FCI GENERAL RULES FOR INTERNATIONAL FACTORING

Description

FCI GENERAL RULES FOR INTERNATIONAL FACTORING

(printed July 2013)

CONTENTS

Section I General Provisions 2

Article 1 Factoring Contracts and Receivables 2

Article 2 Parties taking part in two-factor international factoring. 3

Article 3 Receivables included. 3

Article 4 Common language. 3

Article 5 Time limits 3

Article 6 Writing. 3

Article 7 Deviation agreements 4

Article 8 Numbering system.. 4

Article 9 Commission / Remuneration. 4

Article 10 Settlement of disagreement between Export Factor and Import Factor 4

Article 11 Good faith and mutual assistance. 5

Section II Assignment of receivables 5

Article 12 Assignment 5

Article 13 Validity of Assignment 5

Article 14 Documentation relation to receivables 6

Article 15 Reassignment of receivables 7

Section III Credit Risk. 7

Shanghai Landing Law Offices

Article 16 Definition of credit risk. 7

Article 17 Approvals and requests for approvals 7

Article 18 Reduction or cancellation. 9

Article 19 Obligation of Export Factor to assign. 10

Section IV Collection of Receivables 11

Article 20 Rights of the Import Factor 11

Article 21 Collection. 12

Article 22 Unapproved Receivables 12

Section V Transfer of Funds 13

Article 23 Transfer of payments 13

Article 24 Payment under Approval 14

Article 25 Prohibition against assignment 14

Article 26 Late Payments 15

Section VI Disputes 16

Article 27 Disputes 16

Section VII Representations, warranties and undertakings 18

Article 28 Representations, warranties and undertakings 18

Section VIII Miscellaneous 19

Article 29 Communication and electronic data interchange (EDI) 19

Article 30 Accounts and Reports 19

Article 31 Indemnification. 20

Article 32 Breaches of provisions of these Rules 20

Shanghai Landing Law Offices

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 contact 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 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 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 Export Factor in accordance with these Rules.

Shanghai Landing Law Offices

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 agreement between the parties to the writing, the writing identifies the originator of the writing and indicates his approval of the communication contained in the writing.

Article 7 Deviation 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.

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 commission 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 disagreement between Export Factor and Import Factor
(i) All disagreement 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 accepts 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 exercises 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) By reason of the assignment to the Import Factor of full ownership of each receivable, the

Shanghai Landing Law Offices

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.

(iii) 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[JT1] 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[JT2] , 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.

Shanghai Landing Law Offices

(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 Import Factor's request, then the Import Factor may reassign such receivable.

Article 14 Documentation relation to receivables

(i) The Import Factor must receive details of invoices and credit notes relating to any receivable assigned to him without undue delay and in the case of invoices in any event before the due date of the receivable. For the purpose of the GRIF, the "due date" of any receivable shall mean the date specified for payment of the receivable as stated in the contract of sale, provided, however, that if such contract specifies payments in instalments then, unless otherwise dictated by the contract, each instalment shall be treated as having a separate due date.

(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[JT3] 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 fulfillment 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.

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, if later, the 30th day after the end of any extended time granted by the Import Factor under Article (iv).

(ii) In the event of any reassignment of a receivable permitted to the Import Factor under this Article or under paragraph (vii) of Article 27, except as provided in paragraph (iv) of this Article, 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.

(iv) If any payment shall be received by the Import Factor from the debtor in respect of any receivable so reassigned before notice of that reassignment shall have been received by the debtor then the Import Factor shall hold that payment for the benefit of, and remit it to, the Export Factor promptly.

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.

Shanghai Landing Law Offices

(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, which may be for the approval of individual orders or of credit lines, 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 rely. 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 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.

Shanghai Landing Law Offices

(v) (a) approval in full or in part of an individual order binds the Import Factor to assume the approved credit risk provided that the shipment of the goods is made not later than the date of shipment, if any, stated in the request for the assumption of credit risk or any earlier expiry date indicated by the Import Factor in the approval.

(b) 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.

(c) The word "goods" includes "services" and the expression "shipments made" includes "services performed".

(d) Shipment in relation to goods occurs when they are placed in transit to the debtor or his designee, whether by common carrier or the debtor's or supplier's own transport and in relation to services when they are completed.

(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 the 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 the order in which they are due for payment and shall be limited at any time the amount then so paid or

credited. Where 2 or more receivables are due for payment on the same date then their succession shall take place in accordance with the order of their respective invoice numbers.

(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. However, no such variation, which extends the credit beyond any credit period specified as a maximum by the Import Factor in the approval, shall be permitted.

(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 credits 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.

Shanghai Landing Law Offices

Article 18 Reduction or cancellation

(i) For good reason[JT4] the Import Factor shall have the right to reduce or cancel the individual order approval or the credit line. Such cancellation or reduction must take place in writing or by telephone (to be confirmed in writing). Upon receipt of such notice of cancellation or reduction the Export Factor shall immediately notify the supplier and such cancellation or reduction shall be effective as to shipments made and/or services performed after the supplier's receipt of such notice. On or after the sending of any such notice of cancellation or reduction to the Export Factor, the Import Factor shall have the right to send such notice also direct[JT5] 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 minimize 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 order approvals and credit lines are immediately cancelled without notice, but shall remain valid for any receivable relating to a shipment made and services performed before the date of termination provided that the receivable is assigned to the Import Factor within 30 days of that date.

(iii) When the cancellation of credit line is effective or the credit line has expired then:

(a) the right of succession 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 or transactions otherwise excluded before the first assignment of a receivable in respect of that debtor) 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[JT6] 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 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 distribution.

