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Factoring Model Law Working Group

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BACKGROUND RESEARCH REPORT

1. The purpose of this document is to provide the Factoring Model Law Working Group with additional research on various matters related to existing factoring practices across the globe and other relevant legal issues. The research was undertaken by the Kozolchyk National Law Center (NatLaw).

2. Part I provides an overview of developments in factoring globally, including a list of private sector associations that have published guidance material on factoring and supply chain finance.

3. Part II provides a summary of the existing international instruments that govern factoring.

4. Part III provides a comparative analysis of 5 States[1] in relation to 8 specific issues:

- (a) Governing Legal Framework
- (b) Factorable Receivables
- (c) Future Receivables
- (d) Effect of Anti-Assignment Clauses
- (e) Effectiveness against the Account Debtor
- (f) Priority of Assignments
- (g) Registration System
- (h) Regulatory Aspects and Licensing

5. Part IV provides summaries of the legal frameworks for receivables in 13 different jurisdictions[2].

6. Part V provides a summary of recent developments in blockchain and factoring and a table describing seven receivables financing platforms that are currently operating in different States.

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[1] Croatia, Latvia, Russia, China and Nigeria.

[2] Argentina, Azerbaijan, Belarus, Chile, Colombia, Ethiopia, Guatemala, Kenya, Mexico, Nigeria, OHADA, South Africa and Venezuela.

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I. DEVELOPMENTS IN FACTORING GLOBALLY

7. Since the peak of the 2007-2009 Great Recession, factoring activity has doubled in size.[3] Between 2018 and 2019, global factoring volume grew by over 5 percent from 2.76 trillion euros to 2.92 trillion euros.[4] Europe was the largest contributor, accounting for over 1.9 trillion euros (68 percent of the total global volume), a growth rate of over 8 percent from 2018. France, Germany, Spain, Italy, and the Netherlands, comprised 60 percent of the market. The Asia Pacific region represented 23 percent of the global volume, with 683 billion euros. However, this figure was a 2 percent drop from the Asia Pacific volume of 695 billion euros in 2018. China accounted for 494 billion euros of the 2019 Asia Pacific volume. The Americas represented 8 percent of the 2019 global total, with an overall figure of 221 billion euros (less than 5 percent growth from 2018). In the Americas, Central and South America led the way with 134 billion euros, while North America accounted for 87 billion euros (a 4 percent decline from 2018). Lastly, in Africa, factoring volume reached 24 billion euros, growing by 10 percent from 2018, largely thanks to increased factoring volumes in South Africa and Egypt. Total factoring volume reached a new high in 2016, reaching 2.375 trillion euros.[5] As at 2015, Europe was the world's largest factoring market on a regional basis, accounting for 66 percent of the global factoring market.[6] On the opposite end, Africa was the smallest factoring market, accounting for less than 1 percent of the global total.[7]

8. International factoring represented (in relative terms), its largest percentage of overall factoring activity in two decades, driven by the global shift to open account trade and the key role of factoring in such trade, especially for SMEs.[8] From 2010-2016, international factoring grew 13 percent annually, compared to 5 percent for domestic factoring.[9]

9. Forfaiting is being increasingly used as a supply chain finance technique. The International Trade and Forfaiting Association (ITFA) reports that the forfaiting market in China stood at over USD 30 billion in 2016.[10] ITFA also reported robust business globally with significant involvement of non-bank providers.

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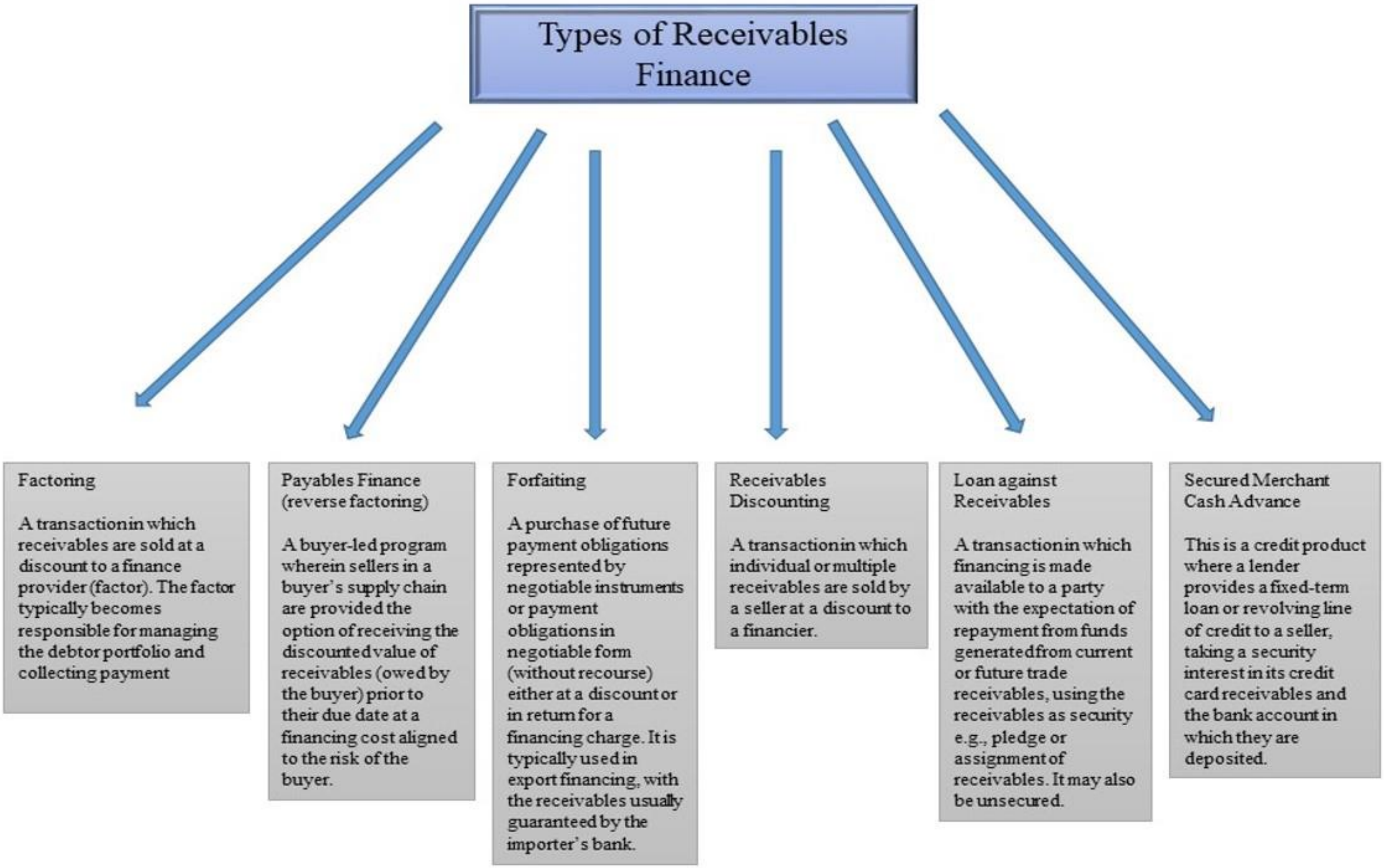
[3] International Chamber of Commerce (ICC), *2017: Rethinking Trade and Finance* (July 2017), p. 26.
[4] FCI, 2019 Preliminary Global Factoring Statistics (March 10, 2020).
[5] *Id*. at 133.
[6] ICC, 2016: Rethinking Trade and Finance (Oct. 2016), p. 104-105.
[7] *Id*. at 105.
[8] *Id*. at 26.
[9] *Id*. at 134.
[10] *Id*. at 26.

