxation (VAT)
Subject:	Proposals for a Council Directive and Regulation as regards the VAT treatment of insurance and financial services - Comments on the treatment of factoring

Delegations will find below comments from the Presidency on the changes to the abovementioned proposals as regards treatment of factoring for VAT purposes under article 135, paragraph 1, point (d) of the Directive (doc. 12977/10 FISC 89) and the corresponding articles of the Regulation (doc. 12988/10 FISC 90).

I. FACTORING

1. Terminology

Although the term “factoring” is used widely, defining factoring remains rather difficult because a factoring agreement may cover lots of different arrangements depending on the business needs. Moreover, confusion may arise from the fact that the wording is often used to designate arrangements which may seem similar to factoring, but do not share the basic features, as is for instance the case with invoice discounting.

Given these remarks, the Presidency can endorse the approach developed by the previous Presidency that, rather than trying to define “factoring”, reference could be made to the constituting elements of a factoring agreement.

2. Purpose and benefit

In essence, factoring is a facility designed to improve the cash flow of a business. It is a combination of services which is based on the transfer of invoices/account receivables or book debts from a business (mostly a sales company delivering goods or supplying services) to a third party (a factoring company or bank specialized in factoring).

The most important benefit for the business using the factoring service is that cash is made available at an earlier stage than it otherwise would as the business will be able to draw money at a moment when its claim has not yet come to maturity. Moreover, the factoring company will either take over the complete administration of the sales ledger or will advise the business in administering its clients and client’s receivables, and the way of recovering debts. The factoring company may also release the business from the burden of recovering debts and pursuing payment from bad debtors. Against payment of an additional premium, the risk of default of the debtor may be shifted from the sales company to the factoring company. The existence of the factoring agreement is generally notified to the debtor (client of the sales company to whom the invoice is issued).

A simple example to illustrate the above: Sales Company A sells televisions. We assume that the usual commercial delay for payment of invoices is 30days. The balance sheet of A will mention under “account receivables” the amount to be received from the sales made up until full payment has been received. If A does not want to await payment from its clients or wants to optimize its cash flow position in order to live up to its own responsibilities towards its suppliers, and meanwhile benefit from professional advice concerning the administration and recovery of its debts, it may conclude a factoring agreement with a factoring company.

3. Main features

As stated under point 2 above, factoring basically aims to influence the cash flow position of a company positively.

To this purpose a financing mechanism is set in place which is:

based on the nominal value of some or all of the outstanding debts of the business entering into the factoring agreement; and
secured with assets on the balance sheet of that business through the transfer of the entirety or part of its account receivables to the factoring company.

Based on the transfer of the entirety or part of its account receivables to the factoring company, the transferring company will be entitled to a percentage of the nominal value thereof against payment of interest. This entitlement can be immediate or as from an agreed date, but will, in general, precede the expiration date on which payment is due by the debtor.

The remaining amount, after deduction of costs, will be received by the transferor only upon full payment of the invoices by their debtor. In order to be certain to receive the remaining part, the transferor may require the factoring company to provide coverage against the debtor’s default upon payment of a premium.

Depending on the kind of agreement that is concluded, the money taken up by the transferor remains either acquired (true factoring or non-recourse factoring) or has to be reimbursed upon default of the initial debtor (non-recourse factoring).

3.1. Non-recourse or true factoring

A factoring agreement may provide for the factoring company to take over the risk of default of the debtor.

As a consequence of the conclusion of a non-recourse factoring arrangement, the sales company will be faced with a limit up to which it can sell goods or services to the customers whose account receivables it transferred to the factoring company. Within these limits set by the factoring company, the latter becomes responsible to the sales company on the due date of the receivables, whether or not the debtor makes payment to the factor. The percentage of the transferred receivables which was paid upfront will then remain acquired by the transferor.

The services supplied by the factoring company will, within the framework of a non-recourse factoring, go beyond pre-financing and recovering debts. They will also include advisory services with respect to the creditworthiness of potential customers and by doing so help the sales company to adopt a better credit control policy.

3.2. Recourse factoring

If the risk of default remains with the transferor, he will contractually be obliged to buy in the initially transferred account receivables on the due date for a price which will cover the amount he took up from the factoring company.

