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REGULATORY FRAMEWORK FOR FACTORING EGYPT FINANCIAL SERVICES PROJECT TECHNICAL REPORT NO. 27

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INTRODUCTION

The objective of this project on factoring in Egypt was to complete a set of new regulations related to factoring, first in draft form for discussion with the EFS team and with the counterpart, then in final form following discussions with the counterpart.

As stated in the SOW of October 2005, these documents were therefore completed in two phases:

Phase One (before coming to Cairo): Draft regulations and a Policy Paper were completed on October 30 and sent to EFS, then EFS distributed them to the advisory team and to the counterpart.

Phase Two (in Cairo): Following an meeting on November 20 with the counterpart and discussions with the EFS team, a full proposal for a regulatory framework for factoring was completed on November 26 and distributed to the EFS team. Following discussions with the EFS team, this proposal (dated November 29) was given to the counterpart and discussed with him on November 30, in two meetings (morning and afternoon). At these meetings, some policy issues were discussed and resolved, and reflected in the final proposed regulations which were completed and submitted to EFS team and to the counterpart (the Executive Regulations, and the Rules, final version dated December 1). At the November 30 meetings the counterpart expressed satisfaction with the proposed regulatory documents; asked for a brief summary of the proposal for presentation to the Minister (this summary was then done by this Consultant, dated December 1), and asked the EFS project to arrange for an Arabic version of the Executive Regulations and Rules to be done by financial and legal experts.

The documents submitted by this Consultant as described above are the following:

Phase I: Documents of October 30, 2005:
Policy Paper on Factoring
Sample Regulations for Factoring

Phase II: Documents of November 26, 2005 (submitted to EFS team)
Proposed regulatory framework for factoring in Egypt
Proposed Executive Regulations
Proposed General Rules for Factoring
Comments on the current Executive Regulations

Documents of November 29, 2005
Additional material on capital requirements, and a chart on domestic and international factoring.

Documents of December 1, 2005 (reflecting the results of the meeting of November 30 with the counterpart):
Final proposed Executive Regulations (Art. 1)
Final proposed General Rules for Factoring
Brief Summary of these proposals
Brief Introduction to the proposals

The schedule of external meetings attended by the consultant in Cairo is included in the annex of this report. This schedule does not include the frequent meetings and discussions held with EFS team members at the EFS office.

POLICY PAPER ON FACTORING

This Policy Paper deals with the questions to be considered and resolved in developing an appropriate regulatory framework to permit and encourage the development of factoring in Egypt. This Policy Paper is based on factoring as practiced internationally, and does not make reference to the specifics of Egypt's current framework for factoring, which exists in those current laws and regulations which apply to contracts, to assignment of receivables, and to factoring specifically.

It is intended that this Policy Paper and the issues raised therein will serve as a basis for discussion, leading to the development of a specific regulatory framework appropriate to the Egyptian circumstance and which will encourage the development of factoring in Egypt on a sound basis.

This Policy Paper covers the following topics:

1. Basic Elements of a Regulatory Framework for Factoring
2. Definitions of Factoring
3. Domestic and International Factoring
4. Rules Governing International Factoring
5. Specific Issues Relating to Regulation of Factoring.
6. Establishing Criteria for Factoring Companies
7. Tax and Accounting Issues
8. Credit Information
9. Legal Codes and Factoring
10. Issues for Possible Regulatory Decision-Making

1. Basic Elements of a Regulatory Framework for Factoring

The legal and regulatory framework for factoring in any country lies in the combination of the following four areas:

- (a) Legal codes: The sections of the country's legal code which govern commercial contracts and assignment of receivables are a basic element in the legal framework for factoring (these sections of Egypt's legal codes should be assessed for their applicability to factoring).
- (b) Other laws and regulations may exist which either mention factoring, or which implicitly or explicitly affect factoring activity (in Egypt, the Law on Investments and some related regulations make general reference to factoring).

- (c) Regulatory bodies: There may be one or another regulatory body with a mandate to regulate or supervise factoring, or the non-bank financial service sector generally (in Egypt the GAFI is mentioned in the above-mentioned regulations relating to factoring).
- (d) The tax code and accounting rules and their application to factoring transactions and companies is another key element in the factoring framework

Once these four areas are understood as they exist in Egypt at present, it become possible to design a set of factoring regulations which are compatible with the existing legal framework and which will serve both to encourage factoring to develop, and to serve any policy objectives in regulating this activity.

2. Definitions of factoring

In the language of international conventions on factoring, “factoring” is defined

generally as a contractual relationship involving (a) a Supplier of goods and services, and (b) a Factor to which the Supplier sells or assigns existing or future receivables arising from contracts of sale of goods or services made between the Supplier and its customers (the Debtors), who are duly notified of the factoring contract.

A Factor shall perform at least two of the following functions:

- a) Provide finance for the Supplier, including advance payments, through the purchase (transfer, assignment) of the receivables.
- b) Maintenance of accounts (ledgering) relating to the receivables;
- c) Collection of the receivables;
- d) Provide protection against default in payment by Debtors due to the Debtors' financial inability to pay;

Different forms of factoring may arise when some but not all of these four functions are provided. For example, finance and collection, without maintenance of accounts, would be “invoice discounting”. Finance, collection and maintenance, but without protection against Debtor default, would be “factoring with recourse”.

Factoring is usually defined as limited to commercial receivables, and does not include consumer receivables (contracts for the sale of goods and services bought by individuals primarily for personal, family or household use). However, by some definitions, receivables arising from consumer services, such as utility or telephone bills, can be factored. In the US, there are no restrictions, and receivables for any goods or services, regardless of the type of Debtor, can be factored. In some countries, a governmental or publicly-owned entity may not be a Debtor in a factoring transaction.

The definition of factoring in international conventions includes “invoice discounting”, where the Factor simply purchases and collects the accounts receivable. In

“factoring” proper, the Factor also offers other services such as sales ledger management and credit control. “Invoice discounting” is popular with large firms that have sufficient in-house financial management and credit information capabilities, and so do not need a Factor’s assistance in credit management. “Factoring” is more popular with smaller businesses which cannot or do not want to employ full-time staff to manage credit.

In international commercial practice, it is common to include both factoring and invoice discounting together as “factoring”. For example, Factors Chain International does not distinguish between factoring and invoice discounting in its international factoring statistics.

Factoring contracts may be either “without recourse” (non-recourse factoring), or “with recourse” (recourse factoring). In “non-recourse factoring”, the Factor assumes responsibility for the buyer’s (Debtor’s) ability to pay, and bears the Debtor payment risk. In “recourse factoring”, the Factor has full and complete recourse to the Supplier when the Debtor does not pay the receivable in full.

Future receivables are a potentially important source of factoring, and should be included in any definition of factoring. Where a commercial relationship is stable, the future cash flow from product delivery may be considered reliable, so a Supplier may wish to factor these future receivables, and a Factor may wish to purchase these receivables. This is a common practice, and increases the flexibility of factoring as a financing instrument.

Factoring is one, but not the only, form of receivables financing. There are other forms of receivables financing that should not be included in the definition of factoring, which are as follows:

- (1) Forfaiting, which involves the purchase or discounting of documentary receivables (promissory notes, for example) without recourse to the party from whom the receivables are purchased. Forfaiting involves financial rather than commercial transactions, and does not have the same collection characteristics, so it is not typically an activity of factoring companies.
- (2) Refinancing, which involves the assignment of receivables against some form of bank or other credit granted to the assignor.
- (3) Securitization, which can involve issuance of securities backed by commercial receivables of various types, which are purchased by the securitization company (the issuer of the securities) from the commercial entity which originated the receivables.
- (4) Project finance, which involves loans to project contractors which are secured by future revenues generated by the project.

3. Domestic and International Factoring

Domestic and international factoring have many similarities, and some key differences. Key elements of factoring which apply to both domestic and international factoring are:

- a) Providing finance against accounts receivables.
- b) Credit control and acceptance of buyer payment risk.
- c) Maintenance of sales ledgers.
- d) Collection of outstanding sales invoices.

A major difference between domestic and international factoring is that domestic factoring involves parties who operate in a single legal system and local currency, while the parties to international factoring operate in more than one legal system and in foreign currencies. Also, in domestic factoring, the domestic Factor is solely responsible for the collection and quality of service. In international factoring using the “two-factor” system, the Import Factor is responsible for collections and is largely responsible for the quality of service.

In international factoring, it is possible for a single Factor to conduct the activity (“direct factoring”), but there are clear advantages to using the “two-factor system” which involves a co-operation between two factoring companies, one in the seller’s country (the Export Factor), and one in the buyer’s country (the Import Factor). As the two-factor system requires smooth co-operation between the Export Factor and the Import Factor, networks such as Factors Chain International have the advantage of providing a clear set of rules and procedures governing a two-factor relationship, which otherwise would need to be negotiated between the two factors with risks for both.

A two-factor system is required when an Export Factor wishes to offer factoring services to a large number of countries of export without itself having a close knowledge of the trading conditions of each country. The Export Factor benefits from the Import Factor’s ability to handle collections from the Buyer, if necessary through the court system of the Buyer’s country. A Seller (exporter) to several countries only needs to sign on Factoring Agreement with the Export Factor in its own language, and the Buyers will deal with a local Import Factor in their own language. Also, payment can be made by the Buyer to the Import Factor in its own country.

Because there are costs involved in a two-factor system, there may be circumstances where direct factoring is appropriate. Direct import factoring may be done where only credit cover and collection are required. Often a domestic factor will start to conduct international factoring by using its domestic expertise to perform direct import factoring, or will perform import factoring together with a foreign export factor, without necessarily (yet) becoming part of an international factoring network. Direct export factoring is more limited in application, and is usually done when the export is to a neighboring country which the seller considers part of its “home market” and where the Factor can operate and bear the buyer collection risk effectively, or else can obtain credit insurance at acceptable cost. Normally any Factor wishing to offer general export factoring services will use the two-factor system and (while this is not required to conduct business) should seriously consider joining one of the international factoring networks.

4. Rules Governing International Factoring

International factoring using the two-factor system requires a set of rules and procedures which govern the activities and basis for cooperation between two factors conducting the transaction in two jurisdictions. While such rules may be established bilaterally between those two parties, this is very cumbersome, hence the great benefit of having an agreed set of rules which can be applied rapidly among a large number of factors in many countries.

This need is a basic reason for the growth and success of the international factoring networks, of which Factors Chain International (FCI) is the most prominent.

While it is highly desirable for a factoring company to join FCI or one of the other factoring networks if they intend to conduct international (especially export) factoring as a core business, it is not desirable to oblige factoring companies to join such organizations, which at early stages of their activity may be a premature and unnecessarily costly step. A factoring company engaged only in domestic factoring is operating with a procedural framework determined by local laws and regulations. If that company engages in import factoring, or in export factoring where direct factoring is appropriate, the FCI Rules are not needed as such Rules govern the two-factor system.

That said, a significant factoring company will likely consider joining FCI or another factoring network. Taking FCI as an example will illustrate how the international factoring rules are applied.

By joining FCI, a factoring company signs an agreement (the “Interfactor Agreement”) in which it commits to be governed by three sets of rules and procedures.

1. The General Rules for International Factoring (GRIF)
2. The edifactoring.com Rules
3. The Rules of Arbitration

These rules constitute the basic framework governing co-operation between members. Together they define the rights and obligations of the parties to transactions under the two-factor system.

Because of the clarity of these Rules governing FCI members, and the importance of maintaining the integrity of such Rules as they apply to all members, it is unnecessary for any country to incorporate the detail of these Rules in any regulatory framework.

FCI is a so-called “open” factoring chain, allowing more than one factor in a given country to be an FCI member. By encouraging multiple memberships, it allows other FCI members to select which correspondent factor to work with in another country. This allows market forces and competition to determine the degree of success of FCI members in a given country.

The following summary illustrates the application of international factoring rules, using the FCI example,

a. The FCI Interfactor Agreement

The Interfactor Agreement is the basis of the contractual arrangements between factors.

It binds the signers to the three sets of FCI Rules: the GRIF, the edifactoring.com Rules and the Arbitration Rules. Special conditions affecting only certain countries can be incorporated in the bilateral Interfactor Agreements.

b. The edifactoring.com Rules govern how members communicate with each other, the obligations of the respective factors, and matters of security, confidentiality and storage of records. Transactions between the respective factors are validly concluded by the exchange of edifactoring.com messages without any written documentation.

c. The General Rules for International Factoring (GRIF) is a uniform set of rules and regulations, created over many years (since 1969) by FCI and governing transactions

between FCI members. The GRIF, together with the Interfactor Agreement, is in effect a service and guarantee contract between the Export Factor and the Import Factor. The Export Factor, who has received the assignment of accounts receivable from its customer (the Seller), assigns those same accounts receivable to the Import Factor to collect from the Buyer. This assignment technically taking place by means of an edifactoring.com message. The Import Factor and Export Factor only need to sign one Interfactor Agreement to cover transactions of many sellers.

Because the Export Factor, in assigning the accounts receivable to the Import Factor who bears the credit risk (assuming the Import Factor approves a credit limit applicable to the Buyer), the Export Factor is able to offer credit risk cover and payment at a pre-determined date to a Seller. These mechanisms permit an Export Factor to offer cross- border factoring to exporters in his country, thereby encouraging international trade.

The GRIF is a comprehensive set of rules which covers the following areas:

Factoring contracts and receivables

Parties taking part in two-factor international factoring

Receivables included

Common language

Time limits

“Writing”

Deviating agreements

Numbering system

Commission/Remuneration

Settlement of Disagreements between Export Factor and Import Factor
Good faith and mutual assistance

Assignment

Validity of assignment

Validity of receivables

Reassignment of receivables

Definition of Credit Risk

Approvals and requests for approvals

Reduction or cancellation

Obligation of Export Factor to assign

Rights of the Import Factor

Collection

Unapproved receivables

Transfer of Payments

Payment under guarantee

Prohibitions against assignments

Late payments

Disputes

Representations and Warranties

Communication and electronic data interchange (EDI)

Accounts and reports

Indemnification

Breaches of provisions of these Rules

d. The FCI Rules of Arbitration provide for a method of resolving disputes between FCI members through an FCI arbitration process, which involves appointing arbitrators whose decisions are binding.

5. Specific Issues Relating to Regulation of Factoring

Factoring has developed in a variety of legal and regulatory settings, Specific to the individual country in which the factoring is provided. The bedrock on which factoring lies is each country's laws governing contracts between parties and assignment of receivables. Where these laws are clear and well-tested as to enforceability, factoring has developed without any specific legal or regulatory framework for factoring as such.

However, where factoring is a new concept, or where there are gaps or difficulties with in the legal framework for assignment of receivables, it has been desirable to put in place a body of law and/or regulation in order to make factoring a workable activity in practice. For example, regulations can usefully to define factoring and the parties to factoring contracts, specify the notification process. It may also be desirable, to avoid inappropriate regulatory confusion, unnecessary and onerous registration processes, or excessive costs, to clarify certain features of factoring. For example, regulations can clarify that factoring contracts are not "loans" (which could make them subject to banking laws); or that transfers of commercial contract receivables which are the objects of factoring do not need to be formally registered each time a receivable is assigned to a factor.

Another area where there is a wide spectrum of practice among countries is the degree and type of regulation of factoring companies. The basic alternative types of regulation of factoring companies in various countries are the following:

--No regulation whatsoever specific to factoring (US, UK and several other EU countries, some emerging markets). This situation encourages factoring and regulates it within the country's the legal and fiscal framework. Each factoring company operates according to its corporate governance rules and its contractual relationships. There is no specific regulatory body overseeing factoring or other non-bank financial services (leasing and consumer credit

are similarly unregulated, while banking, insurance and securities markets are governed by regulatory bodies).

--Factoring is governed by the regulatory body which is charged with governing non-bank financial services activities. This body may be the Central Bank, using rules

distinct from regulation of commercial banks (which take deposits from the public, unlike factoring companies). The regulatory body may be a "super-regulator" of non-banking financial businesses including capital markets, insurance etc. Or the regulator may be a regulatory body distinct from the regulators of the banking and capital markets sectors. This regulatory framework may be limited to setting criteria for factoring companies, or it may provide for a specific licensing of factoring companies.

--Factoring may be closely regulated in law, and restrictions may be placed on who can engage in factoring (for example, Russia restricts factoring activity to licensed commercial banks). Such restrictive or detail laws, or too-detailed regulations, can prevent factoring from developing properly in a given country.