i. Types of Receivables Finance Transactions



ii. Table: Associations that have prepared guidance on factoring and supply chain finance

Institution	Description	Documents
Bankers Association for Finance and Trade (BAFT)[11]	BAFT is an international transaction banking association, providing a global forum for its members in the areas of trade finance, payments, compliance, and regulations. It was formed by the merger of the Bankers Association for Finance and Trade (BAFT) and the International Financial Services Association (IFSA).	i. BAFT Master Loan Agreement - English and New York Law Versions
Factors Chain International (FCI)[12]	Established in 1968, FCI is an umbrella organisation for independent factoring companies around the world, with almost 400 members in 90 countries. It is the global industry association for open account receivables finance, including factoring, invoice discounting and other supply chain finance solutions.	ii. Model Law on Factoring 2014 iii. Invoice Verification Guide
Global Supply Chain Finance Forum	The Global Supply Chain Finance Forum was established in 2014 as an initiative of industry associations to develop, publish and promote a set of commonly agreed standard market definitions for Supply Chain Finance and for SCF-related technique. It includes BAFT, the European Banking Association (EBA), FCI, ICC and the International Trade and Forfaiting Association (ITFA)[13].	iv. Standard Definitions for Techniques of Supply Chain Finance
International Chamber of Commerce (ICC)[14]	The ICC promotes international trade, responsible business conduct and a global approach to regulation and dispute resolution services. Members include many of the world's leading companies, SMEs, business associations, and local chambers of commerce.	v. ICC Uniform Rules for Forfaiting (URF800) vi. Draft Uniform Rules for Digital Trade Transactions

11 https://www.baft.org/
12 https://fci.nl/en/about-fci-new/about-fci .
13 https://itfa.org/
14 https://iccwbo.org/.

International Factoring Association[15]	The IFA was formed in 1999 to provide information, training, purchasing power and a resource for the factoring community.	vii. Sample Invoices with Notice of Assignment (NOA) viii. Sample Complaints Against Account Debtors ix. The Factoring Guide to Account Management
Secured Finance Network[16]	Secured Finance Network (formerly the Commercial Finance Association) is the largest association of asset-based lenders, factoring companies and other secured finance constituents. The SFN's membership consists of over 220 lenders and 51 service providers.	x. SFNet Compendium of Secured Finance Law

15 https://www.factoring.org/index.asp

16 https://www.sfnet.com/

II. INTERNATIONAL TREATIES REGULATING FACTORING

No	Instrument	Application	Types of Receivables	Treatment of Anti-Assignment Clauses	Priority among competing claims
1	UNIDROIT Convention on International Factoring (Factoring Convention). Adopted in 1988. Nine States ratified the Convention, entered into force in 1995.	The Convention governs factoring contracts for the assignment of receivables that arise from a contract of sale of goods between a supplier and a debtor whose respective places of business are located in different States that are Contracting States to the Convention. In addition, for the Convention to apply, the law of a Contracting State must govern both the factoring contract and the contract for sale of goods. Its application may be contractually excluded. The factor must perform at least two of the following functions: 1. Finance for the supplier, including loans and advance payments; 2. maintenance of accounts (ledgering) relating to the receivables; 3. collection of receivables; 4. protection against default in payment by debtors;	The receivables assigned pursuant to a factoring contract must arise from a contract of sale of goods between a supplier and a debtor whose places of business are in different States. Although the Convention frequently refers to "goods" and "sale of goods," those terms encompass contracts for services and the supply of services.	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.	The Convention does not provide a rule that determines the priority among competing assignees and other creditors, leaving the matter to the applicable domestic law.

2	United Nations Convention on the Assignment of Receivables in International Trade (Receivables Convention). Adopted in 2001. Two States have ratified the Convention.	The Receivables Convention applies to both assignments of international receivables and international assignment of receivables if, at the time the contract of assignment is concluded, the assignor is located in a Contracting State.	The receivables may arise from a range of transactions, including contracts for the supply of goods, construction and services, contracts for the sale or lease of real property, loan receivables, intellectual property royalties, and monetary damages for breach of contract. However, the Receivables Convention does not apply to non-contractual payment rights such as tort claims or tax refunds, foreign exchange transactions, bank deposits, and letters of credit, among others.	An assignment of a receivable is effective notwithstanding any agreement between the initial or any subsequent assignor and the debtor or any subsequent assignee limiting in any way the assignor's right to assign its receivables.	The Convention's Annex provides for three optional approaches to determine the priority which is based on the time of (i) registration; (ii) of the contract of assignment; and (iii) notification of assignment. States are encouraged to amend their existing rules to incorporate one of these approaches.

III. DOMESTIC LEGAL FRAMEWORKS FOR FACTORING

Comparative analysis of specific issues in States

State	**Governing Legal Framework**	**Factorable Receivables**	**Future Receivables**	**Effect of Anti-Assignment Clauses**	**Effectiveness against Account Debtor**	**Priority of Assignments**	**Registration System**	**Regulatory Aspects and Licensing**
Croatia	Factoring in Croatia is governed by several laws including: (i) the Law on Factoring; (ii) the Law on Obligations; and (iii) the Companies Law.	Only receivables with a maturity date of less than one year are eligible for factoring in Croatia. Factoring companies are prohibited from purchasing non-performing loans (NPLs) or "synthetic" risks related to NPLs.	Future receivables may form the subject of a factoring contract, provided they are "sufficiently determinable." A future claim is "sufficiently determinable" if the creditor, debtor and the maximum amount of the claim is determined in the factoring contract and the bases for the future claims are indicated in the contract.	Anti-assignment clauses are valid. Thus, the (account) may disregard the notification of assignment and pay to the original creditor.	There is no requirement to notify the account debtor in order for the assignment to be valid.	In the event of multiple assignments of a receivable to several factors, priority will be given to the factor that first notifies the (account) debtor of the assignment.	Assignments, whether for security purposes or outright, are not subject to registration.	The Croatian Financial Services Supervisory Agency (CFSSA) is the regulatory body that is responsible for approving the management team of factoring companies as well as for issuing risk management and internal audit procedures for factoring companies. While no specific capital adequacy standard exists for factoring

