



UNIVERSITEIT VAN PRETORIA  
UNIVERSITY OF PRETORIA  
YUNIBESITHI YA PRETORIA

**LEGAL AND REGULATORY  
CONSIDERATIONS IN PROMOTING  
FACTORING AS AN ALTERNATIVE TRADE  
FINANCING TOOL IN NIGERIA**

SUBMITTED IN PARTIAL FULFILMENT OF THE LL.M IN  
INTERNATIONAL TRADE & INVESTMENT LAW IN AFRICA

BY:

**NELSON CHILOTAM ONUOHA**  
STUDENT NUMBER: **21829897**

IN THE FACULTY OF LAW, UNIVERSITY OF PRETORIA

OCTOBER, 2021

SUPERVISOR: DR. MAGALIE MASAMBA

## **Declaration**

I, **Nelson Chilotam Onuoha**, declare that this mini dissertation is wholly my own work except for references specifically indicated in the text. This mini dissertation is hereby submitted for the award of Legum Magister (LL.M) in International Trade and Investment Law in Africa at the International Development Law Unit, Centre for Human Rights, Faculty of Law, University of Pretoria. It has not been previously submitted for the award of a degree at this or any other tertiary institution.

---

**Nelson Chilotam Onuoha**

## ACKNOWLEDGEMENTS

Blessed be God, the Almighty, who sustained me, inspired me and provided for me throughout the course of conducting this study.

I am very grateful to my parents – Mr & Mrs Alfred Onuoha, my siblings and other family members who immensely supported me throughout this LLM Programme.

I acknowledge, in no small measure, the assistance and support provided to me by the Management of the law firm of Solola & Akpana, as well as my very amiable work colleagues who constantly encouraged me and wished me well throughout the programme.

I thank my fellow ‘comrades-in-arms’, the entire LLM, International Trade and Investment Law in Africa (TILA) class of 2021. It was one very fulfilling year of friendship, learning, bonding and engaging towards addressing the issues affecting Africa’s political economy. I particularly acknowledge Jack, Adetutu, Michelle, Kedibone, Sandrine, Emmanuel, Malebo, Cesar, Joyce and Leyla; your friendship, assistance, advice and all round benevolence towards me kept me going through this research and the LLM programme in general.

In a very special way, I acknowledge you Adetutu, without your kind support and encouragement perhaps I would not have undertaken this LLM programme - I will never forget.

I thank my indefatigable supervisor, Dr. Magalie Masamba. Your critical and constructive comments and directions immensely shaped this study.

I acknowledge the kind assistance and mentorship provided by Ms Memory Dube, my lecturer, mentor and friend, whose burning passion for building young African trade and investment lawyers prompted her to provide me with helpful tips and guidance whilst this study was still in its nascent stage.

I acknowledge Mr. Albert Puja, my friend and eminent senior colleague, who constantly supported, advised and encouraged me through conducting this study.

I must also acknowledge the members of the LLM, Human Rights and Democratization in Africa (HRDA) class of 2021, particularly Benjamin, Ramou, Kwame and Hilma – amazing people! You guys demonstrated the true meaning of the *ubuntu* spirit and in various ways, your friendship and kindness to me added colour to my life throughout my LLM programme sojourn.

I thank the entire administrative staff of the 2021 TILA LLM programme, particularly the Programme Manager, Dr. Rimdolmsom Kabre. Your constant assistance and support ensured that the programme went smoothly.

Finally, I thank everyone and anyone who has, in one way or another, supported or encouraged me throughout writing this dissertation and the LLM programme in general. Borrowing the words of George Mathew Adams, “there is no such thing as a self-made man. We are made up of thousands of others. Everyone who has ever done a kind deed for us, or spoken one word of encouragement to us, has entered into the make-up of our character and of our thoughts, as well as our success”. Thank you all.

## **LIST OF ABBREVIATIONS**

AfCFTA – African Continental Free Trade Agreement

Afrexim bank – African Export-Import Bank

AML – Anti-money Laundering

CBN - Central Bank of Nigeria

EBRD - European Bank for Reconstruction and Development

FCI – Factoring Chain International

GDP – Gross Domestic Product

IFG – International Factoring Group

KYC – Know Your Customer

SMEs – Small and Medium Enterprises

UNCTAD - United Nations Conference on Trade and Development

UNIDROIT – The International Institute for the Unification of Private Law

## **ABSTRACT**

The level of trade in Nigeria has been declining in recent years. This decline is attributable to the inaccessibility of trade finance particularly by Nigerian SMEs which are the principal contributors to economic activity in Nigeria. Factoring has been identified as a veritable tool for providing sustainable and accessible trade finance particularly for SMEs. Factoring is a financial service where an enterprise sells its accounts receivables (in the form of invoices) to a factor at a discount in return for immediate cash and a range of services including credit protection, accounts receivable bookkeeping and collection services. Despite the prospects factoring bears for improving trade financing in Nigeria, the awareness, availability and use of factoring as a trade financing product in Nigeria has remained very low. One key reason for the poor state of factoring in Nigeria is the absence of a robust and facilitative legal and regulatory framework for factoring in Nigeria. This research therefore analyses the legal and regulatory framework for factoring in Nigeria to assess the extent to which it facilitates and promotes the use and provision of factoring as an alternative trade financing tool in Nigeria. This paper commences by exploring the concept of factoring and examining the role of factoring as an alternative trade financing tool in Nigeria. This research analyses the legal and regulatory framework for factoring in Nigeria by examining the current framework and the proposed framework – the Nigerian Factoring Bill. This research goes further to comparatively analyze the legal and regulatory framework for factoring in Nigeria against modern best practices for factoring law and regulation to extract valuable lessons for Nigeria. Finally, this research proffers useful recommendations for improving and strengthening the Nigerian legal and regulatory framework for factoring in order to promote and facilitate the use and provision of factoring services in Nigeria.

## Table of Contents

### CHAPTER ONE

#### GENERAL INTRODUCTION

1.1	Background of the Study.....	9
1.2	Problem Statement.....	12
1.3	Aims and Objectives of the Study.....	13
1.4	Research Questions.....	14
1.5	Significance of the Study.....	15
1.6	Thesis Statement.....	17
1.7	Research Methodology.....	17
1.8	Limitations of the Study.....	18
1.9	Literature Review.....	18
1.10	Structure of Research.....	21

### CHAPTER TWO

#### THE CONCEPT OF FACTORING

2.1	Introduction.....	23
2.2	The definition of factoring:.....	23
2.3	Mechanics of factoring: Key actors and processes.....	26
2.4	Types of factoring.....	27
2.5	Modern approaches to factoring regulation.....	30
2.6	Conclusion.....	31

### CHAPTER THREE

#### THE ROLE OF FACTORING AS AN ALTERNATIVE TRADE FINANCING TOOL IN NIGERIA

3.1	Introduction.....	33
3.2	The role of factoring in improving trade finance in Nigeria.....	33
3.3	The benefits and challenges of using factoring in Nigeria.....	35
3.4	Factoring compared with traditional trade financing tools used in Nigeria.....	37
3.4.1	Letters of credit.....	37
3.4.2	Cash-in-advance.....	38
3.4.3	Documentary collections.....	38
3.4.4	Open account.....	39
3.5	Conclusion.....	40

### CHAPTER FOUR

#### EXAMINING THE LEGAL AND REGULATORY FRAMEWORK FOR FACTORING IN NIGERIA

4.1	Introduction.....	41
-----	-------------------	----

4.2	The extant legal and regulatory framework for factoring in Nigeria .....	41
4.2.1	The UNIDROIT Convention on International Factoring 1988:.....	42
4.2.2	Nigerian contract law on assignment of contractual rights .....	44
4.2.3	Banking and Other Financial Institutions Act 2020.....	47
4.2.4	Central Bank of Nigeria Guidelines for Financial Companies in Nigeria 2014 .....	48
4.3	The proposed legal framework for factoring in Nigeria: The Nigerian Factoring Bill 2016 .....	49
4.3.1	The definition of factoring and the limitation on assignment of receivables:.....	49
4.3.2	Requirement of notice of assignment.....	52
4.3.3	Prohibition on assignment.....	54
4.3.4	Priority of competing interests in assigned receivables .....	54
4.4	Conclusion .....	55

## CHAPTER FIVE

### COMPARATIVE ANALYSIS OF NIGERIA'S LEGAL AND REGULATORY FRAMEWORK FOR FACTORING WITH BEST PRACTICES FOR FACTORING LAW AND REGULATION

5.1	Introduction.....	56
5.2	Comparing Nigeria’s legal and regulatory framework for factoring with Egypt’s legal and regulatory framework for factoring.....	56
5.2.1	Regulation and supervision of factoring services .....	57
5.2.2	Factoring legislation.....	59
5.3	Towards a robust legal framework for factoring in Nigeria: Comparing Nigeria's Factoring Bill against international best model laws for factoring.....	61
5.3.1	The International Factor’s Group Model Law on Factoring 2014 .....	61
5.3.1.1	Definition of factoring and the limitation on assignment of receivables .....	62
5.3.1.2	Requirement of notice of assignment.....	63
5.3.1.3	Prohibition on assignment of receivables .....	63
5.3.1.4	Priority in competing rights to assigned receivable .....	64
5.3.2	The African Export-Import Bank Model Law on Factoring 2016.....	64
5.3.2.1	Definition of factoring and the limitation on assignment of receivables .....	65
5.3.2.2	Requirement of notice of assignment.....	65
5.3.2.3	Prohibition on assignment of receivables .....	66
5.3.2.4	Priority in competing rights to assigned receivable .....	66
5.4	Conclusion .....	67

## CHAPTER SIX

### CONCLUSION AND RECOMMENDATIONS

6.1	Introduction.....	68
6.2	Summary of Findings.....	69

6.3	Recommendations.....	71
6.3.1	Recommendation One – Expedite enactment of the Nigerian Factoring Bill into law.....	71
6.3.2	Recommendation Two - Proposed amendments to the Nigerian Factoring Bill 2016.....	71
6.3.3	Recommendation Three – The development of specific and facilitative regulations for factoring in Nigeria. ....	74
6.4	Conclusion .....	74
	Bibliography.....	76



## CHAPTER ONE INTRODUCTION

---

### 1.1 Background of the Study

Trade is a strong tool for global economic growth and poverty reduction. It facilitates the movement and exchange of goods, services and capital across nations. An increased level of trade in a country consequently increases the economic growth of that country.<sup>1</sup> According to the World Bank, in 2019, the global trade to Gross Domestic Product (GDP) ratio was 60% and the trade to GDP ratio in Sub-Saharan Africa was 53.8%.<sup>2</sup> According to UNCTAD, between the periods 2015-2019, the total African trade value was USD 760 billion and represented 29% of Africa's GDP.<sup>3</sup> Trade is a major contributor to the global and African economy.

Notwithstanding the immense importance of trade to global and African economic growth, Africa's trade only amounts to around 3% of global trade.<sup>4</sup> In 2019, Africa recorded exports of USD 462 billion and imports of USD 569 billion in merchandise trade resulting in a 3% fall compared to 2018.<sup>5</sup> The emergence of the Covid-19 pandemic has also further blighted economic activities in Africa with economic activity contracting by 2% in 2020 from the previous year.<sup>6</sup> The level of African trade also fell by 11.9% in 2020 as compared with 2019.<sup>7</sup>

One major hindrance to trade globally and in Africa is the high level of unmet trade finance demand. Trade finance is at the core of the trading system as it provides the required risk

---

<sup>1</sup> World Bank 'Stronger open trade policies enable economic growth for all' <https://www.worldbank.org/en/results/2018/04/03/stronger-open-trade-policies-enables-economic-growth-for-all> (accessed 25 May 2021).

<sup>2</sup> World Bank 'World Bank databank (trade % of GDP)' [https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?name\\_desc=true](https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?name_desc=true) (accessed 25 May 2021).

<sup>3</sup> African Union 'Impact of the corona virus (covid-19) on the African economy' <https://www.tralac.org/documents/resources/covid-19/3218-impact-of-the-coronavirus-covid-19-on-the-african-economy-african-union-report-april-2020/file.html> (accessed 25 May 2021).

<sup>4</sup> World Bank 'Strengthening Africa's capacity to trade' [https://www.wto.org/english/res\\_e/booksp\\_e/strengthening\\_africas\\_capacity\\_to\\_trade\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/strengthening_africas_capacity_to_trade_e.pdf) (accessed 25 May 2021).

<sup>5</sup> World Bank (n4).

<sup>6</sup> World Bank 'Covid-19 and the future of work in Africa: Emerging trends in digital technology adoption' (2020) 23 *Africa's Pulse* <https://openknowledge.worldbank.org/bitstream/handle/10986/35342/9781464817144.pdf?sequence=10&isAllowed=y> (accessed 25 May 2021).

<sup>7</sup> African Export Import Bank and African Development Bank 'Survey of impact of covid-19 on African trade finance' 2021 <https://media.afreximbank.com/afrexim/Survey-of-Impact-of-COVID-19-on-African-Trade-Finance.pdf> (accessed 25 May 2021).

mitigation and cash flow to facilitate trade transactions.<sup>8</sup> Yet, a wide trade financing gap persists and is expected to surge as a result of the pandemic. In 2018, the global trade finance gap was estimated at USD 1.5 trillion.<sup>9</sup> This gap is more pronounced in emerging markets and developing economies like Africa. The trade finance gap in Africa was estimated at USD 82 billion in 2019 representing 5.5% of the global trade finance gap.<sup>10</sup> Markedly, considering that Africa contributes to only 3% of global trade, Africa's share of the global trade financing gap is disturbingly larger than its share in global trade.<sup>11</sup> The vulnerable trading actors particularly affected by this wide trade financing gap are the Small and Medium Enterprises (SMEs). Despite accounting for 80% of the businesses in Sub-Saharan Africa, SMEs only received 34% of the total African trade financing portion in 2019.<sup>12</sup> This trade financing handicap suffered by African SMEs has clearly hindered their contribution to trade and ultimately adversely affects Africa's contribution to global trade.

In Nigeria, the trade sector contracted by -8.49% in 2020 from the previous year and contributed to only 13% of Nigeria's total GDP as against 15% in 2019.<sup>13</sup> This poor performance of the Nigerian trade sector is linked to the poor performance of Nigerian SMEs in trade. Although SMEs in Nigeria contributed to 48% of Nigeria's GDP in 2018 and about 90% of total employment, SMEs contributed to only 7% of the country's exports value.<sup>14</sup> According to the

---

<sup>8</sup> Common Market for Southern and Eastern Africa 'The role of trade finance in promoting trade: The implications of covid-19 on trade finance in Africa' 2020 <https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.comesa.int/wp-content/uploads/2020/07/The-Role-of-Trade-Finance-in-Promoting-Trade-and-the-Implications-of-Covid-192.pdf&ved=2ahUKEwiqyOmx1PPwAhVRuXEKHR25AhsQFjAAegQIAxAB&usg=AOvVaw0yw3RdQMoc-WSHjCJmDA3->(accessed on 25 May 2021).

<sup>9</sup> K Kim and Others '2019 trade finance gaps, growth, and jobs survey' 2019 <https://www.adb.org/publications/2019-trade-finance-gaps-jobs-survey> (accessed on 25 May 2021).

<sup>10</sup> African Development Bank (2020) 'Trade finance in Africa: Emerging trends and opportunities' <https://www.afdb.org/en/documents/trade-finance-africa-trends-over-past-decade-and-opportunities-ahead>(accessed on 25 May 2021).

<sup>11</sup>African Development Bank (n10).

<sup>12</sup> African Export-Import Bank and African Development Bank 'Trade finance in Africa: Trends over the past decade and opportunities ahead' 2020 [https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.mfw4a.org/sites/default/files/resources/trade\\_finance\\_report\\_sept2020.pdf&ved=2ahUKEwjNxeOs5OXwAhWJgf0HHT4rBH8QFjAJegQIBhAB&usg=AOvVawIfoFMfPEq2YNgByx\\_dL3Z5](https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.mfw4a.org/sites/default/files/resources/trade_finance_report_sept2020.pdf&ved=2ahUKEwjNxeOs5OXwAhWJgf0HHT4rBH8QFjAJegQIBhAB&usg=AOvVawIfoFMfPEq2YNgByx_dL3Z5) (accessed 25 May 2021).

<sup>13</sup> National Bureau of Statistics 'Nigerian GDP report, 2020' 2020 [https://nigerianstat.gov.ng/elibrary?queries\[search\]=trade](https://nigerianstat.gov.ng/elibrary?queries[search]=trade) (accessed on 25 May 2021).

<sup>14</sup>J Akintunde 'Factoring could be a game changer for Nigerian SMEs and trade' 2020 <http://www.financialnigeria.com/factoring-can-be-a-game-changer-for-nigerian-smes-and-trade-feature-317.html>(accessed on 25 May 2021).

National Bureau of Statistics, only 4.1% of Nigerian SMEs involved in trade contributed to Nigeria's volume of exportable products in 2017.<sup>15</sup>

SMEs in Nigeria, and Africa as a whole, struggle to participate in trade due to their limited or weak access to finance and credit.<sup>16</sup> Even though the credit default rates of African SMEs reduced greatly between 2013 and 2019, the rejection rate for trade finance applications made by African SMEs increased by 20% points.<sup>17</sup> The share of rejection rates of trade finance applications made by African SMEs in 2019 by regions is as follows: Central Africa (47%), North Africa (37%), Southern Africa (33%), West Africa (30%) and East Africa (23%). Currently, only 28% of African Banks' total finance portfolio is assigned to African SMEs.<sup>18</sup> African SMEs are denied trade finance because of their lack of demonstrated creditworthy history and their lack of collateral.<sup>19</sup> Furthermore, competition, change in banking regulations on know-your-customer/anti-money laundering (KYC/AML) as well as stringent capital requirements introduced after the global financial crises, have raised transactional costs and made small transactions, usually done by SMEs, unprofitable for banks.<sup>20</sup> This high refusal rate of SMEs' trade finance applications in Africa is expected to increase with the emergence of the pandemic as African Banks prefer to grant credit to large corporations rather than SMEs in times of crises.<sup>21</sup>

The demand for trade finance is expected to increase in Africa as the continent seeks to recover from the economic debilitating effects of the pandemic. The implementation of the AfCFTA would also require increased trade finance to enable intra-African trade. African SMEs which are currently underfinanced will most likely be the key participants in intra-African trade under the AfCFTA given that they form the dominant portion of enterprise in Africa. It is reported that increased intra-African trade under the AfCFTA would require an additional USD 40 billion in trade financing.<sup>22</sup> It has therefore become more important than ever for African countries, including Nigeria, to have as many accessible and inclusive trade financing alternatives as

---

<sup>15</sup> National Bureau of Statistics 'National survey of Micro, Small and Medium Enterprises, 2017' 2017 [https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.nigerianstat.gov.ng/download/967&ved=2ahUKewih\\_cT27eXwAhVyh\\_0HHQ7yB1MQFjABegQIBhAB&usg=AOvVaw2tonSqxM8WR6yV9elnBwg1](https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.nigerianstat.gov.ng/download/967&ved=2ahUKewih_cT27eXwAhVyh_0HHQ7yB1MQFjABegQIBhAB&usg=AOvVaw2tonSqxM8WR6yV9elnBwg1) (accessed on 25 May 2021)

<sup>16</sup>Common Market for Southern and Eastern Africa (n 8).