There are some international conventions which define factoring and the relationships between parties in international factoring. The best known is UNIDROIT convention of 1988. The terms of that convention are compatible with the practices of FCI and the other factoring networks. Relatively few countries have ratified this convention (only 16 countries have adopted this convention, included some but not all EU countries). The definitions and practices spelled out for international factoring in the UNIDROIT convention are essentially those followed by FCI members, making it unnecessary in practice for a country to formally adhere to this convention (the FCI Rules are much more detailed than the UNIDROIT convention, which is a more general framework).

The other international convention which mentions factoring is UNICTRAL, which is more recent and which so far has few adherents.

6. Establishing Criteria for Factoring Companies

A major area for decision in any regulatory framework for factoring is determining the criteria for determining who can perform factoring activities. Such elements as corporate form, minimum capital, ownership criteria, scope of business, and required expertise may be areas where clear standards should be set.

In some countries there are no restrictions on what type of entity may perform factoring activities. In others, such activities are highly restricted, for example limited to licensed banks only. These are the two extremes. However, in most countries, especially those emerging markets where factoring is new and is being introduced, there is typically a set of criteria set forth in some regulatory form which stipulates minimum capital requirements. There may also be some stipulations as to the type of company and ownership.

The desired standard for such regulation should be to permit, even encourage, the establishment of legitimate factoring businesses, while ensuring a level of serious expertise and financial backing to permit such businesses to function properly. If this balance is not struck, on the one hand there is the possibility of marginal entities promoting themselves to the market as factoring companies; and on the other hand, the emergence of factoring could be stifled by overly onerous regulatory requirements which create barriers to entry.

The following are some criteria which would typically be considered for regulating factoring companies:

Corporate form:

One set of criteria would require a factoring company to be a joint stock company. This would appear to be a prudent requirement to ensure proper governance and financial management and reporting.

Minimum capital:

Required minimum capital is a key issue, and various criteria have been set in various countries. The best guiding principle would appear to be to set minimum capital at a level which ensures serious shareholder backing, but not so large as to be an unnecessary barrier to entry or disproportionate to the real needs of a factoring business.

Some countries have set a high minimum capital for factoring, at or near the level required for participation in Factors Chain International (USD 2 million). But this level of capital base is not needed for companies wishing to engage in the business of domestic factoring or direct import factoring, so this level of minimum capital is excessively high and creates a barrier to entry and an impediment to the development of factoring.

At the other extreme, countries with no capital requirements (such as Brazil) have seen a proliferation of thinly-capitalised and marginal entities offering factoring, which is undesirable.

Where international programs have recently advised developing countries, the minimum capital requirements are EUR 100,000 (Romania) and EUR 250,000 (Serbia). These levels appear sufficient to ensure serious financial backing for a factoring company but without posing an obstacle to the development of factoring activity, as higher capital requirements could. Some countries' central banks have responsibility for regulating non-bank financial service companies, and in those cases there may be minimum capital, and/or licensing requirements, for such entities.

Lending and credit exposure ratios

In some countries, advances to clients by factoring companies may be defined as credit or loans and restrictions may apply, such as limits on total advances in proportion to equity, or limits on exposure to a single client. In other countries, factoring advances are specifically excluded from the definitions of loans, and therefore not regulated in this way.

Ownership of factoring companies

Many countries have no regulations or requirements of any kind on who may own a factoring company. At the other extreme, some countries (Russia, China) permit factoring to be done only by licensed commercial banks. In most developing markets for factoring, where the authorities wish to put some regulatory framework in place, there are various options which are used.

A relatively restrictive set of ownership criteria limits shareholding in factoring companies to licensed banks and non-bank financial institutions, or to factoring companies owned by such entities. This set of criteria excludes some of the most qualified entities who could enter the factoring business, namely major commercial and trading companies.

A less-restrictive but still conservative set of criteria would require factoring to be owned either by (a) licensed banks and non-bank financial institutions; (b) subsidiaries of licensed bank or non-bank financial institutions; or (c) companies whose sole or primary purpose and activity is factoring.

To permit the development of factoring, this sector should be open to the participation of well-established commercial businesses who are able to meet the capital requirements and also can provide the needed management and operational expertise to conduct factoring, such expertise being closer to commercial sales and credit than to banking.

A related question is that of shareholder support for the factoring company. In some countries, the regulations require the shareholders of a factoring company to provide unconditional support, without limit, in the event the factoring company fails to meet its financial obligations.

Scope of business of a company conducting factoring

If the objective is to encourage the development of factoring, it is best not to limit factoring to companies whose sole or primary business is factoring. For example, a commercial company or a bank, with sufficient capital and with the needed commercial and financial knowhow, should be able to engage in factoring as a specific business and division within its larger organization. While most banks do factoring through separate subsidiary companies, a few leading banks, such as HSBC, do factoring through a separate division which is part of the bank itself.

Management expertise:

Setting some standards for experience levels of senior management of factoring companies, where experience in managing financial or commercial businesses is required, could be appropriately.

7. Tax and Accounting Issues

In any jurisdiction, it is important to understand what fiscal laws and regulations apply to factoring, and what accounting practices are applicable by the fiscal authorities, regulators and by the accounting and auditing profession.

In the fiscal area, it is important to determine the applicability and rates of taxes such as Value Added Tax (VAT), or equivalent tax such as a sales tax, to factoring transactions such as factoring commissions and interest on advances. There may be special deferrals or exemption on such taxes. An important exemption in many countries is the non-applicability of VAT to financial services (this is standard EU practice). If factoring can be defined as a financial service, then these revenues from factoring activities would not be subject to VAT (or equivalent sales tax). However, VAT and sales tax treatment of factoring is in many countries who use these forms of taxation is evolving and offer unclear in practice, especially with a relatively new service such as factoring, so it is important to clarify the application of the relevant taxes.

An obstacle to factoring in some countries has been the levying of transaction taxes or stamp duties payable when commercial accounts receivable are purchased. In some cases collections in certain circumstances also involve taxes or stamp duties.

A factoring company should be able to manage its business in a given fiscal environment as long as the rules are clear and fairly applied, and there are no overly onerous taxes on factoring transactions which make it unattractive to perform.

Regarding accounting rules, these also need to be clarified for the benefit of proper tax and financial reporting of factoring company financial statements. Because factors purchase receivables and make contingent commitments involving degrees of risk, the accounting treatment of provisions and losses should be clearly understood and applied.

8. Credit information

Factoring is greatly assisted where there is good credit and other information available about local companies from sources such as credit information bureaus and business registries. If such information sources are lacking, one separate but parallel objective in promoting factoring may be to promote the development of credit information bureaus and accurate business registries.

9. Legal Codes and Factoring

Factoring is based on the legal codes of any country. There are some questions which need to be addressed and clarified in any country in order to understand the legal framework for factoring. If these questions can be answered for domestic factoring, then it is also possible to evaluate the environment for international factoring as well.

Some key legal questions pertinent to factoring are:

- a. Can accounts receivable be assigned to a third party ?
- b. Does "assignment" constitute a legal "sale" of the receivables ?
- c. Must the assignment be notified to the buyer in order to be legally enforceable, and in what form must this notification take place ?
- d. Does the legal code include the concept of reservation/retention of title ?
- e. Is prohibition of assignment possible ?
- f. Is there a developed insolvency law including receivership/controlled administration provisions ?

To clarify these and other legal issues relating to factoring, it is important to consult a legal expert who has been associated with a factoring or receivables discounting entity to determine the environment for factoring in the current legal codes of the country.

10. Issues for Possible Regulatory Decision-Making

To establish a regulatory framework for factoring, the following decisions need to be taken by the potential regulatory body:

a. Current legal framework:

Determine whether the current legal code permits domestic factoring, and identify any gaps that may be overcome in regulations to define and govern factoring activity.

b. Establishment of factoring companies:

Determine what level of regulation or licensing requirements, if any, are needed or desirable for the establishment of factoring companies. This includes determining the corporate form, minimum capital, shareholder requirements, and other features of factoring companies.

c. Regulatory body:

Determine which regulatory body, if any, should be responsible for licensing and/or regulating factoring activity. If banks are to be involved in factoring, determine what the role of the bank regulator is or should be.

d. Regulatory rules:

Determine what regulatory rules should apply to questions such as

- Criteria for factoring companies (point b. above),
- The desired scope of regulation (definition of “factoring”),
- Regulation of domestic factoring,
- Regulation of international factoring: determine what requirements to place on international factoring, especially export factoring, as distinct from those on domestic or import factoring where the activity and financial exposure is domestic only).
- What perceived risks exist in the factoring business which require specific regulation or oversight by a Government body to protect the public interest ? Should there be exposure limits and other risk management criteria ?

e. Tax and accounting:

Determine what clarifications, if any, are needed in the areas of application of tax codes and accounting rules to the circumstances of factoring companies and transactions.

f. Current factoring company activities:

What are the current factoring activities, in the country ? Is domestic factoring or receivables discounting activity taking place ? If any factoring companies conduct international factoring, do they participate in an international factoring network and therefore abide by the rules and procedures of that network ? What is the factoring company experience, and any real or perceived difficulties, with the current legal, fiscal and accounting framework ? Determine, from the above information, whether there are any obstacles or risks in current factoring activity. Determine whether there are any impediments which hamper the development of factoring. Determine whether any of these obstacles or risks require require a regulatory remedy.

COMMENTS ON THE CURRENT EGYPTIAN FACTORING REGULATIONS

This memorandum with comments on the current Executive Regulations (Art. 1) is prepared for the EFS Project as part of the task of developing a regulatory framework for factoring in Jordan. The comments herein provide some background to the proposals made in my November 27 documents, namely the Proposal for a Regulatory Framework for Factoring and the two accompanying regulatory documents: (A) proposed Executive Regulations, and (B) proposed General Rules for Factoring.

The current Egyptian regulations in the Investment Law set forth certain requirements for factoring companies. Some of these requirements should be retained in a new regulatory framework governing factoring, while other requirements should not be retained as they are overly restrictive and will limit the development of factoring. The Comments (below) to each section of the current regulations give a rationale for treatment of each issue in new Executive Regulations and General Rules being proposed.

The current regulation covering factoring in Egypt, Article (1) of the Executive Regulations to the Investment Law, consists of two sections:

1. A definition of factoring (two paragraphs), and
2. Requirements for establishing and operating factoring companies (two paragraphs with nine sub-paragraphs).

The definition of factoring in the first two paragraphs of the Executive Regulations should be amended and substituted by a correct definition of factoring as used internationally. This new definition appears in section 1 of the proposed Executive Regulations.

The remainder of the present Article (1) gives a set of requirements for factoring companies. In the comments below, the requirements in the current regulations are given in **boldface**, and the comments are in *italics*.

A company engaged in factoring business should satisfy the following conditions:

- **Has a legal form of a joint stock company.**

COMMENT: This requirement should be retained, as it is the standard legal form for a financial service enterprise.

- **Its business is limited to factoring**

COMMENT: This is too restrictive. A commercial company or a bank, with sufficient capital and with the needed commercial and financial knowhow, should be able to engage in factoring as a specific business and division within its larger

organization. The proposed licensing requirements include a requirement that if the applicant engages or will engage in business other than factoring, the company must maintain distinct books and records for its factoring activity.

- **A financial institution is amongst its shareholders**

COMMENT: This is unnecessarily restrictive. Factoring should not be limited to companies where a bank or insurance company is one of the shareholders. Well-established commercial companies are also capable of owning and managing a factoring business.

- **Its paid-in capital is not less than 10 million Egyptian pounds or equivalent amount in foreign currencies.**

COMMENT: This requirement is high by international standards. In many markets have a combination of large factoring companies and smaller ones serving a more SME-oriented clientele with smaller transaction size and therefore smaller capital requirements. The LE 10 million capital requirement is close to the level of capital required for participation in Factors Chain International (USD 2 million). But especially for factoring companies wishing to engage in domestic or import factoring, or to do factoring with relatively small-scale enterprises, it is an unnecessarily high barrier to entry. Many countries have no minimum capital requirements for factoring activity, while in others minimum capital requirements have been set as low as EUR 100,000 (USD 120,000). A level of 1 to 2 million Egyptian pounds would seem to be an appropriate level to ensure sufficient financial resources to conduct the business and to encourage factoring to be developed by serious participants.

- **The managing director or the executive officer of the company has financial, banking, commercial, or insurance experience of not less than 10 years after getting a relevant university degree. A company can not exercise the factoring business until it satisfies this condition and give a notice to this effect to the General Authority for Investment and Free Zones (GAFI).**

COMMENT: This requirement makes sense in establishing some level of expertise which, like minimum capital, ensures serious business and management capability. It is retained in the licensing requirements contained in the proposed Rules.

A Factor should observe the following when exercises its business:

- **Business standards and criteria to be developed by its board of directors in compliance with applicable laws and regulations and to be notified to GAFI.**

COMMENT: This requirement makes sense, as it encourages the company's Board to establish a sound business and operating plan and to so inform the Regulator, whose interest is not in the business details but rather to ensure that to ensure that some standards and criteria are being developed in a serious way

by each factoring enterprise. This requirement is maintained in the licensing requirements in the proposed Rules

- **Keeping books of account to record details of transactions, type of business involved in the transaction, amount, term of finance, type and evidence of payment of due balances**

COMMENT: This requirement for proper accounting and financial management makes sense, as it would for any joint stock company which is required to report properly to fiscal authorities and to its shareholders. Proper management of accounts receivable (ledgering) is basic to the factoring business and systems for doing so must be part of a factoring company's knowhow base and operating procedures. The proposed Rules include such requirements as part of the licensing process.

- **In case of international factoring business, getting membership in one of the international groups of factoring companies which regulate the international factoring activity including: Factoring Chain International (FCI) and the International Factoring Group (IFG)**

COMMENT: Joining one of these international factoring networks is a business decision best left to a given factoring company, and should not be a regulatory requirement. There are numerous examples of factoring companies which begin as domestic factors, then begin doing some import factoring (where collections and risk assessment is also in the factor's home country), and possibly some export factoring under bilateral arrangements with a foreign export factor, before then deciding to meet the requirements and pay the fees to join one of the international factoring groups.

However, it is certainly beneficial for a factoring company engaged in international factoring on a significant scale to join one of these networks. Also, joining these groups has benefits in adding to the factoring knowhow of members, who have access to detailed information and training programs about factoring.

(Note: FCI and IFG do not "regulate" factoring but rather are groups of companies who agree to follow certain procedures in conducting cross-border factoring with fellow members).

- **Setting up the necessary arrangements for practicing its business in foreign markets where there is no international factoring services.**

COMMENT: Where a factoring company wishes to do export factoring, it will need to identify a correspondent factor (the import factor) with which to work in that market. If factoring services are not available, then normally an exporter would wish to receive an acceptable bank letter of credit covering the transaction. It would be unusual for a factoring company to itself establish a factoring business in the other country, unless it is part of an international banking group which is also present in that country. In any case, however, this is a business decision best left to the judgment of the factoring company.

PROPOSED EXECUTIVE REGULATIONS ON FACTORING

These proposed Executive Regulations will amend and replace the current Art (1) of the Executive Regulations to the Investment Law.

1. Definition of Factoring

Factoring is a three-party transaction between a Factoring Company, a business entity supplying goods and/or services to another business entity (the Seller), and the purchaser of the Seller's goods and/or services (the Debtor). A Factoring Contract means a contract in writing between the Supplier and the Factoring Company pursuant to which the Supplier assigns to the Factoring Company existing and/or future accounts receivable (receivables) arising from contracts of sale of goods or services made between the Supplier and its customers (the Debtors).

A Factoring Company shall perform at least two of the following services for the Supplier:

- (i) Finance for the Supplier, including advance payments;
- (ii) Maintenance of accounts (ledgering) relating to the receivables assigned to the Factor by the Supplier;
- (iii) Collection of receivables;
- (iv) Protection against default in payment by Debtors.

2. Factoring as a financial service

Factoring is a non-banking financial service; factoring contracts and transactions shall be deemed financial services for fiscal and regulatory purposes; and Factoring Companies shall be deemed financial service providers for regulatory purposes.

Advances to Suppliers by Factoring Companies are not loans but are a part of the factoring services provided under a Factoring Contract between a Factoring Company and a Supplier.

3. The Authority for Factoring

The Authority has the authority to issue Rules, approved by its Board of Directors, concerning the characteristics and operations of Factoring Companies; and to grant licenses to companies permitting them to perform factoring transactions, under Rules to be determined by the Board of Directors of the Authority. Such Rules shall include:

- (i) Criteria and procedures for licensing new Factoring Companies to be

- established.
- (ii) Requirements to be met by applicant for a factoring company license and by
 - licensed Factoring Companies;
- (iii) Procedures for monitoring by the Regulatory Authority of licensed Factoring Companies.
- (iv) The types of factoring transactions which may be performed by licensed Factoring Companies, to include domestic factoring, import factoring, and export factoring.

