



## **CIRCULAR**

**F. No 172/ IFSCA/Finance Company Regulations/2021-22/10      August 17, 2021**

**To,  
All IFSC Banking Units /Finance Companies/Finance Units/Participants on ITFS  
platform in the International Financial Services Centre (IFSC)**

**Subject: Guidelines on Factoring and Forfeiting of Receivables**

Reference is drawn to the International Financial Services Centres Authority (Finance Company) Regulations, 2021 (hereinafter referred to as 'Finance Company Regulations') which have been notified in the official gazette on March 25, 2021.

2. The International Financial Services Centres Authority (hereinafter referred to as "Authority"), in order to regulate the Factoring and Forfeiting activity as mentioned in regulation 5(1)(i)(b) of the Regulations by the Finance Company/ Finance Unit in the International Financial Services Centre (hereinafter referred to as "IFSC") in India, directs the entities concerned to follow the Guidelines as specified below:

### **3. Applicability**

3.1 These Guidelines shall be applicable to Finance Companies / Finance Units registered with the Authority under regulation 3 of the Regulations that are intending to undertake the activity of Factoring and Forfeiting of receivables.

3.2 Part I of these Guidelines shall be applicable to IFSC Banking Units ('IBUs') licensed by the Authority under IFSC (Banking) Regulations, 2020, to undertake permissible activities subject to such prudential regulations as may be applicable to them.

3.3 Part I of these Guidelines shall also be applicable to all participants registered on 'ITFS Platform' for undertaking permissible Factoring and Forfeiting transactions under the Framework for setting up of International Trade Financing Services



Platform ('ITFS') for providing trade finance services at International Financial Services Centres ('IFSCs') dated July 9, 2021.

#### **4. Definitions**

For the purpose of implementation of these Guidelines the following definitions shall be referred to:

- (i) "Assignment" means transfer by agreement to a factor of an undivided interest, in whole or in part, in the receivables of an assignor due from a debtor;
- (ii) "Assignee" means a factor in whose favour the receivable is transferred;
- (iii) "Assignor" means any person who is the owner of any receivable;
- (iv) "Debtor" means any person liable to the assignor, whether under a contract or otherwise, to pay any receivable or discharge any obligation in respect of the receivable whether existing, accruing, future, conditional or contingent;
- (v) "Factor" means an entity engaged in the factoring business in the IFSC and includes a Financier under ITFS framework;
- (vi) "Factoring business" means the business of acquisition of receivables of assignor by accepting assignment of such receivables or financing, whether by way of making loans or advances or otherwise against the security interest over any receivables but does not include:
  - (a) credit facilities provided by an IBU or a Finance Company/Finance Unit in its ordinary course of business against security of receivables;
  - (b) any activity as commission agent or otherwise for sale of agricultural produce or goods of any kind whatsoever or any activity relating to the production, storage, supply, distribution, acquisition or control of such produce or goods or provision of any services.
- (vii) "Financial Contract" means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, shares, bonds, debentures or any other financial instrument, any repurchase of securities and lending transaction or any other similar transaction or combination of such transactions entered into in the financial markets;
- (viii) "Forfeiter" means an entity engaged in the forfaiting business in the IFSC and includes Financiers under ITFS framework;



(ix) “Forfaiting business” means sale and purchase of the receivables on a without recourse basis, as permitted under these Guidelines;

(x) “netting agreement” means any agreement among the system participants for the purpose of determination by the system provider of the amount of money or securities due or payable or deliverable as a result of setting off or adjusting the payment obligations or delivery obligations among the system participants, including the claims and obligations arising out of the termination by the system provider, on the insolvency or dissolution or winding up of any system participant or such circumstances as the system provider, may specify in its rules or regulations or bye-laws (by whatever name called), of the transactions admitted for settlement at a future date so that only a net claim be demanded or a net obligation be owned;

(xi) “Receivables” means the money owed by a debtor and not yet paid to the assignor for goods or services and includes payment of any sum (by whatever name called) required to be paid for the toll or for the use of any infrastructure facility or services.

All other words and expressions used but not defined in these Guidelines shall have the same meaning respectively assigned to them under IFSC (Banking) Regulations, 2020, ITFS Framework and Finance Company Regulations.