State	Governing Legal Framework	Factorable Receivables	Future Receivables	Effect of Anti-Assignment Clauses	Effectiveness against Account Debtor	Priority of Assignments	Registration System	Regulatory Aspects and Licensing
								companies, they are required to apply International Financial Reporting Standards (IFRS) accounting standards and must submit audited annual reports to the CFSSA.
Latvia	Aspects of factoring in Latvia are governed by several laws, including (i) the Civil Law of 1997; (ii) the Commercial Law of 2000; and (iii) the Credit Institutions Law of 1995.	There are no restrictions on the types of receivables that can be assigned under a factoring agreement.	Future receivables may be assigned if they are properly defined in the factoring agreement in order to be identifiable when they arise.	Anti-assignments clauses are invalid in Latvia, so any receivable may be assigned without the consent of the account debtor.	There are no notification formalities for the validity of an assignment.	N/A	Assignments, whether for security purposes or outright, are not subject to registration.	Latvian law does not impose any specific licensing requirements for the provision of factoring services.
Russia	Factoring in Russia is governed by the following laws: (i)	The Civil Code does not impose any restrictions on the receivables.	Future receivables must be defined in the factoring agreement in a	Anti-assignment clauses are not enforceable as	Notification of the debtor is not a pre-requisite for	N/A	Article 389 of the Civil Code requires that an assignment	Article 825 of the Civil Code specifies that, subject to

State	Governing Legal Framework	Factorable Receivables	Future Receivables	Effect of Anti-Assignment Clauses	Effectiveness against Account Debtor	Priority of Assignments	Registration System	Regulatory Aspects and Licensing
	the Civil Code No. 51-FZ of 1994 (as amended); (ii) the Federal Law No. 395-1 "On Banks and Banking Activities" of 1990 (as amended); (iii) the Federal Law No. 115-FZ "On Combating Legalization of Income Received by Illegal Means, and Terrorism Financing" (AML Law); (iv) the Federal Law No. 86-FZ "On the Central Bank of the Russian Federation" of 2002.		manner that makes it possible to identify them when they arise. While there is no guidance in the Civil Code as to what constitutes sufficient description of a future receivable, Russian courts have ruled that receivables cannot be described using general descriptions such as "all future monetary claims." Instead, the factoring agreement may specify that all future receivables of a certain type will be assigned to the factor.	against the factor. Nevertheless, the assignor will remain liable to the account debtor for breach of the anti-assignment clause.	the validity of an assignment.		be concluded in the same written form as the underlying transaction that generated the receivables, be it in simple written form or notarial form. If the underlying transaction was subject to registration (e.g. transactions involving immovables, participatory interest in limited liability companies etc), then the assignment of such a claim must be	obtaining the needed approvals under other laws, any legal entity may provide factoring services. Banks and non-bank financial institutions (NBFIs) may provide factoring services in accordance with the Law on Banks, under their banking licenses issued by the Central Bank of Russia (CBR). Banks and NBFIs are subject to the prudential regulatory regime of the Law on Banks and must

State	Governing Legal Framework	Factorable Receivables	Future Receivables	Effect of Anti-Assignment Clauses	Effectiveness against Account Debtor	Priority of Assignments	Registration System	Regulatory Aspects and Licensing
							similarly registered.	comply with mandatory ratios such as capital adequacy requirements, risk management requirements, and provisioning. NBFIs are not subject to such requirements.
China	Factoring in China, especially with respect to assignment of receivables, priority and perfection, is governed by rules found in contract, property, and	Receivables arising from contracts for sale of goods or services can be assigned to a factor.[18]	The law is unclear on the extension to future receivables, with some commentators arguing that the assignment will be enforceable when the receivables come into	Anti-assignment clauses in the underlying contract that generates the receivables are enforceable.[20]	Notification of the account debtor is mandatory for the assignment to be effective, but only against the	Priority between competing assignees is determined by the time the debtor receives notice of the assignment.[22]	Assignments for security purposes are subject to registration with the Credit Reference Centre of the People's Bank	Since 2018, factoring companies are regulated by the China Banking and Insurance Regulatory

[18] Xin Zhang and May Liu, *Lending and Taking Security in China: Overview*, PRACTICAL LAW, https://uk.practicallaw.thomsonreuters.com/3-500-9517?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1 (January 21, 2020).

[20] Zhou Jie and Eddie Hu, *China: Securitization 2019*, THE INTERNATIONAL COMPARATIVE LEGAL GUIDE (ICLG) (May 30, 2019), https://iclg.com/practice-areas/securitisation-laws-and-regulations/china .

[22] *Id*.

State	Governing Legal Framework	Factorable Receivables	Future Receivables	Effect of Anti-Assignment Clauses	Effectiveness against Account Debtor	Priority of Assignments	Registration System	Regulatory Aspects and Licensing
	security law. There is neither a single law on factoring nor any People's Supreme Court policy on factoring.[17]		existence. Others contend that it will be enforceable if the receivables arise from an existing receivables contract, the seller has performed its main obligations, and proper notification has been provided to the account debtor.[19]		account-debtor.[21]		of China.[23] However, the effect of such registration is unclear.	Commission (CBIRC).[24]

[17] Peter Mulroy, *China Factoring Industry: Current State and Future Developments*, FCI (July 6, 2017), https://fci.nl/en/news/China%20Factoring%20Industry-%20Current%20State%20and%20Future%20Developments/4235

[19] Zhou Jie and Eddie Hu, *China: Securitization 2019*, THE INTERNATIONAL COMPARATIVE LEGAL GUIDE (ICLG) (May 30, 2019), https://iclg. com/practice-areas/securitisation-laws-and-regulations/china. Michael J. Moser and Fu Yu (eds.), *Doing Business in China* (Juris Publishing, 2014), §7.04[2].

[21] Jon Woo Jung, *The Assignment of Receivables under the Chinese Contract Law and Some Suggestions*, PEKING UNIVERSITY JOURNAL OF LEGAL STUDIES 3, 119 (2012), http://en.pkulaw.cn/DisplayJourn.aspx?lib=qikan&Gid=1510108744&keyword=.

[23] Xin Zhang and May Liu, supra n 18. It is unclear if the Credit Reference Center is an online or paper registry.