Article 19 Obligation of Export Factor to assign

(i) Subject to the provisions of paragraph (ii) and (iii) of this Article the Export Factor may, but is not obliged to, offer to the Import Factor all receivables, owing by debtors in any one country and relating to one supplier, 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 debtor's country.

(iii) When the Import Factor has approved a credit line on a debtor[JT7] and a receivable 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.

(iv) 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 assignment of receivables cannot be expected.

Section IV Collection of Receivables

Article 20 Rights of the Import Factor

(i) 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 nay 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.

(ii) If the sales contract contains a prohibition of assignment the Import Factor shall have the same rights as set forth in paragraph (ii) of Article 12 as agent for the Export Factor and/or the supplier.

(iii) If the Import Factor:

(a) is unable to obtain judgement in respect of any receivable assigned to him in the courts, any

Shanghai Landing Law Offices

arbitration panel or other tribunal of competent jurisdiction of the debtor's country (collectively, a "Tribunal") by reason only of:

(1) clear and convincing language relating to jurisdiction or alternate dispute resolution in the contract of sale between the supplier and the debtor which gave rise to that receivable; or

(2) denial of jurisdiction to proceed in the debtor's country by any such Tribunal; and

(b) informs the Export Factor of that inability within 365 days of the due date of the invoice[JT8] 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.

(iv) If, within 3 years from the date of any reassignment referred to in paragraph (iii) of this Article, the Export Factor or the supplier shall have obtained a judgment or award by any Tribunal in relation to the reassigned receivable against the debtor enforceable in the debtor's country, then, to the extent that the receivable has been approved, the Import Factor shall:

(a) accept an assignment of all the rights against the debtor under that judgment and again accept the receivable as approved; and

(b) make a Payment under Approval, as defined in Article 24 and hereinafter referred to as a PUA within 14 days of the date on which payment is to be made by the debtor according to the judgment provided that the assignment required under paragraph (iv)(a) of this Article has been made effectively by the Export Factor within that period.

Shanghai Landing Law Offices

All costs in relation to the obtaining of judgment under this Article shall be the responsibility of the Export Factor.

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 expense 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 amounts 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 PUA.

Shanghai Landing Law Offices

(ii) All payments, irrespective of the amount, shall be transferred daily via SWIFT or a similar system.

(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 dishonored (cheque or equivalent) provided that:

(1) the Import Factor notified the Export Factor of this possibility with the payment advice (payment under reserve); and

(2) 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; or

(3) such dishonor was the result of a stopped payment order issued by the debtor owing to a dispute raised later than the issuance of the payment instrument, in which case the procedures and time limits are as provided in Article 27 and for that purpose the payment by the Import Factor to the ExportFactor shall be treated as if it were a PUA (as defined in Article 25(ii) hereof).

(4) Repayment 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.

Article 24 Payment under Approval
Except as provided in Article 25, 27 and 32:

(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 a Payment under Approval to the Export Factor; described herein as PUA.

(iii) For the purpose of this paragraph (i) and (ii) of this Article, payment by the debtor shall mean payment to any of the Import Factor, the Export Factor and 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 county 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 (mid rate) quoted by XE.com (and used in the edifactoring.com) at the date on which the PUA 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 Prohibition against assignment
(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 PUA 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 PUA in respect of any 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

Shanghai Landing Law Offices

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.

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-month-LIBOR as quoted on such due date in the relevant currency, provided that the aggregated 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 aggregated accrued amount of interest exceeds EUR 50.

(iv) Any late payment by the Export Factor to the Import Factor will be subject to the provisions of paragraph (ii) and (iii) of this Article.

Section VI Disputes

Article 27 Disputes

(i) A dispute occurs whenever a debtor fails to accept the goods or the invoice or raises a defense, counterclaim or set-off including (but not limited to) any defense 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

Shanghai Landing Law Offices

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 receivable to which the dispute relates, the Import Factor shall not be required to make PUA 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 PUA, but within 180 days of the due date of the receivable, 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 reimbursement.

(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 favor 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 the negotiation or proceedings at regular interval; 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 judgment in the case of a legal settlement, provided, however that such 30 day period shall not apply in the case of the admission of the debt by the person responsible for the administration of the debtor's insolvent estate.

(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:

Shanghai Landing Law Offices

(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 PUA, 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 PUA.

(vii) If the Export Factor does not comply with all his obligations under this Article and such non-compliance substantially affects the risk position of the Import Factor, then the Import Factor shall have the right to reassign to the Export Factor the disputed receivables and the Export Factor shall promptly reimburse the Import Factor with the amount of the PUA' such payment shall include interest from date of PUA to the date of reimbursement as calculated in accordance with paragraph (iii)(b) of Article 26.

(viii) If the dispute is resolved in full in favor 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.

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 defense 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 receivable, any such notice of assignment being in the form prescribed by

Shanghai Landing Law Offices

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.

Shanghai Landing Law Offices

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.

(iv) Neither the Export Factor nor the Import Factor shall disclose any confidential information given to them to any third party without the written consent of the other unless required by law.

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 reply 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 the 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 or warranties under these Rules. The burden of proof of any such loss, costs, interest or expenses lies with the Export Factor.

Shanghai Landing Law Offices

(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) A substantial breach must be asserted within 365 days after the due date of the receivable to which it relates.

(ii) If the Export Factor has substantially breached any provision of these Rules, the Import Factor shall not be required to make PUA 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 PUA the Import Factor shall be entitled to reimbursement of the amount paid, provided that the Import Factor has established his right to reimbursement, to the satisfaction of the Export Factor, within 3 years from the date of assertion of the breach.

(iii) A substantial breach of paragraph (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.

(iv) The Export Factor shall promptly reimburse the Import Factor under this Article; such

payment shall include interest from the date of PUA 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.

Date Created
April 2016
Author
admin

Shanghai Landing Law Offices