<sup>17</sup>African Export-Import Bank and African Development Bank (n 12).

<sup>18</sup> K Awani 'Factoring: An alternative SME financing instrument for intra-African trade promotion' (2020) 6 *Contemporary Issues in African Trade and Trade Finance* at 85.

<sup>19</sup>Awani (n 18) 83.

<sup>20</sup>African Export-Import Bank and African Development Bank (n 12).

<sup>21</sup> A Bigsten 'Credit constraints in manufacturing enterprises in Africa' (2003) 12 *Journal of African Economies* at 104.

<sup>22</sup>Awani (n 18) 85.

possible. It is in this context that factoring emerges as a veritable trade financing alternative, particularly for SMEs in Nigeria.

Factoring is a financial service whereby a business entity assigns its accounts receivables to a factor at a discount in exchange for instant cash and the provision of services including credit protection, accounts receivable bookkeeping and debt collection.<sup>23</sup> Through factoring, firms with higher risk profiles such as Small and Medium Enterprises (SMEs) can gain access to sustainable finance because the financing risk is placed on the firms' accounts receivables rather than the firms themselves.<sup>24</sup>

Factoring has become a fast growing trade finance product. The global factoring industry volume in 2019 was 2.9 trillion euros showing a 5% increase from the previous year.<sup>25</sup> Africa's share in the 2019 global factoring volume was 24 billion euros showing a 10% increase from 2018, with South Africa, Morocco, Egypt, Tunisia and Mauritius making the highest contributions to Africa's factoring volume.<sup>26</sup> Nigeria, Africa's largest economy,<sup>27</sup> is glaringly missing in this list.

## 1.2 Problem statement

Factoring provides a suitable trade financing alternative for SMEs as it is a very low risk trade financing tool. It ensures cash flow and eased access to finance for SMEs by converting their present or future receivables to immediate cash irrespective of their credit history.<sup>28</sup> It also enables large businesses optimize their supply chain by providing financing for their small and mid scale suppliers.<sup>29</sup> Despite these benefits, the awareness, availability and use of factoring as a trade financing product in Nigeria is very low.<sup>30</sup> As at October 31, 2020, there were only two licensed factors in Nigeria.<sup>31</sup>

---

<sup>23</sup> L Klapper 'The role of factoring for financing Small and Medium Enterprises' (2005) *World Bank Policy Research Working Paper* 3593.

<sup>24</sup> Klapper (n 23) 7.

<sup>25</sup> Factoring Chain International 'Factoring Chain International annual review 2020' 2020 <https://fci.nl/en/media/26962/download> (accessed 25 May 2021).

<sup>26</sup> Factoring Chain International (n 25).

<sup>27</sup> World Bank 'World Bank in Africa overview' 2021 <https://www.worldbank.org/en/region/afr/overview> (accessed 25 May 2021).

<sup>28</sup> Klapper (n 23) 7.

<sup>29</sup> Klapper (n 23) 7.

<sup>30</sup> S Alayemi and others 'Factoring as finance alternative: reasons for non-patronage in Nigeria' (2015) 1 *American Journal of Economics, Finance and Management* 504 at 509.

<sup>31</sup> Central Bank of Nigeria 'List of licensed financial institutions in Nigeria' 2020 <https://www.cbn.gov.ng/Out/2020/FPRD/FC%20OCT%202020.pdf> (accessed 29 May 2021).

The legal problem is that, just as in many other African countries, the absence of a robust and facilitative legal and regulatory framework for factoring greatly impedes factoring growth in Nigeria.<sup>32</sup> The position of Nigerian contract law on assignment of contractual rights is the only related legal source on assignment of receivables in Nigeria, and even that source has remained uncertain and vague as there is a dearth of Nigerian judicial precedent/decisions on the subject and a conflict between the positions of common law and equity.<sup>33</sup> The Banking and Other Financial Institutions Act merely indicates factoring as one of the non-banking financial services to be regulated by the Central Bank of Nigeria (CBN), without making any specific provisions on factoring.<sup>34</sup> There is also currently no specific regulatory framework for factoring in Nigeria. Factoring in Nigeria is currently regulated by the CBN through the CBN's general Guidelines for Finance Companies in Nigeria.

In an attempt to address the absence of a specific legal framework for factoring in Nigeria, the Factoring Bill 2016 is currently being passed through Nigeria's Parliament. However, it is yet to be seen if the Bill appropriately addresses the main legal and regulatory considerations affecting the use of factoring which include: a.) the definition of factoring and the limitation on assignment of receivables; b.) requirement of notice of assignment; c.) prohibition on assignment of receivables and; d.) priority in competing rights to assigned receivable.<sup>35</sup>

### **1.3 Aims and Objectives of the Study**

The overarching aim of this study is to analyse the extant and proposed legal and regulatory framework for factoring in Nigeria to assess the extent to which it facilitates and promotes the use of factoring as an alternative trade financing tool in Nigeria.

In order to achieve the overarching aim of this study, this study shall seek to do the following:

- a.) Examine the concept of factoring by exploring its definition, types, mechanics and the modern approaches to regulating it as a financial service globally.

---

<sup>32</sup>E Kameni 'An insight into recent legal and regulatory reforms of factoring in Africa' (2014) 1 *Contemporary Issues in African Trade and Trade Finance* 27; Alayemi and others (n 30) 509.

<sup>33</sup>*Julius Berger Nigeria Plc & Anor v. Toki Rainbow Community Bank Ltd* (2009) LPELR-4381.

<sup>34</sup>Banking and Other Financial Institutions Act 2020, sec 131.

<sup>35</sup>D Tatge 'Legal aspects of factoring' 2014 <file:///C:/Users/ME/Documents/1-LEGAL-ASPECTS-OF-FACTORING-Lagos-June-4-2014-2.pdf>> (accessed on 25 August 2021); U Brink 'Factoring laws and their impact on factoring and the receivable finance industry' 2019 [https://fci.nl/en/news/Factoring%20Laws%20and%20their%20Impact%20on%20Factoring%20-%20Receivables%20Finance%20Industry?language\\_content\\_entity=en](https://fci.nl/en/news/Factoring%20Laws%20and%20their%20Impact%20on%20Factoring%20-%20Receivables%20Finance%20Industry?language_content_entity=en)> (accessed on 25 August 2021); Kameni (n 32) 28.

- b.) Explore the role of factoring as an alternative trade financing tool in Nigeria.
- c.) Analyse the legal and regulatory framework for factoring in Nigeria
- d.) Compare the legal and regulatory framework for factoring in Nigeria with best practices on factoring legislation and regulation, to extract valuable lessons for strengthening the legal and regulatory framework for factoring in Nigeria.
- e.) Proffer recommendations towards improving the legal and regulatory framework for factoring in Nigeria to enable and promote the use and provision of factoring services in Nigeria.

#### **1.4 Research Questions**

The overarching question this research seeks to answer is: to what extent does the legal and regulatory framework for factoring in Nigeria promote and facilitate the use of factoring as an alternative trade financing tool in Nigeria?

In essence, the research questions which this research shall seek to answer are as follows:

- a) What is factoring, how does it work and what are the modern approaches to regulating it globally?
- b) What is the role of factoring as an alternative trade financing tool in Nigeria?
- c) What is the legal and regulatory framework for factoring in Nigeria, and how does it regulate and guide the use and provision of factoring services in Nigeria?
- d) What are some of the modern best practices for factoring legislation and regulation and how does the Nigerian legal and regulatory framework for factoring compare with them?
- e) What lessons can be drawn from some of the best practices for factoring legislation and regulation to strengthen the legal and regulatory framework for factoring in Nigeria?

## 1.5 Significance of the Study

This study finds its significance in the dearth of literature on factoring in Nigeria in spite of the numerous benefits that factoring could afford to trade finance, trade and overall economic growth and development in Nigeria. SMEs are at the heart of the Nigerian economy. They represent a very important piece in increasing Nigeria's level of trade and improving the contribution of trade to Nigeria's GDP.<sup>36</sup> Yet, Nigerian SMEs face significant strain in obtaining trade finance. This increasing difficulty faced by Nigerian SMEs in accessing trade finance and credit is not unrelated to Nigeria's low trade to GDP ratio.

Bank credit has remained a dominant trade financing tool in Nigeria. However, Nigerian SMEs are quite underserved by Banks in accessing credit. Although bank lending to the private sector in Nigeria has significantly increased since the banking sector's consolidation and recapitalization programme, the percentage of total bank credit afforded to SMEs has been declining.<sup>37</sup> From 2006 – 2011, bank credit to Nigerian SMEs plunged to 0.41%.<sup>38</sup> This figure further fell to 0.1% in the 1st quarter of 2017.<sup>39</sup> Banks are reluctant to advance credit financing to Nigerian SMEs because of their perceived high risk profile, lack of collateral, poor financial record keeping, high credit transaction costs and unreliable credit information.<sup>40</sup> This difficulty in accessing bank credit has deprived Nigerian SMEs of the requisite liquidity to cover production costs and increase production. As a result, the levels of exportable products of Nigerian SMEs are immensely low.

The foregoing issues highlight why factoring could be very important in improving the availability of trade finance in Nigeria and consequently increasing Nigeria's participation in trade. Factoring is a very SME-friendly trade financing product because it ensures that SMEs are afforded requisite cash flow by converting the value of their invoices into immediate cash. Although a minimal percentage of the invoice value is withheld by the factor as discount on the invoice amount, factoring aids SMEs maximize profits through increased turnover as a result of

---

<sup>36</sup>Akintunde (n 14).

<sup>37</sup>Akintunde (n 14).

<sup>38</sup>Akintunde (n 14).

<sup>39</sup>Akintunde (n 14).

<sup>40</sup> D Saari 'Challenges faced by SMEs when accessing loans from financial institutions in Nigeria' BBA thesis, Helsinki Metropolia University of Applied Sciences, 2020 at 15 - 18 [https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://core.ac.uk/download/pdf/323463079.pdf&ved=2ahUKEwjZ5JOKivHwAhVCrHEKHZP6B-YQFnoECAQQAg&usg=AOvVaw1Y2kSPdZik\\_8hbfstyk91](https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://core.ac.uk/download/pdf/323463079.pdf&ved=2ahUKEwjZ5JOKivHwAhVCrHEKHZP6B-YQFnoECAQQAg&usg=AOvVaw1Y2kSPdZik_8hbfstyk91) (accessed 25 May 2021).



quicker access to funds.<sup>41</sup> This way, SMEs are able to increase and improve production and create higher exportable value. Unlike bank credit financing, factoring is an ideal trade financing option for high risk firms because of the relatively low risk in factoring transactions.<sup>42</sup> It is reported that factoring has the potential to unlock between USD 1 billion to USD 2 billion in financing for Nigerian SMEs each year.<sup>43</sup> The use of factoring is increasingly growing in Africa and at the same time the already high trade financing demand in Africa is expected to increase. This study is therefore vital to improve the awareness, use and regulation of factoring in Nigeria as a tool for expanding trade finance availability in Nigeria.

This study explores the role, suitability, benefits and challenges of using factoring as an alternative trade financing product in Nigeria. Given that factoring can only thrive where there is a facilitative legal and regulatory environment for the use and provision of this financial service, this study principally examines the extent to which the current and proposed legal and regulatory framework for factoring in Nigeria supports and promotes the use of factoring in Nigeria.

This study is timely in the sense that Nigeria is currently in the process of passing its proposed factoring legislation – the Nigerian Factoring Bill 2016 – into law.<sup>44</sup> This study will therefore help to examine and critically analyse the Factoring Bill to assess the extent to which it addresses the following principal issues in factoring law and regulation: a.) the definition of factoring and the limitation on assignment of receivables; b.) requirement of notice of assignment; c.) prohibition on assignment of receivables and; d.) priority in competing rights to assigned receivable. This study will draw valuable lessons for Nigeria from current international best factoring model laws which are the International Factoring Group (IFG) and the African Export-Import Bank (Afrexim Bank) Model laws, as well as from the legal and regulatory framework of Egypt - an economically similar African country where factoring has been thriving.

The findings and recommendations from this study will be very useful to financial services' providers, consumers and law/policy makers in Nigeria. They will provide legal and policy insights towards strengthening the legal and regulatory framework for factoring in Nigeria, and particularly enable the members of the Nigerian parliament to make any necessary improvements

---

<sup>41</sup>Akintude (n 14).

<sup>42</sup>Klapper (n 23) 9.

<sup>43</sup> PricewaterhouseCoopers Ltd. 'Factoring the Gap: Improving Access to Working Capital for MSMEs' 2020 [https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.pwc.com/ng/en/assets/pdf/factoring-the-gap.pdf&ved=2ahUKewjpm6rq8O\\_wAhX6QEEAHUIZDHgQFjAAegQIARAB&usg=AOvVaw3f8nCOH4Pw53OWeNjbDxpE](https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.pwc.com/ng/en/assets/pdf/factoring-the-gap.pdf&ved=2ahUKewjpm6rq8O_wAhX6QEEAHUIZDHgQFjAAegQIARAB&usg=AOvVaw3f8nCOH4Pw53OWeNjbDxpE) (accessed 29 May 2021).

<sup>44</sup> Nigerian Export-Import Bank 'NEXIM Bank calls for Speedy Passage of Factoring Bill' 2020 <https://neximbank.com.ng/nexim-bank-calls-for-speedy-passage-of-factoring-bill/> (accessed 29 May 2021).



to the Factoring Bill before or soon after it is passed into law. This study will also aid to increase the awareness, use and acceptance of factoring as an alternative and inclusive trade financing tool in Africa generally and in Nigeria particularly. This way, financially vulnerable trading actors, particularly SMEs, will be able to take advantage of the product in accessing sustainable cash flow financing and improve their levels of tradable production. This study will also contribute to bridging the wide literature gap in factoring and factoring law and regulation in Nigeria.

## **1.6 Thesis Statement**

This study is designed to assess the hypothesis that the absence of a predictable and robust legal and regulatory framework for factoring has stunted the growth, accessibility, acceptance and use of factoring as an alternative trade financing instrument in Nigeria. This study proposes that with a facilitative legal and regulatory environment for factoring in Nigeria, the growth and use of factoring in Nigeria will greatly improve and in turn enable inclusive and accessible trade financing in Nigeria.

## **1.7 Research Methodology**

This research shall employ a desktop-based qualitative research methodology. For the entire part of the study, primary and secondary sources will be consulted and analysed to fulfill the aims and objectives of the study and answer the research questions of the study.

The primary sources that will be consulted include: Nigerian case law reports, the UNIDROIT Convention on International Factoring 1988, the Banking and Other Financial Institutions Act 2020, the Secured Transactions in Movable Assets Act 2017, the Companies and Allied Matters Act 2020, the CBN Revised Guidelines for Finance Companies in Nigeria 2014 and the Nigerian Factoring Bill 2016.

This research will also proceed to consult secondary sources including books, journal articles, policy reviews, working papers and reports from international organizations and Development Finance Institutions, online news articles as well as legal and finance magazine commentary.

This research shall also conduct a comparative legal analysis of the legal and regulatory framework for factoring in Nigeria with the IFG and Afrexim Bank Model laws for factoring which represent current international best practice for factoring legislation, as well as with the

legal and regulatory framework for factoring in Egypt. The choice of using Egypt as the continental comparator jurisdiction reflecting continental best practice is informed by the fact that although the economies of Egypt and Nigeria are similar in terms of size, the use and growth of factoring in Egypt has been very impressive as compared to the poor levels of use and growth of factoring in Nigeria.<sup>45</sup> Furthermore, Egypt recently enacted a new factoring law which appears to have given more boost to the growth of factoring in Egypt.<sup>46</sup>

Therefore, this research will adopt multiple research methods and will therefore be theoretical, descriptive, analytical, comparative and prescriptive in approach.

## **1.8 Limitations of the Study**

The scope of this study is limited to factoring and does not aim to comprehensively discuss other forms of trade financing. However, this study will briefly compare factoring with other traditional trade financing tools used in Nigeria in order to situate the role of factoring as an alternative trade financing tool. This study is geographically limited to Nigeria and not Africa as a whole. This study is also particularly focused on the legal and regulatory issues and aspects of factoring in Nigeria and does not primarily consider other aspects of factoring in Nigeria.

## **1.9 Literature Review**

Currently, there is an absence of comprehensive literature on legal and regulatory issues affecting factoring in Nigeria in particular, and a paucity of literature on factoring in Nigeria in general.

According to Klapper, factoring is an ideal trade financing tool for emerging economies considering that SMEs in most developing countries find it difficult to obtain adequate financing from banks.<sup>47</sup> The author states that considering that SMEs in emerging economies have to wait for 30-90 days to receive payment on their supply invoice, factoring provides these SMEs with necessary working capital financing by converting these invoices to immediate cash for these SMEs without having to wait for their customers to make payment on the invoices.<sup>48</sup> The author also highlights that a facilitative and supportive legal and regulatory environment is crucial for

---

<sup>45</sup>Factoring Chain International (n 25).

<sup>46</sup>Factoring Chain International (n 25).

<sup>47</sup>Klapper (n 23) 7.

<sup>48</sup>Klapper (n 23) 7.

factoring to thrive in emerging economies.<sup>49</sup> However, the article did not particularly situate the importance or applicability of factoring in improving trade financing in Africa.

Ivanovic, Baresa and Bogdan recognize factoring as an alternative and globally well-established simple and efficient source of financing suitable for SMEs.<sup>50</sup> The authors did not evaluate or examine the role of factoring as an alternative trade financing tool for SMEs in emerging economies such as Nigeria.

Oramah identifies that despite the increasing use of factoring as a veritable tool for improving trade financing around the world, factoring is yet to develop in Africa.<sup>51</sup> Oramah and Dzene state that the factoring industry in Africa is underdeveloped and this accounts for Africa's poor contribution to the global factoring volumes.<sup>52</sup> However, neither literature explored the state of factoring in Nigeria – Africa's largest economy.

Tomusange identifies that factoring represents a viable financing alternative for SMEs in Africa.<sup>53</sup> Awani also highlights that factoring is an effective tool for SME growth and an important finance product for reducing the trade finance gap in Africa.<sup>54</sup> She also asserts that the increased use of factoring will enable SMEs' participation in intra-African trade and boost their competitiveness by allowing them carry out trade transactions on open account basis.<sup>55</sup> These authors did not consider the role of factoring as a trade financing alternative for SMEs in Nigeria, an African country in which SMEs contribute to over 80% of national economic activity.

Oramah identifies that the challenges to the growth and use of factoring in Africa include: the lack of knowledge and awareness of the product in Africa, the lack of interest in factoring by African businesses and the lack of facilitative legal and regulatory infrastructure for factoring in

---

<sup>49</sup>Klapper (n 23) 11.