4. Various constitutive elements of factoring

Three main elements may be distinguished:

1° financing

2° debt recovery including administration of the sales ledger in relation thereto

3° covering the risk of debtor's default

4.1. Financing

4.1.1. Nature of the service

The factor will grant the business a credit facility, the level of which will depend on the nature of the underlying debt, the over whole business practice, the payment pattern of the debtor(s) etc. In fact, the business will receive an advance of (part of the) funds he was entitled to recover himself, but at a later stage (i.e. only at maturity of his claims).

The level of credit will generally be less than the total face value of the debts. Usually, the transferor gets 80% of the nominal value of the sales invoices or account receivables upfront. The remaining 20%, after deduction of costs, will be paid after the factoring company has received payment from the debtor. Interest will be charged for the credit used.

In practice the factor will open up a client account and credit the accepted value of the debt (claim) on one side and debit the amount advanced to the client, and his charges, to the other. Periodically the factor will debit the account with interest payable on the amount advanced to the business.

4.1.2. Consideration for the service

The factor will normally calculate interest with respect to the amount withdrawn by the client until he has himself actually received the amount or until the debt is contractually considered irrecoverable. The interest charged is usually referred to as a discount charge.

4.2. Debt recovery including sales ledger administration

4.2.1. Nature of the service

The factoring company will be charged with the entire responsibility of administering sales ledger, in respect of each customer of the sales company. once the factoring agreement is in place, the sales company will issue each invoice in duplicate, whereby one copy goes to the buyer and one to the factoring company. The factoring company will send the sales company periodic reports with respect to the current status of the receivables and the amount received from customers. The factoring company will also send reports to the debtor with respect to his debt and the action to obtain payment.

The transfer of the account receivables or sales invoices is accompanied by the entitlement for the factoring company to collect payment of the debts (claim) when it has matured. A fee is charged for these services.

4.2.2. Consideration for the service

The consideration for the actual debt recovery is usually referred to as the factoring fee. This fee is the counter part for supplying the various debt recovery services under the factoring agreement, more particularly the debt recovery including credit control and sales ledger administration. Usually, this fee is calculated as a percentage of the projected sales turnover of the client for the next twelve months, and varies between 1 to 2.5 %.

4.3. Covering the risk of debtor's default

4.3.1. Nature of the service

The factoring company may cover the risk of default of the debtor, against payment of a premium.

4.3.2. Consideration for the service

The consideration for covering the risk of the debtor's default is usually referred to as the del credere fee.

5. Difference between factoring and invoice discounting

Under a factoring agreement a sales company receives a full sales ledger administration service. Moreover, the existence of the factoring agreement is generally disclosed to the customers of the sales company. Whenever an invoice is issued to a customer, the sales company will send a copy to the factoring company. The factoring company will exercise a credit control function, which will not only include the issuing of statements to the customers of the sales company, but may even go as far as making telephone calls to those customers in order to achieve payment.

When a company concludes a invoice discounting agreement, the administration of his sales ledger, as well as the debt collection remain the sole responsibility of the sales company. The company offering invoice discounting will in fact only advance payment against the payment of interest/ a fee. The existence of the invoice discounting agreement will not be disclosed to the customers of the company. On the other hand, invoice discounting can be – as is the case for factoring – with or without recourse.

6. ECJ decision in MKG

In MKG (C-305/01) the ECJ considered whether recourse factoring was an economic activity for VAT purposes. The German tax authorities had considered it not to be, on the basis that since a debt (claim) was sold to the factor, the factoring company does not make a supply for consideration either when purchasing the debt (claim), or, recovering it (because by then it owns the debt (claim)). The Court determined that, in this respect, it was no different to non-recourse factoring and there was an economic activity. It considered that services provided by the factor (such as collecting the debt (claim)) were taxable. It did not specifically consider whether interest charged by a factor on advanced amounts of credit were exempt. The ECJ did not consider either any supply aspects concerning the sale or assignment of the debt (claim) to the factoring company.

7. Examples of factoring arrangements

Annex 1 sets out some examples of how factoring arrangements may work in practice.

The examples in Annex 1 simplify the reality of the process. In actual factoring arrangements, a factor will continually review and analyse the position of the debts (claims) it has taken over. Daily/ monthly records are maintained which calculate the value of any money drawn down by the business, the value of the debts collected, the interest chargeable etc. Annex 2 provides an example of the process involved in a factoring arrangement (considering it on both a recourse and non-recourse basis).

