Factoring and Invoice Discounting: Law and Practice in Qatar

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Background and Market Practice

Factoring is a financing technique that enables an exporter to collect the purchase price of the goods relating to an export transaction prior to the due date of payment. Typically, banks in Qatar act as factors and purchase receivables relating to the export transaction. The same technique is also used for financing contractors and sub-contractors, where works have been performed or goods and services have been supplied and payment under the corresponding invoice is payable after a period of time (e.g. 90 days). This latter technique is referred to as 'invoice discounting'.

Balance Sheet Treatment

One key commercial consideration for companies seeking to sell their receivables is for the receivables to be removed from their balance sheet as a debt and to appear as revenue that has been collected. This treatment is possible if the receivables are sold on a 'without recourse' basis. Auditors usually require a legal opinion to confirm that a 'true sale' of the receivables has been effected.

While under Qatari law factoring (in respect of invoices and contracts) can occur on a 'with recourse' or 'without recourse' basis, as a result of certain legal issues, banks typically opt to structure their invoice discounting product on a 'limited recourse' basis. Therefore, once the invoice or agreement has been validly assigned to the bank, the bank would have direct recourse to the debtor under the invoice or contract (the "**Debtor**"), however, in the event of a dispute over the performance of the invoice or contract the bank will have recourse to the exporter or contractor (the "**Seller**"). In other words, the only risk being assumed by the bank is that of the bankruptcy of the Debtor. The bank does not assume the risk of performance by the Seller under the discounted invoice or contract.

In Qatar, especially in the context of contractor receivables, the assignment perfection procedures are difficult to complete. Therefore, the Seller will also provide a representation relating to the assignment having been perfected and a breach of this representation is included as a recourse event. Our view is that the inclusion of certain representations as recourse events should not impact the 'true sale' nature of the transaction.

Assignment of Invoices and Contracts (Legal Considerations)

Each invoice or contract that is subject to the factoring arrangement should be assigned to the bank.

The Civil Code (Law No. 22 of 2004) (the "**Civil Code**") sets out specific provisions relating to the assignment of rights. Article 324 of the Civil Code states that a creditor may assign its rights except where a specific provision of law or contract restricts such assignment.

Article 326 of the Civil Code requires that the assignor should notify the debtor (i.e. the Government Authority) of the assignment in order for the assignment of receivables to take effect against the

Government Authority. While the requirement for such a notification is not unusual, Article 326 goes on to state that the effectiveness of assignment vis-à-vis third parties shall only occur if the acknowledgement or acceptance of the notice of assignment from the debtor is "date certain". Date certainty effectively gives priority to the assignee (bank) in respect of the assigned receivables. However, effecting date certainty is an administrative burden and requires the acknowledgement or consent received from the Debtor to be date certified by the Authentication Department at the Ministry of Justice.

Ministry of Economy and Finance Regulations

In addition to the requirements under the Civil Code, the Ministry of Economy and Finance has also issued regulations relating to the assignment of receivables where the receivables emanate from a 'government authority' (the "Regulations"). It is understood that the Regulations would be applicable to various Ministries and other bodies such as Ashghal (Public Works Authority) and KAHRAMAA (Qatar General Electricity and Water Corporation)

The Regulations impose a higher standard of compliance. The significant additional requirements are:

1. the Government Authority and the assignee bank are required to notify the Government Auditing Department at the Ministry of Economy and Finance of the assignment;
2. the assignment agreement is required to be notarised at the Authentication Department (note that this is not a requirement under the Civil Code); and
3. banks are required to verify that the Government Authority has not agreed to assign the proceeds to any other party including to a sub-contractor.

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