[24] *CBIRC Became the New Regulatory Authority of Commercial Factoring Industry in China*, FCI (May 18, 2018), https://fci.nl/en/news/CBIRC%20became%20the%20New%20Regulatory%20Authority%20of%20Commercial%20Factoring%20Industry/4630.

State	Governing Legal Framework	Factorable Receivables	Future Receivables	Effect of Anti-Assignment Clauses	Effectiveness against Account Debtor	Priority of Assignments	Registration System	Regulatory Aspects and Licensing
Nigeria	Factoring in Nigeria is governed by the Secured Transactions in Movable Assets Act 2017 (STMAA), the Companies Act, the common law, and judicial precedents.	As a general rule, receivables arising from contracts for sale of goods or services can be assigned under a factoring agreement.	Future receivables may be the subject of an assignment by way of security without further qualification.	By virtue of the STMAA, in an assignment by way of security, an anti-assignment clause in the underlying contract from which the receivables arise will be ineffective against an assignee. The position is unclear with respect to outright transfers, but some scholars believe that an anti-assignment clause will be enforceable in that respect.	By virtue of the STMAA, notification of the account debtor is not a pre-requisite for the validity of an assignment by way of security. However, it is unclear whether this rule applies to outright transfers.	For outright transfers, priority may be determined by the time of notification to the account-debtor unless the notice-giving assignee knew of the earlier assignment at the time it takes its assignment. For assignments by way of security, priority will be determined by the order of registration in the electronic collateral registry	Assignments for security purposes are subject to registration in the electronic collateral registry.	There is no regulatory scheme for factoring in Nigeria. However, the Central Bank may regulate aspects of factoring business, especially for financial institutions.

IV. DOMESTIC LEGAL FRAMEWORKS ON THE TREATMENT OF RECEIVABLES

10. Part IV provides summaries of the legal frameworks for receivables in 13 different jurisdictions[25]. In particular, this research examines five issues in each jurisdictions: (i) definition of receivables, (ii) types of transfers; (iii) governing framework; (iv) rights in receivables that may be transferred; and (v) rules governing transfers of future receivables. The purpose of this analysis is to provide information to the Working Group on how different jurisdictions are currently regulating these issues, so the Working Group is well informed on existing practices when drafting the Model Law. This section may be expanded over time to provide a more thorough analysis of a larger number of States.

A. Argentina

11. Argentina's Civil and Commercial Code does not contain a specific definition of receivables. Nonetheless, under the general framework of the law, a receivable would be defined under a typical creditor-debtor relationship where the creditor has the right to receive value in exchange for its goods or services. More specifically, under the rules on factoring, a receivable would need to be a result of the company or person's line of business.

12. According to the Civil and Commercial Code, there are five ways in which a receivable can be transferred in Argentina. First, receivables can be pledged[26] provided that the receivable is documented in writing and notice is given to the account debtor. The creditor in this case would collect directly from the account debtor. An entity that carries out financial activity may grant a floating commercial pledge, subject to Law 15,348/46 which requires the pledge to be documented in special forms and for it to be registered. The commercial pledge creditor will have priority over the assets against third parties upon its registration, and the debtor may not grant any other security over the receivables pledged.[27]

13. Second, receivables can be assigned[28] provided that the creditor, debtor, and account debtor all agree to its assignment in writing. Third, the creditor can sell receivables / invoices at a discount.[29] Fourth, receivables may be granted as security through a Guarantee Trust.[30] In this case, the agreement must be in writing and it will only be effective against third parties – i.e., the account debtor – provided that notice is given. And finally, receivables can be transferred as security under a factoring agreement.

14. Factoring is governed by articles 1421 through 1428 of Argentina's Civil and Commercial Code. Factoring agreements can be entered into with or without recourse, and may be granted over specific receivables, a part or all of the present and future receivables of the debtor. Future receivables can be granted as security only if they can be identifiable.

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[25] Argentina, Azerbaijan, Belarus, Chile, Colombia, Ethiopia, Guatemala, Kenya, Mexico, Nigeria, OHADA, South Africa and Venezuela.

[26] Argentina, Civil and Commercial Code, Arts. 2232-2237.

[27] Decreto Ley No. 15,348/46, Pledge requiring Registration, Argentina, June 25, 1946, Arts. 1, 4, 5, 7 and 14 (as reformed).

[28] Argentina, Civil and Commercial Code, Arts. 1632-1635.

[29] Argentina, Civil and Commercial Code, Art. 1409.

[30] Argentina, Civil and Commercial Code, Art. 1680.

B. Azerbaijan

15. Rules governing receivables finance are found in both the Secured Transactions Law (ST Law) and the Civil Code.[31] Article 655.1 of the Civil Code defines factoring. Article 4 of the ST Law expressly provides that the assignment of a monetary obligation (factoring) pursuant to Article 655 (factoring agreement) of the Civil Code is a type of encumbrance falling within the purview of the ST Law, thus subjecting factoring to registration for the purpose of perfection and priority. Article 1 of the ST Law defines "encumbrance of movable property" as a limited property right over a movable asset. Anti-assignment clauses in the underlying agreement that generates the receivable are generally effective against the transferee if the receivables debtor has "legitimate reasons" to include such restrictions. Article 14 of the ST Law contains some special rules with respect to enforcing encumbrances on accounts receivable as against the receivables debtor, which requires a notification. However, notification is neither a condition of creation nor perfection.

C. Belarus

16. Belarus' secured transactions framework is mostly contained within the 1998 Civil Code of the Republic of Belarus (hereinafter Civil Code).[32] Articles 338-40 provide rules governing specific types of pledges, including pledges of claims. Rules governing outright transfers of receivables are provided in Article 772 of Chapter 43. Factoring is also covered by the 2000 Banking Code of the Republic of Belarus under which it is a regulated banking operation. The 2015 Edict of the President of Belarus on the Registry of Movable Property Encumbered by a Pledge (Edict) and the 2016 Regulation of the Cabinet of Ministers of the Republic of Belarus on the Procedure for the Formation, Maintenance, and Functioning of the Registry of Movable Property Encumbered by a Pledge (Regulation) govern aspects related to the creation, perfection, and priority of registered pledges. However, since an outright transfer is not a pledge, it is not registrable under the Edict and Regulation because they do not contemplate the registration of transfers other than pledges. Article 157 of the *Banking Code* overrides the legal effect of a restriction that may be imposed on a transfer of the receivables, such as in the sale agreement between the borrower and a buyer of a product. Third-party effectiveness is achieved by registering the security right in the collateral registry, which determines priority based on the time of registration.