II. COMPROMISE LEGAL TEXT

1. Directive text (Article 135, paragraph 1, point (d))

(d) transfer of a credit and debt position;

"Transfer of a credit position" means the cession of ~~full title to~~ the right of receiving money excluding the one constituting a supply of securities.

"Transfer of a debt position" means the ~~transfer~~ **cession** of an obligation to pay money, excluding the one constituting a supply of securities.

2. Regulation text (Article 2, paragraph 1, point (j) – Article 3, paragraph 1, point (c) – Article 5, paragraph 1 and paragraph 2, points (a), (b) and (c))

Article 2

1. The definition of "insurance and reinsurance" provided for in point (a) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

(...)

- (j) **insurance against the debtor's default included in a debt recovery agreement [such as a factoring agreement].**

Article 3

1. The definition of "granting of credit" provided for in point (b) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

(...)

- (c) **the granting of loans secured on claims, including discounting bills of exchange and promissory notes, invoice discounting and the advance of funds included in a debt recovery agreement [such as a factoring agreement];**

Article 5

1. The definition of "transfer of a credit and debt position" provided for in point (d) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:
 - ~~(a) the acceptance of the risk of a debtor's default by means of assumption of his debts.~~
2. The definition of "transfer of a credit and debt position" provided for in point (d) of Article 135(1) of Directive 2006/112/EC shall not cover the following:
 - (a) ~~the services for recovering debts, claims, bills of exchange, receipts and other documents on behalf of a creditor~~ **the transfer of a credit position carried out as a preliminary act to debt recovery services [such as a factoring agreement]. Such transfer is outside the scope of VAT.**
 - [(b) debt recovery services relating to a credit position which has been transferred to the debt recovery services provider;**
 - (c) debt recovery services relating to a credit position which has not been transferred to the debt recovery services provider.]**

III. COMMENTS WITH RESPECT TO THE COMPROMISE LEGAL TEXT

Taking into account the support from delegations on the general approach proposed by the previous Presidency, the Presidency has upheld the basic elements of this approach.

This approach essentially implies that debt recovery agreements such as factoring agreements can (and most often do) constitute in fact a bundle of different supplies of services which are distinct in nature but which should each be considered in its own right in order to determine the applicable VAT regime.

Typically, a complex debt recovery agreement would therefore comprise:

actual debt recovery services in the strict sense of the word to be considered as excluded from the VAT exemption (in accordance with the current wording of article 135, paragraph 1, point (d) of the VAT directive and ECJ case law);

the advance of funds to be considered as a VAT exempt financing or credit element;

the commitment to safeguard the transferor against the debtor's default to be considered as a VAT exempt insurance element.

In order to clarify the previous compromise text even further, the Presidency would like to suggest the following for the various transactions carried out within the framework of a debt recovery agreement:

- (1) the transfer of the credit position as a preliminary condition for the implementation of a debt recovery agreement

The Presidency refers back to a working document No 420 discussed at the VAT Committee following the *MKG* case, in which the following was stated:

Taking into account:

- the description of the factor's service as consisting in the purchase of debts

- the insistence of the Court that true and quasi factoring should be treated equally from the point of view of VAT, and

- the fact that despite the assignment of credits being implemented through a sale of credit, the provision of funds to the creditor at the moment of purchase of credits is treated not as a consideration that is due for the credits but rather as a loan to the creditor for which he has to pay interest,

it would appear that the assignment of a credit to the factoring company should not be considered to be a supply in the sense of article 2.1 of the Sixth VAT Directive, either because such an assignment does not constitute an economic activity or because the assignment of the credits is not done for consideration.

The Presidency could support this analysis, as did most Member States at the time this document was discussed. For reasons of legal certainty, the Presidency suggests to have some kind of reference in place which reflects this approach. The reference to the fact that the transfer of the credit position is outside scope is added as the mere exclusion of the transfer out of the scope of the exemption, might open up discussion whether the transfer should then be taxed (as is the case for all the other services which are explicitly excluded from the scope of the exemption).

(2) the debt recovery services in the strict sense of the word

debt recovery services provided for the owner of a debt (credit position) which has not been transferred to the debt recovery service provider: the Presidency has mentioned it as an example of a service not included within the transfer of a credit position and therefore excluded from the VAT exemption.