<sup>50</sup> S. Ivanovic and Others 'Factoring: Alternative model of financing' 2 *UTMS Journal of Economics* 196.

<sup>51</sup> B Oramah 'From the periphery to the center – Africa as the growth market for factoring' (2014) 1 *Contemporary Issues in African Trade and Trade Finance* 5.

<sup>52</sup> B Oramah and R Dzene 'Evolution of factoring in Egypt and implications for factoring development in Africa' (2014) 1 *Contemporary Issues in African Trade and Trade Finance* 18.

<sup>53</sup> R Tomusange 'Factoring as a financing alternative for African Small and Medium Enterprises' PhD Thesis, Walden University, 2020 at 103 – 104 <https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://scholarworks.waldenu.edu/cgi/viewcontent.cgi%3Farticle%3D2577%26context%3Ddissertations&ved=2ahUKEwiZx-jH7vHwAhUtQxUIHemBxQOFjABegQIBxAB&usq=AOvVaw2q3xKZAhZZmibBY0O4E1do> (accessed on 30 May 2021).

<sup>54</sup> Awani (n 18) 85.

<sup>55</sup> Awani (n 18) 84.

Africa.<sup>56</sup> Although these challenges appear similar to the challenges affecting factoring in Nigeria, the author only addressed these challenges from a continental perspective. The author also did not identify the particular legal and regulatory issues hampering factoring in Africa.

Kameni posits that the absence of an enabling legal and regulatory environment for factoring in Africa is a major constraint to the prospective growth and use of factoring in Africa.<sup>57</sup> He identifies the nature of legal and regulatory challenges that impede factoring in Africa as follows: difference in legal systems, absence of legal expertise on factoring and factoring law in Africa and, the absence of factoring laws and judicial precedents on factoring.<sup>58</sup> The absence of a factoring law is also one of the legal and regulatory challenges affecting factoring in Nigeria. However, the article only analysed the legal and regulatory challenges to factoring in a broad continental context and not an African country-specific context.

Akintunde asserts that factoring will be vital in providing accessible trade financing for Nigerian SMEs to increase their participation in trade.<sup>59</sup> His article impresses the need for an increased awareness and utilization of factoring in Nigeria to boost Nigeria's international and domestic trade.<sup>60</sup> The author states that Nigeria bears the advantage of currently creating its legal framework for factoring and encourages the Nigerian Parliament to pass Nigeria's Factoring Bill into law.<sup>61</sup> However, the author did not consider or analyse the challenges to the use of factoring as a trade financing tool in Nigeria. The author also did not compare factoring with other trade financing instruments in Nigeria to determine its relevance as an 'alternative' trade financing tool. Furthermore, the article neither explored the current legal and regulatory framework for factoring in Nigeria nor examined whether the provisions of the Nigerian Factoring Bill were adequate enough to address the gaps in the current Nigerian legal framework for factoring.

Alayemi et al identify the absence of a robust and facilitative legal and regulatory environment for factoring in Nigeria as one of the reasons for the low patronage and use of factoring in Nigeria.<sup>62</sup> The authors however did not identify or analyse the legal and regulatory issues affecting factoring in Nigeria. The authors did not also examine the legal and regulatory framework for factoring in Nigeria.

---

<sup>56</sup>Oramah (n 51) 8.

<sup>57</sup>Kameni (n 32) 27.

<sup>58</sup>Kameni (n 32) 28 – 31.

<sup>59</sup>Akintunde (n 14).

<sup>60</sup>Akintunde (n 14).

<sup>61</sup>Akintunde (n 14).

<sup>62</sup>Alayemi and others (n 30) 507.

The Center for Trade and Business Environment Advisory, in its Position Paper on the Nigerian Factoring Bill, identified that the enactment of the Nigerian Factoring Bill into law will improve Nigerian SMEs' access to trade finance and introduce new tradable finance instruments.<sup>63</sup> The author states that 'the Factoring Bill is an attempt to promote the practice of factoring as alternative source of MSMEs financing in Nigeria'.<sup>64</sup> However, the paper did not examine the current legal and regulatory framework for factoring in Nigeria. The paper also failed to critically analyse the provisions of the Factoring Bill.

This study seeks to contribute to bridging the gap in knowledge on the legal and regulatory considerations affecting the use and availability of factoring in Nigeria as well as add to the scanty literature on factoring in Nigeria. This study will build on existing literature to critically assess the extent to which the current and proposed legal framework for factoring in Nigeria promotes and facilitates the use and provision of factoring services in Nigeria.

### **1.10 Structure of Research**

This research is divided into six chapters. Chapter One provides the background to the study, aims and objectives of the study, research questions, significance of the study, thesis statement, research methodology, limitations of the study, literature review and the structure of the research.

Chapter Two of the research provides a conceptual framework of factoring by exploring the definition of factoring, the types of factoring, how factoring works and the modern global approaches to regulation of factoring.

Chapter Three examines the role of factoring as an alternative trade financing tool in Nigeria. It considers how factoring can improve trade financing in Nigeria as well as the benefits and challenges of using factoring in Nigeria. It also briefly compares factoring with other traditional trade financing tools in order to show the relevance of factoring as an 'alternative' trade financing tool.

Chapter Four of this research examines the legal and regulatory framework for factoring in Nigeria. It identifies and analyses the current legal and regulatory sources governing factoring as

---

<sup>63</sup> Center for Trade and Business Environment Advisory 'Position Paper on Factoring Assignments (Establishment, Etc) Bill, 2019' [https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://centre-tba.org/wp-content/uploads/2021/03/POSITION-PAPER-ON-FACTORING.pdf&ved=2ahUKEwiGjvrx\\_fHwAhX3VRUIHd0dCb84ChAWMAI6BAgAEAE&usg=AOvVaw1Vkhwj7YRjt5zB8OKA2aph](https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://centre-tba.org/wp-content/uploads/2021/03/POSITION-PAPER-ON-FACTORING.pdf&ved=2ahUKEwiGjvrx_fHwAhX3VRUIHd0dCb84ChAWMAI6BAgAEAE&usg=AOvVaw1Vkhwj7YRjt5zB8OKA2aph) (accessed on 30 May 2021).

<sup>64</sup>Center for Trade and Business Environment Advisory (n 63).

a financial service in Nigeria whilst critically pinpointing their shortcomings. It also analyses the proposed legal framework for factoring in Nigeria, which is the Nigerian Factoring Bill, to examine how and to what extent its provisions adequately provide for the following main considerations in modern factoring legislation: a.) the definition of factoring and the limitation on assignment of receivables; b.) requirement of notice of assignment of receivables; c.) prohibition on assignment of receivables and; d.) priority in competing rights to assigned receivable.

Chapter Five carries out a comparative analysis of the legal and regulatory framework for factoring in Nigeria against African and international best practices for factoring legislation and regulation. The chapter shall set out the legal and regulatory framework for factoring adopted by Egypt – representing African best practice, and conduct a comparative analysis of Egypt's framework with Nigeria's. This Chapter also compares the Nigerian Factoring Bill with modern international best model laws for factoring, particularly the IFG Factoring Model Law and the Afrexim Bank Factoring Model Law, to identify the extent to which the Bill has adopted international best practices on factoring legislation.

Chapter Six provides the conclusion and recommendations of this research. The chapter will summarize the findings of the research and propose recommendations to strengthen and improve Nigeria's legal and regulatory framework for factoring.

## **CHAPTER TWO**

### **THE CONCEPT OF FACTORING**

---

#### **2.1 Introduction**

The previous chapter provided a general introduction of this study and revealed that factoring can unlock accessible and sustainable trade financing to improve the poor levels of trade in Nigeria. However, it also revealed that despite these exciting prospects factoring bears for trade financing in Nigeria, the awareness, acceptance and use of factoring as a trade financing tool is very low in Nigeria. The chapter poses that the absence of a facilitative and robust legal and regulatory framework for factoring in Nigeria is one of the main reasons for the low use and provision of factoring services in Nigeria. It is for this reason that this study sets out to principally examine the extent to which the legal and regulatory framework for factoring in Nigeria promotes the use and provision of factoring services in Nigeria. However, to provide a better appreciation of the legal and regulatory aspects of factoring, it is important to explore the concept of factoring.

This chapter seeks to examine the concept of factoring by examining the definition of factoring as well as the mechanics and types of factoring. This chapter shall also examine the modern approaches to regulating factoring as a financial service globally.

#### **2.2 The definition of factoring:**

Factoring has been ascribed different meanings by different authors and institutions. The International Institute for the Unification of Private Law (UNIDROIT) defines factoring as an arrangement between a factor and his client whereby the factor provides at least two of the following services: financing, ledger management/bookkeeping, debt collection and credit protection.<sup>65</sup> This definition is restrictive as it requires that the factor provide at least two of the foregoing services before the transaction can be regarded as a factoring transaction. This is problematic as in practice, clients might request a factor to provide only financing services upon assignment of the clients' receivables to the factor without more. A strict application of the UNIDROIT definition will presuppose that a transaction wherein a factor provides only financing services will not suffice as a factoring transaction strictly so called. Nonetheless, a few purists amongst factoring practitioners might be wary of accepting as a factoring transaction, a

---

<sup>65</sup>UNIDROIT Convention on International Factoring 1988, art 2(1).

transaction wherein the factor provides only financing without carrying out any of the other functions.<sup>66</sup>

Hoti defines factoring as a contractual relationship between the seller of goods/services and a financial institution whereby the institution purchases the sale receivables of the seller and controls or administers the accounts relating to the purchased receivables.<sup>67</sup> Hoti's definition appears to imply that only financial institutions can provide factoring services as factors. This might not always be the case as, in some jurisdictions, factoring is not accepted as a financial service to be provided by only financial institutions.<sup>68</sup>

In his seminal work 'Factoring Law and Practice', Salinger defines factoring as the purchase of commercial debts owed to seller by a factor, for the purpose of the factor providing finance to the seller to the value of the purchased debts or relieving the seller from administrative tasks or credit risks associated with the purchased debts.<sup>69</sup> Salinger's definition recognizes that the provision of factoring services can be for the purpose of providing financing alone without more. However, Salinger identifies factoring as 'purchase' of the client's receivables by the factor. This presupposes that in all factoring transactions, the client's accounts receivable is outrightly sold to the factor. This might essentially be the case in non-recourse factoring but not in factoring with recourse. This is because in recourse factoring, while the factor is the legal owner of the receivables upon assignment, the factor reserves the right to re-assign the receivables back to the seller where the buyer or debtor fails to pay the amount due on the invoice(s) within an agreed period after the due date.<sup>70</sup> Accordingly, where an assigned invoice has not been paid at the end of the agreed due period, any prepayment made by the factor to the seller may be withdrawn and repayment may be required from the seller.<sup>71</sup> Thus, it is submitted that it might be more apposite to refer to the transfer of the accounts receivable from the seller to the factor in a factoring transaction as an 'assignment' rather than a sale or purchase.

Alarcon defined factoring as a partnership in which a firm transfers its receivables arising from its business operations to a factor, along with hiring of certain additional services, and receives

---

<sup>66</sup>F Salinger *Factoring law and practice* (2004) 2.

<sup>67</sup> U Hoti 'Factoring: A Financial Instrument' (2014) 2 *Interdisciplinary Journal of Research and Development* [www.uamd.edu.al/new/wp-content/uploads/2015/07/2.-Ulpian-Hoti.pdf](http://www.uamd.edu.al/new/wp-content/uploads/2015/07/2.-Ulpian-Hoti.pdf) (Accessed 11 August 2021).

<sup>68</sup>Kameni (n 32) 29.

<sup>69</sup>Salinger (n 66) 2.

<sup>70</sup> EU Federation 'Factoring and commercial finance: An introduction' <https://euf.eu.com/category/4-brochures.html?download=375#:~:text=Factoring%20and%20Commercial%20Finance%20is,period%20the%20invoice%20is%20financed> (accessed on 11 August 2021).

<sup>71</sup>EU Federation (n 70).



the payment on the due date or in advance, with or without the right of set-off, upon payment of a fee.<sup>72</sup>

In its General Rules for International Factoring (GRIF) published in 2011, the IFG defined factoring as a contract wherein a seller may assign his accounts receivable to a factor, whether or not for the purpose of financing, in which the factor must provide at least one of the following services: a.) Bookkeeping of the accounts relating to the receivable; b.) collection of receivables and; c.) credit protection.<sup>73</sup> Similar to the UNIDROIT's definition of factoring, the IFG's definition is also problematic as it suggests that some other service or function other than financing must be provided by the factor in order to qualify as a factoring transaction.

According to Sundaram, factoring is a continuing legal relationship between a financial institution and a seller whereby the factor purchases the seller's sale receivables with or without recourse to the seller, and takes responsibility for the credit risk and administration of the ledgers relating to the purchased receivable.<sup>74</sup>

The World Bank defines factoring as a technique whereby pursuant to a contract, a credit institution takes responsibility for collecting a company's debts and assumes the credit risks or potential losses arising from or relating to the debts.<sup>75</sup> This definition is problematic as it identifies factors as credit institutions *simpliciter* when in some cases non-credit institutions can provide factoring services. The definition also conceives the factor's role as providing debt collection and credit protection services alone when indeed, as seen above, factors provide other services such as financing and bookkeeping services.

Factoring is defined by Westlake as a means of converting a non-productive or inactive asset such as books debts or receivables into a productive asset such as cash, by selling the receivables to institutions that specialize in collecting and administering them.<sup>76</sup>

Extrapolating from the foregoing definitions, factoring can be defined as a contract wherein a seller assigns his accounts receivables arising from the sale of goods or services to another party

---

<sup>72</sup>R B Alarcon 'International Factoring and Development: The Impact of the Factoring Model Law 2014' 2014 <https://fci.nl/about-factoring/international-factoring-rosana-bastos-sep2014.pdf>> (accessed on 11 August 2021).

<sup>73</sup> International Factors Group 'General rules for international factoring' [https://www.garantibbvafactoring.com/files/pdf/IFG\\_GRIF.pdf](https://www.garantibbvafactoring.com/files/pdf/IFG_GRIF.pdf)> (accessed 11 August 2021).

<sup>74</sup> Bangladesh Bank Core Committee on Factoring 'Guidelines on international factoring' 2017 <https://www.bb.org.bd/aboutus/regulationguideline/draftguide.php> (accessed 11 August 2021).

<sup>75</sup>World Bank 'Policy note on SMEs access to finance in Tunisia' 2009 <https://openknowledge.worldbank.org/handle/10986/12951>> (accessed 11 August 2021).

<sup>76</sup> M Westlake 'Factoring' *Financial Times Management* 21 June 1975 at 12.

(the factor) in return for immediate cash for the value of the receivables less a discount which serves as the factor's commission, and which may be in addition or in alternative to the factor's provision of any or all of the following services: credit protection, accounts receivable bookkeeping and collection services.

### **2.3 Mechanics of factoring: Key actors and processes**

The structure of a factoring transaction is relatively simple. However, factoring can be done in different scales which reveal a variation in processes and roles by different actors.<sup>77</sup> In domestic factoring, three parties are involved: a.) the seller (client) which is the company or person which sells goods and services on credit; b.) the buyer (debtor) who is the customer who purchases goods from the client and; c.) the factor who is the party to whom the client assigns his accounts receivables due from the debtor and who, in some cases, acts on behalf of the client to collect debts from the debtors and provides bookkeeping services by managing the client's accounts receivable ledger.<sup>78</sup>

International or cross border factoring involves four parties namely: a.) the seller who exports goods or services on credit; b.) the buyer who imports goods from the seller; c.) the export factor engaged by the seller who is responsible for the entire cross-border factoring operation and who selects the counterparty (import factor) and; d.) the import factor who is situated in the buyer's country.<sup>79</sup> Using an export factor and an import factor in cross-border factoring, otherwise known as the Two-Factor system, mitigates the transaction's risks.<sup>80</sup> The import factor provides the export factor with an understanding of the local context of the buyer's country, in terms of laws and trade customs/usage.<sup>81</sup> The import factor also helps to conduct checks and due diligence on the creditworthiness of the buyer.<sup>82</sup>

---

<sup>77</sup>The African Capacity Building Foundation 'Factoring in Africa to Support trade development: Challenges and opportunities for growth through capacity development' 2021 <https://www.africaportal.org/publications/factoring-africa-support-trade-development-challenges-and-opportunities-growth-through-capacity-development/> (accessed 12 August 2021).

<sup>78</sup>The African Capacity Building Foundation (n 77).

<sup>79</sup>The African Capacity Building Foundation (n 77).

<sup>80</sup>Klapper (n 23) 6.

<sup>81</sup>The African Capacity Building Foundation (n 77).

<sup>82</sup>Klapper (n 23) 6.

According to Klapper, the fundamental assets in a factoring transaction are the seller's accounts receivable, which are purchased by the factor at a discount.<sup>83</sup> The balance outstanding on the assigned invoices is paid to the seller when the receivables are paid to the factor by the buyer upon deduction of the factor's commission and service fees.<sup>84</sup> Typically, factors provide sellers with financing up to 70% of the value of the assigned invoices and pay the remaining 30%, less interest and service fees, when payment on these invoices is received from the buyer.<sup>85</sup> A significant aspect of the factoring relationship is that a factor will usually advance less than 100% of the actual value of the assigned receivable.<sup>86</sup> The difference between this advance amount and the invoice amount provides a reserve held by the factor to be used to cover any shortfalls in the payment of the related invoice by the buyer.<sup>87</sup>

Other than financing, factors may also provide other services to the seller. Factors provide assessments of the creditworthiness of the seller's prospective buyers to enable the seller make informed decisions about offering credit to the buyer.<sup>88</sup> In addition to this credit service, factors also provide debt collection services which involve collecting accounts that are overdue and minimizing the losses associated with these accounts.<sup>89</sup> Factors may notify a buyer that an account is overdue and pursue debt recovery on the offending account from the buyer.<sup>90</sup> In some types of factoring, factors also provide credit protection by assuming the credit risks relating to the assigned invoices.

## 2.4 Types of factoring

Factoring as a finance product has a number of variations.<sup>91</sup> Factoring services can be provided on a 'recourse' or 'non-recourse' basis.<sup>92</sup> Recourse factoring is the most common form of domestic factoring available by volume.<sup>93</sup> In recourse factoring, the factor purchases the seller's invoices and provides financing to the seller on the value of the invoices. Thereafter, the factor proceeds to collect the debt on the purchased invoices from the buyer when they become due.<sup>94</sup>

---

<sup>83</sup>Klapper (n 23) 3.

<sup>84</sup>Klapper (n 23) 3.

<sup>85</sup>Klapper (n 23) 3.

<sup>86</sup>Klapper (n 23) 3.

<sup>87</sup>Klapper (n 23) 3.

<sup>88</sup>EU Federation (n 95).

<sup>89</sup>Klapper (n 23) 5.

<sup>90</sup>Klapper (n 23) 5.

<sup>91</sup>Salinger (n 66) 15.

