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FACTORING: THE WAYS TO IMPROVE

Despite the rapid development of factoring in the financial services market in recent years, it is new and incomprehensible for Ukrainian most potential consumers. The formation of the Ukrainian factoring services market began in 2001 while in the world it has existed for over 60 years.

However, there was no regulatory, theoretical and practical base, highly qualified staff and prepared ways for providing this type of services at the moment of creation the factoring services market in Ukraine. Afterwards Ukrainian specialists have developed technology for providing factoring services and simplified the factoring cycle. Since 2006 factoring has gained popularity in the banking business. Nevertheless, provided to current clients factoring transactions were mainly an alternative to credit. In addition to banks, factoring was provided by other financial institutions, but their opportunities as well as the number of clients were much smaller [1].

According to the current Ukrainian legislation [2, 3, 4] factoring services can be provided both by banks and financial companies. However, banks and related financial companies are leading in factoring operations. As a rule, Ukrainian financial market banks provide financing services only. Factoring is a non-banking business and is best served by independent companies. Unfortunately, in Ukraine independent financial companies occupy a small percentage of factoring institutions. Nowadays factoring companies have to work with their customers on a deferred payment basis and have several regular customers. Working with international organizations Ukrainian factoring companies seek out foreign partners for their customers and thus diversify and redistribute risks.

Taking into consideration the experience of other countries we can draw attention to the US experience of factoring. At first factoring meant commission relationships that could be combined with lending relationships. The obligation to pay the commission was secured by the pledge of goods owned by the factor. These relations were governed by the case law. Later there was a need to establish a pledge of goods and monetary claims of the client without obtaining of goods into possession

and without the debtor's notice of withdrawal of the claim. Such rules were first established in 1909 in paragraph 45 of the New York State Property Law [5].

In the 20th century a Unified Commercial Code was developed and subsequently adopted by the states in the United States. It established extensive regulation of relations in property turnover. The Unified Commercial Code has no specific factoring provisions but establishes general provisions for the assignment of the claim, rights and obligations of the original and new creditors, debtor protection provisions and other provisions for third party relationships [6]. Thus, an important step forward has been made at the Unified Commercial Code - instead of the former fragmentary regulation coming the regulation is more complex and more abstract.

Factoring activities are mediated not by a special type of contract, but by other mixed contracts, which are a variety of combinations of named contracts, for which general regulation is established by other provisions. More abstract regulation of the model of the civil and commercial codes of continental law excludes the casual regulation of factoring in general and factorial encumbrance in particular.

The problem of the financial market is the low payment discipline of debtors and insufficient protection of creditors' rights. This is due to the imperfection of the law, the judicial system and the executive service. The risks of late repayment are greater for factoring operations than for conventional lending because the factor deals not with one borrower, but with a whole range of debtors. In this case, factor has the amount of information about the debtors less than about the borrowers in classic lending which increases the risk. Therefore, strengthening the protection of creditors' rights is one of the most important conditions for developing factoring in Ukraine.

Considering the above we can conclude that to ensure Ukrainian factoring development all provisions that regulate factoring relationships as those related to a special specific covenant should be excluded from Ukrainian law. This will be consistent with both the substance of such relations and international conventions. Also the legislation on derogation (законодавство стосовно відступлення вимоги) requires improvement. In particular, the contractual prohibition of withdrawal of a monetary claim should be waived, except where the consumer is the debtor. This principle is essential for the development of factoring. Rules should also be put in place to ensure that the replacement of the creditor in the obligation will not impair the position of the debtor. Moreover, the possibility of contractual waiver of the counterclaim to the new lender should be established except where the consumer is the debtor.

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CIVIL RELATIONS

Doctrinal civil relationships have finally been legally defined. It was in Article 1 of the CCU that the term "civil relations" was first used.

Civil relations are social relations governed by the rule of civil law, the participants of which are the holders of subjective civil rights and legal obligations. Legal relations are a form in which the abstract model of a rule of law, due to a certain legal fact, gets its specific expression and binding of the rights and obligations of specific entities to certain objects. The implementation of a rule of law in a particular legal relationship is that its participants receive subjective rights and are entrusted with the legal obligations guaranteed by the state in the person of its judiciary and sometimes other bodies.

Characteristic features of civil relationships are:

they are a variant of only such legal relationships that meet the requirements of the subject matter and method of civil law. Hence, property and personal non-property relations;

this relationship is formalized by the rules of civil law;

they are protected by the rules of civil law;

they arise, change and terminate on the basis of the legal facts which are inherent in private law. In doing so, they may arise on grounds which are not provided for by law but do not contradict it;