However, since there is – by assumption – no preceding transfer of a credit position prior to the debt recovery services, it seems self-obvious to the Presidency that such service cannot be exempt on the basis of a text referring to transfer of a credit position. The text has therefore been put between brackets as the Presidency would therefore suggest not mentioning such service under this header in view of the logical and legal incompatibility. If it were not mentioned, the service would still not be eligible for VAT exemption by lack of any specific legal base to exempt the service.

debt recovery services provided for the transferor of a debt (credit position): mentioned explicitly as an example of a service not included within the transfer of a credit position.

However, since there is in this case a transfer of a credit position preceding the debt recovery services but both transactions are carried out by different persons (transfer by the transferor of the credit position, debt recovery by the transferee of the credit position), it seems also self-obvious that the debt recovery service cannot be exempt on the basis of an article exempting the transfer of a credit position. Therefore the Presidency would advocate not mentioning such a service under this header, that is being the reason why it is between square brackets. In that case the service would still be taxed by lack of any specific legal base to exempt it.

- (3) the service consisting in providing safeguard against the risk of default of the debtor as an element in debt recovery agreements

During the last meeting, there seemed to be a majority of Member States agreeing to exempt this service in its own right as suggested by the previous Presidency. The Presidency finds it legally difficult to exempt such a service rendered by the debt recovery service provider to the transferor of the debt under the header “transfer of a credit position” as the latter transaction is carried out by the transferor (and not by the party providing risk cover). Accordingly, this potential component of a debt recovery service agreement has been moved to the point quoting examples of debt guarantee, where it is exempt according to its intrinsic nature.

- (4) the service consisting in providing an advance of funds as an element in debt recovery agreements

During the last meeting, there seemed to be a majority of Member States agreeing to exempt this service in its own right as suggested by the previous Presidency. The Presidency finds it legally difficult to exempt such a service rendered by the debt recovery service provider to the transferor of the debt under the header “transfer of a credit position” as the latter transaction is carried out by the transferor. Accordingly, this potential component of a debt recovery service agreement has been moved to the point quoting examples of the granting of credit, where it is exempt according to its intrinsic nature.

The approach as suggested by the Presidency at this point, builds upon the basic approach as suggested by the previous Presidency and draws its logical conclusions one step further because of the way in which the exemption relating to the transfer of “credit and debit positions” is currently drafted: it should indeed be noted that the scope of the VAT exemption relating to the credit and debt positions (“debts”) is clearly narrower than the existing VAT exemption under the current Directive text: it is limited as it merely refers to transfers of debts (credit and debit positions) instead of using a more general reference to transactions concerning debts. The limitation is twofold as the current compromise text limits the exemption “ratione materiae” (only transfers, nothing more) and “ratione personae” (only services rendered by the initial owner of the credit position).

Under such a general reference as used in the current text of the VAT directive, the problems as highlighted above - which have led the Presidency to suggest to move the references to the various components of debt recovery agreements elsewhere - would quite obviously not come about.

The most obvious disadvantage of this approach as suggested by the Presidency is the loss of overview at one single place in the regulation of the VAT treatment to be applied to the various components of the agreements relating to debt recovery.

An alternative solution which would remedy this problem and which could be taken into consideration is to broaden the scope of the wording of the VAT exemption relating to credit and debit positions, and exempt in other words not merely the transfer of a credit and debit position but either also the management or the transactions relating to credit and debit positions in general (solution which would reinstate in fact the current scope of the exemption relating to debts). In that case debt recovery services could be explicitly excluded in the legal text of the directive (as is the case under the current text of the VAT directive), and all the examples of the various service components of debt recovery agreements could easily, logically and coherently be bundled in the single corresponding article of the regulation.

Examples of factoring arrangements

The scenarios which follow are (simplified) examples of how factoring arrangements may work.

Scenario A

- **A** is a small independent retailer and sells goods to private individuals on payment terms of 30 days. **A** does not have a processing or collections department. **A** contracts with a factoring company (**B**) to collect its debts (claims) and manage its sales ledger. **A** sells its debts to **B**. **A**'s bad debts are minimal and **B** assesses it is a reasonably low risk arrangement to enter into.
- **B** advances credit to **A** for 80% of the debts (claims). **A** will incur interest on funds to the extent they are drawn down (**A** only draws down half of the credit available and incurs interest on that).
- 75% of the debts (claims) are paid within **A**'s 30-day payment terms. **B** has to chase and collect the remaining 25% of the debts (claims). However, these are all generally collected within 1 month of the payment term expiring.
- **B** maintains **A**'s sales ledger, sends out monthly statements and provides reports on collections. **B** charges a fee for this service.

