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DISTINGUISHING FEATURES OF CONCLUSION OF AN INTERNATIONAL FACTORING CONTRACT FROM AN INTERNATIONAL FOREITING CONTRACT

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Abstract: The article considers legal aspects of the conclusion of international factoring and forfeiting agreements, which are important tools of foreign economic activity. The definition of the concept of factoring and forfeiting contract is reflected. Similarities and differences between these two financial instruments are analyzed, taking into account various criteria. Special attention is paid to the international legal regulation of these types of contracts. Recommendations on supplementing the Civil Code of the Republic of Uzbekistan with new provisions on forfeiting contract for the purpose of simplification of law enforcement practice and stimulation of international trade are offered.

Keywords: international factoring contract, international forfeiting contract, factoring, forfeiting, assignment, financing, international trade, import, export, factor, forfeiter.

Introduction

Nowadays, the most common way to receive funds from a third party on the basis of the concluded contract of international sale of goods between the seller and the buyer is the conclusion of international factoring or forfeiting contracts. It should not be forgotten that these contracts are similar in their legal nature contractual constructions, but they still have distinctive features.

Therefore, one of the popular financial instruments most widely used in international trade is factoring and forfeiting. In spite of the similar purposes between them, they differ significantly in the mechanisms and conditions of contract conclusion.

Methods

The research method used in the statement above is normative legal research, which focuses on analyzing legal principles, regulations, and international conventions governing international factoring and forfeiting agreements. It involves the examination of primary legal sources such as the UNIDROIT Convention on International Factoring (1988), the UN Convention on Assignment of Receivables in International Trade (2001), and the ICC Uniform Rules for Forfaiting (URF 800). Additionally, it incorporates a comparative analysis of various international legal frameworks and practices, including national legislations and non-state regulatory instruments, to identify the distinguishing features and contractual mechanisms of factoring and forfeiting in international trade.

The research also references doctrinal sources, such as academic works and interpretations by legal scholars, to provide a comprehensive understanding of the legal nature and application of these financial instruments.

Results and Discussion

Concept and legal nature of international factoring and forfeiting agreement

Before disclosing the definition of the international factoring and forfeiting agreement, it is necessary to disclose what is meant by factoring and forfeiting.

Factoring (from english “factor” – a gent, intermediary) means purchase by a factor, i.e. a bank or a specialized factoring company of monetary claims of a supplier to a buyer on the basis of a contract of sale of goods for a certain remuneration, and forfeiting means crediting of an exporter by means of purchase of bills of exchange or other debt claims.

A.A. Prikhodko notes that the condition of providing related financial services in a cross-border factoring agreement in international practice is recognized as a determinant in characterizing this agreement, along with the condition of financing the client [6, p.61-62].

Factoring is a form of financing in which a company (supplier) transfers its receivables to a factor (financial institution) in exchange for immediate receipt of a part of the debt amount. In doing so, the factor assumes the risk of non-payment and collects the debts from the buyers. It is important to note that factoring is generally used for short-term financing, as compared to forfeiting.

Forfeiting (from the French a forfait, which means “waiver of rights”, “loss of rights”) emerged after the Second World War, when several banks in Zurich, which had extensive experience in financing international trade, began to use this technique to finance grain purchases by Western European countries in the United States [4, p.113].

Forfeiting, unlike factoring, is oriented towards long-term financing and is used in international trade to finance large export transactions. In forfeiting, the exporter sells its debt security (for example, a promissory note) without recourse to the forfeiter, which, in turn, assumes all risks associated with the importer's non-payment. The forfeiter pays the exporter the full value of the debt obligation less a commission fee.

Unlike factoring, forfaiting is focused on one-time large export transactions and is used to minimize the risks associated with long payment delays.

Despite the rather long conclusion of the international forfeiting agreement, neither in economic, nor in legal doctrine, nor in law enforcement practice there is no unified approach to understanding what forfeiting is and what its distinctive features are.

Legal regulation of international factoring and forfeiting contract

It should be noted that for legal regulation of the international factoring contract the UNIDROIT Convention on International Factoring (UNIDROIT Convention on International Factoring) was adopted in Ottawa on 28 May 1988, where a factoring contract is understood as a contract concluded between two parties – a financial agent and a supplier.