4. Requirements for a Factoring Company

A Factoring Company operating in Egypt and performing factoring services as defined in section 1 above must be a Joint Stock Company registered under the laws of the Republic of Egypt.

The other requirements for a Factoring Company and for granting a license to perform factoring activity in Egypt shall be determined by the Rules approved by the Board of Directors of the Authority, such rules to include the following:

- Minimum capital requirements for a Factoring Company
- Financial ratios to be maintained by a Factoring Company
- Requirements for periodic financial reporting and external audit reports to be submitted to the Authority.
- Requirements for relevant experience of the senior management of the Factoring Company.
- Requirements to communicate the operating and risk policies used by the Factoring Company in the conduct of its factoring activity.
- Other requirements to be determined by the Board of Directors of the Authority.

5. Consistency with other Laws and Regulations

Factoring activities, the activities of licensed Factoring Companies, and factoring contracts must be consistent with all other Laws and Regulations of the Republic of Egypt.

GENERAL RULES FOR FACTORING IN EGYPT

Article 1. Introduction

These General Rules (the “Rules”), approved by the Board of Directors of the Authority under the authority granted to it by the Investment Law and its Executive Regulations, stipulate the scope of factoring activity practiced in Egypt, and the conditions to be met by companies engaging in factoring activity (Factoring Companies, or Factors).

These Rules, and the activities of Factoring Companies, shall be consistent with all prevailing laws and regulations, including laws and regulations governing contracts, assignment of receivables, taxation, and all other prevailing laws and regulations.

Article 2. Scope of these Rules

Chapter I of these Rules defines factoring activity, the parties to a factoring transaction, and factoring contracts. These Rules shall apply to the parties and legal relations arising out of factoring contracts and assignments of receivables concluded in accordance with the provisions of these Rules and with prevailing laws and regulations.

Chapter II of these Rules stipulates the requirements for companies to engage in factoring activity; the requirements and procedures for licensing of factoring companies; and the monitoring processes to be used by the Authority and the requirements to be met by licensed Factoring Companies.

Chapter I: Definition of Factoring Activity and Factoring Contracts

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Article 3. Definition of a Factoring and of Factoring Contracts and Services

The definition of factoring, factoring contracts and factoring services is as set forth in the Executive Regulations, section 1.

Article 4. Types of Factoring

Consistent with the definitions cited in Article 3 above, Factoring Companies may perform one or more of the following types of factoring activities:

(a) Without recourse, or non-recourse factoring, where the Factor assumes responsibility for the buyer’s (the Debtor’s) ability to pay. The Supplier, however, retains the responsibility and obligation if for any reason, other than financial inability, the Debtor does not pay the receivable in full.

(b) With recourse, or recourse factoring, where the Factor has full and complete recourse to the Supplier, and the Supplier is ultimately responsible for settling the unpaid receivables when the Debtor does not pay the receivable in full.

(c) Domestic factoring, where both the Supplier and the Debtor are Egyptian-registered entities;

(d) International factoring, where either the Supplier or the Debtor is an entity registered in a jurisdiction other than Egypt. International factoring may be either export factoring or import factoring.

(i) Import factoring involves a non-Egyptian supplier and a Debtor (buyer of the goods or services provided by the Supplier) which is an Egyptian entity.

(ii) Export factoring involves a supplier which is an Egyptian entity and provides goods and services produced within Egypt, and a Debtor which is a non-Egyptian entity.

Egyptian factoring companies engaged in Export Factoring should obtain risk coverage for the foreign Debtor obligation, either from a foreign Factoring Company, or from a credit insurer or guarantor.

Article 5. Definition of the Parties to a Factoring Transaction

This Article provides definitions consistent with those given in the Executive Regulations, section 1.

The parties to a factoring transaction include the Factor (the Factoring Company), the Supplier, and the Debtor.

(a) The Factor

The Factor shall mean a legal person (a joint stock company) who provides a Supplier, for a fee or interest rate, or both; and for an agreed upon time period, with services as per the Executive Regulations section 1.

(b) The Supplier

The Supplier shall mean a legal person that provides goods and/or services to the Debtor.

(c) The Debtor

The Debtor shall mean a natural or legal person that purchases goods and/or services, from the Supplier.

Article 6. Rights and Obligations of the Debtor

(a) The Debtor shall have the right to be informed of the existence of the Factoring Contract, the accounts receivable for the Debtor's account which the Supplier has assigned to the Factor, and the identity of the Factor.

(b) The Debtor's rights and obligations in its contract with the Supplier shall remain unchanged, excepting only the change of the party which is entitled to receive the payment for the receivable from the Debtor.

(c) Notice to the Debtor

Notice of assignment of receivables under a Factoring Contract is to be given to Debtors in writing (in any form capable of being reproduced in tangible form). Such notice shall be deemed to be given to the Debtor when it is received by the Debtor.

The notice to the Debtor shall include information regarding the existence of a contract between the Factor and the Supplier, and shall reasonably and clearly identify the receivables which have been assigned, and the Factor to whom the Debtor is required to make payment; and the manner in which payment to the Factor by the Debtor is to be made.

Notification of the Debtor of the factoring transaction shall be done in the manner required by those provisions of Egyptian Law (Civil Code) governing notification of assignment of financial rights.

Once notice has been properly given, the Debtor has an obligation to make payment to the Factor in the same manner as under the original contract with the Buyer.

(d) Insolvency of Debtor

An obligation of a Debtor to a Factor for a receivable assigned and owed to that Factor, that is unpaid at the moment the Debtor is declared in insolvency or in bankruptcy, reorganization, or liquidation, shall be dealt with by the Courts as an unsecured obligation or, if the Factor has an identifiable interest in collateral, as a secured obligation according to Law.

Article 7. Requirements for a Factoring Contract

A Factoring Contract between a Factor and a Supplier will adhere to the requirements stated below. Any other provisions of such Factoring Contract will be for the parties to such Factoring Contract to agree between themselves.

(a) Factoring Contracts must specify the nature of the services being provided by the Factoring Company, the present or future accounts receivable which are the object of the Factoring Contract, and the fees and other conditions applied to the services to be provided by the Factor under the Factoring Contract.

(b) A Factoring Contract is not a loan agreement, nor is it an agreement made solely to facilitate the collection of accounts from Debtors.

(c) A contract in which the Factor and the Supplier are the same person shall not be deemed to be a Factoring Contract.

(d) Expiry of the Factoring Contract

A Factoring Contract shall cease to exist after the expiry of the period of time for which it was concluded. If no period of time was fixed, it shall cease to exist after all Debtor accounts transferred by the Factoring Contract have been paid in full.

(e) Factoring Contracts for Future Receivables

The object of a Factoring Contract may consist of, or include, receivables arising from a sale of goods and/or services by a Supplier to a customer or customers (Debtors) in the future. A Factoring Contract for future receivables is not required to identify the customers (Debtors), nor is it required to identify the specific goods and/or services, which are the object of the Factoring Contract. A Factoring Contract for future receivables must specify whether it expires on a given date, or whether it is good until cancelled by either the Supplier or the Factor.

(f) Obligations of the Parties to a Factoring Contract:

(1) Obligations of the Factoring Company

The Factor shall accept assignment of the receivables of Supplier according to the Factoring Contract.

The Factor shall perform the services according to the Factoring Contract.

A Factoring Company may provide factoring services to customers (Suppliers) who compete with each other, in which case the Factor must maintain strict and complete confidentiality of information about each Suppliers' customers and terms of sale.

Factoring company should not engage, directly or indirectly (by any of its owners, directors, managers, or affiliates) in any business which is in competition with any of its customers (Suppliers).

(2) Obligations of the Supplier

The Supplier is liable to the Factor for the existence and the value of the receivables that constitute the object of the Factoring Contract.

The Supplier is liable to the Factor for the existence and the value of receivables assigned free of liens, disputes, charges, defense and all other rights of third parties. The Supplier shall certify, in the Factoring Contract, that there are no pledges, encumbrances, or any other third-party claims against the receivables which are to be assigned to the Factor under the Factoring Contract.

The Supplier is obliged to put at the disposal of the Factor any information and supporting documentation relating to the Debtors of the receivables which are the object of the Factoring Contract, and to do so not later than the time when the Factor is able to exercise the financial rights under those receivables.

If the Debtor, whether in error or for any other reason, makes payment to the Supplier, representing payment for receivables that have already been assigned to the Factor, and after due notice given to the Debtor, the Supplier shall promptly transfer such payment to the Factor.

(g) Security under the Factoring Contract

The Factor and the Supplier may agree on, and include in the Factoring Contract, the application of any form of security to the factoring activity. Forms of security may include deposits, mortgage, pledge of assets, guarantees secured by third parties, or other forms of measures in compliance with provisions of applicable laws.

(h) Subsequent assignment of receivables

A Factoring Contract should include a clause stating that the Factor may reassign or pledge to another party the receivables which the Supplier has assigned to the Factor under the Factoring Contract; or should state whether the parties agree to limit or prohibit subsequent assignment or pledge of the accounts receivable which are the object of that Factoring Contract

(i) The conclusion by a Supplier of Factoring Contract with more than one Factor in connection to the same Debtor account, is not permitted, and any contract subsequent to the first such contract shall be void.

(j) Factoring contracts between a Factor and a Supplier must clearly state the date of the contract and be signed by duly authorized representatives of both parties. Authentication of the date and signature will be done in a manner to be agreed between the parties.

(k) Where a factoring company provides the service of collection on behalf and for the account of its customer (the Supplier), without an assignment of the Supplier's accounts receivable to the Factor, this activity will be the object of a separate collection contract. In such cases the factoring company performing the collection services shall:

1. exercise due care in performing such service as an agent of its customer
2. not commingle funds collected on behalf of a customer with its own funds or use customer's funds for any purpose other than to pay the proceeds to the customer, after deducting the fees and expenses agreed upon in the collection contract.

pay the amounts collected on behalf of a customer promptly after receipt, and in the manner agreed upon in the collection contract.

(l) Confidentiality of information

A Factoring Contract should include a confidentiality clause reflecting the agreement between Factor and Supplier concerning the use by the Factor of information obtained by the Factor from the Supplier about the Supplier, and its present or future customers (the Debtors), and the commercial activity and terms of sale between the Supplier and its customers. However, notwithstanding such confidentiality agreement, the Factor will provide such information as required by a Court order. A Factor may also provide information to a licensed credit bureau relating to the obligors (Debtors) of the accounts receivable which are the object of a Factoring Contract.

Chapter II. Licensing Requirements for a Factoring Company

Article 8. The Licensing Process

Any company wishing to engage in factoring in Egypt must apply for, and be granted, a license for this purpose by the Authority. Such license will only be granted to Egyptian-registered companies fulfilling the requirements set forth herein. Requirements for licensing factoring companies fall into three categories:

- (a) Criteria which must be met, and information provided, by the applicant at time of its application for a license;
- (b) Requirements which must be fulfilled by the applicant after preliminary approval of the application, but before final approval of the license and commencement of factoring activities;
- (c) Requirements which a licensed and operating Factoring Company must meet on an ongoing basis.

Article 9. Submission of License Application

An application for a license to engage in factoring activity must be made either by an applicant which is an Egyptian-registered company wishing to engage in factoring activities in Egypt as a Factoring Company, or by an applicant representing the founders of a Factoring Company to be established in Egypt.

The applicant must submit to the Authority an application letter (or complete the form provided by the Authority for this purpose) stating the Applicant's status as, or intent to establish, a Joint Stock Company with paid-in capital in cash of not less than ten million Egyptian pounds, or equivalent in foreign currencies, at the time it begins its activities as a Factor. The application should be signed by a duly authorized representative of the applicant and provide the following information about the Factoring Company:

(a) A description of the intended factoring activities of the applicant, including a statement of the business standards and criteria to be applied by the Factoring Company in the conduct of its business.

(b) Confirmation of the Factoring Company's present or intended capacity to maintain books of account and financial controls, accounts receivable ledgers, establish risk management policies and procedures, and internal audits and controls, appropriate to conduction factoring activity.

(c) Confirmation that factoring is intended to be the sole or primary activity of the applicant Factoring Company, which is a requirement for any company licensed to engage in factoring activities in Egypt.

(d) The identities (names, addresses), and percent of share ownership, of all shareholders of the applicant holding (or intending to hold) five percent or more of the issued shares of the Factoring Company. Shareholders may be legal or natural persons, but in all cases must meet high standards of integrity and have no history of bankruptcies or criminal convictions.

(e) The identities (names, addresses) and professional qualifications of all the members of the current or intended Board of Directors of the intended Factoring Company.

(f) The identity and professional qualifications of the intended managing director or chief executive officer of the Factoring Company, who must have financial, banking, commercial, or insurance experience of not less than 10 years in addition to a university degree.

If conditions (e) and (f) above cannot be fulfilled at time of application because the parties are not yet known, such information may be provided to the Authority after its preliminary approval, but must be provided to the satisfaction of the Authority before the final license is approved by the Authority permitting the Factoring Company to engage in factoring activity.

A fee of L.E. shall be paid by the applicant to the Authority at the time the application is presented.

Article 10: Preliminary Approval of License Application

Within 10 business days of receiving an application letter for a factoring license, including all required information per Article 9 above, the Authority will notify the applicant in writing of its decision whether or not to grant a preliminary approval of its license application. A preliminary approval of a license application will permit the applicant to proceed with all steps needed to fulfill the requirements for final license approval, as specified in Article 11 below.

Article 11: Final Approval and Granting of License

After the applicant has been duly notified of the preliminary approval of its license

application, the applicant must submit the following information to the Authority (signed by the managing director or chief executive officer of the applicant) within 90 days of such preliminary approval, in order to obtain final approval and a license to engage in factoring activity from the Authority:

- (a) Incorporation documents of the joint stock company (the Factoring Company) with evidence of paid-in capital in cash of not less than 10 million Egyptian pounds or its equivalent in foreign currency. The incorporation documents will state the identity of the External Auditor and Legal Advisor of the Factoring Company.
- (b) A description of the Factoring Company's risk acceptance policies, accounting and financial control processes, and maintenance of accounts receivable information (ledgering); and the expertise available to the Factoring Company permitting it to perform these activities and functions.

- (c) A description of the Factoring Company's intended international factoring activity, and its plan for conducting such business including the intended methods of covering foreign buyer risks when engaging in export factoring.
- (d) Confirmation that the information about the shareholders and members of the Board of Directors of the Factoring Company are the same as that provided with the original license application, providing the current information if there have been any changes or additions.
- (e) Information about the qualifications (if not provided at the time of the initial license application) of the managing director or chief executive officer. Also provide information about the qualifications of other key managers if any.

Once the Applicant has submitted all the above information in good order to the Authority, within 15 business days of receipt of such information, the Authority will notify the applicant in writing of its decision to grant a license to engage in factoring activity. Such license will not be denied to an entity which has received preliminary approval per Article 10 and which has then fulfilled all the above requirements in Article 11, except in cases of material misrepresentation by the applicant with regard to the information provided to the Authority concerning the personal and professional background and professional qualifications of the Factoring Company's proposed shareholders, Board members or managing director or chief executive officer.

A final license to a Factoring Company engage in factoring activity, duly granted by the Authority, shall remain valid so long as the Factoring Company complies at all times with the requirements set forth in Article 13 below.

A final license granted by the Authority shall lapse and be nul and void if the Factoring Company receiving the license fails to begin factoring activity within one year from the date of the approval of the final license.

Article 12. Regulatory Monitoring of Licensed Factoring Companies

The Authority shall monitor all licensed and operating Factoring Companies to ensure they meet a set of standards which are set forth below in Article 13. All Factoring Companies must meet, and comply with, all the requirements set forth below. Failure to comply, in the event any breach is not corrected within 90 days of its occurrence, can be grounds for the Authority to revoke the Factoring Company's license to engage in factoring activity. The Authority will review the compliance of each licensed Factoring Company with these requirements at least once per year, and more frequently if warranted.

Article 13. Requirements to be Met by Licensed Factoring Companies

The requirements to be met by licensed and operating Factoring Companies are as follows:

- (a) The Factoring Company must submit its audited annual financial statements, and the accompanying External Auditors Report, to the Authority within 30 days of such financial statements having been approved by the Annual General Meeting of the Shareholders of the Factoring Company.

(b) The Factoring Company must submit quarterly financial statements to the Authority, signed by the company's management, within 30 days of the end of that quarter. Such financial statements must include a limited review of such financial statements by the Factoring Company's External Auditor.