<sup>92</sup>Klapper (n 23) 3.

<sup>93</sup>EU Federation (n 70).

<sup>94</sup>EU Federation (n 70).

However, in recourse factoring, while the factor is the legal owner of the receivables, the factor reserves the right to re-sell the receivable back to the seller where the buyer has failed to pay the debt due on the assigned invoices.<sup>95</sup> The factor provides financing to the seller on the value of the assigned invoices for a predetermined period, usually 90 days after due date of the invoices. Where the invoice is not paid at the end of this period, the payment made by the factor to the seller would be withdrawn and the seller would be required to refund the amount.<sup>96</sup> Therefore, the seller could still bear the financing risk should the buyer become unable to pay the debt due on the invoices.<sup>97</sup> In emerging economies, most factoring is done on recourse basis as it is usually difficult to assuredly assess the risk of purchased receivables.<sup>98</sup>

In non-recourse factoring, otherwise known as factoring with credit protection, the factor assumes legal title to the receivables as well as the risk of the receivables as the factor would not have recourse against the seller where the buyer defaults in paying the debt due on the receivables.<sup>99</sup> The factor bears the financial credit risk of the buyer defaulting on the receivables and takes responsibility for any bad debts up to agreed limits.<sup>100</sup> However, the credit cover provided by the factor will only apply to bad debts arising from default non-payments and not those arising from other reasons such as disputes or refusal to pay.<sup>101</sup>

Factoring may also be disclosed or undisclosed.<sup>102</sup> In disclosed factoring, the buyer is given notice of the assignment of the accounts receivable, and is required to cooperate with the factor for future collections and transactions relating to the receivables.<sup>103</sup> Usually, a notice referred to as notice of assignment is given to the buyer instructing the buyer to make payments of the receivables directly to the factor.<sup>104</sup> In undisclosed factoring, otherwise known as invoice discounting, the buyer is not notified of the seller's assignment of the accounts receivable to the factor.<sup>105</sup> Although, the factor purchases the invoices and provides funds to the seller on the

---

<sup>95</sup>EU Federation (n 70).

<sup>96</sup>EU Federation (n 70).

<sup>97</sup>EU Federation (n 70).

<sup>98</sup>Klapper (n 23) 3.

<sup>99</sup>Klapper (n 23) 4.

<sup>100</sup>EU Federation (n 70).

<sup>101</sup>EU Federation (n 70).

<sup>102</sup> S Vaddepalli 'Factoring: An alternate payment method in international trade' (2014) 1 *International Journal of Business Quantitative Economics and Applied Business Research* pp 49-60.

<sup>103</sup> D Karim and J Zahid 'Factoring as an alternative mode of international trade finance' 2019 [https://papers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID3536156\\_code3986725.pdf?abstractid=3536156&mirid=1](https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3536156_code3986725.pdf?abstractid=3536156&mirid=1)> (accessed on 11 August 2021).

<sup>104</sup>EU Federation (n 70).

<sup>105</sup>D Karim and J Zahid (n 103).

value of the invoice, the factor does not undertake the collection of the debt due on the invoices from the seller.<sup>106</sup>

Another variant of the factoring product is reverse factoring otherwise known as supply chain financing. This is a financing method initiated by the buyer, usually a medium-sized or large company, to assist its suppliers to access supply finance at a lower interest rate than what is usually obtainable.<sup>107</sup> Due to the creditworthiness of the buyer, smaller suppliers benefit from better financing pricing as a result of the lesser financing risk involved. This process is initiated by the buyer who selects invoices of suppliers in its supply chain to receive earlier payment on the supplied goods or services from the factor in exchange for a discount, usually at a lower commission cost.<sup>108</sup>

Factoring may also be domestic or international. In domestic factoring, the buyer and seller are in the same country while in international factoring the buyer and the seller are in different countries.<sup>109</sup> It is in international factoring that the two-factor system is employed whereby the export factor, engaged by the seller, collaborates with an import factor situated in the buyer's country whose responsibility it is to assess the buyer's creditworthiness and other related issues as well as collect the debt on the assigned invoices from the buyer when they become due.<sup>110</sup>

Other variants of factoring include: bulk factoring, agency factoring, maturity factoring and back to back factoring.<sup>111</sup> In bulk factoring, the factor provides financing services to the seller but does not provide administrative services or credit protection.<sup>112</sup> In agency factoring, the factor provides all functions other than credit collection.<sup>113</sup> In maturity factoring, the factor does not provide immediate finance but undertakes other functions like administrative services and credit collection.<sup>114</sup> The factor undertakes to make payment on the invoices to the seller upon the maturity of the invoices or at any other date agreed by the parties.<sup>115</sup> Back to back factoring is a

---

<sup>106</sup>EU Federation (n 70).

<sup>107</sup>The African Capacity Building Foundation (n 77).

<sup>108</sup>International Finance Corporation 'Supply chain finance knowledge guide' 2014 <https://www.ifc.org/wps/wcm/connect/254277bc-86bd-420e-b390-94a13b19ca36/SCF+Knowledge+Guide+FINAL.pdf?MOD=AJPERES&CVID=mYOre4A> (accessed 12 August 2021).

<sup>109</sup>D Karim and J Zahid (n 103).

<sup>110</sup>D Karim and J Zahid (n 103).

<sup>111</sup>D Karim and J Zahid (n 103).

<sup>112</sup>D Karim and J Zahid (n 103).

<sup>113</sup>D Karim and J Zahid (n 103).

<sup>114</sup>The African Capacity Building Foundation (n 77).

<sup>115</sup>D Karim and J Zahid (n 103).

special type of factoring usually done by distributors who sell to third parties in advance.<sup>116</sup> A separate agreement is entered between buyer and factor whereby the buyer satisfies his credit liabilities with the credit arising out of the sales to the buyer's customers.<sup>117</sup>

## 2.5 Modern approaches to factoring regulation

According to Kara, the regulation of factoring as a financial service is approached by different jurisdictions across the world in three ways.<sup>118</sup> The first approach is having factoring markets without regulations. In this approach, there is no specific regulatory framework set up to oversee the provision of factoring services. Thus, factoring is regulated by the existing legal and fiscal framework. Corporate governance rules and contractual relationships are used to regulate the operations of factors.<sup>119</sup> This model is prevalent in the US, UK and several other EU countries like Belgium, Poland, Finland and France.<sup>120</sup>

The second type of approach to factoring regulation is where factoring is governed by a regulatory authority. Under this model, a regulatory authority, typically the Central Bank of a state, is assigned to regulate factoring and other non-banking financial services using rules different from those used to regulate banking services.<sup>121</sup> According to Kara, there appears to be an emergence of the use of 'super regulators' to supervise the financial sector. These super regulators may be assigned with the responsibility of regulating banking and non-banking financial services such as factoring.<sup>122</sup> It is submitted that this type of approach is what is currently obtainable in Nigeria. Under the Nigerian Banking and Other Financial Institutions Act 2020, the Central Bank of Nigeria (CBN) is empowered to regulate banking and non-banking financial institutions.<sup>123</sup> Pursuant to this power, the CBN released Guidelines to regulate non-banking financial institutions in Nigeria including factors.<sup>124</sup> These Guidelines only provide generic rules for all non-banking financial institutions in Nigeria and do not provide specific rules guiding the provision of factoring services in Nigeria.

---

<sup>116</sup>D Karim and J Zahid (n 103).

<sup>117</sup>D Karim and J Zahid (n 103).

<sup>118</sup>H Kara 'Factoring: to regulate or not to regulate?' (2017) *World Factoring Yearbook* at 4 [www.ebglaw.com/content/uploads/2019/07/Tatge-World-Factoring-Yearboo-2017-eBook.pdf](http://www.ebglaw.com/content/uploads/2019/07/Tatge-World-Factoring-Yearboo-2017-eBook.pdf)> (accessed 13 August 2021).

<sup>119</sup>Kara (n 118).

<sup>120</sup>Kara (n 118).

<sup>121</sup>Kara (n 118).

<sup>122</sup>Kara (n 118).

<sup>123</sup>Banking and Other Financial Institutions Act 2020, sec 29.

<sup>124</sup>Central Bank of Nigeria 'Revised guidelines for finance companies in Nigeria' 2014 <https://www.cbn.gov.ng/out/2014/ccd/revised%20guidelines%20for%20finance%20companies%20in%20nigeria.pdf>> (accessed 13 August 2021).

The third factoring regulation model is a factoring market regulated by specific regulations. Under this model, the factoring industry is closely regulated by specific laws and regulations prescribing minimum requirements and qualifications to undertake the business of factoring.<sup>125</sup> These requirements may include minimum share capital requirements and legal standards for engaging in the business of factoring.<sup>126</sup> A typical example of a jurisdiction where this model is adopted is Russia wherein factoring business can be conducted only by commercial banks.<sup>127</sup> According to Kara, the use of restrictive or exhaustive laws to regulate factoring business may inhibit the development and growth of the factoring industry.<sup>128</sup> Kara argues that regulation may create rise in factoring costs and may be over prescriptive.<sup>129</sup> Nonetheless, the regulation of the factoring industry improves industry standards, professional conduct and enables transparency.<sup>130</sup> It also provides other benefits such as enhancing customer confidence and mitigation of factoring transaction risks.<sup>131</sup>

It is submitted that although there are inherent possibilities of overregulation and imposition of stringent regulatory standards, the use of the third approach to factoring regulation is most desirable to encourage the use of factoring particularly in emerging economies like Nigeria. Establishing specific regulations for factoring creates industry certainty, ensures proper conduct of business and prevents market misconduct and the abuse of consumers. The existence of a specific factoring law also helps to spell out the nature of the transaction itself as well as legitimize the product.<sup>132</sup> Thus, instituting specific and facilitative laws and regulations on factoring will substantially aid in promoting the use and awareness of the product in jurisdictions like Nigeria where the use of factoring is low.

## **2.6 Conclusion**

Factoring as a concept is perceived differently by different authors and institutions. However, a golden thread that cuts across is that factoring is a full financial package wherein the factor provides a number of services including financing, credit protection, accounts receivable management and debt collection. Factoring services are provided in different variations which may involve different actors and processes. Factoring services are regulated through three

---

<sup>125</sup>Kara (n 118).

<sup>126</sup>Kara (n 118).

<sup>127</sup>Kara (n 118).

<sup>128</sup>Kara (n 118).

<sup>129</sup>Kara (n 118).

<sup>130</sup>Kara (n 118).

<sup>131</sup>Kara (n 118).

<sup>132</sup>Klapper (n 23) 10.

different approaches globally. However, this chapter reveals that the approach to factoring regulation whereby specific laws and regulations are used to regulate factoring is most desirable for promoting its use particularly in emerging economies such as Nigeria.

Building on the conceptual framework for factoring provided by this chapter, the next chapter will seek to concisely explore the role of factoring as an alternative trade financing tool in order to provide a strong context for assessing the extent to which the legal and regulatory framework for factoring in Nigeria facilitates and promotes factoring as an alternative trade financing tool.



## **CHAPTER THREE**

### **THE ROLE OF FACTORING AS AN ALTERNATIVE TRADE FINANCE TOOL IN NIGERIA**

---

#### **3.1 Introduction**

The previous chapter provided a conceptual framework for factoring by exploring its definitions, types, processes and the modern approaches to regulating it as a financial service globally. This provided an important foundation towards achieving the overarching aim of this study which is to analyse the extent to which the legal and regulatory framework for factoring in Nigeria promotes factoring as an alternative trade financing tool.

To further provide context for examining the legal and regulatory framework for factoring in Nigeria, this chapter seeks to explore the role of factoring as an alternative trade financing tool in Nigeria. It shall do this through investigating the utility of factoring in improving trade finance in Nigeria as well as the benefits and challenges of using factoring in Nigeria. Finally, to situate factoring as an ‘alternative’ trade financing tool in Nigeria, this chapter also briefly compares factoring with other traditional trade financing tools used in Nigeria including: letters of credit, cash-in-advance, documentary collection and open account.

#### **3.2 The role of factoring in improving trade finance in Nigeria**

Nigeria’s participation in trade has been underwhelming. In 2018, trade accounted for only 33% of Nigeria’s GDP which was significantly below the 54% average for Sub Saharan African countries.<sup>133</sup> The persistent low access to credit and financing by Nigerian SMEs is one of the major reasons for the low contribution of trade to Nigerian GDP as compared to most emerging and frontier-market countries.<sup>134</sup> SMEs are the lifeblood and active drivers of the Nigerian economy. Despite the central role of SMEs in enterprise in Nigeria, they lack access to sustainable financing and credit to competitively participate in trade.

Bank credit has remained a prevailing trade financing tool in Nigeria. However, Nigerian SMEs are quite underserved by Banks in accessing credit. Although bank lending to the private sector in Nigeria has significantly increased since the banking sector’s consolidation and recapitalization programme, the percentage of total bank credit afforded to SMEs has been

---

<sup>133</sup> Akintunde (n 14).

<sup>134</sup> Akintunde (n 14).

declining.<sup>135</sup> Banks are reluctant to advance credit financing to Nigerian SMEs because of their perceived high risk profile, lack of collateral, poor financial record keeping, high credit transaction costs and unreliable credit information.<sup>136</sup> This difficulty in accessing bank credit has deprived Nigerian SMEs of the requisite liquidity to cover production costs and increase production of exportable products.

The foregoing issues highlight why factoring could be very important in improving the availability of sustainable trade finance in Nigeria and consequently increasing Nigeria's participation in trade. Factoring is a very SME-friendly trade financing product because it ensures that SMEs are afforded necessary cash flow by converting the value of their outstanding invoices into immediate cash. Although a minimal percentage of the invoice value is withheld by the factor as discount on the invoice amount, SMEs can effectively maximize their profits by using factoring through increased turnover as a result of quicker access to funds.<sup>137</sup> This way, SMEs are able to increase and improve production and create higher exportable value. Unlike bank credit financing, factoring is an ideal trade financing option for high risk firms like SMEs because of the relatively low risk in factoring transactions.<sup>138</sup>

It is reported that factoring has the potential to unlock between USD 1 billion to USD 2 billion in financing for Nigerian SMEs each year.<sup>139</sup> Other than the provision of financing, other factoring services such as sales ledger management/bookkeeping as well as credit protection and debt collection will provide Nigerian SMEs with better internal bookkeeping procedures, reliable credit information and improved risk profiles.

The use of factoring is increasingly growing in Africa and at the same time the already high trade financing demand in Africa is expected to increase. For Nigeria to beneficially participate in intra-African trade under the AfCFTA, it is vital that the use and awareness of inclusive trade financing tools like factoring is promoted within the country.

---

<sup>135</sup>Akintunde (n 14).

<sup>136</sup>Saari (n 40).

<sup>137</sup>Akintunde (n 14).

<sup>138</sup>Klapper (n 23) 9.

<sup>139</sup>PriceWaterhouseCoopers Ltd. (n 42).

### 3.3 The benefits and challenges of using factoring in Nigeria

One major challenge faced by SMEs in emerging economies such as Nigeria is how to convert their account receivables into immediate working capital.<sup>140</sup> The use of factoring addresses this financing conundrum by converting accounts receivable into immediate cash thereby providing available cash flow necessary for the seller to cover recurrent production costs.<sup>141</sup>

Most international trade transactions, especially those involving emerging and unfamiliar markets, such as Nigeria, are done on open account basis.<sup>142</sup> Sellers usually have to wait about 30-90 days after supply of goods to receive their payments for the goods sold.<sup>143</sup> Most Nigerian SMEs involved in trade are unable to finance their production cycle during this waiting period.<sup>144</sup> Factoring helps to provide liquidity for these businesses during the waiting period for settlement of their invoices as these invoices are assigned to the factor in return for payment of the value of the invoices less the factor's commission. This way, Nigerian SMEs are able to provide competitive trading and credit terms to their buyers in the international market by allowing trade on open account terms which is usually preferred by most buyers.<sup>145</sup> This can enable increase in sales and significantly position these SMEs as competitive sellers in the international market. International trade statistics show that trade on open account terms has become the major form of international trade settlement or payment as it is used in about 80% of total international trade.<sup>146</sup>

Furthermore, since a factoring transaction is not a loan, there are no additional liabilities on the seller's balance sheet although it provides working capital financing.<sup>147</sup> This allows sellers using factoring to remain in good financial position in terms of creditworthiness and solvency.<sup>148</sup> Additionally, the factor's provision of credit protection, sales ledger management and collection services are very helpful to SMEs in emerging economies like Nigeria. The provision of credit protection by the factor can give SMEs in Nigeria greater confidence and assurance in selling in volume to buyers in a cross border context.<sup>149</sup> The cost of the credit cover charged by the factor

---

<sup>140</sup>Klapper (n 23) 8.

<sup>141</sup>Ivanovic and others (n 50) 196.

<sup>142</sup>D Karim and J Zahid (n 103).

<sup>143</sup>D Karim and J Zahid (n 103).

<sup>144</sup>Klapper (n 23) 1.

<sup>145</sup>Klapper (n 23) 1.

<sup>146</sup>D Karim and J Zahid (n 103).

<sup>147</sup>Klapper (n 23) 1.

<sup>148</sup>D Karim and J Zahid (n 103).

<sup>149</sup>EU Federation (n 70).

is usually much less than where an SME has to obtain same on a stand-alone basis considering the economies of scale.<sup>150</sup>

Factoring will also benefit large corporations in Nigeria as it aids to improve their supply chain through providing financing for their small and mid scale suppliers through reverse factoring.<sup>151</sup> Irrespective of the factoring variation used, what is not in doubt is that factoring will always be a safe and controlled form of financing.<sup>152</sup> It is safe since upon assignment of the receivables to the factor, the buyer is obligated to pay the assigned debt to the factor directly even where the seller has become insolvent.<sup>153</sup> It is controlled because the factor will have to closely monitor the account assigned to it and ensure that the buyer satisfies the debt upon maturity.<sup>154</sup>

Despite these many benefits, the use of factoring in Nigeria is not without its challenges. The first challenge is the absence of a robust legal and regulatory framework to adequately regulate the business of factoring in Nigeria. This creates legal and regulatory uncertainty and dampens public confidence in the use of factoring. The low use and awareness of factoring in Nigeria is largely attributable to the absence of a facilitative legal and regulatory framework for factoring in Nigeria.<sup>155</sup> As at October 31, 2020, there were only two licensed factors in Nigeria.<sup>156</sup>

Another challenge to using factoring in Nigeria is that factoring has been identified as involving relatively high cost as a result of the multiple services provided by factors.<sup>157</sup> It is reported that factoring costs are usually higher than the costs of bank loans given that the factor's commission and services fees are usually higher than interest rates charged by banks on loans.<sup>158</sup> However, considering the time value of money and the ease of accessing immediate financing through factoring, it would appear that the relatively higher transaction cost of factoring is commercially justifiable.

---

<sup>150</sup>EU Federation (n 70).

<sup>151</sup>Klapper (n 23) 7.

<sup>152</sup>EU Federation (n 70).

<sup>153</sup>EU Federation (n 70).