D. Chile

17. Under Chilean law No. 19.983,[33] receivables may be generated from, with some exceptions relating to financial transactions, any transaction that requires an invoice, whether that is from sales or provision of services or other similar transactions.[34]

18. The creditor is required to issue a paper or electronic copy of the invoice that allows for its transfer or for its enforcement in an executive trial. The law states that such receivables can only

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[31] Law on the Encumbrance of Movable Property of 2 May 2017, No. 667-VQ, *available in Russian at* https://mpcr.cbar.az/ru/legislation

[32] Civil Code (1998), *available at* https://kodeksy-by.com/grazhdanskij_kodeks_rb.htm (Russian), http://law.by/document/?guid=3871&p0=Hk9800218e (English) (last accessed June 1, 2020).

[33] Law No. 19.983 on the Transfer of Receivables and its Executive Enforcement, Chile, December 15, 2004 (as reformed, most recently on April 3, 2020).

[34] Law No. 19.983, Art. 1.

be issued for a 30-day term.[35] In general, parties can agree to a different term in writing, but such exception does not apply when the receivables debtor is a large business and the creditor of the receivable is a small business. In that case, if the parties agree to a longer term for payment or the receivables debtor pays after the 30-day term as stated in the law, the receivables debtor will have to pay the current market interest rate over the balance.

19. Receivables documented in paper-based invoices can be assigned provided that the assignment is made in writing in the paper-based invoice and notice is provided to the receivables debtor through a notary public or a local officer of the civil registry in locations where a notary is not available. Notice will be considered given if provided in person by the notary or official, or on the sixth day after delivery of a certified letter.[36] For electronic invoices, the assignment must be registered in the public electronic registry managed by the tax authority.[37]

20. Another device to transfer a receivable as a security in Chile is through a pledge.[38] The Chilean law on non-possessory pledges is vague on the definition of a receivable but states that all non-tangible assets, present or future, may be granted as collateral.[39] The pledge agreement must be executed by public deed or in a private instrument authenticated by a notary and filed in the notary's book. The pledge must be notified to the receivables debtor through a notary or through the court notice system.[40] The same provision states that, alternatively, the receivables debtor may agree to and be considered notified of the pledge in writing; however, it is unclear what formalities are needed for its effectiveness. The pledge of receivables is perfected and effective against third parties as of the date of its registration at the Registry of Non-Possessory Pledges.[41]

21. Factoring is regulated as a part of a broader framework for financial transactions. The Law on Banks and other decrees issued by the Treasury deal with the authorization of banks and non-bank institutions to offer factoring services.[42] Factoring has also been developed through case law and doctrine in Chile, such as the Supreme Court decision 914/2010 where the court defined factoring as a financial transaction under which invoices or receivables are transferred/assigned to the creditor and where the debtor receives a sum of money in exchange of such transfer/assignment ….[43]

E. Colombia

22. The Colombian Law on Secured Transactions defines receivables as the right to claim or receive monetary payment, and the definition encompasses future receivables.[44]

23. Articles 23-30 of the Colombian Secured Transactions Law govern security interests and assignments of receivables. The agreement to provide for the assignment of receivables must be in writing, and a corresponding notice must be registered at the Colombian Security Interests

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35 Law No. 19.983, Art. 1, 2.

36 Law No. 19.983, Art. 7.

37 Law No. 19.983, Art. 7-9.

38 Law No. 20.190 on non-possessory pledges, Chile, June 5, 2007 (as reformed, most recently on May 24, 2019).

39 Law No. 20.190, Art. 5, 9, section on pledges.

40 Law No. 20.190, Art. 7, section on pledges.

41 Law No. 20.190, Art. 25, section on pledges.

42 Maximiliano Escobar Saavedra, Factoring (August 2018).

43 Saavedra, Factoring, *citing* Chilean Supreme Court Decision 914/2010.

44 Secured Transactions Law, Law 1676, Colombia, August 20, 2013.

Registry.[45] For the assignment or security over receivables to be effective against the receivables debtor and the creditor to collect payment directly, the creditor must notify the receivables debtor in writing – whether by mail, email or other written form.[46]

24. Factoring and invoice discounting are further governed by a number of reforms to the Commercial Code on invoices adopted in 2008[47] and reforms to the Colombian Regulation of Negotiable Electronic Invoices of 2016.[48] Commercial invoices – whether paper-based or electronically issued – are transferrable through endorsement and the receivables debtor shall pay the holder or who is identified as such in the electronic invoice registry.[49] The electronic invoice registry system in Colombia is managed by the tax authority (*Dirección de Impuestos y Aduanas Nacionales* – DIAN), and so regulated by tax related regulations as well as a decree issued by the Ministry of Treasury.[50]

F. Ethiopia[51]

25. Ethiopia's Secured Transactions Proclamation[52] defines a receivable as "a right to payment of a monetary obligation, excluding a right to payment evidenced by a negotiable instrument, a right to payment of funds credited to a deposit account and a right to payment under security." The taking of security rights over existing and future receivables is governed by the Proclamation. While the Proclamation does not state expressly that it applies to outright transfers of receivables, aspects of such transfers are governed by its provisions. Anti-assignment clauses in the underlying agreement that generates the receivable are ineffective against the transferee, but the grantor may be liable to the receivables-debtor for the breach. The transferee or secured creditor may notify the receivables-debtor of the transfer through a notification that reasonably identifies the secured creditor and the encumbered receivables (including any receivables that may arise after the notification). Failure to notify the receivables-debtor would entitle it to discharge the debt by paying in accordance with the contract generating the receivables. Third-party effectiveness is achieved by registering a notice of the security right in the collateral registry, which determines priority based on the time of registration.

G. Guatemala

26. Guatemala enacted a Factoring Law in 2018[53] that governs factoring and invoice discounting transactions. This new law includes a specific definition of receivable as "a right to payment arising from a contractual relationship between the parties regardless of whether the transaction is a credit

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45 Secured Transactions Law, Colombia, Arts. 9, 14, 16.

46 Secured Transactions Law, Colombia, Arts. 28, 29.

47 Law 1231 reforming Colombia's Commercial Code, July 17, 2008 and reformed by the Colombian Secured Transactions Law in 2013.

48 Law 1349 reforming Colombia's Regulation of Commerce, Industry and Tourism, August 22, 2016.

49 Commercial Code, Colombia, Arts. 772, 774. Regulation of Commerce, Industry and Tourism, Colombia, Art. 2.2.2.53.2 (7).

50 Law 2010, Colombia, December 27, 2019. Colombian Treasury Decree No. 0358, March 5, 2020. Colombian DIAN Resolution No. 000042, May 5, 2020.