(c) The External Audit Report accompanying the annual financial statements per (a) above, and the limited review per (b) above, must include a report by the External Auditor on the compliance of the Factoring Company with all the requirements of the Investment Law and Executive Regulations on Factoring, and these rules (including the requirements of Article 13) in their entirety. This report will specifically include the compliance of the Factoring Company with the capital adequacy and financial requirements set forth in this Article 13, par (d).

(d) The Factoring Company's financial condition, as set forth in the annual and quarterly reports submitted per Article 13, paragraphs (a) and (b) above, must comply with the following financial ratios:

(1) Capital adequacy: The Factoring Company's capital base may not be less than 75 % (seventy-five percent) of the paid-in capital of the Company. Capital base is defined as shareholders' equity (net assets) according to Egyptian accounting standards, plus any subordinated shareholder loans. Subordinated shareholder loans, for the purpose stated above, must be for a duration of not less than one year without amortization; must be made in cash; must not bear any collateral pledged by the Factoring Company; and must not have seniority or priority over any other obligations of the Factoring Company.

(2) The total accounts receivable shall not exceed ten times the capital base (as defined above), as reflected in the reported quarterly and annual financial statements.

(3) Total risk exposure to a single Debtor (or group of related entities) shall not exceed 30 % of the capital base. Total risk exposure shall include accounts receivable on the Factoring Company's balance sheet, plus all other contingent risks not on the balance sheet such as risk coverage provided by the Factoring Company.

(e) The Factoring Company's quarterly reports as required in par (b) above must be accompanied by a calculation of the three financial ratios (1), (2) and (3) in par (d) above.

Any breach by the Factoring Company of any of the above financial ratio requirements (1) (2) or (3), as reported in any quarterly report of its financial statements, must be remedied within 90 days of the date of such financial statements and so reported in the subsequent quarterly financial statements as submitted to the Authority.

Failure to correct any such breach within 90 days of its occurrence can lead to the immediate suspension or revocation by the Authority of the Factoring Company's license to engage in factoring activity.

ANNEX A SAMPLE REGULATIONS FOR FACTORING

Article 1. Scope of Regulations

These Regulations shall govern factoring contracts, assignments of receivables and purchases of receivables as described herein, and the rights and obligations of the parties to a factoring contract.

The provisions of these Regulations shall apply to the parties and legal relations arising out of factoring contracts, assignments of receivables and purchases of receivables concluded in accordance with the provisions of these Regulations.

These regulations shall be consistent with the prevailing laws governing contracts and assignment of receivables, and with all other prevailing laws and regulations.

Article 2. Factoring Contract

A Factoring Contract shall mean a contract concluded in writing between one party (the Supplier) and another party (the Factor) pursuant to which:

(a) The Supplier sells or assigns to the Factor existing and/or future receivables arising from contracts of sale of goods or services made between the supplier and its customers (Debtors).

(b) The Factor shall perform at least two of the following functions:

- (i) Finance for the Supplier, including advance payments;
- (ii) Maintenance of accounts (ledgering) relating to the receivables;
- (iv) Collection of receivables;
- (iv) Protection against default in payment by Debtors due to the Debtors' financial inability to pay;

(c) Notice of the assignment of the receivables is to be given to Debtors in writing (in any form capable of being reproduced in tangible form). Such notice shall be deemed to be given to the Debtor when it is received by the addressee (the Debtor).

(e) A Factoring Contract is not a loan agreement, nor is it a transfer of accounts made solely to facilitate the collection of accounts from Debtors.

(f) A contract in which the Factor and the Supplier are the same person shall not be deemed to be a Factoring Contract.

Article 3. Types of Factoring

Factoring Contracts may include the following types of factoring:

(a) Without recourse, or non-recourse factoring, where the Factor assumes responsibility for the buyer's (the Debtor's) ability to pay. The Supplier, however, retains the responsibility and obligation if for any reason, other than financial inability, the debtor does not pay the receivable in full;

(b) With recourse, or recourse factoring, where the Factor has full and complete recourse to the Supplier when the Debtor does not pay the receivable in full; and,

(c) The object of the Factoring Contract may be:

(i) Domestic factoring, where both the Supplier and the Debtor are Egyptian-registered entities; or

(ii) International factoring, where either the Supplier or the Debtor is an entity registered in a jurisdiction other than Egypt. Export factoring involves a supplier which is an Egyptian entity and provides goods and services produced within Egypt, and a Debtor which is a non-Egyptian entity. Import factoring involves a non-Egyptian supplier and a Debtor (buyer of the goods or services provided by the Supplier) which is an Egyptian entity.

Article 4. Notification of the Debtor

The Factor shall give notice to the Debtor of the assignment of the receivables (the Notice) within a reasonable time, in the following manner:

(a) Notice shall be given in writing to the Debtor, signed by either the Factor or the Supplier;

(b) Notice in writing includes, but is not limited to, faxes, emails and any other telecommunication capable of being reproduced in tangible form;

(c) Notice in writing is deemed to be given when it is received by the addressee (the Debtor).

(d) The Notice to the Debtor shall include information regarding the existence of a contract between the Factor and the Supplier; and shall reasonably and clearly identify the receivables which have been assigned and the Factor to whom the Debtor is required to make payment.

Article 5. Expiry of the Factoring Contract

A Factoring Contract shall cease to exist after the expiry of the period of time for which it was concluded. If no period of time was fixed, it shall cease to exist after all Debtor accounts transferred by the Factoring Contract have been paid in full.

Article 6. Factoring Contracts for Future Receivables

The object of a Factoring Contract may consist of, or include, receivables arising from a sale of goods and/or services by a Supplier to a customer or customers (Debtors) in the future. A Factoring Contract for future receivables is not required to identify the customers (Debtors), nor is it required to identify the specific goods and/or services, which are the object of the Factoring Contract. A Factoring Contract for future receivables must specify whether it expires on a given date, or whether it is good until cancelled by either the Supplier or the Factor.

Article 7. Definition of the Parties

The parties to a factoring transaction include the Factor, the Supplier, and the Debtor.

(a) The Factor

The Factor shall mean a legal person who provides a Supplier, for a fee or interest rate, or both; and for an agreed upon time period, with services as per Article 2 (b).

(b) The Supplier

The Supplier shall mean a legal person that provides goods and/or services to the Debtor.

(c) The Debtor

The Debtor shall mean a natural or legal person that purchases goods and/or services, from the Supplier.

Article 8. Obligations of the Factor

The Factor shall accept assignment of the receivables of Supplier according to the Factoring Contract as set forth in Article 2.

The Factor shall perform the services according to the Factoring Contract as set forth in Article 2(b).

Article 9. Obligations of the Supplier

The Supplier is liable to the Factor for the existence and the value of the receivables that constitute the subject matter of the Factoring Contract referred to in Article 2.

The Supplier is liable to the Factor for the existence and the value of receivables assigned free of liens, disputes, charges, defense and all other rights of third parties.

The Supplier is obliged to set at the disposal of the Factor any information and supporting documentation pertaining to the receivables which constitute the subject matter of the contract between them, at the latest by the time the factor is entitled to exercise any rights emanating from the contract.

If the Debtor, whether through error or for any other reason, makes payment to the Supplier, representing payment for receivables that have already been assigned to the Factor, and after notice has been given to the Debtor under Article 4, then the Supplier shall promptly transfer such payment to the Factor.

Article 10: Security under the Factoring Contract

The Factor and the Supplier may agree on, and include in the Factoring Contract, the application or non-application of any form of security to the factoring activity. Forms of security may include deposits, mortgage, pledge of assets, guarantees secured by third parties, or other forms of measures in compliance with provisions of applicable laws.

Article 10: Prohibition of Assignment

A Factoring Contract may limit or prohibit subsequent sale or assignment of the accounts receivable which are the object of that Factoring Contract.

Article 11: Supplier Prohibition

The conclusion by a Supplier of Factoring Contracts, as referred to in Article 2, with more than one Factor in connection to the same Debtor account, is forbidden, and any such contracts shall be void. Any fraudulent breach of this provision shall be punishable in accordance with the provisions of the Penal Code on fraud.

Article 12. Rights of the Debtor

The Debtor shall have the right to be informed of the existence of the Factoring Contract, the accounts receivable for the Debtor's account which the Supplier has assigned to the Factor, and the identity of the Factor.

The Debtor's rights and obligations in its contract with the Supplier shall remain unchanged, excepting only the change of the party which is entitled to receive the payment for the receivable from the Debtor.

Article 13. Debtor's Obligation to Pay

The Debtor is under an obligation to pay the Factor if, and only if, the Debtor does not have knowledge of any other party's superior right to payment, and if notice in writing of the assignment is given to the Debtor in accordance with Article 4.

Once notice has been properly given, the Debtor has an obligation to make payment to the Factor in the same manner as under the original contract with the Buyer.

Article 14. Insolvency of Debtor

An obligation of a Debtor to a Factor for a receivable assigned and owed to that Factor, that is unpaid at the moment the Debtor is declared in insolvency or in bankruptcy, reorganization, or liquidation shall be dealt with by the Courts as an unsecured obligation or, if the Factor has an identifiable interest in collateral, as a secured obligation, according to Law.

Article 15. Registration of Assigned Receivables

The assignments of receivables by Factoring Contracts, together with any collateral including in the Factoring Contract, any related modifications and amendments, and the termination of the assignments of receivables in Factoring Contracts, shall be recorded in the Pledge Registry.

These requirements shall be in accordance with Laws and Regulations governing the Pledge Registry.

Third parties shall be deemed aware of the existence of assignments that are recorded in the Pledge Registry.

Article 16. Value Added Tax Treatment of Factoring

For purposes of Value Added Tax, factoring activity shall be considered a financial service, and the revenues from factoring activity shall be treated in the same manner as revenues for financial services for Value Added Tax purposes.

Article 17. Fiscal Treatment of Factoring Transactions

Any taxes or stamp duties on the assignment or sale of receivables to a Factor, or on collection by a Factor of such receivables from a Debtor, shall be exempt from taxes and stamp duties.

Article 18. Regulation of Factoring Activities

- (a) Factoring activities as defined in Article 2 performed by a licensed commercial bank, or by a company which is owned more than 50 % by a licensed commercial bank, shall be supervised and regulated by the Central Bank.
- (b) All other factoring activities shall be regulated by these present Regulations.
- (c) All factoring activities as defined in Article 2 and performed as defined herein are subject to all relevant Laws.

Article 19. Requirements for a Factor

- (a) A Factor must take the legal form of a joint stock company, established under the laws governing commercial companies, whose minimum capital is not less than the equivalent of US Dollars 200,000.
- (b) Factoring activities defined in Article 2 can only be performed by:
 - (i) banks and non-bank financial institutions legally established, licensed and operating in the country;
 - (ii) businesses or enterprises whose primary purpose is to perform this activity.
- (c) The managing director or the chief executive officer of the factoring company must have at least 10 years' financial, banking, commercial, or insurance experience of not less than 10 years after getting a relevant university degree.
- (d) The Factor's Board of Directors must approve annually a statement of business standards and criteria, in compliance with applicable laws and regulations, which will be notified to the designated regulatory body.
- (e) The Factor shall at all times maintain books of account to record details of transactions, type of business involved in the transaction, amount, term of finance, type and evidence of payment of due balances.

ANNEX B SUMMARY OF PROPOSED REGULATORY FRAMEWORK FOR FACTORING

A. Executive Regulations

The proposed Executive Regulations would amend and replace the current Executive Regulations (Art. 1) to the Investment Law. The amended Executive Regulations cover the following five areas:

<u>Articles</u>	<u>Comment</u>
1. Definition of Factoring:	Internationally-accepted definition
2. Factoring a financial service.	International standard.
3. Role of the Authority	Defines scope of the regulator's authority, including issuance of Rules.
4. Requirements for a Factoring Company:	Must be Egyptian joint stock company. International standard
5. Factoring conforms to all other Egyptian laws and regulations	Standard

B. General Rules for Factoring

The General Rules for Factoring are to be promulgated by the Board of Directors of the Authority, under the delegation granted by the proposed Executive Regulations.

The proposed General Rules for Factoring cover the following areas:

Chapter I: Definition of Factoring Activity and Factoring Contracts

<u>Article.</u>	<u>Comment</u>
Definitions: Types of Factoring	Internationally-accepted definitions

Definition of Parties to Factoring	Internationally-accepted definitions
Rights, Obligations of Debtors	International practice
Factoring Contract Requirements	International practice

Chapter II: Licensing Requirements for a Factoring Company.

This Chapter sets the criteria and information requirements for companies wishing to apply for a license to engage in factoring activity; establishes the Authority's requirements for approving license applications and for monitoring licensed factoring companies. It specifies the requirements which must be met by licensing Factoring Companies, including financial reporting and the maintenance of prudential financial ratios. Chapter II contains the following sections:

<u>Articles</u>	<u>Comments</u>
The Licensing Process	Outlines the process to be followed by an applicant.
Submission of License Application	Lists information applicants must submit: including applicant confirmation that:
Paid-in capital will be	Equal to current requirement. High by at least L.E. 10 million international standards. Will ensure that first companies in sector substantially capitalized. May be reduced later once sector is operating.
Factoring will be sole activity of applicant.	Common internationally, though not universal.
Information about shareholders applicant.	Standard internationally and directors of
Applicant's managing director or CEO meets required level of experience and integrity.	Standard internationally
Preliminary Approval of License Application	Describes the Authority's process for issuing preliminary approval.

Final Approval and
information Granting of License
Applicant must provide:

Lists steps applicants must take and
to be provided before license is granted.

Incorporation documents

Standard internationally

Proof capital paid-in

Set of operating policies

Risk coverage process

Regulatory Monitoring of
Licensed Factoring Companies

Describes the Authority's process of monitoring
licensed factoring companies

Requirements to be Met by
Licensed Factoring Companies

Describes information to be provided and
financial ratios to be maintained.

Financial ratios:

These prudential ratios are standard

Capital adequacy

internationally and provide safeguards

Assets to capital

against risk of failure

Risk exposure limits

Annual financial statements
and external audit report

Standard internationally

Quarterly financial statements
with audit review

Frequent reporting to regulator not always
required internationally, but will ensure ongoing
monitoring of compliance with financial ratios and
corrective action in event of deterioration.

C. Company-level Operating Rules for International Factoring

There is no regulatory body for international factoring, but there are voluntary associations with members worldwide which have developed detailed operating procedures and documents. These procedures are used not only by their members, but by any factoring company wishing to employ these standard procedures and documents in their relations with

factoring companies in other countries. The operating rules and documents developed by Factors Chain International (the largest of the associations) are the following:

- General Rules for International Factoring (standard, detailed operating procedures)
- Interfactor Agreement (form of contract between export factor and import factor)
- Rules of Arbitration (voluntary dispute resolution process)
- Edifactoring.com Rules (secure e-mail communications between factors who are FCI members)

All of the above procedures and documents are company-level procedures which permit clarity in international factoring operations. They are not governmental regulation

ANNEX C**MINIMUM CAPITAL REQUIREMENTS FOR
FINANCIAL SERVICES ENTITIES**

TYPE OF ENTITY	MINIMUM CAPITAL (L.E. MILLION)	COMMENT
Capital Markets entities:		
Brokerage houses	0.25	
Underwriters	3	Typically large transaction size
Portfolio management	3	
Investment funds	5	
Venture capital	10	Illiquid investment
Bond dealers	20	
Clearing and settlement	30	
Leasing companies	0.5	Medium-term assets, slow turnover, asset base illiquid. Transaction size varies, medium to large.
Factoring companies	10	Short-term assets, rapid portfolio turnover, highly liquid asset base

Transaction size varies, may be small and medium only.

Foreign Exchange offices 5

Mortgage finance companies 50 Long-term assets, slow portfolio turnover, asset base very illiquid

Commercial banks 500

DOMESTIC FACTORING

IMPORT FACTORING

EXPORT FACTORING

Supplier assigns receivable to Factor who collects.

Supplier assigns receivable to Export Factor, who enters into an Interfactor Agreement with Import Factor, who collects.

Factoring contract between Egyptian parties

Factoring contract between foreign parties:

Factoring contract between Egyptian parties:

Factor

Export Factor (foreign)

Export Factor (Egyptian)

Supplier

Supplier (foreign)

Supplier (Egyptian)

Debtor is Egyptian, factor collects locally from Debtor.

Debtor is Egyptian buyer. Import Factor (Egyptian) guarantees buyer payment, performs collection, remits to Export Factor.

Debtor is Foreign buyer. Import factor (Foreign) guarantees buyer payment, performs collection, remit to Export Factor(Egyptian)

Risk of debtor non-payment is knowable to Egyptian factor

Risk of debtor non-payment is knowable to Egyptian factor

Risk of non-payment is NOT knowable to

(local information)

(local information)

Egyptian factor:

Risk cover required
(from foreign Import
Factor or other insurance
or guarantor).