<sup>154</sup>EU Federation (n 70).

<sup>155</sup>Alayemi and others (n 30) 507.

<sup>156</sup> Central Bank of Nigeria 'List of licensed financial institutions in Nigeria' 2020 <https://www.cbn.gov.ng/Out/2020/FPRD/FC%20OCT%202020.pdf> (accessed 29 May 2021)

<sup>157</sup> N Bărbuță-Mișu 'Factoring – alternative of short-term financing for companies' 2014 [https://www.researchgate.net/publication/320269640\\_Factoring\\_-\\_alternative\\_of\\_short-term\\_financing\\_for\\_companies](https://www.researchgate.net/publication/320269640_Factoring_-_alternative_of_short-term_financing_for_companies)> (accessed on 14 August 2021).

<sup>158</sup>Ivanovic and others (n 50) 196.

It is clear that the benefits of using factoring in Nigeria very much outweigh the challenges. Factoring provides an ideal and sustainable solution to the persistent unavailability of trade finance and credit for SMEs in Nigeria. Through the use of factoring, trade finance in Nigeria can become more inclusive and participation in trade in Nigeria can significantly improve.

### **3.4 Factoring compared with traditional trade financing tools used in Nigeria**

Factoring is largely regarded as an innovative trade financing and trade settlement method. Before the emergence of factoring and even in modern day, some conventional trade financing and trade settlement methods are being used in trade across the world, including in Nigeria. These traditional methods include: letters of credit, cash-in-advance, documentary collection and open account.<sup>159</sup> This section shall succinctly compare these traditional trade financing tools with factoring.

#### **3.4.1 Letters of credit**

A letter of credit, otherwise known as documentary credit, is a contractual relationship whereby the buyer's bank (the issuing bank), acting on the instructions of the buyer, authorizes the seller's bank (the advising bank) to make payments to the seller upon receipt of specific documents.<sup>160</sup> It involves a commitment by the issuing bank to make payment to the seller for the goods sold provided that the seller meets all the terms and conditions by presenting the required documents.<sup>161</sup>

A letter of credit is considered a distinct and separate contract from the contract of sale on which it is hinged.<sup>162</sup> Thus, the banks involved are not concerned whether the trading parties fulfill their respective obligations under the sale contract. The advising bank is only obligated to make payment once there is verifiable compliance with the terms and conditions of the letter of credit by presentation of the specified documents.<sup>163</sup>

Letters of credit protect the buyer as payments cannot be made until the documents, such as bills of lading, evincing that goods have been shipped or delivered are presented to the advising

---

<sup>159</sup> A Achor 'Methods of international trade and payments: The Nigerian perspective' (2015) 3 *Global Journal of Politics and Law Research* 21 at 36

<sup>160</sup> Achor (n 190) 41.

<sup>161</sup> Achor (n 190) 41.

<sup>162</sup> Achor (n 190) 41.

<sup>163</sup> Achor (n 190) 41.

bank.<sup>164</sup> Thus, there may be some delay in receiving payment. This is unlike factoring where the seller receives immediate financing from the factor upon the buyer's placement of a purchase order as soon as the creditworthiness of the buyer is assessed.

### **3.4.2 Cash-in-advance**

This method, also known as the prepayment method, is the simplest and most popular trade payment method usually used for small transactions.<sup>165</sup> Under this method, the seller insists on payment for the goods before they are shipped or delivered to the buyer. This involves sale contracts which require "cash against documents" or "cash on delivery".<sup>166</sup> The buyer pays the seller using wire transfer, credit cards or international cheque before the goods are delivered.<sup>167</sup>

Through this method of payment, the seller avoids credit risks and is assured of payment certainty as payment is required to be made before the goods are delivered.<sup>168</sup> Nonetheless, this method is the least attractive option for buyers especially where the seller lacks a demonstrated international business integrity history which is usually the case for most SMEs.<sup>169</sup> Therefore, sellers who use this method are susceptible to losing out to other market competitors willing to offer more attractive payment terms.<sup>170</sup> This is different from factoring where the seller can offer competitive credit terms to the buyer as a result of the financing and credit protection services provided by the factor.

### **3.4.3 Documentary collections**

A documentary collection is a transaction whereby the seller authorizes his bank (remitting bank) to undertake the collection of payment arising from a sale transaction by sending title documents to the goods to the buyer's bank (collecting bank) along with instructions for payment.<sup>171</sup>

---

<sup>164</sup> International Trade Administration 'Methods of payment: Letters of credit' <https://www.trade.gov/letter-credit>> (accessed 16 August 2021).

<sup>165</sup> Achor (n 190) 37.

<sup>166</sup> Achor (n 190) 37.

<sup>167</sup> International Trade Administration 'Methods of payment' <https://www.trade.gov/methods-payment>> (accessed 16 August 2021).

<sup>168</sup> International Trade Administration (n 167).

<sup>169</sup> International Trade Administration (n 167).

<sup>170</sup> Achor (n 190) 37.

<sup>171</sup> Achor (n 190) 38.

Payment is received from the buyer and remitted to the seller through the banks involved in exchange for the documents.<sup>172</sup>

It involves the use of a draft requiring the buyer to pay the amount on the face of the draft either on sight in the case of “document against payment”, or on a specified future date in the case of “document against acceptance”.<sup>173</sup> For document against payment transactions, the bank holds on to the documents until payment is made for the goods while in document against acceptance transactions, it holds the documents until the buyer agrees to make payment at a future date.<sup>174</sup>

Although the banks involved in documentary payment transactions aid to facilitate the transaction, documentary collection offers no verification process and limited recourse in the event of non-payment.<sup>175</sup> As a result, the use of documentary collections envisages a higher risk than that in factoring. This is because in factoring, the factor assesses the creditworthiness of the buyer and, in most cases, provides credit protection services to the seller which helps to absorb payment risks.

#### **3.4.4 Open account**

Under this method, the seller agrees to deliver the goods to the buyer and transfer the title documents to the goods to the buyer on the understanding that the seller’s sale invoice would be paid by the buyer at an agreed future date, usually 30-90 days after shipment and delivery of the goods.<sup>176</sup> Under this method the seller has no control of the payment process except in stipulating the agreed future date for payment.<sup>177</sup>

The use of open account terms is the most advantageous to the buyer who is positioned to only make payment upon receipt and confirmation of the goods. It also provides an advantage to the buyer in terms of better cash flow and reduced cost.<sup>178</sup> This is why open account payment terms are the most competitive terms in the international trade scene.<sup>179</sup>

---

<sup>172</sup>First Bank of Nigeria Ltd. ‘Payments systems in Nigerian international trade: An Overview’ 2012 [https://web2.customs.gov.ng/wp-content/uploads/2019/07/First\\_Bank\\_PAPER.pdf](https://web2.customs.gov.ng/wp-content/uploads/2019/07/First_Bank_PAPER.pdf)> (accessed 16 August 2021).

<sup>173</sup>Achor (n 190) 38.

<sup>174</sup>Achor (n 190) 38.

<sup>175</sup>First Bank of Nigeria Ltd. (n 172).

<sup>176</sup>Achor (n 190) 40.

<sup>177</sup>Achor (n 190) 40.

<sup>178</sup>Achor (n 190) 40.

<sup>179</sup>Achor (n 190) 40.

However, from the seller's perspective, trading on open account terms is the most risky trade settlement method as it requires the seller to deliver goods and transfer title in these goods to the buyer without immediate payment and usually without any guarantee of payment.<sup>180</sup> This method also causes the seller to suffer inadequate cash flow and liquidity for use as working capital as the seller has to wait a long time to receive payment.

The foregoing shows why the use of factoring is important as it provides the necessary liquidity and credit protection to enable sellers offer competitive open account terms in trade which is the most preferable for buyers. Through the use of factoring, the risks that come with securing payment where trade is done on open account terms are largely mitigated. It is projected that since increased intra-African trade under the AfCFTA will involve sellers and buyers exploring unfamiliar markets, the demand for trade on open account terms will soar and the use of low risk trade finance techniques like factoring will become extremely necessary to provide export working capital and mitigate attendant market risks.<sup>181</sup>

### **3.5 Conclusion**

This chapter reveals that factoring will greatly improve the trade financing landscape in Nigeria as it could provide sustainable and accessible trade financing particularly for SMEs which are the major enterprises in Nigeria. It also reveals that the benefits of using factoring in Nigeria far outweigh the challenges. Upon being compared to other traditional trade financing tools being used in Nigeria, this chapter further reveals that factoring provides an innovative, faster, less risky and more competitive trade financing alternative.

Using the contextual and conceptual framework provided by this chapter and the preceding chapter respectively, the next chapter shall seek to analyse the legal and regulatory framework for factoring as a trade financing tool in Nigeria.

---

<sup>180</sup> Achor (n 190) 40.

<sup>181</sup> Awani (n 18) 85.



## **CHAPTER FOUR**

### **EXAMINING THE LEGAL AND REGULATORY FRAMEWORK FOR FACTORING IN NIGERIA**

---

#### **4.1 Introduction**

The previous chapter examined the role of factoring as an alternative trade finance tool in Nigeria. It identified the absence of a robust and facilitative legal and regulatory framework for factoring in Nigeria is one of the main challenges affecting the use, provision and growth of factoring services in Nigeria. This provides useful background and context for analyzing the legal and regulatory framework for factoring in Nigeria.

This chapter seeks to analyse the legal and regulatory framework for factoring in Nigeria to assess the extent to which it facilitates and promotes the use of factoring as a trade financing product in Nigeria. This chapter shall analyse the legal and regulatory framework for factoring in Nigeria in two ways. First, the extant legal and regulatory framework for factoring will be examined and thereafter, the proposed legal and regulatory framework for factoring, which is the Nigerian Factoring Bill 2016, will also be examined.

#### **4.2 The extant legal and regulatory framework for factoring in Nigeria**

Currently, there is no specific legal and regulatory framework for factoring in Nigeria. Although Nigeria signed and ratified the UNIDROIT Convention on International Factoring 1988, the Convention is yet to have the force of law in Nigeria as it has not been domesticated by the Nigerian legislature. The Nigerian Contract Law on assignment of contractual rights is the only direct legal source on assignment of receivables in Nigeria, and even that source has remained uncertain and vague as there is a dearth of Nigerian judicial precedent/decisions on the subject.<sup>182</sup> The Banking and Other Financial Institutions Act merely indicates factoring as one of the non-banking financial services to be regulated by the Central Bank of Nigeria (CBN), without making any specific provisions on factoring.<sup>183</sup> The CBN's guidelines for all finance companies in Nigeria provide general rules for all non-banking financial institutions in Nigeria without any specific provision regulating factors.

---

<sup>182</sup> *Julius Berger Nigeria Plc & Anor v Toki Rainbow Community Bank Ltd* (2009) LPELR-4381.

<sup>183</sup> Banking and Other Financial Institutions Act 2020, sec 131.

In light of the foregoing, this section shall critically examine the UNIDROIT Convention on International Factoring, the Nigerian contract law on assignment of contractual rights, the Banking and Other Financial Institutions Act and the CBN guidelines for finance companies in Nigeria, to assess how and to what extent these laws regulate the use and provision of factoring services in Nigeria.

#### **4.2.1 The UNIDROIT Convention on International Factoring 1988:**

The UNIDROIT Convention (the Convention) was developed to provide uniform rules applicable to the assignment of receivables arising from international sale of goods transactions through factoring.<sup>184</sup> It was adopted on 28 May 1988 upon the conclusion of a diplomatic conference convened by the Canadian government<sup>185</sup> and entered into force on 1 May 1995.<sup>186</sup>

The Convention was signed by Nigeria on 28 May 1988 and ratified on 25 October 1994.<sup>187</sup> However, the Convention is yet to enter into force in Nigeria as it has not been domesticated by an act of the Nigerian Federal Legislature – the Nigerian National Assembly. This is in line with Nigeria’s approach to international treaties.

Nigeria follows the dualist national approach to international law. The dualist approach regards international law and national law as two distinct legal systems such that a treaty binding on a state only becomes part of the national law of that state when it is so incorporated by a national act or law of the state.<sup>188</sup> The Nigerian Constitution provides that an international treaty can only have the force of law in Nigeria if that treaty has been enacted into national law by an act of the Nigerian National Assembly.<sup>189</sup>

The Convention applies to factoring transactions involving the assignment of receivables arising from the sale of goods other than goods bought primarily for personal, family or household use.<sup>190</sup> Markedly, the Convention also provides that it would apply to factoring transactions involving from the assignment of receivables arising from the supply of services.<sup>191</sup> The

---

<sup>184</sup>UNIDROIT Secretariat ‘UNIDROIT Convention on International Factoring 1988 explanatory note’ 2011 <https://www.unidroit.org/explanatory-report-factoring-1988>> (accessed 21 August 2021).

<sup>185</sup>UNIDROIT Secretariat (n 184).

<sup>186</sup><https://www.unidroit.org/status-1988-factoring>> (accessed 21 August 2021).

<sup>187</sup><https://www.unidroit.org/status-1988-factoring>> (accessed 21 August 2021).

<sup>188</sup>P Verdier and M Versteeg ‘International law in national legal systems: An empirical investigation’ (2015) 109 *The American Journal of International Law* 514 at 516.

<sup>189</sup>Constitution of the Federal Republic of Nigeria 1999(as amended), sec 12.

<sup>190</sup>UNIDROIT Convention on International Factoring 1988, art 1(2)(a).

<sup>191</sup>UNIDROIT Convention on International Factoring 1988, art 1(2)(a).

Convention requires the factor to perform at least two of the following functions: financing, bookkeeping of accounts relating to receivables, collection of receivables and credit protection.<sup>192</sup>

The Convention also requires that notice of the assignment of receivables to the factor must be given to the buyer/debtor.<sup>193</sup> However, the Convention fails to provide when and how the notice of assignment is to be given to the buyer. This is problematic as this provision fails to provide precision and certainty on the mode and manner of notifying the buyer as mandatorily required by the Convention. This may impede factoring transactions as the seller and the factor would grapple with the uncertainty of whether to notify the buyer before or after the assignment of the receivables and whether the notification may be oral or written.

The Convention applies to only factoring transactions arising from sales between persons whose places of business are in different states provided that both states and the factor's state are contracting parties to the Convention, or the sale contract and the factoring contract are governed by the law of a contracting state.<sup>194</sup> Clearly, from this provision, the Convention applies only to international factoring transactions and not domestic factoring transactions. Hence, it is arguable that although Nigeria is yet to domesticate the Convention to give it the force of law in Nigeria, the Convention is still very much relevant to regulate applicable international factoring transactions involving Nigerian entities.

One striking feature of the Convention is that it provides that an assignment of receivables would be effective irrespective of an agreement between the seller and the buyer prohibiting such assignment.<sup>195</sup> On the one hand, this provision appears problematic as it interferes with the rights of the buyer and seller to freely contract,<sup>196</sup> and offends the international contract law principle of *pacta sunt servanda* (agreements must be kept) which requires that parties are not to renege on the terms of their agreement.<sup>197</sup> However, this might not be the case when it is considered that the referenced provision does not actually render a prohibition of assignment clause ineffective given that upon its breach by the seller, the buyer still reserves the right to explore available remedies for breach of contract. It is worthy to note that the Convention's provision on prohibition of assignment clauses will not be effective against the buyer if at the time of the

---

<sup>192</sup>UNIDROIT Convention on International Factoring 1988, art 1(2)(b).

<sup>193</sup>UNIDROIT Convention on International Factoring 1988, art 1(2)(b).

<sup>194</sup>UNIDROIT Convention on International Factoring 1988, art 2(1).

<sup>195</sup>UNIDROIT Convention on International Factoring 1988, art 6(1).

<sup>196</sup>Salinger (n 66) 270.

<sup>197</sup>H Wehberg 'Pacta sunt servanda' (1959) 53 *The American Journal of International Law* 775 at 783.

conclusion of the contract of sale, the buyer's place of business was in a contracting state which had made a declaration excluding the application of that provision to buyers within its borders.<sup>198</sup>

#### **4.2.2 Nigerian contract law on assignment of contractual rights**

Nigeria does not have a single codified contract law. Although some states have their own contract legislations, there is no single legislation which all contractual arrangements in Nigeria are subject to. Hence, the applicable legal principles under Nigerian contract law are largely drawn from received English law – including the principles of common law and equity – and judicial precedents, all of which form sources of Nigerian law.<sup>199</sup>

One vital aspect of a factoring transaction is the assignment of accounts receivable arising from a sale contract by the seller to the factor. In factoring transactions, the seller transfers his rights to the purchase price on the sale invoice to the factor. Drawing from the principles of common law and equity, Nigerian contract law provides legal principles guiding the assignment of contractual rights in Nigeria.

As a general rule under Nigerian contract law, by the common law doctrine of privity of contract, a person who is not a party to a contract cannot reap any benefit or suffer any obligation arising from that contract.<sup>200</sup> However, as an exception to the doctrine of privity of contract, the owner of a contractual right (the assignor) may transfer it to a third party (the assignee) without the consent of the debtor or obligator, thereby enabling the assignee to enforce the assigned contractual right against the debtor.<sup>201</sup> The process by which this transfer is done is called an assignment and the types of property which may be assigned are referred to as choses in action.<sup>202</sup> Choses in action are personal intangible rights of property which can only be claimed or enforced by action and not by taking physical possession. These include debts, shares, negotiable instruments, bills of lading, copyrights, legacies etc.<sup>203</sup> Accounts receivables assigned under factoring transactions are debts. Thus, they fall under the classification of choses of action and are therefore capable of being the subject of an assignment under Nigerian Law.

---

<sup>198</sup>UNIDROIT Convention on International Factoring 1988, arts 6(2) & 18.

<sup>199</sup>A Onuoha and others 'Novation of contracts: Examining the effects in modern information and communication technology agreements' (2021) 9 *Global Journal of Politics and Law Research* 34.

<sup>200</sup>*Rebold Industries Ltd. v Magreola & Others* (2015) LPELR-24612(SC).

<sup>201</sup>I Sagay *Nigerian law of contract* (2000) 516; *Rebold Industries Ltd. v Magreola & Others* (2015) LPELR-24612(SC).

<sup>202</sup>Sagay (n 201) 516.

<sup>203</sup>Sagay (n 201) 516.