Factoring activities in Scenario A

- Sale of debts from **A** to **B**.
- Advance of credit from **B** to **A** on which interest is charged.
- Debt (claim) collection services by **B**, that is to say, chasing the debts.
- Provision of services by **B** of maintaining the sales ledger, sending statements and providing reports.

Scenario B

- **X** is a large manufacturer which has a poor cash collection record. It enters into a recourse factoring arrangement with Factor **Y**. **Y** analyse **X**'s accounts and can see that a cash collection rate of only 70% is achieved by **X** on all goods sold. **X** assigns his debts (claims) to **Y**.
- **Y** advances credit for 70% of the face value of the debts (claims). Although **Y** typically offers 80% of the value, due to the typically poor level of collection, it offers a lower level of 70% to manage its risk. **X** draws down the whole of the 70% as credit.
- **Y** provides a range of administrative services to **X** to help to improve the business's cash collection position. This includes providing reports on collections, issuing monthly statements to **Y**, and analysing data to identify where collection issues may be within the business.
- **Y** is able to collect 80% of the debts (claims) owing in the period. It deducts service charges and interest on the amount of credit drawn down. Under the arrangement **X** and **Y** split income collected in addition to the 70%. **Y** therefore gives an additional 10% of the face value of the debts (claims) to **X** – note however that once the charges and interest are deducted the actual cash received by **X** is less.
- The 10% given to **X** is not an advance of credit since the cash has now been collected. In respect of this amount, **Y** has simply collected the amount on behalf of **X**. This service is charged for through the service charge. **Y** retains its additional 10% to meet further service and interest charges.
- The debts (claims) still outstanding are reassigned to **X** who has since established better internal cash collection processes and continues to chase the debts.

Factoring activities in Scenario B

- Assignment of debts from **X** to **Y** under a recourse arrangement.
- Advance of credit from **Y** to **X** on which interest is charged.
- Provision of administrative services from **Y** to **X**.
- Provision of additional 10% of debts (claims) passed from **Y** to **X**.
- Retention of additional 10% of debts (claims) collected by **Y**.
- Reassignment of remaining debts (claims) from **Y** to **X**.

Scenario C

- A successful car rental company (**A**) has several clients who lease large fleets of cars. **A** had good relationships with his clients and they normally pay on time. Last year one of **A**'s clients (**B**) started delaying payment. **B** is now 8 months behind payment to a value of €500,000. **A** has tried unsuccessfully to collect the debt (claim) and used a lot of resource in doing so.
- **A** decides to assign the debt (claim) to a factoring company. The factor company (**C**) agrees to do this on a recourse basis (**A** wanted to enter into a non-recourse arrangement but **C** considered this too risky given the circumstances). The agreement provides that if **C** is unable to collect the debt (claim) in 120 days it will be reassigned to **A**.
- **C** opens a client account for **A** and agrees to advance 60% of the debt (claim) to **A**. In the end **A** does not draw down any of the available funds since it does not need the money.
- **C** is unable to collect the debt (claim) and commences legal proceedings on behalf of **A**. The 120-day period expires and **C** reassigns the debt to **A**. **C** continues to provide legal services in respect of the legal proceedings.
- **A** is not charged any interest on the provision of the credit services since **A** did not use any of it. **C** charges fees for the cash collection and legal services.

Factoring activities in Scenario C

- Assignment of debts from **C** to **A** under a recourse arrangement.
- Creation of client account by **C** for **A**.
- Advance of credit from **C** to **A** on which no interest is charged.
- Provision of debt collection services from **C** to **A**.
- Reassignment of debts from **C** to **A**.
- Provision of ongoing legal services from **C** to **A**.