51 Marek Dubovec and Louise Gullifer, SECURED TRANSACTIONS LAW REFORM IN AFRICA (Hart Publishing, 2019), p. 262-283.

52 Movable Property Security Proclamation No. 1147/2019, *available at* https://chilot.me/2019/03/a-draft-proclamation-to-provide-for-movable-property-security-right/ (last accessed June 1, 2020).

53 Law on Factoring and Discounting Contracts, Guatemala, January 16, 2018.

transaction or not."[54] Their Secured Transactions Law similarly defines receivables as a right to receive payment for any type of transaction.[55]

27. Receivables may be encumbered by a security interest, transferred, or assigned under the Guatemalan Secured Transactions Law. The agreement must be in writing, and third-party effectiveness requires registration with the Security Interests Registry[56] If notice is provided to the receivables debtor, the latter must make payment to the secured creditor. Notice may be given through mail, email, judicial notice, or through a notary.[57]

28. Factoring and invoice discounting agreements may relate to existing or future receivables, a single identifiable receivable or a group or all receivables, and may provide for recourse.[58] Both factoring and invoice discounting agreements must be in writing – paper-based or electronically; they must be registered at the Security Interests Registry for them to be effective against third parties and to establish priority.[59] These agreements are effective against the receivables debtor upon notice which may be provided through any written paper or electronic means.[60]

H. Kenya[61]

29. The Movable Property Security Rights Act (MPSR)[62] provides for the creation of security rights over receivables, both present and future. It defines a receivable as "a right to payment of a monetary obligation, excluding a right to payment evidenced by a negotiable instrument, a right to payment of funds credited to a deposit account and a right to payment under security." The definition of security right under the MPSR includes an outright transfer of receivables, while the definition of collateral includes a receivable that is the subject of an outright transfer. Accordingly, except for the enforcement provisions (Part VII), the MPSR applies to the outright transfer of receivables. Anti-assignment clauses in underlying agreements that generate receivables are ineffective against the transferee, but the grantor may be liable to the receivables-debtor for the breach. The transferee or secured creditor may notify the receivables-debtor of the transfer and the notice must reasonably identify the secured creditor and the encumbered receivables (including any receivables that may arise after the notification). Failure to notify the receivables-debtor would entitle it to discharge the debt by paying in accordance with the contract generating the receivables. Third-party effectiveness is achieved by registering a notice of the security right in the collateral registry, the time of which determines priority.

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54 Law on Factoring, Guatemala, Art. 2 (g).

55 Secured Transactions Law, Law No. 51-2007, Guatemala, November 16, 2007, reformed as of September 12, 2008, Art. 2 (l).

56 Secured Transactions Law, Guatemala, Art. 10.

57 Secured Transactions Law, Guatemala, Art. 22, 23.

58 Law on Factoring, Guatemala, Art. 3.

59 Law on Factoring, Guatemala, Art. 9, 24, 25

60 Law on Factoring, Guatemala, Art. 14.

61 Dubovec and Gullifer, *supra* n 51, at 91-117.

62 The Movable Property Security Rights Act, No. 13 of 2017, *available at* https://www.statelaw.go.ke/wp-content/uploads/2016/07/13%E2%80%94Movable-Property-Security-Rights-Act-2017-Full.pdf (last accessed June 1, 2020).

I. Mexico

30. Mexico's General Law of Negotiable Instruments and Credit Transactions defines receivables as any right to payment in national or foreign currency that is documented in the form of an invoice, credit instruments, electronic data message or other means that prove the existence of such rights.[63] Factoring agreements can be entered into with or without recourse and the law does not require formalities for the agreement, other than identifications of the parties, and the receivables.[64] The transfer will be effective against third parties upon registration of an electronic notice at the Security Interests Registry (*Registro Único de Garantías Mobiliarias* - RUG) and effective against the receivables debtor the day after receiving notice.[65] Notice must be provided in front of two witnesses for it to be effective.[66]

31. Pledges over receivables can be made through endorsement of the negotiable instrument that documents the receivable,[67] by delivery of possession of a non-negotiable instrument documenting the receivable,[68] and if the receivables are only documented in the debtor's accounting books, the pledge would be created through a notation in such accounting books.[69]

32. Non-possessory pledges of receivables[70] must be granted in writing and if the underlying transaction that it is securing is significantly large (currently approximately US$850,000), the parties' signatures need to be ratified by a notary. A pledge is effective against third parties upon registration at the RUG, and priority is determined by the order of registration.[71]

33. Finally, receivables may also be transferred as a security through a guarantee trust.[72] Similar to non-possessory pledges, the agreement must be in writing and if over US$850,000, the parties' signatures must be ratified by a notary.[73] Such transfer is effective against third parties upon registration at the RUG.

J. Nigeria[74]

34. The Secured Transactions in Movable Assets Act (STMAA)[75] regulates the taking of security rights over receivables. Section 63 defines a receivable as "a right to receive value arising from an obligation owed by an account debtor to the grantor including book debts but excluding a negotiable instrument." The STMAA does not expressly apply to outright transfers of receivables. Anti-assignment clauses in the underlying agreement that generates the receivable are ineffective against

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63 General Law of Negotiable Instruments and Credit Transactions, Mexico, reformed as of June 22, 2018, Article 421.

64 General Law on Negotiable Instruments, Art. 419, 430.

65 General Law on Negotiable Instruments, Arts. 426, 427.

66 Commercial Code, Mexico, Art. 390.

67 General Law on Negotiable Instruments, Art. 334 (I).

68 General Law on Negotiable Instruments, Art. 334 (III).

69 General Law on Negotiable Instruments Art. 334 (VIII) and Law on Financial Institutions, Mexico, reformed as of June 4, 2019, Art. 70.

70 General Law on Negotiable Instruments, Art. 355 (I)

71 General Law on Negotiable Instruments, Art. 365, 366, 371.

72 General Law on Negotiable Instruments, Arts. 395-407.

73 General Law on Negotiable Instruments, Art. 404, and Commercial Code, Art. 32 bis 1 (B) (V).

74 Dubovec and Gullifer, *supr*a n 51, at 213-238.

75 Secured Transactions in Movable Assets Act 2017, *available at* http://extwprlegs1.fao.org/docs/pdf/nig185008.pdf (last accessed June 1, 2020).

the transferee. Third-party effectiveness is achieved by registering a notice of the security right in the collateral registry, which determines priority based on the time of registration. Additionally, companies may create fixed or floating charges over their receivables in accordance with the Companies Act. Such charges may be subject to registration with the Corporate Affairs Commission (CAC) in order to be enforceable against the liquidator and subsequent secured creditors of the company.