Among the differences of the UN Convention on Assignment of Receivables in International Trade of 2001 in comparison with the provisions of the UNIDROIT Convention on International Factoring of 1988 and the legislation of the Republic of Uzbekistan is a peculiar understanding of the term ‘assignment’. Thus, in Article 3 of the UN Convention it is understood as transfer of receivables by one party (assignor) to another party (assignee) on the basis of an agreement, which is carried out through sale, as a security for the fulfilment of an obligation or otherwise. In addition, assignment in the form of subrogation, novation and pledge of receivables.

The UNIDROIT Convention on International Factoring Transactions of 1988, defining the factoring agreement, establishes as essential general requirements for assignment of rights of monetary claim and financing of such assignment, obliging only to accompany such assignment with notification of the debtor. Also, this Convention does not define the possibility of recourse claims under the factoring agreement, does not establish restrictions on the promissory note form of settlements, points to the effect of its general principles in the regulation of joint areas (part 2 of article 4), which allows us to consider it as a kind of international legal basis for foreign economic relations on the financing of debt arising from the contract of international sale of goods and to extend its effect to international forfeiting agreements for lack of their special international norms.

It is obvious that there are differences even between international legal acts and non-state regulators with regard to any type of foreign economic transaction. Thus, the 2004 Rules for International Factoring Activities (hereinafter – the 2004 Rules) differ from the 1988 UNIDROIT Convention on International Factoring by specifying four types of participating entities and dividing financial agents according to the criterion of the direction of their activities. While the 1988 UNIDROIT Convention operates only with general concepts – supplier, financial agent and debtor. Article 3 of the 2004 Regulations provides for the scope of their application only in relation to monetary claims arising from contracts for the sale and purchase of goods and/or services on credit terms by any supplier having an agreement with the export-factor concerning debtors located in the territory of the state where the import-factor provides factoring services. Claims arising from sales contracts based on a letter of credit or cash sales contracts are excluded (clause 3.01). In contrast to the 1988 UNIDROIT Convention, the 2004 Rules, according to Article 10, specifically define the procedure for resolving disputes between export and import factors in connection with international factoring transactions. Thus, the appearance of the 2004 Rules in many respects facilitated the realization of relations under the factoring agreement by clarifying a number of issues, the regulation of which had previously been significantly complicated due to the lack of legal regulation. At the same time, a number of non-legal sources of regulation of international factoring were supplemented, which is generally typical for international commercial relations.

In turn, there is no international legal regulation of the international contract of forfeiting, in this connection and in the national legislation of most countries there is no concept and features of this type of contract, which is different from the factoring contract. Only for the regulation of this type of contract adopted and developed non-governmental regulator by the International Forfaiting Association (International Forfaiting Association, or IFA) and the International Chamber of Commerce Uniform Rules for Forfaiting Including Model Agreements (ICC Uniform Rules for Forfaiting Including Model Agreements, publication No. 800 (URF 800)) and entered into force in 2013.

URF 800 is designed to be very broad in scope and is intended to be used for both domestic and international forfaiting transactions, both in the primary and secondary markets. URF 800 enshrines a broad approach to the understanding of forfeiting. Thus, according to Article 2 of the URF forfeiting is the sale by an exporter of the right to demand payment from an importer to a forfeiter without recourse. Forfaiting transaction (forfaiting transaction) is defined as the sale by the seller and purchase by the buyer of the payment claim on a non-recourse basis [5, p.125].

The institute of factoring in civilistics and court practice is considered in the framework of various contractual constructions. For example, Section 9 of the US Uniform Commercial Code (UCC) ‘Security for Transactions. Sale of payments due, contractual rights and real estate securities’ regulates the assignment of credit and invoices - debt claims. In other countries (e.g., Denmark,

Finland) to regulate subrogation and certain types of contracts (e.g., sale and purchase of the right of claim) [3, p.92].