Legal system knowable (local law)

Legal systems: local and
foreign law

Legal systems: local and
foreign law

Collection procedures: local

Collection procedures:
Local (in Egypt)

Collection procedures:
Foreign (Import Factor)

Supplier business and product
flow is knowable (local)

Supplier a foreign entity:
known to Export Factor

Supplier business and
product known to Egyptian
factor.

Transactions may be very
small in amounts, or larger

Transactions may vary
in amount, small to large

Transactions may vary in
amount, medium to large

Key risk: Egyptian buyer
non-payment

Key risk: Egyptian buyer
non-payment

Key risk: foreign Factor,
insurer or guarantor non-
payment.

**ANNEX D GENERAL RULES FOR INTERNATIONAL
FACTORING (PRINTED JULY 2005)**

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SECTION I General provisions

Article 1 Factoring contracts and receivables

A factoring contract means a contract pursuant to which a supplier may or will assign accounts receivable (referred to in these Rules as “receivables” which expression, where the context allows, also includes parts of receivables) to a factor, whether or not for the purpose of finance, for at least one of the following functions:

- Receivables ledgering
- Collection of receivables
- Protection against bad debts

Article 2 Parties taking part in two-factor international factoring

The parties taking part in two-factor international factoring transactions are:

- (i) the supplier (also commonly referred to as client or seller),
the party who invoices for the supply of goods or the rendering of services;
- (ii) the debtor (also commonly referred to as buyer or customer),
the party who is liable for payment of the receivables from the supply of goods or rendering of services;
- (iii) The Export Factor,
the party to which the supplier assigns his receivables in accordance with the factoring contract;
- (iv) the Import Factor,
the party to which the receivables are assigned by the Export Factor in accordance with these Rules.

Article 3 Receivables included

These Rules shall cover only receivables arising from sales on credit terms of goods and/or services provided by any supplier who has an agreement with an Export Factor to or for debtors located in any country in which an Import Factor provides factoring services. Excluded are sales based on letters of credit (other than standby letters of credit), or cash against documents or any kind of sales for cash.

Article 4 Common language

The language for communication between Import Factor and Export Factor is English. When information in another language is provided an English translation must be attached.

Article 5 Time limits

Except as otherwise specified the time limits set forth in these Rules shall be understood as calendar days. Where a time limit expires on a non-working day or any declared public holiday of the Export Factor or the Import Factor, the period of time in question is extended until the first following working day of the factor concerned.

Article 6 Writing

“Writing” means any method by which a communication may be recorded in a permanent form so that it may be re-produced and used at any time after its creation. Where a writing is to be signed, that requirement is met if, by rules accepted among the parties, the writing identifies the originator of the writing and indicates his approval of the communication contained in the writing.

Article 7 Deviating agreements

An agreement in writing made between an Export Factor and an Import Factor (and signed by both of them), which conflicts with, differs from or extends beyond the terms of these Rules, shall take precedence over and supersede any other or contrary condition, stipulation or provision in these Rules relating to the subject matter of that agreement but in all other respects shall be subject to and dealt with as part of these Rules.

(N.B.: Article 7 amended June 2004)

Article 8 Numbering system

In order to identify exactly all suppliers, debtors, Import Factors and Export Factors, an appropriate numbering system must be agreed upon between Export Factor and Import Factor.

Article 9 Commission / Remuneration

- (i) The Import Factor shall be entitled to commissions and/or charges for his services on the basis of the structure and terms of payment as promulgated by the FCI Council from time to time.
- (ii) The agreed commissions and/or charges must be paid in accordance with those terms of payment in the agreed currencies. A party delaying payment shall incur interest and the equivalent of any exchange losses resulting from the delay in accordance with Article 26.
- (iii) In case of a reassignment of a receivable the Import Factor has nevertheless the right to the commission or charges.

Article 10 Settlement of disagreements between Export Factor and Import Factor

- (i) All disagreements arising between an Export Factor and an Import Factor in connection with any international factoring transactions shall be settled under the Rules of Arbitration provided that both are members of FCI at the time of the inception of the transaction.
- (ii) Furthermore any such disagreement may be so settled if only one of the parties is a member of FCI at the time of request for arbitration provided that the other party accepts or has accepted such arbitration.
- (iii) The award shall be final and binding.

Article 11 Good faith and mutual assistance

Under these Rules all duties shall be performed and all rights exercised in good faith. Each of the Export Factor and Import Factor shall act in every way to help the other's interest and each of them undertakes to the best of his ability to assist the other at all times in obtaining any document that may assist the other to carry out his duties and/or to protect his interests. Each of the Import Factor and the Export Factor undertakes that each will inform the other immediately of any fact or matter which comes to his attention and which may adversely affect the collection of any receivable or the creditworthiness of any debtor.

SECTION II Assignment of receivables

Article 12 Assignment

- (i) The assignment of a receivable implies and constitutes the transfer of all rights and interest in and title to such receivable by any means. For the purpose of this definition the granting of a security right over a receivable is deemed to be its transfer
- (ii) All assignments of receivables must be in writing.

Article 13 Validity of assignment

- (i) The Import Factor is obliged, as regards the law of the debtor's country, to inform the Export Factor of:
 - (a) the wording and formalities of the notice of assignment; and
 - (b) any elements in an assignment that are necessary to safeguard the Export Factor against claims of third parties.

The Import Factor warrants the effectiveness of his advice.

- (ii) The Export Factor, whilst relying on the Import Factor's advice under paragraph (i) of this Article as regards the law of the debtor's country, shall be responsible for the effectiveness of the assignment to him by the supplier and of his assignment to the Import Factor including their effectiveness against the claims of third parties and in the insolvency of the supplier.

- (iii) If the Export Factor requests a particular assignment, enforceable against third parties, the Import Factor is obliged to act accordingly as far as he is able to do so in accordance with the applicable law, at the expense of the Export Factor.
- (iv) Whenever the assignment of a receivable needs special documentation or a confirmation in writing in order to be valid and enforceable, at the request of the Import Factor the Export Factor must provide such documentation and/or confirmation in the prescribed way.
- (v) If the Export Factor shall fail to provide such documentation or confirmation in relation to that receivable within 30 days of the receipt of the Import Factor's request, then the Import Factor may reassign such receivable.

(N.B.: Paragraphs (i) and (ii) amended June 2004)

Article 14 Validity of receivables

- (i) The Import Factor must receive details of invoices assigned to him without undue delay and in any event before the due date of the receivable. In addition he must receive details of credit notes relating to such invoices.
- (ii) The Import Factor may require that the original documents evidencing title, including the negotiable shipping documents and/or insurance certificate, are forwarded through him.
- (iii) At the request of the Import Factor and if then needed for the collection of a receivable the Export Factor must promptly provide any or all of the following as proof and in any event within the following time periods:
 - (a) 10 days from the receipt of the request, an exact copy of the invoice issued to the debtor;
 - (b) 30 days from the receipt of that request:
 - (1) evidence of shipment;
 - (2) evidence of fulfilment of the contract of sale and/or services where applicable;
 - (3) any other documents which have been requested before shipment.
- (iv) If the Export Factor:
 - (a) does not provide the documents referred to in Article 14 (iii); or
 - (b) fails to provide a reason for that delay and a request for further time, both acceptable to the Import Factor;

within the prescribed time limits, then the Import Factor shall be entitled to reassign the relevant receivable.

(v) The time limit for the Import Factor to be entitled to request these documents from the Export Factor shall be 270 days after due date of the receivable.

(N.B.: Paragraph (iv) added June 2004 - previous (iv) moved to Paragraph (v), Paragraph (i) amended June 2005)

Article 15 Reassignment of receivables

- (i) Any reassignment of a receivable under Article 13 (v) or Article 14 (iv) must be made by the Import Factor no later than the 60th day after his first request for the relevant documents, or the end of any extended time granted by the Import Factor.
- (ii) In the event of any reassignment of a receivable permitted to the Import Factor under these Rules, the Import Factor shall be relieved of all obligations in respect of the reassigned receivable and may recover from the Export Factor any amount paid by the Import Factor in respect of it.
- (iii) Every such reassignment must be in writing.

(N.B.: Paragraph (i) amended June 2004)

SECTION III Credit Risk

Article 16 Definition of credit risk

- (i) The credit risk is the risk that the debtor will fail to pay a receivable in full within 90 days of its due date otherwise than by reason of a dispute.
- (ii) The assumption by the Import Factor of the credit risk on receivables assigned to him is conditional upon his written approval covering such receivables.

Article 17 Approvals and requests for approvals

- (i) Requests of the Export Factor to the Import Factor for the assumption of the credit risk must be in writing and must contain all the necessary information to enable the Import Factor to appraise the credit risk and the normal payments terms.
- (ii) If the Import Factor cannot confirm the exact identification of the debtor as submitted to him he may amend these details in his reply. Any approval shall apply only to the exact identity of the debtor given by the Import Factor in that approval
- (iii) The Import Factor must, without delay and, in any event, not later than 10 days from receipt of the request, advise the Export Factor of his decision in writing. If, within the said period, the Import Factor cannot make a decision he must, at the earliest, and before the expiry of the period so advise the Export Factor.
- (iv) The approval shall apply up to the amount approved to the following receivables owed by the debtor:

- (a) those on the Import Factor's records on the date of approval;
- (b) those arising from shipments made or services completed up to 30 days before the date of request for approval;

and shall be conditional in each case, upon the receipt by the Import Factor of the invoice details and the documents as stipulated in Article 14.

- (v) The approval of a credit line binds the Import Factor to assume credit risk on those receivables up to the approved amount for shipments made before cancellation or expiry date of the line.

Shipment occurs when the goods are placed in transit to or to the order of the debtor whether by common carrier or the debtor's or supplier's own transport.

(vi) A credit line is a revolving approval of receivables on a debtor's account with one supplier up to the amount of the credit line. Revolving means that, while the credit line remains in force, receivables in excess of the line will succeed amounts within the line which are paid by the debtor or the Import Factor or credited to the debtor. The succession of such receivables shall take place in order in which they are due for payment and shall be limited at any time to the amount then so paid or credited.

(vii) All approvals are given on the basis that each account receivable is in conformity with the terms of payment (with a permissible occasional variation of 100% or 45 days whichever period is shorter) contained in the pertinent information upon which such approval was granted.

- (viii) The approval shall be given in the same currency as the request. However, the credit line covers receivables represented by invoices expressed not only in that currency, but also in other currencies; but in all cases the risk to the Import Factor shall not at any time exceed the amount of the original approval.
- (ix) There shall be only one credit line for each supplier on each debtor and any new credit line shall cancel and replace all previous credit lines for the same supplier on the same debtor in whatever currency denominated.
- (x) If it is known to the Import Factor that it is the practice of the debtor to prohibit assignments of receivables owing by him then the Import Factor shall so inform the Export Factor in giving his approval or as soon as it is known to the Import Factor if later.

Article 18 Reduction or cancellation

- (i) For good reason the Import Factor shall have the right to reduce or cancel the credit line. Such cancellation (which expression includes a reduction) must take place in writing or by telephone (to be confirmed in writing). Upon receipt of such notice of cancellation the Export Factor shall immediately notify the supplier and such cancellation shall be effective as to shipments made after the supplier's receipt of such notice. On or after the sending of any such notice of cancellation to the Export Factor, the Import Factor shall have the right to send such notice also direct to the supplier, but he shall inform the Export Factor of such an action.

The Export Factor shall cooperate, and shall ensure that the supplier shall cooperate, with the Import Factor to stop any goods in transit and thus minimise the Import Factor's loss. The Export Factor undertakes to give the Import Factor all assistance possible in such circumstances.

- (ii) On the effective date of the termination of the contract between supplier and Export Factor all credit lines are immediately cancelled without notice, but shall remain valid for any receivable relating to a shipment made and services completed before the time of termination provided that the receivable is assigned to the Import Factor within 30 days of that date.
- (iii) When the cancellation of the credit line is effective as in paragraph (i) of this Article, or the credit line has expired then:
- (a) the right of succession as described in paragraph (vi) of Article 17 ceases and thereafter, except as provided in sub-paragraphs (b) and (c) of this paragraph, any payment or credit (other than a payment or credit in connection with a transaction excluded in Article 3) may be applied by the Import Factor in satisfaction of approved receivables in priority to unapproved receivables;
 - (b) if any such credit relates to an unapproved receivable and the Export Factor establishes to the satisfaction of the Import Factor that the credit arose solely from the failure to ship or a stoppage in transit, the credit shall be applied to such unapproved receivable; and**
 - (c) any monies subsequently received by the Import Factor resulting from a general distribution from the estate of the debtor in respect of receivables assigned by the Export Factor or the relevant supplier shall be shared between the Import Factor and the Export Factor in proportion to their respective interests in the amount owing by the debtor as at the date of the distribution.**

(N.B. Paragraph (iii) (b) and (c) amended June 2003)

Article 19 Obligation of Export Factor to assign

- (i) Subject to the provisions of paragraph (iii) of this Article the Export Factor must offer the Import Factor all receivables owing by debtors in the Import Factor's country which have been assigned to the Export Factor.

- (ii) The Export Factor shall inform the Import Factor whether or not the Export Factor's agreement is to include the whole turnover on credit terms to the Import Factor's country.
- (iii) In exceptional cases, the Export Factor may withhold from the Import Factor receivables in respect of any debtor, for which the Import Factor is not prepared to assume any risk or a substantial part of it or is prepared to do so only at a factoring commission unacceptable to the Export Factor, but this exception shall not apply to any debtor referred to in paragraph (iv) below.
- (iv) When the Import Factor has approved a credit line on a debtor and an invoice owing by that debtor has been assigned to the Import Factor, then all subsequent receivables of that supplier in respect of that debtor must be assigned to the Import Factor, even when the receivables are only partly approved or not approved at all.
- (v) When the Import Factor decides to cancel a credit line, the obligation for the Export Factor continues to exist until all approved receivables have been paid or otherwise provided for; in other words, until the Import Factor is "out of risk". However, after cancellation of the contract between the Export Factor and the supplier, further assignments of receivables cannot be expected.

SECTION IV Collection of receivables

Article 20 Rights of the Import Factor

- (i) By reason of the assignment to the Import Factor of full ownership of each receivable, the Import Factor shall have the right of bringing suit and otherwise enforcing collection either in his own name or jointly with that of the Export Factor and/or that of the supplier and the right to endorse debtor's remittances for the collection in the Export Factor's name or in the name of such supplier and the Import Factor shall have the benefit of all rights of lien, stoppage in transit and all other rights of the unpaid supplier to goods which may be rejected or returned by debtors.
- (ii) If any cash, cheque, draft, note or other instrument in payment of any receivables assigned to the Import Factor is received by the Export Factor or any of his suppliers, the Export Factor must immediately inform the Import Factor of such receipt. It shall be held in trust by the Export Factor or such supplier on behalf of the Import Factor and shall, if so requested by the Import Factor, be duly endorsed and delivered promptly to him.
- (iii) If the sales contract contains a prohibition of assignment the Import Factor shall have the same rights as set forth in paragraph (i) of this Article as agent for the Export Factor and/or the supplier.
- (iv) If the Import Factor:
 - (a) is unable to obtain judgement in respect of any receivable assigned to him in the courts of the debtor's country by reason only of a term relating to jurisdiction in the contract of sale between the supplier and the debtor which gave rise to that receivable; and

- (b) informs the Export Factor of that inability within 365 days of the due date of the invoice representing that receivable;

then the Import Factor may immediately reassign that receivable and recover from the Export Factor any amount paid in respect of it under paragraph (ii) of Article 24.

(N.B.: Paragraph (iv) amended June 2004)

Article 21 Collection

- (i) The responsibility for collection of all receivables assigned to the Import Factor rests with him and he shall use his best endeavours promptly to collect all such receivables whether approved or unapproved.
- (ii) Except as provided in Article 27 when the total amount of receivables owing by a debtor at any one time is approved in part:
 - (a) the Import Factor shall be entitled to take legal proceedings for the recovery of all such receivables without obtaining the prior consent of the Export Factor but the Import Factor shall inform the Export Factor of such action;
 - (b) if the Export Factor notifies the Import Factor of his disagreement with such legal proceedings, which are then accordingly terminated, the Import Factor shall be entitled to reassign all receivables then owing by the debtor and to be reimbursed by the Export Factor with the amount of all costs and expenses incurred by the Import Factor in such proceedings and the provisions of paragraphs (ii) and (iii) of Article 15 will apply to that reassignment; and
 - (c) except as provided in paragraph (ii) b) of this Article the costs and expenses of such legal proceedings shall be borne by the Import Factor and the Export Factor in proportion to the respective amounts of the approved and unapproved parts of the outstanding receivables.