## **PART I**

### **Guidelines on Factoring and Forfaiting transactions**

#### **A. Guidelines on Factoring of Receivables**

##### **5. Assignment of receivables**

5.1 Any assignor may, by an agreement in writing, assign any receivable due and payable to him by any debtor, to any factor, being the assignee, for a consideration as may be agreed between the assignor and the assignee and the assignor shall at the time of such assignment, disclose to the assignee any defences and right of set off that may be available to the debtor.

5.2 On execution of agreement in writing for assignment of receivables, all the rights, remedies and any security interest created over any property exclusively to secure the due payment of receivable shall vest in the assignee and the assignee shall



have an absolute right to recover such receivable and exercise all the rights and remedies of the assignor whether by way of damages or otherwise, or whether notice of assignment as provided in clause 6 below is given or not.

5.3 Where an assignment of receivables constituting security for repayment of any loan advanced by a creditor and where the assignor, with the written consent of such creditor, has given notice of such encumbrance to the assignee, on acceptance of such assignment, the assignee shall pay the consideration for such assignment to the creditor.

#### **6. Notice to debtor and discharge of obligation of such debtor**

An assignee of a receivable shall not be entitled to demand payment of the receivable from the debtor in respect of such receivables unless notice of such assignment is given to the debtor by the assignor or the assignee along with express authority in its favor granted by the assignor.

#### **7. Discharge of liability of debtor on payment to assignee**

Where a notice of assignment of receivable as stated in clause 6 above is given by the assignor or the assignee, as the case may be, the debtor on receipt of such notice, shall make payment to the assignee and payment made to such assignee in discharge of any obligation in relation to the receivables specified in the notice shall fully discharge the debtor making the payment, from corresponding liability in respect of such payment.

#### **8. Payment made by debtor to assignor to be held in trust for benefit of assignee in certain cases**

Where no notice of assignment of receivables as stated in clause 6 above is given by the assignor or under his authority by the assignee, any payment made by the debtor in respect of such receivables to the assignor shall be held in trust for the benefit of the assignee which shall be forthwith be paid over to such assignee or its agent duly authorized in this behalf.



## **9. Assignor prohibition**

The conclusion by an Assignor regarding assignment of receivables with more than one assignee, at a time, in connection to the same invoice, 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 applicable law.

## **10. Rights and obligations of parties to contract for assignment of receivables**

Without prejudice to the provisions contained in any other law for the time being in force, the debtor shall have the right to notice of assignment as stated in clause 6 above, before any demand is made on it by the assignee and until notice is served on the debtor, the debtor shall be entitled to make payments to the assignor in respect of assigned receivables in accordance with the original contract and such payment shall fully discharge the debtor from corresponding liability under the original contract.

## **11. Liability of debtor**

Where a notice of assignment is served as stated in clause 6 above, the debtor shall,

- (i) intimate the assignee the details of the deposits or advance or payment on account made to the assignor before the receipt of notice of assignment and also provide any other information to the assignee relating to the receivable as and when called upon by the assignee to do so;
- (ii) not be entitled to a valid discharge of its liability in respect of assigned receivables, unless it makes the payment due on an assigned receivable to the assignee;
- (iii) in the event of delay in payment by it, pay the receivable along with the interest as per the original contract or as agreed between the parties.

## **12. Assignor to be trustee of assignee**

Notwithstanding anything to the contrary contained in any other law for the time being in force, where a debtor makes any payment to an assignor which represents payment due on an assigned receivable, such payment shall be deemed to be for the benefit of the assignee, and the assignor shall be deemed to have received the amount



of such payment as a trustee of the assignee and the assignor shall make payment of such amount to the assignee.

### **13. Principle of debtor protection**

13.1 Unless otherwise specified in these Guidelines, any assignment of the receivable shall not, without the express consent of the debtor in writing, affect the rights and obligations of the debtor (including the terms and conditions of the contract)

13.2 Consequent upon the assignment of receivables, the payment instruction under the contract entered into between assignor and debtor may modify the name of person, address or account to which the debtor is required to make payment, but such instructions shall not modify:

- (i) The amount of debt specified in the original contract.
- (ii) The date on which payment is to be made or other terms of the original contract relating to payment.
- (iii) The place specified in the original contract at which payment is to be made or in case no such place is mentioned in the contract, the place of payment to a place other than where the debtor is situated.