K. OHADA[76]

35. The OHADA Uniform Act on Securities (Uniform Act)[77] allows the transfer of ownership of an asset as security for the satisfaction of a present or future debt. It provides for the transfer of receivables as security to legal entities conducting banking or credit operations in the regular course of business. Thus, the Uniform Act's rules on security transfer of receivables are limited to banking or credit institutions. Anti-assignment clauses in the underlying agreement that generates the receivable are effective against the transferee, provided the receivable is a business debt. Future receivables may be assigned as security, but the written agreement must identify the future receivable. Failure to notify the receivables-debtor would entitle it to discharge the debt by paying in accordance with the contract generating the receivables. Third-party effectiveness is achieved by registering a notice of the security right in the business registry, which determines priority based on the time of registration. In addition, a pledge may be created over receivables. Any pledge of future receivables must identify the receivable. The same rules on notification of the receivables-debtor and third-party effectiveness of a security transfer apply to a pledge of receivables.

L. South Africa[78]

36. In South African law, a cession is used to transfer rights in an intangible, including receivables. It is effective once executed, without any need for public notice. Future receivables may be the subject of a cession that will be effective even after the cedent has filed for insolvency, because a security cession of receivables is completed when the cession agreement is executed. Notice to the receivables-debtor is not required where the cedent is tasked with collecting the receivables. Anti-assignment clauses in the underlying agreement that generates the receivable are generally effective against the transferee.

M. Venezuela[79]

37. While Venezuelan law lacks a definition, a receivable is generally understood as an existing obligation to pay money for any valid cause. By virtue of Article 533 of the Venezuelan Civil Code, a receivable is movable property.

38. The main device for transferring receivables in security is a pledge. Venezuela's Civil and Commercial Codes do not provide separate rules for taking a pledge over receivables, therefore the

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[76] Dubovec and Gullifer, *supra* n 51, at 213-238.

[77] The OHADA Uniform Act on Securities 2010, *available at* https://www.droit-afrique.com/uploads/OHADA-Uniform-Act-2010-securities.pdf (last accessed June 1, 2020).

[78] Dubovec and Gullifer, *supra* n 51, at 328-352.

[79] William Johnston (ed.), SECURITY OVER RECEIVABLES: AN INTERNATIONAL HANDBOOK (Oxford Press, 2008), p. 589-599.

general rules governing pledges apply. For third-party effectiveness, the receivables-debtor must be notified of the pledge, unless the receivable is evidenced in bearer title, in which case an endorsement in guarantee would suffice. A pledge can only be created over existing receivables. A pledge agreement over future assets is considered a mere personal obligation to establish a pledge in future. The pledge must be evidenced in a written agreement stating the owed amount, the date, and the type and nature of the pledged receivables. Anti-assignment clauses in the underlying agreement that generates the receivable are generally effective against the transferee. Other devices for taking security over receivables are: (i) a conditioned credit assignment; (ii) a guarantee trust; and (iii) a chattel mortgage over the going concern. With respect to the guarantee trust, only Venezuelan financial institutions and insurance companies can act as trustees. Under this device, the assignor transfers the receivables in trust to a trustee and appoints the creditor as the beneficiary. The trustee is responsible for collecting as well as preserving the receivables and transferring them to the beneficiary upon a breach by the assignor. A chattel mortgage over a going concern covers all the movable assets of the mortgagor, including receivables, but excludes the real estate of the business. The chattel mortgage is created via a written document, which must be registered in the Commercial Registry Office of the location of the going concern.

V. DEVELOPMENTS IN BLOCKCHAIN AND FACTORING

39. A blockchain is a distributed database that uses advanced cryptography and a consensus mechanism to establish: (i) who took an action; (ii) when the action occurred; and (iii) how much of something exists.[80] Information is recorded on the blockchain through blocks of data that, once added, cannot be changed i.e., they become immutable.[81] The database is distributed among several computers in a network that may be spread across the world. Each computer stores a copy of the database. The benefits of a blockchain are speed, efficiency, security, transparency and immutability.[82] Potential blockchain applications include peer-to-peer money transfers, smart contracts, financial services, internet of things (IOT), supply chain tracking, health records, public records, voting and many more.[83]

40. Blockchain has the potential to impact current factoring processes and methods, including through the use of smart contracts and practices such as dynamic factoring.[84] For example, a supplier, manufacturer, and bank could all update their transactional data on the same ledger, enabling efficiency and higher levels of trust and transparency.[85] A bank would be better disposed to financing the receivables of the supplier as it can easily verify the authenticity and provenance of the contract, as well as the time when the buyer accepts delivery. In a smart contract scenario, the contract between the buyer and supplier would be executed on the blockchain that is accessible to all participants in the supply chain. Upon execution, the bank can immediately enter into a factoring contract with the supplier with payment conditioned on the delivery of the goods to the buyer. Using smart sensors, the internet of things, and other technologies, the smart contract could detect the

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[80] Jane Thomason and Valentine Gandhi, Demystifying Blockchain and its Uses for International Development, USAID (2018), p. 5.

[81] *Id*; Adam Levy, *What is Blockchain?* THE MOTLEY FOOL (Mar. 18, 2018), https://www.fool.com/investing/2018/03/18/what-is-blockchain.aspx.

[82] Jane Thomason and Valentine Gandhi, supra n 80.

[83] Adam Levy, supra n 81.

[84] Laurence Fletcher, *Forget the Paper Trail – Blockchain Set to Shake Up Trade Finance*, FINANCIAL TIMES (Dec. 2, 2019), https://www.ft.com/content/04a4fcde-dfb5-11e9-b8e0-026e07cbe5b4?shareType=nongift.

[85] Carlo R.W. De Meijer, *Blockchain and Supply Chain Finance: The Missing Link*, FINEXTRA (May 5, 2017), https://www.finextra.com/blogposting/14049/blockchain-and-supply-chain-finance-the-missing-link.

acceptance of goods by the buyer and immediately release funds to the supplier. Such a process could eliminate multiple intermediaries, paperwork, fees, and inefficient processes. It could also prevent fraud, as every participant in the system can ascertain the existence of a factoring agreement and the stage of the transaction.

41. The smart contract could pay the supplier the moment the blockchain reflects that the goods have shipped, but would automatically reduce the interest rate as the goods get closer to the buyer, reflecting the reduced risk of non-delivery. In such a case, the interest rate on the factored receivables could be lower at the time of delivery than when the goods were shipped. In both of the aforementioned scenarios, smart contracts on the blockchain would not only yield cost-savings, but could allow suppliers, especially small businesses, to build robust credit histories that facilitate banks' know-your-customer (KYC) processes.