Article 22 Unapproved receivables

- (i) When all receivables owing by a debtor at any one time are wholly unapproved:
 - (a) the Import Factor shall obtain the consent of the Export Factor before incurring legal and other costs and expenses (other than the Import Factor's own and administrative costs and expenses) relating to their collection;
 - (b) such legal and other costs and expenses shall be the responsibility of the Export Factor and the Import Factor shall not be responsible for any loss and/or costs which are attributable to any delay in the giving of such consent by the Export Factor;
 - (c) If the Export Factor does not answer the Import Factor's request for consent within 30 days, the Import Factor is entitled to reassign the receivables then or any time thereafter;

- (d) The Import Factor shall be entitled on demand to a deposit from the Export Factor to cover fully or partly the amount of the estimated costs to be incurred in the collection of such receivables.

SECTION V Transfer of funds

Article 23 Transfer of payments

- (i) When any payment is made by the debtor to the Import Factor in respect of any receivable assigned to him he shall pay in the currency of the invoice the equivalent of the net amount received in his bank to the Export Factor immediately after the value date or the date of the Import Factor's receipt of the Bank's notification of the amount received whichever is later except to the extent of any previous payment under guarantee.
- (ii) All payments, irrespective of the amount, shall be transferred daily via SWIFT.
- (iii) Not later than the day of the transfer the Import Factor shall provide a report showing the allocation of the amount transferred.
- (iv) The Export Factor shall repay to the Import Factor on his demand:
 - (a) any payment made by him to the Export Factor if the debtor's payment to the Import Factor was made by a payment instrument subsequently dishonoured (cheque or equivalent) provided that:
 - (i) the Import Factor notified the Export Factor of this possibility with the payment advice (payment under reserve); and
 - (ii) the Import Factor's demand has been made within 10 banking days in the Import Factor's country from the date of his transfer of the funds to the Export Factor; and
 - (iii) repayments demanded by the Import Factor will not affect his other obligations;
 - (b) without any time limit, any payment made by the Import Factor to the Export Factor in respect of any unapproved Receivable or unapproved part of a Receivable to the extent that payment by the debtor or any guarantor of the receivable is subsequently recalled under the law of the country of the payer and such recall is either paid or settled by the Import Factor provided that any such settlement is effected in good faith.

(N.B.: Paragraph (iv) (a) adjusted and Paragraph (iv) (b) added October 2002)

Article 24 Payment under guarantee

Except as provided in Articles 25 and 27:

- (i) the Import Factor shall bear the risk of loss arising from the failure of the debtor to pay in full any approved receivable on the due date in accordance with the terms of the relevant contract of sale or service; and

- (ii) to the extent that any such receivable shall not be paid by or on behalf of the debtor by the 90th day after the due date as described above, the Import Factor shall on such 90th day make payment to the Export Factor (“payment under guarantee”).
- (iii) For the purpose of paragraphs (i) and (ii) of this Article, payment by the debtor shall mean payment to any one of the Import Factor, the Export Factor, the supplier or the supplier’s insolvent estate.
- (iv) In the event of payment to the supplier or the supplier’s insolvent estate the Import Factor shall co-operate with and assist in the debtor’s country the Export Factor to mitigate any potential or actual loss to the Export Factor.
- (v) If an approved receivable is expressed in a currency other than that of the corresponding credit line, in order to determine the approved amount that receivable shall be converted to the currency of the credit line at the rate of exchange ruling at the date on which the payment under guarantee is due. In all cases the risk of the Import Factor shall not exceed at any time the amount of the original approval.

Article 25 Prohibitions against assignments

- (i) In respect of any approved receivable arising from a contract of sale or for services which includes a prohibition of its assignment the Import Factor’s obligation for a payment under guarantee shall arise on the official insolvency of the debtor or when the debtor makes a general declaration or admission of his insolvency, but, in any event, not earlier than the 90th day after the due date as described in paragraph (i) of Article 24.
- (ii) After any payment under guarantee in respect of any approved receivable referred to in paragraph (i) of this article the Import Factor shall have the sole right to claim in the insolvent estate of the debtor in the name of the supplier.
- (iii) The Export Factor shall obtain from the supplier and deliver to the Import Factor any document that may be required by him for the purpose of making any claim as described in paragraph (ii) of this Article.
- (iv) The provisions of this article shall apply, in spite of anything to the contrary elsewhere in these rules.

(N.B.: Paragraph (iv) added June 2003, Paragraph (i) amended June 2004)

Article 26 Late payments

- (i) If the Import Factor or the Export Factor fails to make payment of any amount when it is due to be paid to the other he shall pay interest to that other.
- (ii) Except as provided in paragraph (iii) of this Article, if the Import Factor does not initiate a payment to the Export Factor according to the requirements of Article 23 or Article 24, the Import Factor shall:
 - (a) be liable to pay to the Export Factor interest calculated for each day from the date on which such payment shall be due until actual payment at twice the 3-months-LIBOR as quoted on such due date in the relevant currency, provided that the accrued amount of interest exceeds EUR 50; and

- (b) reimburse the Export Factor with the equivalent of any currency exchange loss suffered by him and caused by the delay in payment.

If there shall be no LIBOR quotation for the relevant currency, twice the lowest lending rate for such currency available to the Export Factor on such date shall apply.

- (iii) If as a result of circumstances beyond his control the Import Factor is unable to make any such payment when due:
 - (a) he shall give immediate notice of that fact to the Export Factor;
 - (b) he shall pay to the Export Factor interest at a rate equivalent to the lowest lending offer rate available to the Export Factor in the relevant currency calculated for each day from the day when his payment shall be due until actual payment, provided the accrued amount of interests exceeds EUR 50

SECTION VI Disputes

Article 27 Disputes

- (i) A dispute occurs whenever a debtor fails to accept the goods or the invoice or raises a defence, counterclaim or set-off including (but not limited to) any defence arising from a claim to the proceeds of the receivable by any third party. However, where there is a conflict between the provisions of this Article and those of Article 25 the latter shall prevail.
- (ii) Upon being notified of a dispute the Import Factor or the Export Factor shall immediately send to the other a dispute notice containing all details and information known to him regarding the receivable and the nature of such dispute. In either case the Export Factor shall provide the Import Factor with further information regarding the dispute within 60 days of the receipt by the Export Factor or his sending it as the case may be.
- (iii) Upon receipt of such dispute notice the approval of that receivable shall be deemed to be suspended.

If a dispute is raised by the debtor and the dispute notice is received within 90 days after the due date of the invoice to which the disputed receivables relates, the Import Factor shall not be required to make payment under guarantee of the amount withheld by the debtor by reason of such dispute.

If a dispute is raised by the debtor and the dispute notice is received after payment under guarantee, but within 180 days of the due date of the invoice, the Import Factor shall be entitled to reimbursement of the amount withheld by the debtor by reason of such dispute.

- (iv) (a) The Export Factor shall be responsible for the settlement of the dispute and shall act continuously to ensure that it is settled as quickly as possible. The Import Factor shall co-operate with and assist the Export Factor, if so

required, in the settlement of the dispute including the taking of legal proceedings.

- (b) If the Import Factor declines to take such proceedings or if the Export Factor requires a reassignment of the disputed receivables so that proceedings may be taken in his or the supplier's name, then, in either case, the Export Factor is entitled to such reassignment.
- (c) Whether or not any such reassignment has been made the Import Factor shall again accept as approved, within the time limits specified in paragraph (v) of this Article, such disputed receivable to the extent that the dispute is settled in favour of the supplier (including an admission by the person responsible for the administration of the debtor's insolvent estate) provided that:
 - (1) the Export Factor has complied with his obligations under paragraph (iv) a) of this Article;
 - (2) the Import Factor has been kept fully informed about the status of negotiations or proceedings at regular intervals; and
 - (3) the settlement provides for payment by the debtor to be made within 30 days of the date of the settlement, if amicable, or the date of the coming into effect of the judgement in the case of a legal settlement.
- (d) For the purpose of this Article, "legal settlement" means a dispute settled by way of a decision of a court or other tribunal of competent jurisdiction (which, for the avoidance of doubt, shall include arbitration) provided such legal proceedings have been formally commenced by proper service of legal process or demand for arbitration prior to the term set for an amicable settlement; and "amicable settlement" means any settlement which is not a legal settlement.
- (v) The time limits referred to in paragraph (iv) c) above, for the Import Factor to accept again as approved a disputed receivable, are as follows:
 - (a) in the case of an amicable settlement, 180 days; and
 - (b) in the case of a legal settlement, 3 years;

in each case after the receipt of the dispute notice in accordance with paragraph (ii) of this Article. If, however, during such periods, the debtor becomes officially insolvent or makes a general declaration or admission of his insolvency, the Import Factor shall remain at risk until the dispute has been settled.
- (vi) In the case of a disputed receivable which the Import Factor has accepted again as approved in accordance with paragraph (iv) of this Article:
 - (a) if the receivable has been reassigned to the Export Factor the Import Factor shall have the right to an immediate assignment to him of all the Export Factor's or (as the case may be) the supplier's rights under the settlement;

- (b) in every such case any payment under guarantee, which is to be made in accordance with Article 24, shall be made within 14 days of the date on which payment is to be made by the debtor according to the settlement provided that:
 - (1) any assignment required by the Import Factor under paragraph (vi) a) of this Article has been made effectively by the Export Factor within that period; and
 - (2) the end of that period of 14 days is later than the original due date for the payment under guarantee.
 - (vii) If the Export Factor does not comply with all his obligations under this Article the Import Factor shall have the right to reassign to the Export Factor the disputed receivable and the Export Factor shall promptly reimburse the Import Factor with the amount of the payment under guarantee; such payment shall include interest from date of payment under guarantee to date of reimbursement as calculated in accordance with paragraph (iii) (b) of Article 26.
 - (viii) If the dispute is solved in full in favour of the supplier, all related costs shall be the responsibility of the Import Factor. In all other cases the costs will be the responsibility of the Export Factor.
- (N.B.: Paragraph (iv) (b) amended June 2004)

SECTION VII Representations, warranties and undertakings

Article 28 Representations, warranties and undertakings

- (i) The Export Factor warrants and represents for himself and on behalf of his supplier:
 - (a) that each receivable represents an actual and bona fide sale and shipment of goods or provision of service made in the regular course of business and in conformity with the description of the supplier's business and terms of payment;
 - (b) that the debtor is liable for the payment of the amount stated in each invoice in accordance with the terms without defence or claim;
 - (c) that the original invoice bears notice that the receivable to which it relates has been assigned and is payable only to the Import Factor as its owner or that such notice has been given otherwise in writing before the due date of the invoice, any such notice of assignment being in the form prescribed by the Import Factor.
 - (d) that each one at the time of his assignment has the unconditional right to assign and transfer all rights and interest in and title to each receivable (including any interest and other costs relating to it which are recoverable from the debtor) free from claims of third parties;
 - (e) that he is factoring all the receivables arising from sales as defined in Article 3 of any one supplier to any one debtor for which the Import Factor has given approval; and

- (f) that all such duties, forwarder's fees, storage and shipping charges and insurance and other expenses as are the responsibility of the supplier under the contract of sale or service has been fully discharged.
- (ii) The Export Factor undertakes for himself and on behalf of his supplier:
 - (a) that he will inform the Import Factor of any payment received by the supplier or the Export Factor concerning any assigned receivable; and
 - (b) that as long as the Import Factor is on risk the Export Factor will inform the Import Factor in general or, if requested, in detail about any excluded transactions as defined in Article 3.
- (iii) In addition to the provisions of Article 32, in the event of a breach of the warranty given in paragraph (i) e) or the undertaking given in paragraph (ii) b) of this Article the Import Factor shall be entitled to recover from the Export Factor
 - (a) the commission and/or charges as agreed for that supplier on the receivables withheld, and
 - (b) compensation for other damages, if any.

SECTION VIII Miscellaneous

Article 29 Communication and electronic data interchange (EDI)

- (i) Any written message as well as any document referred to in these Rules, which has an equivalent in the current EDI Standard can or, if so required by the Constitution and/or the Rules between the Members whenever either of them is applicable, must be replaced by the appropriate EDI-message.
- (ii) The use of EDI is governed by the edifactoring.com Rules.
- (iii) The originator of a communication shall assume full responsibility for the damages and losses, if any, caused to the receiver by any errors and/or omissions in such communication.

Article 30 Accounts and reports

- (i) The Import Factor is responsible for keeping detailed and correct debtor ledgers and for keeping the Export Factor informed about the accounts showing on such ledgers.
- (ii) The Export Factor shall be entitled to rely upon all information and reports submitted by the Import Factor provided that such reliance is reasonable and in good faith.
- (iii) If for any valid reason the Import Factor or the Export Factor will not be able to make use of the EDI then the Import Factor shall account and report at least once a month to the Export Factor with respect to all transactions and each such monthly account and report shall be deemed approved and accepted by the Export Factor except to the extent that written exceptions are taken by the Export Factor within 14 days of his receipt of such account and report.

Article 31 Indemnification

- (i) In rendering his services, the Import Factor shall have no responsibility whatsoever to the Export Factor's suppliers.
- (ii) The Export Factor shall indemnify the Import Factor and hold him harmless against all suits, claims, losses or other demands which may be made or asserted against the Import Factor:
 - (a) by any such supplier by reason of an action that the Import Factor may take or fail to take; and/or
 - (b) by any debtor in relation to the goods and/or services, the invoices or the underlying contracts of such supplier;

provided that in either case the Import Factor's performance in his action or failure to act is reasonable and in good faith.

- (iii) The Import Factor shall indemnify the Export Factor against any losses, costs, interest or expenses suffered or incurred by the Export Factor by reason of any failure of the Import Factor to comply with his obligations under paragraph (i) of Article 13 or any breach of his warranty given in that paragraph. The burden of proof of any such loss, costs, interest or expense lies with the Export Factor.
- (iv) Each of the Export Factor and the Import Factor shall reimburse the other for all losses, costs, damages, interest, and expenses (including legal fees) suffered or incurred by that other by reason of any of the matters for which the indemnities are given in paragraphs (ii) and (iii) of this Article.

Article 32 Breaches of provisions of these Rules

- (i) If the Export Factor has substantially breached any provision of these Rules, the Import Factor shall not be required to make payment under guarantee to the extent that the breach has seriously affected the Import Factor to his detriment in his appraisal of the credit risk and/or his ability to collect any receivable. The burden of proof lies with the Import Factor. If the Import Factor has made payment under guarantee the Import Factor shall be entitled to reimbursement of the amount paid.
- (ii) A substantial breach of paragraphs (i) a) and b) of Article 28 that results only from a dispute shall not be subject to the provisions of this Article and shall be covered by the provisions of paragraphs (i) to (viii) of Article 27.
- (iii) A substantial breach must be asserted within 365 days after the due date of the invoice to which it relates.
- (iv) The Export Factor shall promptly reimburse the Import Factor under this Article; such payment shall include interest from date of payment under guarantee to date of reimbursement as calculated in accordance with Article 26 (ii).
- (v) The provisions of this Article are additional to and not in substitution for any other provisions of these Articles.

ANNEX E FCI INTERFACTOR AGREEMENT
(Version June 2002)

AGREEMENT made this _____ day of _____, 20 _____.

by and between

and

WITNESSETH:

WHEREAS, _____ and _____ will from time to time engage the services of the other to act as Import Factor with respect to sale of goods or rendering of services to debtors located in the country(ies) where the Import Factor's services are to be performed;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, it is hereby agreed between the parties as follows:

1. Each of the parties hereby subscribes to and agrees to be bound by all of the terms and provisions of the General Rules for International Factoring ("GRIF"), the edifactoring.com Rules and the Rules of Arbitration, all promulgated by the Factors Chain International as formally revised from time to time, subject to the following modifications:

2. The services to be performed by _____ or _____ as Import Factor shall be rendered with respect to sellers designated by the parties from time to time and at such commission rates or other compensation as may be mutually agreed upon with respect to each seller.

3. Neither of the parties shall be obliged to engage the services of the other exclusively but each party shall be free to engage the services of any other factoring organisations located in the country(ies) where the parties perform factoring services.

4. This Agreement shall take effect as of the date set out above and shall continue indefinitely, subject to termination by either party on 60 days' prior written notice to the other but such termination shall not apply to, modify or otherwise affect the obligations of the parties hereunder or under the GRIF, the edifactoring.com Rules and the Rules of Arbitration with respect to transactions occurring, accounts receivable transferred or indebtedness incurred prior to the effective date of such termination.