Scenario D

- **X** is a supplier of electrical goods to the retail industry. Customers include several well-known department stores and electrical retailers as well as independent traders.
- Business is quite slow and **X** is in some financial difficulty. A lot of customers have started delaying payment (some debts are very old). **X** decides to enter into a factoring agreement to factor its entire list of debtors.
- **X** enters into talks with a factoring company (**Y**). **X** would like an advance on 85% of his debts (claims). **Y** only generally advances up to 80% of a client's debts (claims) and therefore 85% is too high. In order to calculate how much money **Y** will advance to **X** it carries out a review of **X**'s debtors.
- **Y** analyses **X**'s entire list of debtors and details of orders, payments made and outstanding amounts. **Y** discovers that the well-known high street customers (which account for 55% of **X**'s business) always pay, even though a few have recently started paying outside **X**'s payment terms. Most of the independent businesses (which account for 45% of **X**'s business) are paying late. 10% of these debts (claims) have been outstanding for over 12 months.

- **Y** agrees to advance credit to **X** but because the chance of collecting the 10% of old debts appears to be low, it will not advance credit for these amounts. **Y** grants **X** credit of 70% (that is to say, 80% less the 10% high-risk debts (claims)). **Y** agrees to enter into a recourse agreement for the 55% of debts with high street retailers and a non-recourse agreement for the 45% of debts with the independent customers.
- **Y** provides advice to **X** on its cash collection processes, including how it may deal with cash collection issues and on how the business's information technology could be adapted to make the process more efficient, for example, to use automated payment processes.

Factoring activities in Scenario D

- The recourse and non-recourse arrangement entered into by **X** and **Y**.
- Advance of credit from **Y** to **X** on which interest is charged.
- Provision of advice from **Y** to **X** about cash collection processes and IT systems.

Factoring process in detail

This Annex details an example of a recourse and non-recourse factoring process and how it works in practice.

Recourse factoring

- i) The factor's client (**A**) invoices its customer £100.
- ii) Under the terms of a factoring agreement the factor (**B**) would automatically take an equitable interest in the debt (claim). **A** assigns the debt (claim) to **B** at face value. (Whilst it is possible to take a legal interest in the debt (claim) it does not seem to happen in practice.)
- iii) Taking the equitable interest in the debt (claim) gives **B** an entitlement to pursue and take legal proceedings against the debtor (**C**).
- iv) Once the debt (claim) is processed in **B**'s system, **B** makes funds available to **A** of about 80% of the debt. The percentage made available is dependant on a number of factors, including the particular debtor and **A** and **B**'s exposure to and/or risk assessment of them.
- v) **A** decides whether or not to draw upon the funds. There is no obligation on the client to do so and indeed some businesses are "service only" (that is to say, only use debt collection services and maybe others).
- vi) If **A** draws down funds, he is charged a finance fee, at a previously agreed daily rate. This charge may be called the "discount charge" or "discount".
- vii) **A** is also charged a service fee based on the anticipated volume of business to be written and the administrative workload for **B**. The level of service varies between factors and from business to business and is considered to be a key differentiating factor for business.

- viii) The service fee charged by **B**, and any discount due, is set off against **A**'s available credit/debtor payments on a monthly basis.
- ix) As payments are received in from debtors these are set against **A**'s draw downs. If **A** has not drawn down on the £100 but the debt (claim) has been collected, the client must physically request draw down before being given money by **B**.
- x) If the debt (claim) is collected, the liability (and assignment) is discharged.
- xi) If **A**'s normal commercial terms expire, **B** will then chase **C** for collection of the money owed. The manner and extent of the collection approach varies according to the factor but is typically undertaken by a combination of telephone calls and letters. Eventually, legal proceedings may be brought against **C** if non-payment persisted.
- xii) If at the end of a defined period (for example, 120 days) the debt (claim) is not collected **B** will re-assign the debt (claim) to **A**. The re-assignment of the interest in the debt (claim) may occur at different times or events depending on the arrangements with **B**.

Non-recourse factoring

This type of service consists of all of the events set out above, except xii): At the end of the defined period:

- i) **A** is able to draw down the "un-approved" amount of the invoice: 20% in this example, subject to any exceptions within the factoring agreement and less fees and charges made by **B**.
- ii) **B** will proceed in pursuing **C** taking the necessary legal action to collect the debt (claim).
- iii) At the conclusion of the collection process, the debt (claim) will have been collected, or not.
- iv) Where the debt (claim) is not collected, **B**'s equitable interest, to the extent of the uncollected debt (claim), is re-assigned to **A** (as is the case for recourse arrangements).
- v) To the extent that the debt (claim) is not collected, this is **B**'s financial loss. The debt (claim) remains legally outstanding and owing to **A**. however, if **A** receives a payment after the re-assignment, **A** should forward this payment to **B**.