The legal requirements for a valid assignment vary under the principles of common law and equity. Under common law, the Judicature Act provides that the requirements for an assignment are as follows: a.) the assignment must be in writing under the hand of the assignor; b.) it must be an absolute assignment of the whole debt, and not by way of charge only and; c.) written notice of the assignment must be given to the debtor.<sup>204</sup> Where an assignment is done in accordance with the requirements under the Act, and the debtor is in receipt of the notice of assignment, it has the effect of transferring the following rights to the assignee: a.) the legal right to the debt; b.) all legal and other remedies with respect to the debt and; c.) the power to validly discharge the debt without the consent of the assignor.<sup>205</sup> An assignment done pursuant to the Judicature Act is referred to as a legal assignment as distinguished from an assignment recognized under equity.<sup>206</sup>

Under the principles of equity, any assignment done other than in compliance with the requirements under common law is recognized as a valid assignment in equity, provided that the intention of parties to assign the contractual right is clear and value is given.<sup>207</sup> An equitable assignment need not be in writing and notice to the debtor is not a prerequisite for a valid equitable assignment even though notice plays an important role in determining priority among competing interests in an assigned debt.<sup>208</sup> Furthermore, an equitable assignment can involve an assignment of only part of the debt and not necessarily all of it.<sup>209</sup> An equitable assignment can also be done by way of charge.<sup>210</sup>

It is important to note that both a legal assignment and an equitable assignment are capable of transferring full ownership in the assigned right(s) to the assignee provided that the substance of the transaction is for the outright sale and purchase of a debt.<sup>211</sup> The only difference between the effect of a legal assignment and an equitable assignment is purely procedural.<sup>212</sup> In a legal assignment, the assignee may sue in his own name alone to enforce the assigned right against the

---

<sup>204</sup>Judicature Act 1873, sec 25(6).

<sup>205</sup>Salinger (n 66) 132.

<sup>206</sup>Salinger (n 66) 132.

<sup>207</sup>Salinger (n 66) 132.

<sup>208</sup>Salinger (n 66) 132.

<sup>209</sup>Salinger (n 66) 132.

<sup>210</sup>Salinger (n 66) 132.

<sup>211</sup>Salinger (n 66) 132.

<sup>212</sup>Salinger (n 66) 132.

debtor. While in an equitable assignment, the assignee must institute the suit in both his name and the name of the assignor.<sup>213</sup>

With regards to priority in competing assignee interests over the same assigned debt, the position is the same for both legal and equitable assignments.<sup>214</sup> Pursuant to the general rule established in *Dearle v Hall*,<sup>215</sup> where there are conflicting interests over the same assigned debt, the assignee whose notice of assignment is first in time takes priority. In determining which notice of assignment is first in time, the relevant date to be considered is the date on which the notice of assignment was received by the debtor and not the date on which it was sent.<sup>216</sup> Where the competing interests arise from an earlier equitable assignment and a later legal assignment of the same debt, the equitable assignment will take priority over the legal assignment if it was notified to the debtor before the legal assignment.<sup>217</sup>

According to Salinger, the rationale behind the rule on priority is to prevent fraudulent multiple assignment of the same debts as it presupposes that the assignee who fails to give notice promptly or at all deserves to be displaced by an assignee who diligently gives notice first.<sup>218</sup>

It is unclear how these conflicting legal requirements for assignment under common law and equity have been applied or adopted by Nigerian courts. This is because there is a dearth of Nigerian judicial precedents which exhaustively deal with the issue of assignment of contractual rights. According to Onuoha, Nigerian courts have failed to clarify the legal requirements for assignments in Nigeria.<sup>219</sup> This opacity is further exacerbated by the absence of a unified statutory legal framework for contracts in Nigeria to address the gaps and inconsistencies created by the different legal principles of common law and equity on contractual issues such as the assignment of contractual rights.<sup>220</sup> This makes transactions which involve assignments, such as factoring, more costly. It creates higher transaction risks which translate into higher transaction costs. It also presents a difficulty for parties and their lawyers in structuring and documenting such transactions.<sup>221</sup>

---

<sup>213</sup>Salinger (n 66) 132.

<sup>214</sup>Salinger (n 66) 149.

<sup>215</sup>(1823) 3 Russ 1.

<sup>216</sup>Salinger (n 66) 149.

<sup>217</sup>Salinger (n 66) 149.

<sup>218</sup>Salinger (n 66) 150.

<sup>219</sup>Onuoha (n 199) 50.

<sup>220</sup>Onuoha (n 199) 50.

<sup>221</sup>Onuoha (n 199) 50.

The most recent Nigerian judicial precedent which provides for the legal requirements for a valid assignment appears to be the decision of the Nigerian Court of Appeal in *Julius Berger Nigeria Plc & Another v Toki Rainbow Community Bank Ltd.*<sup>222</sup> In that case, the Court held that for an assignment to be valid, the following conditions must be present: a.) the assignor's ownership of or entitlement to the rights sought to be assigned; b.) the absolute transfer in writing of the assigned rights to the assignee and; c.) where the rights assigned are to enforced against a third party, the assignor must notify that third party of the assignment in writing.<sup>223</sup> Clearly, the Court seems to have largely adopted the requirements under common law, most notably with respect to the requirement of notice to the debtor. However, the Court failed to expressly specify when the assignor must give notice to the debtor. Furthermore, the Court failed to resolve the conflicting requirements for assignments under common law and equity, and their implications on assignment transactions such as factoring in Nigeria.

#### **4.2.3 Banking and Other Financial Institutions Act 2020**

The Banking and Other Financial Institutions Act (the Act) was enacted in 2020 to repeal the Banking and Other Financial Institutions Act of 2004 and to, among other things, regulate and supervise banking and the business of other financial institutions in Nigeria. In addition to the Central Bank of Nigeria Act of 2004, the Act confers powers and imposes duties on the CBN.<sup>224</sup>

The Act sets prudential and conduct of business rules for banks in Nigeria. The Act also confers the CBN with the exclusive powers to regulate and supervise banks and other financial institutions in Nigeria, as well as their affiliates.<sup>225</sup> Under the Act, the CBN is empowered to issue regulations, policies and guidelines to banks and other financial institutions in Nigeria in order to: ensure responsible conduct of business, protect the consumers of financial services, promote competition in the Nigerian financial system, and ensure sustained public confidence in financial services in Nigeria.<sup>226</sup>

The Act defines 'other financial institutions' to include any individual, association or body corporate carrying on the business of factoring regardless of whether such business is conducted virtually or digitally.<sup>227</sup> Hence, the CBN is the institution with the exclusive regulatory and

---

<sup>222</sup>(2009) LPELR-4381.

<sup>223</sup>*Julius Berger Nigeria Plc & Anor v Toki Rainbow Community Bank Ltd* (2009) LPELR-4381.

<sup>224</sup>Banking and Other Financial Institutions Act 2020, sec 1(1).

<sup>225</sup>Banking and Other Financial Institutions Act 2020, sec 29(1).

<sup>226</sup>Banking and Other Financial Institutions Act 2020, sec 30.

<sup>227</sup>Banking and Other Financial Institutions Act 2020, sec 131.

supervisory powers to regulate factoring business in Nigeria. The Act further defines factoring as ‘the business of acquiring debts due to any person.’<sup>228</sup> Clearly, this definition of factoring by the Act leaves so much to be desired since, as we have seen from Chapter two of this study, factoring involves much more than the mere acquisition of debts. The Act did not make any provisions setting guidelines or rules for the conduct of factoring business in Nigeria.

#### **4.2.4 Central Bank of Nigeria Guidelines for Financial Companies in Nigeria 2014**

Pursuant to its statutorily exclusive powers to regulate and supervise banks and other financial institutions in Nigeria, in 2014, the CBN issued revised guidelines to regulate the establishment, operations and other activities of all institutions providing permissible non-banking financial services including factoring.<sup>229</sup> The guidelines provide rules relating to the following: licensing requirements, sources of funds, rendition of returns, prudential requirements, risk management, supervision and compliance, corporate governance and other regulatory matters such as revocation of licenses and anti-money laundering compliance.<sup>230</sup>

Notably, the guidelines provide that any company seeking a licence to provide non-banking financial services in Nigeria shall accompany the application for licence with the deposit of the minimum capital of N100 million (One hundred million naira).<sup>231</sup> Thus, by this provision, any company seeking to provide factoring services in Nigeria must meet a minimum capital requirement of N100 million. It is submitted that this provision is problematic as the minimum capital requirement is significantly huge. Considering the fact that most factors in Africa have limited capital and target small and medium size enterprises,<sup>232</sup> it is quite unreasonable to expect companies seeking to commence factoring businesses in Nigeria to meet this steep capital requirement. Since factors are not deposit-taking institutions like banks, it is appropriate that less stringent prudential regulations, including lower capital requirements, should apply to them.

It is submitted that the high capital requirement for obtaining licenses to carry out non-banking financial services in Nigeria could be one of the reasons for the low provision of factoring services in Nigeria despite its low risk features and the vast business opportunities for factors in Nigeria. It is advisable that, considering that the use and growth of factoring in Nigeria is still in its nascent stage and that factoring is a unique financial service, a more facilitative regulatory

---

<sup>228</sup>Banking and Other Financial Institutions Act 2020, sec 131.

<sup>229</sup>Central Bank of Nigeria guidelines for finance companies in Nigeria, art 2.

<sup>230</sup>Central Bank of Nigeria guidelines for finance companies in Nigeria, arts 3, 4, 5, 6, 7, 8, 9 & 10.

<sup>231</sup>Central Bank of Nigeria guidelines for finance companies in Nigeria, art 3.

<sup>232</sup>Kameni (n 32) 29.



approach would be to have the CBN issue specific guidelines on factoring and impose considerably lower capital requirements to incentivize companies seeking to provide factoring services in Nigeria.

### **4.3 The proposed legal framework for factoring in Nigeria: the Nigerian Factoring Bill 2016**

As identified in the previous section of this chapter, there are a number of legal and regulatory gaps and uncertainties arising as a result of the absence of a specific legal and regulatory framework for factoring in Nigeria. In a bid to correct this, the Nigerian Federal Parliament is currently passing the Factoring (assignment of receivables) Bill 2016 (the Bill) into law to serve as a specific and direct legal framework for factoring in Nigeria.<sup>233</sup> The Bill seeks to create an Act to provide legal principles guiding factoring transactions, the assignment of receivables and other related matters in Nigeria.

However, it is yet to be seen how and to what extent the Bill addresses the following four main considerations in factoring law and regulation: a.) the definition of factoring and the limitation on assignment of receivables; b.) requirement of notice of assignment of receivables; c.) prohibition on assignment of receivables and; d.) priority in competing rights to assigned receivable.<sup>234</sup> This section shall examine the Bill to evaluate how it addresses these four main considerations.

#### **4.3.1 The definition of factoring and the limitation on assignment of receivables:**

The Bill defines factoring as a contract between the client and the factor wherein the client assigns or will assign or will offer to assign to the factor, trade receivables arising from supply contracts between the client and its debtors, and the factor is to perform at least one of the following functions: a.) providing or procuring finance for the client including loans and advance payments; b.) maintenance or bookkeeping of accounts related to the assigned receivables and; c.) collection of assigned receivable.<sup>235</sup>

---

<sup>233</sup>E Abraye and Others ‘Creating new opportunities for Nigerian businesses through factoring’ 2020 <https://www.mondaq.com/nigeria/corporate-and-company-law/928460/creating-new-opportunities-for-nigerian-businesses-through-factoring>> (accessed 25 August 2021).

<sup>234</sup>Tatge (n 35); Brink (n 35); Kameni (n 32) 28.

<sup>235</sup> Factoring Bill 2016, sec 1

Clearly, the Bill omits to include credit protection as one of the functions of a factor. This is most likely because the legislators perceive the credit protection function as an insurance activity which is specifically regulated under a separate legal and institutional framework in Nigeria. It is submitted, with due respect to the legislators, that this perception may not be correct considering that the credit protection function provided by factors is different from credit insurance.<sup>236</sup> There is no payment of premiums in factoring transactions as is the case in credit insurance transactions. Furthermore, the credit protection function provided in factoring transactions is not to indemnify the client against bad assigned debts. Rather, it is to provide the client with financing to the value of the assigned debt upon assignment of the debt as in non-recourse factoring or upon the due date of the debt as in maturity factoring, whilst assuming the risk of the purchased debt where it fails to collect on the due date for sole reason of inability of the debtor to pay. By excluding credit protection as one of the services a factor may provide, the Bill has consequently excluded the provision of the non-recourse and maturity types of factoring.

The Bill defines assignment as the transfer of all or an undivided interest in a receivable payable by a debtor from the client to the factor whether or not notice of the assignment has been given to the debtor.<sup>237</sup> The Bill further provides that a creation of rights in a receivable as security for indebtedness or other obligation is deemed to be a transfer.<sup>238</sup> By this provision, the Bill envisages that the creation of a mortgage or charge on a receivable as security for a loan obligation, or other obligation owed by the client to the factor, amounts to an assignment of that receivable. This means that in factoring transactions wherein not all client accounts receivables are purchased, the client may pledge the non-purchased accounts as collateral security for the obligations owed by the client to the factor under the factoring agreement.<sup>239</sup>

Thus, the Bill considers factoring as both a ‘true-sale’ transaction where the receivables are purchased by the factor with or without recourse, and an asset-based lending transaction by which clients can assign their receivables to the factor as collateral or security for the financing provided by the factor.<sup>240</sup> The latter comes with certain implications under Nigerian law. In such a case, where the client is a company registered under Nigerian law, it would be required to comply with the provisions of Nigerian company law on the requirements for creating a charge

---

<sup>236</sup> R Uyanik ‘Factoring’s protection against bad debts versus credit insurance’ 2019 <https://www.linkedin.com/pulse/factorings-protection-against-bad-debts-vs-credit-insurance-uyanik/> (accessed on 25 August 2021).

<sup>237</sup> Factoring Bill 2016, sec 1

<sup>238</sup> Factoring Bill 2016, sec 1.

<sup>239</sup> Salinger (n 66) 5.

<sup>240</sup> Salinger (n 66) 5.

or security interest on a company's asset. This includes a registration of the charge with the Nigerian Corporate Affairs Commission within ninety days from the date of creation of the charge.<sup>241</sup>

The Bill applies to domestic and international assignment of domestic trade receivables or international trade receivables made under or pursuant to a factoring contract.<sup>242</sup> The Bill defines a domestic trade receivable as one arising from a sale contract between parties who are located in Nigeria at the time of conclusion of the contract, and an international trade receivable as one arising from a sale contract where the parties are in different countries at the time of conclusion of the contract.<sup>243</sup> The Bill also applies to subsequent assignments of receivables where the initial assignment was made pursuant to a factoring contract or where the initial assignment is governed by the Bill or common law.<sup>244</sup>

However, the Bill does not apply to assignments made for personal or household purposes or assignments made as part of the sale or change in the ownership or legal status of the business out of which the assigned receivables arose.<sup>245</sup> The Bill also does not apply to assignments of receivables arising under or from the following:<sup>246</sup> a.) transactions on a regulated exchange; b.) financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions; c.) inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments; d.) the transfer of security rights in sale or loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary; e.) a letter of credit or independent guarantee; f.) financial services, including financial trading; g.) security interests created by other statutes; h.) landlord's liens except as to fixtures; i.) receivables arising from the sale or lease of real property; j.) transfer of interests in or a claim under a policy of insurance, k.) transfers of claims for wages or compensation by employees, l.) the sale of a business, m.) set-off claims and; n.) claims in court proceedings.

It is worthy to note that under the Bill, the assignment of future receivables is permissible unless parties agree otherwise.<sup>247</sup> The Bill defines future receivables as receivables arising after the

---

<sup>241</sup>Companies and Allied Matters Act 2020, sec 222(1)&(2).

<sup>242</sup>Factoring Bill 2016, sec 3(1).

<sup>243</sup>Factoring Bill 2016, sec 1.

<sup>244</sup>Factoring Bill 2016, sec 3(2).

<sup>245</sup>Factoring Bill 2016, sec 4(1).

<sup>246</sup>Factoring Bill 2016, sec 4(2).

<sup>247</sup>Factoring Bill 2016, sec 7(3).

conclusion of the factoring contract.<sup>248</sup> The Bill also provides that upon an assignment of receivables in a factoring transaction, all related rights to the receivables such as guarantees, liens or documents of title are also transferred to the factor.<sup>249</sup>

Notably, the Bill failed to make explicit provisions to guide and regulate electronic assignment of receivables. This shows that, while drafting the Bill, the lawmakers failed to take into contemplation the fact that electronic factoring is fast becoming the mainstay of factoring transactions.

#### **4.3.2 Requirement of notice of assignment**

The Bill provides that an assignment of receivables in a factoring transaction may be done without notice to the debtor.<sup>250</sup> This clearly makes room for the provision of undisclosed factoring or invoice discounting wherein, as we have seen in chapter two of this study, the assignment of the receivables' invoices is not disclosed to the debtor as the seller or client remains responsible for collection of the debt upon its maturity.<sup>251</sup>

The Bill provides that unless parties agree otherwise, notice of assignment as well as a payment instruction directing the debtor to pay the debt to the factor directly upon maturity, may be sent by either the client or the factor or both.<sup>252</sup> However, after notice of the assignment has been sent, payment instructions can only be sent by the factor.<sup>253</sup> The Bill clearly leaves the issuance of notice at the discretion of the factor or the client by using the word 'may'. It is submitted that this creates arbitrariness as although it is deducible that making the issuance of notice discretionary is to allow room for undisclosed factoring, it ought to have been expressly stated that notice is mandatory for other forms of factoring. Making the issuance of notice a mandatory requirement before or within a reasonable time after an assignment is desirable, as it helps prevent incidences of fraudulent double assignments and gives the factor priority over subsequent security or creditor interests created over the receivables.<sup>254</sup>

---

<sup>248</sup>Factoring Bill 2016, sec 1.

<sup>249</sup>Factoring Bill 2016, sec 9(1).

<sup>250</sup>Factoring Bill 2016, sec 1.

<sup>251</sup>D Karim and J Zahid (n 103).

<sup>252</sup>Factoring Bill 2016, sec 12(1).

<sup>253</sup>Factoring Bill 2016, sec 12(1).

<sup>254</sup>E Wilde 'Regulatory and legal aspects of factoring' 2014 <https://s3-eu-west-1.amazonaws.com/demo2.opus.ee/afrexim/Regulatory-and-Legal-Aspect-of-Factoring.pdf> (accessed 25 August 2021).

In addition, the Bill provides that registration of an assignment by the client shall constitute proper notice to the debtor and to every other party irrespective of whether or not such party received or had actual notice of the assignment, provided that the registry shall immediately send out notice of registration to the debtor.<sup>255</sup> This provision is facilitative as it makes room for constructive notification as an alternative to actual notification of assignment of receivables. However, the Bill fails to define or establish what registry would be responsible for registering assigned receivables. This creates uncertainty. It may be argued that the registry referred to in the Bill is the National Collateral Registry (NCR) established under the Secured Transactions in Movable Assets Act. However, this may not be a valid argument. This is because the NCR was established solely for the registration of security interests created over movable assets alone, and not security interests created over intangible assets like debts or account receivables as is the case in some factoring transactions.<sup>256</sup> Furthermore, by definition of the Bill, an assignment of receivables in a factoring transaction may involve an actual sale of the receivables rather than the creation of a security interest over the receivables, and the NCR is not established to register sale of assets.<sup>257</sup> Thus, the NCR is not suitable for registering any type of factoring transaction.