Except in relation to assignments of receivables made before 1 July 2002, this Agreement contains all the matters agreed between the parties in relation to the receivables included by Article 3 of the GRIF and all agreements, warranties, representations and other statements made by the Import Factor or the Export Factor to the other before the making of this Agreement and the reliance on any usages or practices are excluded.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective corporate officers thereunto duly authorised as of the day and year first above written.

By

Title:

By

Title:

ANNEX F SAMPLE COPY FCI INTERFACTOR AGREEMENT

SAMPLE COPY FCI INTERFACTOR AGREEMENT (Version June 2002)

AGREEMENT made this 2nd day of July, 2002,
by and between World Factors N.V. ("World") of
Amsterdam, The Netherlands
and Cosmopolitan Factors SDN BHD ("Cosmopolitan") of
Kuala Lumpur, Malaysia

WITNESSETH:

WHEREAS, World and Cosmopolitan will from time to time engage the services of the other to act as Import Factor with respect to sale of goods or rendering of services to debtors located in the country(ies) where the Import Factor's services are to be performed;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, it is hereby agreed between the parties as follows:

1. Each of the parties hereby subscribes to and agrees to be bound by all of the terms and provisions of the General Rules for International Factoring ("GRIF"), the edifactoring.com Rules and the Rules of Arbitration, all promulgated by the Factors Chain International as formally revised from time to time, subject to the following modifications:

2. The services to be performed by World or Cosmopolitan as Import Factor shall be rendered with respect to sellers designated by the parties from time to time and at such commission rates or other compensation as may be mutually agreed upon with respect to each seller.

3. Neither of the parties shall be obliged to engage the services of the other exclusively but each party shall be free to engage the services of any other factoring organisations located in the country(ies) where the parties perform factoring services.
4. This Agreement shall take effect as of the date set out above and shall continue indefinitely, subject to termination by either party on 60 days' prior written notice to the other but such termination shall not apply to, modify or otherwise affect the obligations of the parties hereunder or under the GRIF, the edifactoring.com Rules and the Rules of Arbitration with respect to transactions occurring, accounts receivable transferred or indebtedness incurred prior to the effective date of such termination.

Except in relation to assignments of receivables made before 1 July 2002, this Agreement contains all the matters agreed between the parties in relation to the receivables included by Article 3 of the GRIF and all agreements, warranties, representations and other statements made by the Import Factor or the Export Factor to the other before the making of this Agreement and the reliance on any usages or practices are excluded.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective corporate officers thereunto duly authorised as of the day and year first above written.

WORLD FACTORS N.V.

By *P. Jansen*

Title: *Managing Director*

COSMOPOLITAN FACTORS Sdn Bhd

By *J. Petersen*

Title: *Managing Director*

ANNEX G

RULES OF ARBITRATION PROMULGATED BY FACTORS CHAIN INTERNATIONAL (June 2003 edition)

Article 1

FCI Arbitration

- 1) In accordance with article 10 of the General Rules for International Factoring (GRIF) promulgated by Factors Chain International and as amended from time to time, members of Factors Chain International are obliged to refer disagreements relating to their mutual factoring arrangements which cannot be solved by an amicable settlement, to a process of FCI arbitration.
- 2) The arbitration award shall be final and binding.
- 3) By submitting the disagreement to arbitration by Factors Chain International, the parties shall be deemed to have undertaken to carry out the resulting award without delay and to have waived their right to any form of appeal or objection, whether as to procedures or otherwise, in so far as such waiver can validly be made.

Article 2

Choice of Arbitrators

- 1) The Executive Committee of Factors Chain International does not itself settle disputes. It appoints, if necessary, arbitrators in accordance with the provisions of this article. The Committee shall have regard to the proposed arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrator(s) are nationals.
- 2) The dispute may be settled by a sole arbitrator or by three arbitrators. In the following articles the word "arbitrator" denotes a single arbitrator or three arbitrators as the case may be except where the context otherwise requires.
- 3) Arbitrators shall be executives of FCI member companies. In case a tribunal is being used, the last arbitrator to be appointed must be selected from a regularly updated list, containing names of suitable arbitrators, nominated by the member companies. Among the nominations, former factoring executives are acceptable as well (see Appendix 1).
- 4) All Arbitrators shall be and remain independent of the parties. Executives and former executives of either of the parties, or any company related to either of them, shall be deemed to be not independent. Any challenge to the independence of an arbitrator shall be referred to the Secretariat and shall be dealt

with and decided upon by the Executive Committee, which decision shall be final.

- 5) If the arbitrator, appointed by the claimant in the Request for Arbitration is acceptable to the respondent as the sole arbitrator, no other arbitrators will be appointed. An arbitrator has the right, however, to accept his nomination on the condition that he will not be a sole arbitrator. For cases over EUR 100,000 three arbitrators are required.
- 6) If the respondent cannot agree to the arbitrator proposed as the sole arbitrator, or when for other reasons the dispute is to be referred to three arbitrators, the respondent shall have a period of 30 days within which to appoint an arbitrator.
- 7) If the respondent fails to appoint an arbitrator and if more than one arbitrator is needed, the Executive Committee will make the appointment instead.
- 8) The third arbitrator, who will act as chairman of the arbitration tribunal, shall be appointed by the two arbitrators selected by claimant and respondent within a fixed time limit of 30 days. Should the two arbitrators fail within the fixed time period to reach agreement on the third arbitrator, he shall be appointed by the Executive Committee.
- 9) If an arbitrator is prevented from carrying out his functions, or has to resign for any reason, or if the Executive Committee decides that the arbitrator is not fulfilling his functions in accordance with the rules or within the prescribed time limits, he shall be replaced. A new appointment will be made according to the rules of this article

Article 3

Request for Arbitration

- 1) A party wishing to settle a dispute by way of FCI arbitration shall submit its request for arbitration to the FCI Secretariat. The date when the request is received shall, for all purposes, be deemed to be the date of commencement of arbitration proceedings.
- 2) The request for arbitration shall inter alia contain the following information:
 - a) names in full of the parties;
 - b) a statement of the claimant's case;
 - c) the amount of the sum in dispute;
 - d) all relevant particulars concerning the arbitrator of the claimant's choice in accordance with the provisions of Article 2 above.

- 3) The Secretariat shall send a copy of the request and the documents annexed thereto to the respondent for his answer.

Article 4

Answer to the Request

- 1) The respondent shall within 30 days from the receipt of the documents referred to in paragraph 3 of Article 3, inform the Secretariat, whether he accepts the arbitrator appointed by the claimant as the sole arbitrator and if not, and also in those cases where one arbitrator is considered to be insufficient, appoint a second arbitrator.

He shall at the same time set out his defence and any counterclaim and supply relevant documents. In exceptional circumstances the respondent may apply to the Secretariat for an extension of time for the filing of his defence and his documents. The application must, however, include the respondent's comments on the arbitrator appointed by the claimant and where appropriate, mention the appointment of the second arbitrator. If the respondent fails to do so, the Secretariat shall report to the Executive Committee, which shall proceed with the arbitration in accordance with these rules.

- 2) A copy of the answer and of the documents annexed thereto, if any, shall be communicated to the claimant for his information.
- 3) The claimant shall file a reply to any counterclaim within 30 days from the date of receipt of the counterclaim(s) communicated by the Secretariat.

Article 5

Transmission of the file to the Arbitrator

- 1) The Secretariat shall transmit the file to the arbitrator as soon as it has received the defendant's answer to the request for arbitration. In case two arbitrators have been appointed, the Secretariat shall request them to submit within 30 days (after receipt of that request) the name of the chairman of the arbitration tribunal. The chairman in turn will receive a copy of the file from the Secretariat.
- 2) When no more arbitrators are to be appointed, all further communications are to be sent directly to the arbitrator in a number of copies sufficient to provide one copy for each party, plus one for each arbitrator, and one for the Secretariat.

Article 6

Rules governing the proceedings

The rules governing the proceedings before the arbitrator shall be those resulting from these rules and, where these rules are silent,

any rules which the parties in conjunction with the arbitrator may agree upon.

Article 7 **Place of Arbitration**

The place of arbitration shall be fixed by the arbitrator unless agreed upon by the parties. Ideally such a location will be chosen which minimizes the total travel expenses for the arbitrator and the parties concerned.

Article 8 **Terms of Reference**

1) Before proceeding with the preparation of the case, the arbitrator shall draw up, on the basis of the then available information, or in the presence of the parties and in the light of their most recent submissions, a document defining his terms of reference. This document shall include the following particulars:

- a) the full names and description of the parties;
- b) the addresses of the parties to which notifications or communications arising in the course of the arbitration may validly be made;
- c) a summary of the parties' respective claims;
- d) definition of the issues to be determined;
- e) the arbitrator's full name, function and address;
- f) the place of arbitration;
- g) particulars of the applicable procedural rules (see article 6);
- h) a statement indicating that the parties will accept the award as final in view of their agreement, resulting from FCI membership, to submit to FCI arbitration.

2) The document mentioned in paragraph 1 of this article shall be signed by the parties and the arbitrator. The drawing up and the signing of the document will have to be completed within 30 days of the date when the file has been transmitted to the arbitrator. Should one of the parties refuse to take part in the drawing up of said document or to sign the same, the Executive Committee shall take such action as is necessary for its approval. Thereafter, the Executive Committee shall set a time limit for the signature of the statement by the defaulting party and on expiry of that time limit the arbitration shall proceed and the award shall be made.

Article 9

The Arbitration Proceedings

- 1) The arbitrator shall proceed within as short a time as possible to establish the facts of the case by all appropriate means. After study of the written submissions of the parties and of all documents relied upon, the arbitrator shall hear the parties together in person if one of them so requests; and failing such a request he may of his own motion decide to hear them.
- 2) The arbitrator may appoint one or more experts, agree upon their remuneration, receive their reports and/or hear them in person.
- 3) The arbitrator may decide the case on the relevant documents alone if the parties so request or agree.
- 4) At the request of one of the parties or if necessary on his own initiative, the arbitrator, giving reasonable notice, shall summon the parties to appear before him on the day and at the place appointed by him and shall so inform the Secretariat.
- 5) If one of the parties, although duly summoned, fails to appear, the arbitrator, if he is satisfied that the summons was duly received and the party is absent without valid excuse, shall have power to proceed with the arbitration, and such proceedings shall be deemed to have been conducted in the presence of all parties.
- 6) The arbitrator shall be in full charge of the hearings, at which all the parties shall be entitled to be present.
- 7) The parties may appear in person or through duly accredited representatives. In addition, they may be assisted by advisers.
- 8) At any time during the proceedings either of the parties shall, at the request of the arbitrator, pay to the Secretariat a deposit on account of the costs of the arbitration.

Article 10

Award by Consent

If the parties reach a settlement after the file has been transmitted to the arbitrator in accordance with Article 5, the same shall be recorded in the form of an arbitration award made by consent of the parties.

Article 11

Time-limit for Awards

- 1) The arbitrator shall make his award within three months of the date of signing the document mentioned in Article 8.

- 2) The Executive Committee may, in exceptional circumstances and pursuant to a reasoned request from the arbitrator, or if need be on its own initiative extend this time limit if it decides that it is necessary to do so.
- 3) Where no such extension is granted, the Executive Committee shall determine the manner in which the dispute is to be resolved.

Article 12

Decision as to costs of arbitration

- 1) The arbitrator's award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration and decide which of the parties shall bear the costs or in what proportions the costs shall be borne by the parties.
- 2) The costs of the arbitration shall include the arbitrator's fees (see appendix 2), the expenses, if any, of the arbitrator and the fees and expenses of any experts.
- 3) The costs of the arbitration shall normally not include the travel expenses and the legal costs incurred by the parties. The arbitrator may decide differently, however, provided that the amounts involved are known to the arbitrator before the award is given.
- 4) The Executive Committee may fix the arbitrator's fees at a figure higher or lower than that from the application of the annexed tariff if in the exceptional circumstances of the case this appears to be necessary.

Article 13

Making of award

The arbitration award shall be deemed to be made in the Netherlands and on the date when it is signed by the arbitrator.

Article 14

Notification of award to parties

Once an award has been made, the arbitrator shall submit the signed award to the Secretariat, which in turn will notify the parties of the decision of the arbitrator.

Article 15

Settlement of arbitration costs

The Secretariat will settle the arbitration costs (see Article 12) in accordance to the decisions as put down in the award. The parties agree to pay their share to the Secretariat without delay.

Article 16

Distribution of award

For each case the terms of reference in combination with the award will be published among the members of Factors Chain International with omittance of any names.

Article 17**Language of arbitration**

English will be the principle language of arbitration. Only in cases where the arbitrator and the two parties agree to another language, the hearings may be conducted in that language. The terms of reference and the award will under any circumstances be presented to the Secretariat in the English language.

Article 18**General rules**

- 1) The arbitrator shall not be bound by any strict rules of law or procedure or evidence. He shall be entitled to make his decisions in accordance with what he thinks is fair and equitable between the parties in accordance with normal commercial practice and the customs of international factoring based on the GRIF.
- 2) No liability on the grounds of negligence or otherwise shall attach to
 - a) any arbitrator;
 - b) the Executive Committee;
 - c) the Secretariat;
 - d) any member of the Executive Committee or of the Secretariat; in respect of any act or omission on his part in connection with any proceedings under these articles.
- 3) All decisions made by the Executive Committee shall be made by a simple majority of votes (excluding members, if any, who are officials or parties to the dispute). In the event of an equal vote the Chairman shall have two votes. the latter rule shall apply also to the arbitration tribunal.
- 4) In all matters not expressly provided for in these Rules, the arbitrator and the Executive Committee shall act in the spirit of these Rules and shall make every effort to make sure that the award is enforceable at law.

CANDIDATES FOR CHAIRMANSHIP OF FCI ARBITRATION TRIBUNALS

COMPILED FEBRUARY 2003

Name	Position	Company
Mr. Enrico ANDREIS	Retired	
Mr. Çağatay BAYDAR	General Manager	Koç Faktoring Hizmetleri.
Mrs. Aysen ÇETINTAS	Assistant General Manager	Koç Faktoring Hizmetleri.
Mr. Mo-Na CHIEN	Chairman	Chailease Credit Services Co.,
Mr. Julien CROLS	Head Legal Department	Fortis Commercial Finance
Ms. Maria DUNNE	International Manager	Barclays Bank plc
Mrs. Rengin EKMEKÇIOGLU	General Manager	Yapi Kredi Faktoring
Mr. Sylvio FASOLA	International Manager	Factoring CS
Mr. Francisco GALLIFA	International Manager	Heller Factoring Española
Mr. Eric GIFFO	Deputy General Manager	Fortis Commercial Finance
Mr. Harvey GUBERMAN		Hahn & Hessen
Mr. Ole HANSEN	General Manager	Nordisk Factoring
Mr. Theo HIBLER	Chairman of the Board	Intermarket Bank AG
Mr. Hans-Ruediger HOPPE	Manager Legal Department	Deutsche Factoring Bank
Mr. Ben HOSH	Regional Manager-Europe	UPS Capital UK Ltd.
Mr. Clive ISENBERG	Managing Director	Scottish Pacific Business Finance Pty.

Mr. LEE Kheng Leong	Vice President	DBS Bank
Mr. Marco LONI	International Manager	Centro Factoring
Mr. Francis MOOCK	International Manager	International Factors
Ms. Jana NEMECKOVA	Member of the Board	Transfinance
Mr. Helmut PARIS	Managing Director	Magyar Factor
Mr. Arvid RUBÆK	Credit Manager	GERLING NCM Factoring
Mr. Freddy SALINGER	Retired	
Ms. Bea VANDEPLASSCHE	Corporate Manager Credit & Risk	Fortis Commercial Finance

ARBITRATION FEES (as of June 2003)

1. A fixed amount of EUR 500,- is to be paid to the FCI Secretariat as compensation for expenses related to the arbitration procedure.
2. The arbitrator(s) are to be paid EUR 500,- per day for attending meetings and for the time it takes to travel to and from the place of arbitration.

ANNEX H **RULES FROM EDIFACTORING.COM** (Version March 2002)

Article 1. **Definitions**

For the purposes of the edifactoring.com Rules, hereinafter called the "Rules", the following definitions shall apply:

edifactoring.com: The proprietary communication system of FCI (and any of its future updated versions) used for all two-factor system business messages exchanged by the members of FCI.

edifactoring.com Message: A coherent set of data, structured according to agreed message standards, for transmission by electronic means, prepared in a computer readable format and capable of being automatically and unambiguously processed.

Trading Partners: Any two members of FCI who exchange edifactoring.com messages.

User Guide: The edifactoring.com User Guide, as revised from time to time, that includes the technical specifications, the User Guide proper, the procedural and organisational issues, and the business rules and specifications for the use of edifactoring.com and the exchange of edifactoring.com messages.

