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PRELIMINARY DRAFT UNIFORM RULES ON CERTAIN ASPECTS OF
INTERNATIONAL FACTORING

as approved by the Unidroit Study Group for the preparation
of uniform rules on the factoring contract on 21 April 1982

Rome, April 1982

Preliminary draft uniform rules on certain aspects of
international factoring

Article 1

1. For the purpose of the present rules, "factoring contract" means a contract concluded between one party (the supplier) and another party (the factor) by which the factor is to provide at least two of the services specified in paragraph 2 of this article and the supplier is to assign to the factor on a continuing basis, by way of sale or security, receivables arising from the sale of goods.

2. The services referred to in paragraph 1 of this article are finance, the maintenance of accounts, the collection of receivables and protection against credit risks.

3. In these rules references to "sale of goods" and "sale" shall, except as otherwise indicated, include the supply of services.

Article 2

1. The present rules shall apply in relation to international factoring contracts, that is to say, factoring contracts relating, wholly or in part, to receivables arising from a contract for the sale of goods between parties whose places of business are situated in different States. Where a party has more than one place of business, his place of business for the purpose of this article shall be that having the closest relationship to the contract of sale and its performance.

2. The present rules shall apply only in relation to factoring contracts pursuant to which:

(a) the receivables to be assigned arise from the sale of goods to trade or professional customers (debtors), and

(b) notice of assignment of the receivables is to be given to the debtors.

Article 3

As between the supplier and the factor:

- (a) a contractual provision for the assignment by the supplier of existing or future receivables shall be valid, even though the contract does not specify them individually, if they are so described that at the time when they come into existence they can be identified as falling within the contract;
- (b) a provision in the factoring contract by which future receivables are assigned shall have effect according to its terms without the need for any new act of transfer by the supplier after the receivables have come into existence.

Article 4

The assignment of a receivable by the supplier to the factor shall be effective notwithstanding any agreement between the supplier and the debtor prohibiting such assignment.

Article 5

The factoring contract or an assignment made pursuant to it may validly provide for the transfer, automatic or otherwise, to the factor of all or any of the supplier's rights under the contract of sale, including any provision in such contract reserving to the supplier the title to the goods.

Article 6

1. Subject to paragraph 2 of this article, the assignment shall be effective against the debtor if notice of the assignment to the debtor:

- (a) is given in writing and reasonably identifies the receivables which have been assigned and the person to whom the debtor is required to make payment; and
- (b) states that the assignment is governed by these rules.

2. A notice of assignment shall be effective for the purpose of paragraph 1 of this article only in relation to a receivable arising under a contract which has been concluded at or before the time the notice is given.

Article 7

If the debtor in good faith and without having reason to know of any other person's right to payment of a receivable makes payment to the factor pursuant to a notice of assignment given by the supplier or by the factor with the supplier's actual or apparent authority, the payment shall be effective to discharge the debtor's liability pro tanto even if:

- (a) the receivable had not been validly assigned by the supplier to the factor; or
- (b) the right to payment of the receivable was vested in a third party.

Article 8

1. Except as provided in Article 4, in a claim by the factor against the debtor for payment of a receivable arising under a contract of sale the debtor may set up against the factor all defences of which the debtor could have availed himself under that contract if such claim had been made by the supplier.

2. The debtor may also exercise against the factor any right of set-off in respect of claims existing and available to the debtor at the time the debtor received notice of the assignment against the supplier in whose favour the receivable arose.

Article 9

Without prejudice to the debtor's rights under Article 8, non-performance or defective or late performance of the contract of sale by the supplier shall not entitle the debtor to recover money paid by the debtor to the factor.

Article 10

1. The factor shall not, by reason only of transfer of title to goods to the factor as provided by Article 5, incur liability to a third party for loss, injury or damage caused by the goods.

2. Nothing in this article shall affect the liability of the factor where he sells or otherwise disposes of the goods to a person who is not the supplier, another factor or the debtor.

Article 11

The present rules shall also apply to subsequent assignments of the receivables by the factor to another factor as if the first factor were the supplier and the other factor were the initial factor, whether the places of business of the factors are situated in the same State or in different States.