Under the Bill, notice of assignment or a payment instruction is effective upon receipt by the debtor provided that it is written in a language that is reasonably expected to inform the debtor about its contents.<sup>258</sup> It is sufficient if the notice is written in the same language as the sale contract.<sup>259</sup> The Bill provides that a notice of assignment may relate to future receivables and the notice of a subsequent assignment constitutes notice of all prior assignments.<sup>260</sup>

It is noteworthy that the absence of or impropriety of a notice of assignment does not affect the validity or effectiveness of an assignment under the Bill.<sup>261</sup> This is unlike the position of common law and the decision of Nigerian courts which require that a notice of assignment must be validly given to the debtor before an assignment of contractual rights can be effective.

---

<sup>255</sup>Factoring Bill 2016, sec 12(1).

<sup>256</sup> Secured Transactions in Movable Assets Act 2017, sec 11

<sup>257</sup>Factoring Bill 2016, sec 1.

<sup>258</sup>Factoring Bill 2016, sec 15(1).

<sup>259</sup>Factoring Bill 2016, sec 15(1).

<sup>260</sup>Factoring Bill 2016, sec 15(2)&(3).

<sup>261</sup>Factoring Bill 2016, sec 7(1).

### **4.3.3 Prohibition on assignment**

The Bill provides that an assignment of a receivable, as well as the consequent transfer of related rights in that receivable, is effective notwithstanding any prohibition against such assignment.<sup>262</sup>

The Bill defines ‘prohibition against assignments’ as any legal, contractual, regulatory or governmental requirement that limits, prohibits or restricts the right to assign a receivable.<sup>263</sup>

The Bill further provides that the client and the factor shall suffer no liability to the debtor for breach of a prohibition against assignment clause or agreement, and such a breach cannot be raised by the factor as a defence or set-off against a claim for payment of an assigned debt.<sup>264</sup>

The Government and its agencies or bodies are also prohibited from taking any action against the client or the factor for an assignment of a receivable made in breach of any prohibition against assignment.<sup>265</sup>

It is submitted that the foregoing provisions of the Bill will greatly promote the use of factoring in Nigeria as they provide adequate protection to the client and the factor to freely assign receivables.

### **4.3.4 Priority of competing interests in assigned receivables**

Under the Bill, if more than one assignment of the same receivable is made by the same client, then priority amongst the factors regarding their entitlement to the receivable will be determined by the general rules of law and in the absence thereof, then the first factor to give notice to the debtor shall have priority.<sup>266</sup> The Bill however failed to define what would constitute ‘general rules of law’. This creates uncertainty.

Furthermore, there appears to be a contradiction in the Bill as the Bill also provides that the date of registration of an assigned receivable shall be the determining factor in ascertaining priority over the interest accruable to any factor over the receivables.<sup>267</sup> This creates two contradictory criteria for determining priority over assigned receivables: the date of notice of assignment and the date of registration of the assignment. Hence, parties and adjudicators would be faced with the dilemma as to which criterion to apply in the event of a priority dispute.

---

<sup>262</sup>Factoring Bill 2016, secs 8(1) & 9(2).

<sup>263</sup>Factoring Bill 2016, sec 1.

<sup>264</sup>Factoring Bill 2016, sec 8(2).

<sup>265</sup>Factoring Bill 2016, sec 8(3).

<sup>266</sup>Factoring Bill 2016, sec 21(1).

<sup>267</sup>Factoring Bill 2016, sec 12(3).

With respect to other competing rights in the assigned receivable such as the rights of judgment creditors or other creditors in insolvency, the Bill provides that the law of the state in which the client is located will govern the priority of the rights of a factor and that of the competing claimant in the assigned receivable.<sup>268</sup>

#### **4.4 Conclusion**

In the final analysis, it is clear that the extant legal and regulatory framework for factoring in Nigeria does not effectively promote and facilitate the use and provision of factoring services. This chapter revealed that the absence of a specific law or regulation on factoring in Nigeria creates so much uncertainty and ambiguity in factoring transactions in Nigeria which translates into higher transaction costs and risks. Therefore, it is safe to conclude that the foregoing has greatly stifled the growth, awareness, provision and use of factoring services to provide trade financing in Nigeria.

Nonetheless, the Factoring Bill 2016 brings with it a glimpse of hope and optimism for improvement in the use and provision of factoring services in Nigeria. This is because, to a large extent, the Bill appears to settle the uncertainties and ambiguities on the legal aspects of factoring that exist in the current Nigerian legal and regulatory framework for factoring. However, certain provisions of the Bill are fraught with inconsistencies, contradictions and ambiguities, and do not appear to completely align with international best practices and models for factoring legislation. Thus, in the next chapter of this study, the Bill will be compared with international and continental best legal and regulatory frameworks for factoring to examine the extent to which the Bill has adopted best practices on factoring law and regulation.

---

<sup>268</sup>Factoring Bill 2016, sec 21(2).

**CHAPTER FIVE**  
**COMPARATIVE ANALYSIS OF NIGERIA’S LEGAL AND REGULATORY**  
**FRAMEWORK FOR FACTORING WITH BEST PRACTICES FOR FACTORING**  
**LAW AND REGULATION**

---

## **5.1 Introduction**

The previous chapter revealed that there are a number of gaps in both the extant and the proposed legal and regulatory framework for factoring in Nigeria. It is thus important to examine continental and international best practices for factoring law and regulation to examine how the Nigerian legal and regulatory framework for factoring compare with them, and to find out if there are any valuable lessons which may be drawn from them to improve factoring law and regulation in Nigeria.

Thus, this chapter will examine the legal and regulatory framework for factoring in Egypt, comparing it with the legal and regulatory framework for factoring in Nigeria. The choice of using Egypt as the continental comparator jurisdiction reflecting continental best practice is informed by the fact that although the economies of Egypt and Nigeria are similar in terms of size, the use and growth of factoring in Egypt has been very impressive as opposed to the poor levels of use and growth of factoring in Nigeria.<sup>269</sup> Furthermore, Egypt recently enacted a factoring law which appears to have given more boost to the growth of factoring in Egypt.<sup>270</sup>

This chapter will also compare the Nigerian Factoring Bill with the most recent international model laws on factoring: the Afrexim Bank Model Law on Factoring 2016 and the IFG Model Law on Factoring 2014, in order to examine the extent to which the Bill has adopted international best practices on factoring legislation as contained in these model laws.

## **5.2 Comparing Nigeria’s legal and regulatory framework for factoring with Egypt’s legal and regulatory framework for factoring**

Egypt is one of the countries with a fast growing factoring industry. According to the FCI Annual Review for 2020, Egypt realized the largest increase in factoring volume between 2018 and 2019.<sup>271</sup> It is not merely coincidental that the foregoing came right after the Egyptian Parliament passed Egypt’s new Law No. 176 of 2018 (Egypt’s Factoring Law) on August 15,

---

<sup>269</sup>Factoring Chain International (n 25).

<sup>270</sup>Factoring Chain International (n 25).

<sup>271</sup>Factoring Chain International (n 25).



2018 to regulate both financial leasing and factoring activities.<sup>272</sup> Egypt's Factoring Law replaced the old financial leasing law (Law No. 95 of 1995) and the ministerial decree No. 446 of 2003.<sup>273</sup>

This section will compare Egypt's legal and regulatory framework for factoring with that of Nigeria under two headings: a.) Regulation and supervision of factoring services and; b.) factoring legislation. Since the author could not find an English version of Egypt's new Factoring Law as the only available copy of the Law on the Egyptian parliament website is in Arabic, the author shall, in carrying out the comparison below, rely on a factoring survey conducted by the European Bank for Reconstruction and Development in 2018 wherein the salient provisions of Egypt's Factoring Law were comprehensively analysed.

### **5.2.1 Regulation and supervision of factoring services**

In Egypt, the Egyptian Financial Supervision Authority (the Authority) acts as the regulatory body for factoring companies.<sup>274</sup> The Authority licenses non-banking financial institutions seeking to undertake factoring activities in Egypt.<sup>275</sup> For this regulatory purpose, factoring activity is defined as 'purchase by the factoring company of present and future financial rights resulting from selling of goods or services and providing other services related to management of such rights'.<sup>276</sup> Furthermore, Egypt recognizes retail factoring, which involves the factoring of retail receivables where the debtor is an end consumer, and a special regulation is established for that particular type of factoring.<sup>277</sup>

Egypt's Factoring Law provides the Authority with broad supervisory powers and functions over factoring operations. These powers and functions include carrying out inspections of factoring companies and ensuring the due compliance of factoring companies with licensing rules, requirements and other applicable laws and regulations.<sup>278</sup> Additionally, the Authority is in charge of issuing warnings, suspending and revoking factoring licenses, convening the board of directors or general assembly of factoring companies, issuing dissolution orders for board of

---

<sup>272</sup>Youssery Saleh & Partners 'Egypt's new financial leasing law' 2019 <https://www.mondaq.com/leasing/855804/egypt39s-new-financial-leasing-law>>(accessed 9 September 2021).

<sup>273</sup> Andersen Legal Team 'Legal Alert 112: Updates in financial leasing laws' 2020 <https://eg.andersen.com/legal-alert-112/>>(accessed 9 September 2021).

<sup>274</sup> European Bank for Reconstruction and Development 'Factoring survey in EBRD countries of operation' September 2018 <https://www.ebrd.com/documents/ogc/factoring-survey.pdf>>(accessed 9 September 2021).

<sup>275</sup>(n 274) as above.

<sup>276</sup>(n 274) as above.

<sup>277</sup>(n 274) as above.

<sup>278</sup>(n 274) as above.

directors of factoring companies, as well as preventing the conclusion of factoring contracts.<sup>279</sup> The Authority also issues detailed regulations governing factoring activities in accordance with Egypt's Factoring Law.

The foregoing regulatory structure is similar to the regulatory structure for factoring in Nigeria wherein the Central Bank of Nigeria (CBN) acts as the exclusive regulatory body for all non-banking financial institutions, including factors, through the CBN's guidelines for finance companies in Nigeria.<sup>280</sup> However, unlike under the Egyptian regulatory framework, the Nigerian regulatory framework does not specifically define what factoring is for the purposes of regulation by the CBN. Furthermore, there is an existence of specific regulations or guidelines for factoring in Egypt,<sup>281</sup> as compared to Nigeria where generic regulations and guidelines are used to regulate factoring services together with other non-banking financial services. The use of specific regulations for factoring in Egypt enables a clear, direct and predictable set of rules for factoring operations which provides both actual and potential providers and users of factoring services with much needed legal certainty.

To obtain a factoring licence in Egypt, a company must be established as an Egyptian joint stock company.<sup>282</sup> It is required that at least one of the shareholders of the company holding at least 50% of the company's share capital must be a juristic person.<sup>283</sup> Furthermore, where a financial institution is a shareholder in the company, it must hold at least 25% of the share capital.<sup>284</sup> To obtain a factoring licence, a company must meet a minimum capital requirement of EGP 10,000,000.<sup>285</sup> Where the company seeks to undertake retail factoring, the minimum capital requirement is EGP 15,000,000.<sup>286</sup>

Clearly, the minimum capital requirement for engaging in factoring services under the Egyptian regulatory framework is comparatively lower than the minimum requirement set by the Nigerian regulatory framework – N 100,000,000.<sup>287</sup> It is arguable that this comparatively lower minimum capital requirement in Egypt provides a more facilitative regulatory environment for companies seeking to undertake factoring services as compared to Nigeria.

---

<sup>279</sup>(n 274) as above.

<sup>280</sup>Central Bank of Nigeria guidelines for finance companies in Nigeria, art 2.

<sup>281</sup>European Bank for Reconstruction and Development (n 274).

<sup>282</sup>(n 274) as above.

<sup>283</sup>(n 274) as above.

<sup>284</sup>(n 274) as above.

<sup>285</sup>(n 274) as above.

<sup>286</sup>(n 274) as above.

<sup>287</sup>Central Bank of Nigeria guidelines for finance companies in Nigeria, art 3.

## 5.2.2 Factoring legislation

As stated above, Egypt's Factoring Law provides the legal principles and guiding provisions governing the use and provision of factoring services in Egypt. The Factoring Law provides for a definition of the factoring contract as a financing contract between the client and the factor, wherein the factor purchases the present and future financial rights arising from the sale of the goods and the provision of services in accordance with the Factoring Law.<sup>288</sup> This is unlike the position in Nigeria wherein there is a current absence of a specific law on factoring and hence there is no definition of factoring under Nigeria's current legal framework. However, Nigeria's proposed factoring legal framework – the Factoring Bill, comprehensively defines factoring to include not just the assignment of receivables but also the provision of other factoring services such as debt collection and ledger management.<sup>289</sup>

Egypt's Factoring Law distinguishes between domestic and international factoring as well as recourse and non-recourse factoring. Under the Law, a factoring transaction will be considered domestic where it arises from a sale contract between a buyer and a seller who are both resident within the Arab Republic of Egypt.<sup>290</sup> Where either party is resident outside Egypt then it is considered an international factoring transaction.<sup>291</sup> This is the same distinction given to domestic and international factoring used under the Nigerian Factoring Bill.<sup>292</sup> However, unlike Nigeria, Egypt is not a member of the UNIDROIT Convention on International Factoring.<sup>293</sup>

Under the Egyptian Factoring Law, parties to a recourse factoring transaction must explicitly agree that the client guarantees the debtor's fulfilment of its obligations upon maturity of the assigned receivable.<sup>294</sup> Conversely, where the client does not guarantee the fulfillment of the debtor's obligation and only guarantees the existence of the assigned receivable, the transaction is a non-recourse factoring transaction. This distinction is not made in Nigeria's Factoring Bill although the definition of factoring therein impliedly caters for both recourse and non-recourse factoring transactions.

---

<sup>288</sup>European Bank for Reconstruction and Development (n 274).

<sup>289</sup>Factoring Bill 2016, sec 1.

<sup>290</sup>European Bank for Reconstruction and Development (n 274).

<sup>291</sup>(n 274) as above

<sup>292</sup>Factoring Bill 2016, sec 1.

<sup>293</sup>European Bank for Reconstruction and Development (n 274).

<sup>294</sup>(n 274) as above.

Egypt's Factoring Law expressly designates factoring as a true sale transaction.<sup>295</sup> That is to say, even where done on recourse basis, Egyptian law recognizes all factoring transactions as involving an outright sale of the assigned receivables. This is different from the provision of the Nigerian Factoring Bill which recognizes factoring as both a true-sale transaction and an asset-based lending transaction wherein a client may merely pledge the assigned receivable to the factor as collateral rather than outrightly sell it.<sup>296</sup>

Egypt's Factoring Law expressly allows the assignment of future receivables provided that they comply with the requirements set out under the Factoring Law. This is also the position under the Nigerian Factoring Bill which provides that parties may assign future receivables unless they agree otherwise.<sup>297</sup> Furthermore, just as provided under the Nigerian Factoring Bill, Egypt's Factoring law requires factoring contracts to be in writing.<sup>298</sup> However, unlike the Nigerian Factoring Bill, Egypt's Factoring Law requires the factoring contract to be drafted in compliance with the template contract of the Authority.<sup>299</sup>

Article 39 of Egypt's Factoring Law explicitly provides that an assignment of receivables under a factoring transaction is valid and effective from the date of conclusion of the factoring contract. However, under Article 52 of the Factoring Law, a factoring contract only becomes effective against the debtor upon the service of notice of assignment on the debtor and such notice must comply with the Factoring Law's requirements and the Authority's regulations.<sup>300</sup> It is noteworthy that Article 38 of the Factoring Law provides that the transfer of financial rights from the seller to the factor must be 'in accordance with the provisions of the Civil Code'.<sup>301</sup> Under the Civil Code, for an assignment of receivables to be effective against the debtor and third parties, the assignment must be (a) notified to the debtor in writing and via court bailiff notice, or (b) accepted by the debtor in writing with certified date.<sup>302</sup> Where these requirements are unmet, the assignment will be effective only between the factor and the client, but not against the debtor or third parties.<sup>303</sup>

---

<sup>295</sup>(n 274) as above.

<sup>296</sup>Factoring Bill 2016, sec 1.

<sup>297</sup>Factoring Bill 2016, sec 7(3).

<sup>298</sup>Factoring Bill 2016, sec 1; European Bank for Reconstruction and Development (n 274).

<sup>299</sup>(n 274) as above.

<sup>300</sup>(n 274) as above.

<sup>301</sup>(n 274) as above.

<sup>302</sup>(n 274) as above.

<sup>303</sup>(n 274) as above.

Unlike the provisions of the Egypt Factoring Law, the Nigerian Factoring Bill does not require the service of notice of assignment to make the assignment valid and effective.<sup>304</sup> This is a shift from the position of common law and Nigerian judicial decisions which require service of notice for an assignment of contractual rights to be valid and effective. Furthermore, under the Bill, service of notice of assignment on the debtor appears discretionary rather than mandatory.<sup>305</sup> As discussed in the previous chapter, this could create legal uncertainty and create room for fraudulent double assignment of the same receivable.

Under Egypt's Factoring Law, contractual prohibitions against the assignment of receivables are allowed.<sup>306</sup> Thus, where an assignment of receivables is done in breach of a contractual prohibition against the assignment of those receivables, the assignment is ineffective against the debtor unless the debtor subsequently allows the assignment.<sup>307</sup> This is different from the position under the Nigerian Factoring Bill which expressly provides that an assignment of a receivable is effective notwithstanding any prohibition against such assignment.<sup>308</sup> It is submitted that the provision of the Nigerian Factoring Bill in this regard is more facilitative for factoring than that of Egypt's Factoring Law, as it allows parties the freedom and protection to assign receivables.

### **5.3 Towards a robust legal framework for factoring in Nigeria: Comparing Nigeria's Factoring Bill against international best model laws for factoring**

This section will undertake a comparative analysis of the provisions of Nigeria's Factoring Bill 2016 with the IFG and Afrexim Bank Model laws for factoring. The comparison shall be done on the basis of the four main considerations in factoring legislation: a.) the definition of factoring and the limitation on assignment of receivables; b.) requirement of notice of assignment of receivables; c.) prohibition on assignment of receivables and; d.) priority in competing rights to assigned receivable.<sup>309</sup>

#### **5.3.1 The International Factor's Group Model Law on Factoring 2014**

The IFG Model Law (IFG Law) was established in 2014 to set out harmonized principles guiding the assignment of receivables to ensure certainty and transparency. It seeks to advance

---

<sup>304</sup>Factoring Bill 2016, sec 7(1).

<sup>305</sup>Factoring Bill 2016, sec 12(1).

<sup>306</sup>European Bank for Reconstruction and Development (n 274).

<sup>307</sup>(n 274) as above.

<sup>308</sup>Factoring Bill 2016, secs 8(1) & 9(2).