### **14. Defences and right of set off of debtor**

In a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against the assignee:

- (i) all defences and right of set off arising from the original contract, entered into between the assignor and debtor or any other contract that was part of the same transaction, of which the debtor could avail himself as if the assignment had not been made and such claim were made by the assignor instead of assignee. *Provided* that the assignee shall, unless otherwise agreed between the parties, be entitled to recover from the assignor, any loss suffered by it as a result of any such defences and right of set off being exercised by the debtor;
- (ii) any other right of set off, if it was available to the debtor at the time of notice of the assignment, as stated in clause 6 above, was received by the debtor.



## **15. Agreement not to raise defences or rights of set-off**

15.1. The debtor may agree with the assignor in writing not to raise against the assignee, the defences and rights of set-off that it could raise pursuant to the above clause. Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.

15.2. The debtor may not waive defences:

- (i) arising from fraudulent acts on the part of the assignee; or
- (ii) based on the debtor's incapacity.

## **16. Modification of original contract**

16.1 Any agreement made before service of notice of the assignment of a receivable, as stated in clause 6 above, between the assignor and the debtor that affects the assignee's rights in respect of that receivable, shall be effective as against the assignee, and the assignee shall acquire rights in the assigned receivables, as modified by such agreement.

16.2 Any agreement made after notice of the assignment between the assignor and the debtor that affects the assignee's rights shall be ineffective as against the assignee unless:

- (i) the assignee consents to it or,
- (ii) the receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

16.3 Nothing contained in sub-clauses (16.1) and (16.2) shall affect any right of the assignor or the assignee arising from breach of an agreement between them.

## **17. Breach of Contract**

If the assignor commits any breach of the original contract with the debtor, such breach shall not entitle the debtor to recover from the assignee any sum paid by the debtor to the assignor or the assignee pursuant to the factoring transactions:

*Provided* however that nothing contained in this clause shall affect the rights of the debtor to claim from the assignor any loss or damages caused to him by reason of breach of the original contract.



## **18. Provisions of these Guidelines not to apply in certain cases**

The provisions of factoring Guidelines shall not apply to any assignment of receivables arising under or from the following transactions, namely:

- (i) any merger, acquisition or amalgamation of business activities or sale or change in the ownership or legal status of business;
- (ii) any assignment of loan receivables by an IBU or Finance company/Finance unit to another IBU or Finance company/Finance unit;
- (iii) securitization transactions (including assignment of receivables to special purpose vehicles or trusts that issue securities against such receivables, bought from a single debtor or single group of debtors);
- (iv) financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;
- (v) transactions on a recognised exchange;
- (vi) foreign exchange transactions except receivables;
- (vii) inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;
- (viii) bank deposits;
- (ix) sale of goods or services for any personal, family or household use;
- (x) letter of credit or independent guarantee;
- (xi) a bilateral contract entered with the supplier the terms of which mandates the contract to be governed by the law of a country other than India; or
- (xii) any other transaction(s) that may be specified by the Authority.

## **19. General Guidelines on risk management for undertaking factoring transactions**

The assignee undertaking factoring business shall ensure proper and adequate control and reporting mechanisms including but not limited to:

- (i) Assignee shall carry out a thorough credit appraisal of the debtors before entering into any factoring arrangement or prior to establishing lines of credit with the factor.



- (ii) Factoring services shall be extended in respect of receivables which represent genuine trade transactions which are not void in nature and are not pertaining to any trade in dispute.
- (iii) Assignee must be fully aware of the risks involved in factoring transactions such as sovereign risk, country risk, currency risk, transfer risk and documentation risk and credit risk.
- (iv) Every Factor and/or ITFS on behalf of the Factor, as the case may be, shall register the particulars of every transaction of assignment of receivables in its favour with the Central Registry set-up under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), within the prescribed timelines from the date of such assignment, wherever applicable.
- (v) Assignee may purchase credit insurance for its exposure from insurers in the IFSC or shall comply with provisions of Sec 2CB of the Insurance Act, 1938 for purchase of such insurance.

## **B. Guidelines on Forfeiting of Receivables**

**20.** The following shall be adhered to while undertaking Forfeiting business by a Forfeiter:

- (i) Receivable shall be a negotiable instrument.
- (ii) Non-recourse to the Seller/Assignor.
- (iii) Notice should be given to debtor whenever there is rediscounting of bill, by Forfeiter.
- (iv) Payment by the importer/debtor must be guaranteed by a third party.
- (v) Adequate safeguards of Information Technology should be placed and Information Technology audit must be done regularly by all the entities as per clause 3 above, undertaking forfeiting activity must ensure that its contractual documents should specify the legal jurisdiction where the case will be resolved in the case of any dispute.