Business Day: Any day, except non-working days or any declared public holiday, in the intended place of receipt of an edifactoring.com message.

Digital Signature: A method of authentication by means of data appended to, or a cryptographic transformation of, a data unit that allows a sender or receiver of the data unit to prove the source and integrity of the data unit and to protect against forgery.

Code: The Code of International Factoring Customs promulgated by Factors Chain International, until superseded by the GRIF.

GRIF: The General Rules for International Factoring promulgated by Factors Chain International, as revised from time to time.

Article 2. **Object and Scope**

The provisions contained herein shall govern the exchange of edifactoring.com messages between the Trading Partners.

The edifactoring.com User Guide forms an integral part of the Rules. Accordingly, the breach of any of the provisions and message business rules contained within the User Guide shall be a breach of the Rules.

Article 3. **Message Standards, Systems Operation, Method of Transmission and Specifications.**

3.1 **Message standards.**

All edifactoring.com messages shall be transmitted in accordance with the specifications of the User Guide.

There will be only one official version of each message type at any one time as described in User Guide. Any reference in formal FCI documents and other FCI documentation (including seminars, training courses, etc.) will relate only to the official version.

New message versions and new message types will become the official edifactoring.com message standard on a date agreed to by the Council following the release to all FCI members of the related technical specifications.

As from the official implementation date of a new edifactoring.com message standard, any member of FCI has the right and obligation to use the new official standard with all Trading Partners.

3.2 Systems Operation.

The Trading Partners shall provide and maintain, to the level specified in the User Guide, the equipment, software and Internet connection services necessary to effectively transmit, receive, log and store edifactoring.com messages.

Should a failure occur such as that one Trading Partner is unable to exchange edifactoring.com messages for more than two business days, the Trading Partner affected by failure shall be obliged to inform all his Trading Partners of such a failure, and subsequently of its resolution, without undue delay.

3.3 Method of Transmission.

The Trading Partners agree to exchange edifactoring.com messages through the edifactoring.com system.

Any other method of transmission is not covered by the Rules.

3.4 Specifications.

All specifications and details regarding sections 3.1, 3.2 and 3.3 of the Rules shall be as set out in the User Guide.

Article 4. Transmission of edifactoring.com Messages.

4.1 Responsibility of the Sender.

The sender shall assume full responsibility for the damages and losses, if any, caused to the receiver by the incorrectness and incompleteness of the information contained within each and every edifactoring.com message sent.

4.2 Time of Delivery.

Each and every edifactoring.com message sent shall be considered to be delivered to the receiver as soon as the message is delivered to the receiver's own mailbox.

4.3 Proof of Delivery.

The "Message Audit Trail Report" shall serve as the proof of delivery of all edifactoring.com messages. The sender shall be obliged to retrieve the Message Audit Trail Report on each and every business day and to ensure that all messages sent have been delivered with no error status to the receiver. The sender shall take immediate action to correct and/or retransmit all messages rejected that contain errors.

4.4 Responsibility of the Receiver.

The receiver shall be responsible to retrieve all edifactoring.com messages delivered to him. The receiver shall also be obliged to retrieve the Message Audit Trail Report on each and every business day and to ensure that he has retrieved all messages delivered to him.

If an edifactoring.com message retrieved appears not to be in good order, correct and complete in form, and if the receiver does not inform the sender without undue delay, then the message shall be deemed accepted by the receiver.

If the receiver of an edifactoring.com message understands that the message is not intended for him, he should take reasonable action to inform the sender without undue delay, and must disregard the information contained therein.

Article 5. Processing of edifactoring.com Messages.

The Trading Partners undertake to process or ensure that their system processes the edifactoring.com messages retrieved without undue delay and within any time limits specified in the User Guide.

Article 6. Security of edifactoring.com Messages.

6.1 Standard Security.

The Trading Partners undertake to implement and maintain control and security procedures and measures necessary to ensure adequate protection of edifactoring.com messages, reports and other information against the risk of unauthorised access, alteration, loss or destruction.

6.2 Additional Security.

edifactoring.com encrypts all business messages sent and retrieved. Message verification includes the identification, authentication and verification of the integrity and origin of a message by the use of log-in validation and 128 bit encryption of business messages during transmission.

Article 7. Confidentiality

The Trading Partners shall ensure that edifactoring.com messages that contain information specified to be confidential by the sender, or agreed to be confidential between the Trading Partners, are maintained in confidence and are neither disclosed nor transmitted to any unauthorised persons or used for any purposes other than those intended by the Trading Partners.

Messages shall not be regarded as containing confidential information to the extent that such information is in the public domain.

The same degree of confidentiality, as specified in this article, shall be respected by any third party who, in the course of his duties, becomes aware of such confidential information. The Trading Partners are solely responsible to mark clearly as "confidential" such information before disclosing it to any third party.

Article 8. Logging, Recording and Storage of edifactoring.com Messages and Reports.

8.1 Logging and Storage.

Unless prohibited by national legislation, each Trading Partner shall keep a complete and chronological record of all edifactoring.com messages and reports sent and retrieved to/from edifactoring.com. The Trading Partners shall store these records in either printed or in electronic file format.

8.2 Period of Retention.

The Trading Partners shall maintain the records referred to in article 8.1 unaltered and securely, for at least five calendar years.

8.3 Reproduction of edifactoring.com Messages and Reports.

In addition to any relevant national legislative or regulatory requirements, the Trading Partners shall ensure that the stored edifactoring.com messages and reports are readily accessible and that they can be reproduced in a readable form and, if required, can be printed.

Article 9. Intermediaries.

If a Trading Partner uses the services of an intermediary (such as an Internet Service Provider or a software vendor) in order to transmit, retrieve or process edifactoring.com messages and reports, that Trading Partner shall be responsible towards the other Trading Partner or Trading Partners for any acts, failures or omissions of the intermediary in its provision of the said services as though they were his own acts, failures or omissions. For the purposes of these Rules, the intermediary shall be deemed to be acting on behalf of that Trading Partner.

If a Trading Partner instructs any other Trading Partner to use the services of an intermediary for transmitting, retrieving or processing an edifactoring.com message or report, then the instructing Trading Partner shall be responsible towards the other Trading Partner for such intermediary's acts, failures or omissions.

The Trading Partner shall ensure that it is a contractual responsibility of the intermediary that no change is made to the substantive data content of the edifactoring.com messages and reports, and that such edifactoring.com messages and reports are not disclosed to any unauthorised person.

Article 10. Electronic Transactions.

The Trading Partners accept that transactions are validly concluded and contracts are validly formed by exchange of edifactoring.com messages without any written documentation. The Trading Partners shall expressly waive any rights to bring an action declaring the invalidity or avoidability of a transaction concluded or a contract

formed between themselves on the sole ground that the transaction was concluded or the contract formed by the use of edifactoring.com.

A contract made by edifactoring.com will be considered to be formed at the time and the place where the edifactoring.com message constituting the acceptance of an offer or the taking of a commitment is delivered to the receiver.

Article 11. Assignment of Accounts Receivable.

11.1 Assignment.

Each account receivable, represented by the edifactoring.com message type 9 (Invoice and Credit Notes), shall be deemed to be assigned when such same message is delivered to the receiver.

Each edifactoring.com message type 9 shall always be deemed to bear the following text of assignment:

"Pursuant to the Agreement between us, we hereby notify you of transactions entered into by our client (seller) here mentioned with its customer (debtor) as represented by this invoice. We hereby transfer to you all rights, title and interest in and to the account receivable concerning such invoice".

11.2 Reassignment

Each account receivable, represented by the edifactoring.com message type 16 (Charge Back and Reassignment), with message function code = 2 – Reassignment, shall be deemed to be reassigned when such same message is delivered to the receiver.

Each edifactoring.com message type 16 with message function code = 2 – Reassignment shall always be deemed to bear the following text of reassignment:

"Pursuant to the Agreement between us, we hereby transfer back to you all rights, title and interest in and to the account receivable concerning the here mentioned invoice".

11.3 Confirmation of Assignment

Whenever the assignment of account receivables, under special circumstances, needs a confirmation in order to be valid and enforceable, each Trading Partner undertakes to provide such confirmation in the form prescribed by the other Trading Partner.

Article 12. Admissibility and Evidential Value of edifactoring.com Messages.

12.1 Evidential Value.

In the event of a disagreement, the Trading Partners shall not bring into question the admissibility as evidence of edifactoring.com messages exchanged and stored according to the provisions of the Rules.

Unless otherwise agreed, edifactoring.com messages exchanged on the basis of the Rules and in accordance with the provisions herein, shall have, between the Trading Partners, a comparable evidential value to that accorded to written documents.

If edifactoring.com messages are transmitted in accordance with an authentication procedure such as a digital signature, they shall have, between the Trading Partners, a comparable evidential value to that accorded to a signed written document.

12.2 Retention of Original Documentation.

Each Trading Partner shall have the obligation to retain the original documentation of all documents listed in article 10 of the Code or in article 14 of the GRIF (whichever is applicable), as well as any other document specified before the assumption of credit risk, and to make available the same to the other Trading Partner upon request and not later than ten business days from such request.

The minimum period of retention shall be the same as that stipulated in article 8.2 of the Rules.

Article 13. Protection of Personal Data.

Where edifactoring.com messages that contain personal data are sent or received, for purposes other than the normal course of the factoring business, in countries where no data protection legislation is in force, each Trading Partner agrees, as a minimum standard, to respect the latest provisions of the European Union on the protection of the individual with regard to the automatic processing of personal data.

Article 14. Applicable Law and Dispute Resolution.

The applicable law governing the Rules shall, in all respects and for each edifactoring.com message, be the Code or the GRIF and the law of the sender's country for matters not regulated by the Code or by the GRIF.

In the event of a conflict of law between the governing law of any contract being effected by edifactoring.com and the Rules, the Rules will prevail.

Any disagreement arising in connection with the provisions of these Rules shall be settled in accordance with the provisions of article 2 of the Code or of article 10 of the GRIF (whichever is applicable).

Annex I Consultant's Meeting Schedule

EFS Project, November 20-December 1, 2005

Sunday November 20

12:00 Dr. Abdel Hamid Ibrahim, Financial Senior Advisor to Minister of Investment
with EFS team members Ahmed Hussein, Dr. Abdel Moniem El Tohamy
and Ms. Rehab Sharf

Monday November 21:

Tuesday 22 November:

10:00 Exports Guarantee Company

General Manager Mr. Omar A. El Shenawi

Deputy General Managers Mr. Alaa Gouda and Nasser A. Ragab

With Ahmed Hussein and Rehab Sharf

Wednesday 23 November:

10:00 Egypt Factors Ltd:

Mr. Bernhard Arnebold (FIMBank)

Mr. Khaled Hamza (CIB)

With Ahmed Hussein, Rehab Sharf and Dr. El Tohamy

Joined at conclusion by Dr Abdel Hamid Ibrahim

12 noon: Meeting with team members Dr. Tohamy and Rehab Sharf (with Ahmed Hussein)

3:30 pm: Mortgage Finance Authority (MFA)

Osama Saleh, Chairman

Ashraf El Kady, Deputy Chairman

Bahaa Ali El Din, Legal Advisor

Lubna Helal, Central Bank of Egypt and MFA Board member

Dr. Shreif El Otafy, Senior Economic Advisor to Minister of Investment

Dr. Abdel Hamid Ibrahim, Financial Senior Advisor to Minister of Investment
with Francois Pepin, Ahmed Hussein, Shamsnoor Abdel Aziz

Thursday 24 Nov

Sunday November 27

11:00 am General Authority for Investment and Free Zones (GAFI):

Ms. Neveen El Shafei, Vice Chairman

Mr. Hazem Elwissimy, Advisor to the Chairman

Ms. Mona Aboul-Kheir, Deputy Head—Investor Relations Unit, Office of
the

Chairman with Francois Pepin, Ahmed Hussein

Monday 28 November

10:00 IFC PEP-MENA: Mr. Thomas Jacobs, Ms. Angela Atherton

5:00-7:30 pm: Mortgage Finance Authority

Mr. Ashraf El Kady, Deputy Chairman

Mr. Lubna Halal, MFA Board Member with Francois Pepin, Ahmed
Hussein, Lamia El Zufzafy, Manal Shalaby

Tuesday 29 November

3:30 pm: Lawyer Dr. Ahmed Abu Ali (law firm Hassouna and Abou Ali) with Francois
Pepin, Ahmen Hussein, Shamsnoor Abdoul Aziz, Rehab Sharf

Wednesday 30 November 20, 2005

10:00 am and 6:00 pm: Dr. Abdel Hamid Ibrahim with Francois Pepin, Ahmed Hussein,
Rehab Sharf and Dr. Tohamy

Thursday 1 December

Annex J Consultant's Scope of Work

Scope of Work

Stephen Strauss – Factoring Advisor

Egypt FS Project

Time frame: October – November 2005

Background

The Egypt Financial Services Project (FSP) objective is to build the market infrastructure required for real estate financing and other forms of secured lending. Three elements of that objective include:

1. To widen access and increase the affordability of owner-occupied housing by lowering down-payments, lengthening maturities of housing finance, and lowering the effective interest cost of housing loans. Tasks 1, 2 and 3 below shall support this objective.
2. To ensure that banks and other primary lenders will be able to resell home loans or to otherwise obtain long-term funding, so that formal-sector finance of housing can grow to significant size in relation to national income. Tasks 1 and 3 below shall support this objective.
3. To widen access to and lower the cost of financing for fixed and working capital. Tasks 2,3 and 4 below shall support this objective.

In order to achieve these goals the project is undertaking activities through four main tasks, which are:

- 1- Task 1 – Establish the supporting framework for the real estate finance industry,
- 2- Task 2 - Improve operation of the registration system for urban properties in the Ministry of Justice,
- 3- Task 3 - Framework and procedures for secured lending within the Ministry of Investment (MOI) and Ministry of Justice (MOJ), and develop new financial instruments under the Capital Markets Authority, the Ministry of Finance and the Central Bank of Egypt, and
- 4- Task 4 -- Establishment of a broad credit information system.

Objective

Complete a proposed set of rules and regulations for domestic and international factoring in Egypt.

General Task

The Factoring Advisor will conduct his task in two Phases, in connection with the new financial instrument that is factoring.

Phase One – Draft Regulations, offsite

The task involves the Factoring Advisor writing an initial drafting of a set of proposed regulations for domestic and international factoring in Egypt, prior to the Advisor's visit in

Cairo. The Factoring Advisor will also prepare a policy paper, indicating to the counterpart, the MOI and his Senior Advisor, what the policy alternatives may be and on which the counterpart may have to decide.

The draft and the policy paper will be provided to the counterpart for consideration, prior to Phase Two. These documents will be considered by the counterpart as a “discussion paper”, covering all areas, and best international practices, in order to lead to a final and comprehensive set of regulations, to constitute the entire regulatory framework for factoring.

Phase Two – Finalize Regulations, in Cairo

The Factoring Advisor will, in Cairo:

- 1- discuss with the counterpart and EFS the draft regulations and the policy paper; and
- 2- meet appropriate parties to review:
 - the matter of the pending application for licensing as a factor;
 - how commercial law treats receivables discounting or assignment; and
 - current factoring or receivables financing practices by local entities;
- 3- review, advise the counterpart on, and obtain from the counterpart final policy decisions suitable to Egypt; and
- 4- finalize the draft regulations, acceptable to the counterpart for their adoption.

The Market Advisors will be assisted by the long-term and short-term EFS advisors as appropriate, including with the local Finance Advisor, to ensure the draft regulations have been properly adapted to the Egyptian financial context.

Period of Performance

The performance of this assignment under Phase One should take place approximately from mid-October, for completion of Phase 1 by October end from the Factoring Advisor’s third country, in the Factoring Advisor’s third country.

The Phase 2 assignment trip to Cairo would be for, and completed between, the period of 20 November to 1 December 2005.

Deliverables

1. a first draft of regulations;
2. a detailed policy paper;
3. final draft regulations

Reporting

During the assignment the Factoring Advisor will report to the Team 3 Task Leader and COP.

Roles and Qualifications of Technical Specialist

The short-term expatriate Factoring Advisor has twenty years experience in mature and developing financial markets and first-hand experience in international and domestic factoring operations and their regulatory framework. He is fully familiar with all aspects of the factoring industry and international best practices, with at least ten years of experience in mature and developing financial markets.

Estimated Level of Effort

This task requires a Level of Effort estimated at a total of twenty-two (22) days, being 10 days for each of Phase One (third-country) and Phase Two (in the field), plus two (2) travel days.

Approval:

Chief of Party_____

Date_____