It is worth noting that forfeiting takes an important place in the system of financing world trade, as the number of import and export contracts is increasing. For the conclusion of international forfeiting contracts an important role is played by specialized banks operating within large bank holdings, for example, such as Credit Swiss Holding and Swiss Bank Corp. (Switzerland), which are available in the UK, France, the USA and other countries. Today the most famous forfaiting companies are London Forfaiting Company, Midland Aval, Oppenheim, BB AVAL; as the main banks – Standart Bank (pan-African credit organisation), HSBC Forfaiting (England), West Merchant Bank (England), Deutshe Morgan Grenfell (Germany), Bank Austria Creditanstalt (Austria), Raiffeizen Bank (Austria), Sumitomo Mitsui Banking Corporation – SMBC (Japan), Midland Aval Bank (part of HSBC group – England), Oppenheim (Germany).

Distinguishing criteria between an international factoring agreement and an international forfeiting agreement

It should be noted that an international factoring agreement and an international forfeiting agreement differ from each other by the following contractual terms and criteria:

- legal regulation: in factoring – the UN Convention on International Factoring, and in forfeiting – the ICC Commercial Customs and Standards;
- the object of the transaction is predominantly: in factoring – an invoice, and in forfeiting – a bill of exchange (simple or transferable) In factoring, the object of the contract is accounts receivable related to the supply of goods and services. In forfeiting, the object of the contract is debt obligations, usually in the form of promissory notes or letters of credit issued on a long-term basis;
- by terms: in factoring – up to 180 days, and in forfeiting – over 180 days (from 6 months to 7 years), which allows using it for financing large export contracts;
- by amount: in factoring – no limitation, and in forfeiting – large amounts (from USD 500 thousand and more);
- percentage of the amount from the contract of sale of goods: in factoring – from 60-90%, and in forfeiting – 100%;
- risk accounting: in factoring – recourse to the exporter's claims is possible, while in forfeiting – without recourse to the buyer;
- currency: in factoring – a wide range of currencies, and in forfeiting–only in freely convertible currency;
- additional guarantees: in factoring – not always required, and in forfeiting – obligatory bank aval;
- fees and costs: in factoring – management and advance financing fees, and in forfeiting –discount on the value of the debt obligation

Conclusion

International factoring and forfeiting contracts play an important role in stimulating global trade by providing exporters with access to liquidity and risk management. Although the objectives of these contracts are similar, differences in legal regulation, terms, level of liability and cost structure make these instruments unique. Obviously, the choice between entering into an international factoring or forfeiting agreement depends on the specifics of the trade operation, the company's financial needs and the level of acceptable risk.

In connection with the lack of legal regulation of the definition of forfeiting contract in the legislation of the Republic of Uzbekistan, it is proposed to make additions to the Civil Code of the Republic of Uzbekistan, in particular, to introduce a new chapter regulating forfeiting contract, providing for the concept of forfeiting contract, the rights and obligations of its parties, the features of conclusion, the responsibility of the parties to the contract, etc. [5, p.126] Forfeiting contract should be understood that one party - the seller sells a negotiable document, which expresses the right of monetary claim from the buyer under the original transaction to another party - forfeiter, and forfeiter undertakes to pay the debt of the buyer to the seller in full less the remuneration separately agreed by the parties. If the buyer fails to pay the forfeiter, the forfeiter has no right to demand such payment from the seller.

The international forfeiting contract is understood as an agreement in which one party - the seller (exporter) sells a negotiable document in which the right of monetary claim from the buyer (importer) under the original contract of international sale is expressed to the other party - forfeiter, and the forfeiter undertakes to pay the debt of the buyer to the seller in full less the remuneration separately agreed by the parties.

It is obvious that the contract of financing under assignment of monetary claim reflected in Chapter 42 of the Civil Code of the Republic of Uzbekistan provides for the regulation of the factoring contract, but not forfeiting, and they differ from each other.

The need to adopt separate normative acts, both at the national and international legal level (despite the presence of joint international legal norms regulating factoring and assignment of receivables), which would regulate the financial transaction itself, as well as the rights and obligations of the parties to the contract of forfeiting, would offer a unified terminological basis for the conclusion of this contract and for the regulation of forfeiting relations through seems obvious in view of the increasing demands of subjects of international law, and the need to adopt separate normative acts for the regulation of forfeiting relations

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