- (vi) All the entities as per clause 3 above, must ascertain the accuracy of information provided by the exporter so as not to prejudice any rights, if there is a breach of warranties.
- (vii) All Entities in IFSC undertaking forfaiting transactions shall adhere to International Chamber of Commerce Uniform Rules for Forfaiting (URF 800)
- (viii) All the entities as per clause 3 above, while undertaking forfaiting transactions shall adopt appropriate risk management policies as indicated in clause 19 above.

## **21. Powers of Authority to give directions and to collect information from factor/forfeiter**

21.1 The Authority may, at any time, by general or special order, direct that every factor/forfeiter shall furnish to it, in such form, at such intervals and within such time, such statements, information or particulars relating to factoring/forfaiting business undertaken by them, as may be specified by the Authority from time to time.

21.2 The Authority may, if it considers necessary in the interest of business enterprises availing factoring/forfaiting services or in the interest of factor/forfeiter or interest of other stake holders give directions to a factor/forfeiter either generally or in particular or group of factors/forfeiters in respect of any matters relating to or connected with the factoring/forfaiting business undertaken by them.

21.3 If any factor/forfeiter fails to comply with any direction given by the Authority under sub-clause (21.2), the Authority may prohibit such factor/forfeiter from undertaking the factoring/forfaiting business,

*Provided* that before prohibiting any factor/forfeiter from undertaking the factoring/forfaiting business, the factor/forfeiter shall be given a reasonable opportunity to file its written submissions.

**22.** All the entities as per clause 3 above, shall ensure compliance with these factoring and forfaiting Guidelines in addition to other applicable laws.



## **PART II**

### **Prudential Guidelines**

**23.** In addition to the above Guidelines, the Finance Company /Finance Unit undertaking factoring and/or forfaiting transactions shall adhere to the provisions of IFSCA (Finance Company) Regulations, 2021 and the Guidelines/Circulars issued thereunder.

#### **24. Recognition of Non-Performing Assets (NPA)**

**24.1** The receivable acquired under factoring which is not paid by the due date, should be treated as NPA irrespective of when the receivable was acquired by the factor or whether the factoring was carried out on “recourse basis” or “non-recourse” basis. The entity on which the exposure was booked should be shown as NPA and provisioning be made accordingly.

**24.2** For the Purpose of asset classification and provisioning, the Circular bearing F. No 172/ IFSCA/Finance Company/Unit Regulations/2021-22/3’ dated May 03, 2021, on ‘Prudential Regulations and activity specific Guidelines’ issued by IFSCA, shall be adhered to.

**25.** Since under “without recourse” factoring transactions, the Finance Company/ Finance Unit is underwriting the credit risk on the debtor, there should be a clearly laid down Board-approved limit for all such underwriting commitments.

**26.** The Finance Company/ Finance Unit shall have a Board approved risk mitigation strategy or policy for identified risks while undertaking factoring and forfaiting business.

**27.** The factoring and forfaiting transactions shall be covered with the overall exposure ceiling as per the Authority’s circular bearing ‘F. No 172/ IFSCA/Finance Company/Unit Regulations/2021-22/6’ dated, May 25, 2021 on ‘Framework on Computation of Exposure Ceiling for Finance Companies/Finance Units’, as applicable. The exposure shall be reckoned as under:



- (i) In case of factoring on “with-recourse” basis, the exposure would be reckoned on the assignor.
- (ii) In case of factoring on “without-recourse” basis, the exposure would be reckoned on the debtor, irrespective of the credit risk cover/ protection provided, except in cases of international factoring where the entire credit risk is assumed by import factor.

### **Miscellaneous**

**28.** This Circular is issued in exercise of powers conferred by section 12 of the International Financial Services Centres Authority Act, 2019 to develop and regulate the financial products, financial services and financial institutions in the International Financial Services Centres.

**29.** A copy of this Circular is available on the website of the Authority at [www.ifsc.gov.in/circular](http://www.ifsc.gov.in/circular).

Yours faithfully

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