42. The blockchain could make it much easier to decrease the risk associated with financing invoices, reducing the cost of due diligence, which is a major expense in contemporary supply chains.[86] Credit providers on the blockchain network can simply consult the decentralised database to verify that an invoice has not been duplicated, without sacrificing confidentiality.[87] This could be achieved by tokenising invoices, so that every invoice on the blockchain receives a timestamp and a unique identifier.[88] The invoice would be hashed cryptographically so that it can only be financed once as well as to encrypt data, making confidential details unreadable.[89] Such tokenised invoices can then be sold at a discount to factoring companies.

43. A number of blockchain-based initiatives and projects aim to apply blockchain technology to facilitate transparency, increase liquidity and reduce fraud in factoring transactions. For instance, companies such as INVIOU and Hiveterminal provide blockchain registries for peer-to-peer trading of invoices.[90] Businesses upload invoices to the blockchain platform where debtors can digitally authenticate and confirm ownership of their invoices without disclosing confidential details.[91] The platform tokenises the authenticated invoices and provides a global peer-to-peer marketplace that enables financiers to purchase invoices directly from their owners with the transaction recorded in the blockchain registry.[92] The platform provides prospective purchasers with a risk-assessment of each individual invoice, based on analysis of the invoice history stored in the platform's database.[93]

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86 James Sinclair, *Blockchain Technology Applied to Factoring and Short-Term Debt*, TRADE FINANCE GLOBAL (Sep. 3, 2018), https://www.tradefinanceglobal.com/posts/blockchain-technology-applied-to-factoring-and-short-term-debt/.

87 *Id.*

88 Id.

89 *Id.*

90 See www.inviou.com (last accessed Jan. 14, 2020); and see https://www.hiveterminal.com/en/, (last accessed Jan. 14, 2020).

91 See www.inviou.com (last accessed Jan. 14, 2020).

92 *Id.*

93 *Blockchain Platform for Invoice Finance: Interview with INVioU,* TRADE FINANCE GLOBAL (May 3, 2018), https://www.tradefinanceglobal.com/posts/blockchain-platform-for-invoice-finance-interview-with-inviou/, (last accessed June 19, 2019); and see https://medium.com/hiveterminal/why-users-choose-hiveterminal-e936e54d92f6, (last accessed Jan. 14, 2020).

iii. Table: Receivables Finance Platforms

No	Platform	Home Country / Region	Platform Overview	Product(s)
1	eFactor Network[94]	Mexico	eFactor Network is a leading FinTech company in Mexico that allows corporates and their suppliers to improve their payment terms and gives them access to working capital. Over the past 5 years, it has provided over USD 2 billion directly to businesses through its funding platform. Their network includes over 10,000 companies, comprised of buying organisations, suppliers, financial institutions and technology partners.	eFactor Network allows the company to select multiple funding providers for its financing program, allowing the addition or replacement of one funding agent with another. It has more than 25 funding providers on the platform, including the world's largest banks, non-banking institutions and capital market investors.[95]
2	SciCustomer by PrimeRevenue[96]	United States	Offering working capital solutions for accounts payable and accounts receivable, it facilitates a volume of more than $200 billion in payment transactions per year. Its accounts receivable finance platform allows suppliers to sell their invoices for early payment well before the actual due date and, in most cases, without any involvement from or disclosure to customers.	SciCustomer allows sellers to sell invoices and leverage multiple funding sources by using one single platform to manage the entire process from upload to sale through to maturing payments and collections. The accounts receivable financing is done based on unapproved invoices. Invoice data is uploaded into SCiCustomer, where it is processed, funded by a variety of different funding sources, and reconciled against payments.[97]

94 http://www.efactornetwork.com/index.

95 http://www.efactornetwork.com/financiamiento-a-la-cadena-de-suministro.html.

96 https://primerevenue.com/scicustomer-accounts-receivable-finance/.

97 *Id*.

No	Platform	Home Country/Region	Platform Overview	Product(s)
3	Demica[98]	The United Kingdom/Europe	Demica's platform provides a wide of supply chain finance and trade receivables finance transactions. Its technology platform tracks the performance of millions of invoices and model any receivable finance structure. Demica manages over $6bn of receivables facilities. Their platform now processes over one million invoices a day.	Demica's platform allows banks to access their transaction management tools and set up deals directly. Corporate clients can share their unpaid invoices via the platform, which then helps banks assess which are eligible for financing and fit a bank's specific exposure limits.[99]
4	Orbian[100]	United States	Orbian's platform allows companies to finance their supply chain by issuing notes to sell their receivables to banks. Its multibank funding model appeals to a growing number of companies that don't want to rely on a single bank or want to be able to easily add and change funding providers, depending on their needs.	Orbian's supply chain transactions process includes the following steps: i. Supplier submits invoice to Company ii. Company uploads the approved invoice to Orbian platform for payment iii. Orbian schedules the purchase of approved receivables iv. Financial partners fund the purchase of the receivables v. Supplier receives payment on the receivables within 3 days of approval vi. Company pays full invoice amount to Orbian on due date vii. Orbian pays financial partners.[101]

98 https://www.demica.com/banks/trade-receivables-finance-platform/.

99 https://www.gtreview.com/news/fintech/demica-to-offer-direct-access-to-its-receivables-finance-platform/.

100 https://orbian.com/.

101 https://orbian.com/transactions/.

No	Platform	Home Country/ Region	Platform Overview	Product(s)
5	CBAC Invoice Financing Network[102]	United States	CBAC Funding was created to assist companies raise capital to expand, pay off debt, hire new employees and meet other needs. CBAC provides an invoice-financing marketplace where businesses submit invoices for factoring companies to purchase. Their marketplace supports several types of auctions including invoice factoring, invoice discounting, and spot factoring.	After creating a free account, sellers can connect the platform with their accounting software to upload the relevant financial data. They may receive up to 30 immediate quotes from invoice factoring companies on their open accounts receivable. Each quote will show the exact amount of upfront cash that will be received and the total overall cost. Once satisfied with a quote, they can submit their application, enter details about their company, upload financial documents, and receive the funds within a few business days.[103]
6	GT Nexus[104]	United States	The GT Nexus network integrates directly into the order management system of the buyers and suppliers. Buyers transmit order information through GT Nexus to their suppliers, financial institutions, freight carriers, and logistics providers. GT Nexus facilitates more than $20 billion in payments between buyers and their suppliers in 90 countries and in 8 currencies. Buyers and financial institutions offer pre and post export financing and payment protection through the GT Nexus cloud.	Description not available.
7	Factor Plat[105]	Estonia/Europe	FactorPlat is an online multibank factoring platform. All transactions are run based on e-docs certified by e-signatures.	Description not available.

102 https://cbacfunding.com/about/partners_program.

103 https://cbacfunding.com/.

104 https://www.infor.com/news/infor-to-acquire-gt-nexus-1.f

105 https://ediweb.com/en/products/factorplat.