<sup>309</sup>Tatge (n 35); Kameni (n 32) 28.

the modernization of the law on assignment of receivables while protecting existing practices and facilitating the development of new ones.<sup>310</sup> The provisions of the IFG Law are compared with those of the Nigerian Factoring Bill below as follows:

### **5.3.1.1 Definition of factoring and the limitation on assignment of receivables**

The IFG Law defines factoring as a contract whereby a seller (client) assigns trade receivables arising from the sale of goods or services to a factor with or without notice to the buyer (debtor), and the factor is to perform at least one of the following services: provision of financing to the client, management or bookkeeping of the accounts relating to the assigned receivable, debt collection and credit protection.<sup>311</sup> This definition is essentially the same as the definition adopted by the Nigerian Factoring Bill.<sup>312</sup> However, unlike the IFG Law, the Factoring Bill excludes credit protection as a function or service which a factor can perform.<sup>313</sup> Thus, the definition of factoring under the Bill is more restrictive as compared to the IFG Law.

Just like the Factoring Bill,<sup>314</sup> the IFG Law defines an assignment of receivables as both a true sale of the receivables as well as a creation of security interest over the receivables.<sup>315</sup> This perceives factoring as both a true-sale transaction and an asset-based lending transaction. Furthermore, just like the Factoring Bill,<sup>316</sup> the IFG Law allows an assignment of future receivables.<sup>317</sup> The Law also recognizes that secured rights in a receivable are transferred along with the assignment of that receivable.<sup>318</sup> This is the same position under the Factoring Bill although the Bill refers to such rights as ‘related’ rights.<sup>319</sup>

Furthermore, similar to the provisions in the Factoring Bill,<sup>320</sup> the IFG Law excludes from its application, assignments made for personal or household purposes as well as assignments arising from trade in financial services.<sup>321</sup>

---

<sup>310</sup>IFG Model Law on Factoring 2014, preamble 3.

<sup>311</sup>IFG Model Law on Factoring 2014, art 1.2.

<sup>312</sup>Factoring Bill 2016, sec 1.

<sup>313</sup>Factoring Bill 2016, sec 1.

<sup>314</sup>Factoring Bill 2016, sec 1.

<sup>315</sup>IFG Model Law on Factoring 2014, art 2.1.

<sup>316</sup>Factoring Bill 2016, sec 7(3).

<sup>317</sup>IFG Model Law on Factoring 2014, art 7.

<sup>318</sup>IFG Model Law on Factoring 2014, art 9.

<sup>319</sup>Factoring Bill 2016, sec 9(1).

<sup>320</sup>Factoring Bill 2016, sec 4(2).

<sup>321</sup>IFG Model Law on Factoring 2014, art 4.

### 5.3.1.2 Requirement of notice of assignment

The IFG Law provides that an assignment would be valid and effective even without giving notice of the assignment to the debtor.<sup>322</sup> This is the same provision under the Factoring Bill.<sup>323</sup> Thus, both legislations allow for the invoice discounting type of factoring.

In a similar provision to that contained in the Factoring Bill,<sup>324</sup> the IFG Law provides that notice of assignment as well as a payment instruction may be sent by either the client or the factor or both.<sup>325</sup> Thus, just like the Factoring Bill, the wordings of the IFG Law also envisage that issuing notice of assignment to the factor is discretionary rather than mandatory.

Just like the Factoring Bill,<sup>326</sup> the IFG Law provides that a notice of assignment is effective against the debtor upon receipt where same is made in a language that is reasonably expected to inform the debtor of the assignment.<sup>327</sup> Furthermore, in a similar provision as the Factoring Bill,<sup>328</sup> the IFG Law provides that the impropriety of the notice does not render it ineffective.<sup>329</sup>

### 5.3.1.3 Prohibition on assignment of receivables

Under the IFG Law, an assignment of a receivable is effective notwithstanding any agreement between the client and the debtor limiting the client's right to assign the receivable.<sup>330</sup> Thus, the IFG Law overrides any contractual ban or prohibition on assignment of receivables. This is the same provision under the Factoring Bill which also nullifies contractual prohibitions against assignment of receivables.<sup>331</sup>

However, unlike the IFG Law, the Bill overrides not just contractual prohibitions against assignment of receivables but also prohibitions arising from laws, regulations or governmental acts.<sup>332</sup> Furthermore, unlike the IFG Law which still renders a client liable to a debtor for breach of contract upon breaching a prohibition of assignment clause,<sup>333</sup> the Bill absolves the client and

---

<sup>322</sup>IFG Model Law on Factoring 2014, arts 1.2 & 7.

<sup>323</sup>Factoring Bill 2016, secs 1 & 7(1).

<sup>324</sup>Factoring Bill 2016, sec 12(1).

<sup>325</sup>IFG Model Law on Factoring 2014, art 12.1.

<sup>326</sup>Factoring Bill 2016, sec 15(1).

<sup>327</sup>IFG Model Law on Factoring 2014, art 15.1.

<sup>328</sup>Factoring Bill 2016, sec 12(4).

<sup>329</sup>IFG Model Law on Factoring 2014, art 12.2.

<sup>330</sup>IFG Model Law on Factoring 2014, art 8.1.

<sup>331</sup>Factoring Bill 2016, sec 8(1).

<sup>332</sup>Factoring Bill 2016, secs 8(1) & 1.

<sup>333</sup>IFG Model Law on Factoring 2014, art 8.2

the factor from any liability to the debtor for breach of a prohibition against assignment.<sup>334</sup> The Bill further prevents the debtor from raising same as a defence or set-off to any claim for payment of an assigned debt.<sup>335</sup>

Thus, from the foregoing it is deducible that the Factoring Bill provides more freedom and protection for assignment of receivables as compared to the IFG law.

#### **5.3.1.4 Priority in competing rights to assigned receivable**

The IFG Law provides that where a client makes an assignment of the same receivable to more than one assignee, priority among the assignees will be determined by the general rules of law.<sup>336</sup> This is similar to the provision of the Factoring Bill,<sup>337</sup> although the Bill further provides that where there are no applicable general rules of law, the first assignee to give notice of the assignment to the debtor will take priority.<sup>338</sup> However, as identified in the previous chapter, the Bill also makes a self-contradictory provision that the date of registration of an assigned receivable shall be the determining factor in ascertaining priority over the interest accruable to any factor over the receivable.<sup>339</sup>

Nonetheless, the IFG Law further suggests that where a priority system is not already in place in the enacting country, the country should base such priority on registration of the receivable.<sup>340</sup> As stated above, the Factoring Bill adopted this suggestion albeit in contradiction with another provision in the Bill. Furthermore, the Bill failed to expressly define or establish the registry that would be responsible for registering assigned receivables.

### **5.3.2 The African Export-Import Bank Model Law on Factoring 2016**

The Afrexim Bank Model Law on Factoring (the Model law) was established in 2016 and its provisions were largely drawn from the provisions of the IFG Model law.<sup>341</sup> In order to provide cross-border uniformity in factoring transactions, the Model law is designed for adoption in more than one country but is required not to be changed in substance. The provisions of the Model law are compared with those of the Factoring Bill below:

---

<sup>334</sup>Factoring Bill 2016, sec 8(2).

<sup>335</sup>Factoring Bill 2016, sec 8(2).

<sup>336</sup>IFG Model Law on Factoring 2014, art 21.1

<sup>337</sup>Factoring Bill 2016, sec 21(1).

<sup>338</sup>Factoring Bill 2016, sec 21(1).

<sup>339</sup>Factoring Bill 2016, sec 12(3).

<sup>340</sup>IFG Model Law on Factoring 2014, annex.

<sup>341</sup>Afrexim Bank Model Law on Factoring 2016, explanatory introduction.



### **5.3.2.1 Definition of factoring and the limitation on assignment of receivables**

The Model law defines factoring as a contract between the client and factor wherein the client assigns or will assign or will offer to assign to the factor, trade receivables arising from supply contracts between the client and its debtors and the client is to perform at least one of the following functions: a.) providing finance for the client; b.) maintenance or bookkeeping of accounts related to the assigned receivables; c.) collection of assigned receivable and; d.) credit protection.<sup>342</sup> This is the same definition of factoring provided in the Factoring Bill although the Bill excludes credit protection as one of the functions a factor may provide.<sup>343</sup>

The Model law defines an assignment as the transfer of all or an undivided interest in a receivable payable by a debtor from the client to the factor as well as the creation of a security interest in a receivable, whether or not notice of the assignment has been given to the debtor.<sup>344</sup> This is the same definition under the Bill; hence, both legislations recognize factoring as a true-sale transaction and an asset-based lending transaction.

Just like the Factoring Bill,<sup>345</sup> the Model law allows the assignment of future receivables as well as recognizes the transfer of related rights in a receivable along with the assignment of that receivable.<sup>346</sup> Furthermore, just like the Factoring Bill,<sup>347</sup> the Model law excludes from its application, assignments made for personal or household purposes as well as assignments arising from trade in financial services.<sup>348</sup>

### **5.3.2.2 Requirement of notice of assignment**

Similar to the provision of the Factoring Bill,<sup>349</sup> the Model law provides that an assignment may be validly done without issuing notice of the assignment to the debtor.<sup>350</sup> Thus, both legislations allow the use of the invoice discounting variation of factoring whereby assignments of receivables are made without notifying the debtor.

---

<sup>342</sup>Afrexim Bank Model Law on Factoring 2016, art 1.

<sup>343</sup>Factoring Bill 2016, sec 1.

<sup>344</sup>Afrexim Bank Model Law on Factoring 2016, art 1.

<sup>345</sup>Factoring Bill 2016, secs 7(3) & 9(1).

<sup>346</sup>Afrexim Bank Model Law on Factoring 2016, arts 8.1 & 6.3.

<sup>347</sup>Factoring Bill 2016, sec 4(2).

<sup>348</sup>Afrexim Bank Model Law on Factoring 2016, art 4.

<sup>349</sup>Factoring Bill 2016, sec 1.

<sup>350</sup>Afrexim Bank Model Law on Factoring 2016, art 1.

The Model law also provides that unless parties agree otherwise, notice of assignment as well as a payment instruction directing the debtor to pay the debt to the factor directly upon maturity, may be sent by either the client or the factor or both.<sup>351</sup> This is the same provision in the Factoring Bill.<sup>352</sup> Thus both legislations presuppose that the issuance of a notice of assignment to the debtor is discretionary rather than mandatory.

Furthermore, just like the Factoring Bill,<sup>353</sup> the Model law provides that notice given to the debtor is effective upon receipt where it is made in a language which is reasonably expected to inform the debtor of the assignment.<sup>354</sup>

### **5.3.2.3 Prohibition on assignment of receivables**

The Model law provides that an assignment of a receivable is effective notwithstanding any prohibition against the assignment.<sup>355</sup> This is broader than the provision of the IFG Law and similar to the provisions of the Bill,<sup>356</sup> as it overrides any type of prohibition against assignment whether contractual, legal, regulatory or governmental.

Furthermore, just like the Factoring Bill,<sup>357</sup> and unlike the IFG Law, the Model law exempts the client and the factor from any liability to the debtor for breach of a prohibition against assignment and prevents the debtor from raising same as a defence or set-off to any claim for payment of an assigned debt.<sup>358</sup> Thus, the Model law and the Factoring Bill provide more security and freedom for assignment of receivables as compared to the IFG Law.

### **5.3.2.4 Priority in competing rights to assigned receivable**

The Model law provides that if more than one assignment of the same receivable is made by the same client, then priority amongst the factors regarding their entitlement to the receivable will be determined by the general rules of law and in the absence thereof, then the first factor to give notice to the debtor shall have priority.<sup>359</sup>

---

<sup>351</sup>Afrexim Bank Model Law on Factoring 2016, art 11.1.

<sup>352</sup>Factoring Bill 2016, sec 12(1).

<sup>353</sup>Factoring Bill 2016, sec 15(1).

<sup>354</sup>Afrexim Bank Model Law on Factoring 2016, art 14.1.

<sup>355</sup>Afrexim Bank Model Law on Factoring 2016, art 7.1.

<sup>356</sup>Factoring Bill 2016, sec 8(1).

<sup>357</sup>Factoring Bill 2016, sec 8(2).

<sup>358</sup>Afrexim Bank Model Law on Factoring 2016, art 7.2.

<sup>359</sup>Afrexim Bank Model Law on Factoring 2016, art 20.1.

The foregoing provision is also made in the Factoring Bill.<sup>360</sup> However, as already stated, the Bill also makes a contradictory provision which purports that priority is to be determined by comparing the respective dates of registration of the respective competing assignments of the same receivable.<sup>361</sup> This is in sync with the Model law which also recommends that a system of registering assignments should be put in place in order to determine priority based on date of registration.<sup>362</sup>

## **5.4 Conclusion**

This chapter revealed that the regulatory framework for factoring in Egypt is more robust and precise as compared to Nigeria's regulatory framework, as Egypt's framework provides specific regulations and rules to guide factoring operations. Furthermore, Egypt possesses a specific legal framework for factoring and this creates more legal certainty and ease for factoring operations in Egypt as compared to Nigeria where there is currently no specific factoring legal framework. Nonetheless, this chapter observed that the Nigerian Factoring Bill is well set up to fill the void in Nigeria's factoring legal architecture as soon as it is passed into law, as the Bill provides as much legal certainty for factoring as that provided by Egypt's Factoring Law.

Additionally, this chapter found that the provisions of the Nigerian Factoring Bill are largely modelled on the IFG and Afrexim bank Model Laws for factoring, even though the provisions of the Bill appear to be more similar to the more recent Afrexim bank Model Law as compared to the IFG Model law. Nonetheless, there are still certain material differences between the provisions of the Bill and the provisions of both model laws. In the final analysis, although the Bill adopted very useful international best practices for factoring, there are still some loopholes in the Bill that need to be corrected if the Bill is to provide a robust and facilitative legal framework for factoring in Nigeria upon its enactment. Useful recommendations in this regard will be made in the next chapter.

---

<sup>360</sup>Factoring Bill 2016, sec 21(1).

<sup>361</sup>Factoring Bill 2016, sec 12(3).

<sup>362</sup>Afrexim Bank Model Law on Factoring 2016, annex.

## **CHAPTER SIX**

### **CONCLUSION AND RECOMMENDATIONS**

---

#### **6.1 Introduction**

The level of trade in Nigeria has been dwindling in recent years and this decline is largely attributable to the pervasive inaccessibility of sustainable and immediate trade finance particularly by Nigerian SMEs which principally account for the state of economic activity and enterprise in Nigeria. Factoring has been identified as a veritable tool for providing sustainable and accessible trade financing particularly for SMEs. In spite of this, the awareness, availability and use of factoring as a trade financing product in Nigeria has remained very low. One key reason for the poor state of factoring in Nigeria is the absence of a robust and facilitative legal and regulatory framework for factoring in Nigeria.

In order to address the foregoing legal problem, this study set out to achieve the overarching aim of analyzing the extant and proposed legal and regulatory framework for factoring in Nigeria to assess the extent to which it facilitates and promotes the use of factoring as an alternative trade financing tool in Nigeria. To achieve this principal aim, this study sought to: a.) examine the concept of factoring by exploring its definition, types, mechanics and the modern approaches to regulating it as a financial service globally; b.) explore the role factoring as an alternative trade financing tool in Nigeria; c.) analyse the legal and regulatory framework for factoring in Nigeria; d.) compare the legal and regulatory framework for factoring in Nigeria with best practices on factoring legislation and regulation and extract valuable lessons for strengthening the legal and regulatory framework for factoring in Nigeria and; e.) proffer recommendations towards improving the legal and regulatory framework for factoring in Nigeria to enable and promote the use and provision of factoring services in Nigeria.

To achieve the aims of this study, Chapter Two of this study explored the concept of factoring by examining its definition, types, mechanics and the modern approaches to regulating factoring globally. Chapter Three examined the role of factoring as an alternative trade financing tool in Nigeria. It examined the role of factoring in improving trade finance in Nigeria and the benefits and challenges of using factoring in Nigeria. It also briefly compared factoring with other traditional trade financing tools used in Nigeria to show its relevance as an ‘alternative’ trade financing tool. Building on the conceptual and contextual background provided by the foregoing chapters, Chapter Four proceeded to examine the extant legal and regulatory framework for factoring in Nigeria, as well as Nigeria’s proposed factoring legal framework (the Nigerian

Factoring Bill), to assess the extent to which they facilitate and promote the use and provision of factoring services in Nigeria. Thereafter, Chapter Five undertook a comparative analysis of Nigeria's legal and regulatory framework for factoring with that of Egypt which was identified as representing continental best practice for factoring legislation and regulation in Africa. The Nigerian Factoring Bill was also compared with the provisions of the IFG and Afrexim Bank Model Laws on Factoring in order to examine the extent to which the Bill adopted international best practices for factoring legislation.

This Chapter shall provide a summary of findings made in this study and proffer recommendations towards strengthening the legal and regulatory framework for factoring in Nigeria.

## **6.2 Summary of Findings**

The first substantive chapter of this study, Chapter Two, found that although factoring as a concept is perceived and defined differently, a golden thread that cuts across all definitions is that factoring is a full financial package wherein the factor provides a number of services including financing, credit protection, accounts receivable/ledger management and debt collection. Furthermore, the chapter revealed that factoring services are provided in different variations which may involve different actors and processes. Finally, the chapter revealed that whilst factoring is regulated as a financial service through three different approaches globally, the approach whereby specific laws and regulations are used to regulate factoring is most desirable for promoting its use particularly in emerging economies such as Nigeria.

Chapter Three of this study revealed that factoring has the potential to immensely improve the trade financing landscape in Nigeria by unlocking sustainable and accessible trade financing particularly for SMEs which are the major enterprises and economic actors in Nigeria. It also revealed that the benefits and prospects of using factoring in Nigeria outweigh the perceived challenges. Notably, the chapter found that the absence of a robust and facilitative legal and regulatory framework for factoring in Nigeria is one of the main challenges affecting the use, provision and growth of factoring services in Nigeria. In briefly comparing factoring with other traditional trade financing tools being used in Nigeria, the chapter found that factoring provides a comparatively more innovative, safer, faster and more competitive trade financing alternative.

In Chapter Four, this study revealed that the extant legal and regulatory framework for factoring in Nigeria does not promote and facilitate the use and provision of factoring services. The

chapter's analysis of the current legal and regulatory framework for factoring in Nigeria showed that the absence of a specific law or regulation on factoring in Nigeria creates so much uncertainty, ambiguity and regulatory hurdles in factoring transactions in Nigeria, which ultimately translate into higher transaction costs and risks. This chapter concludes that the foregoing gaps in the extant legal and regulatory framework for factoring in Nigeria has greatly stifled the growth, awareness, provision and use of factoring services to provide trade financing in Nigeria.

Upon an analysis of the proposed legal framework for factoring in Nigeria – the Nigerian Factoring Bill, Chapter Four of this study further found that the certainty and clarity of legal and regulatory requirements and guidelines for factoring provided by the Bill will greatly improve the use and provision of factoring services in Nigeria once it is passed into law. To a large extent, the Bill settles the uncertainties and ambiguities on the legal aspects of factoring that exist in the current Nigerian legal and regulatory framework for factoring. Nonetheless, certain provisions of the Bill are marred by relatively minor omissions, inconsistencies, contradictions and ambiguities which can be cured by minimal amendments. These amendments will be proposed as part of the recommendations of this study.

From the comparative analysis undertaken in Chapter Five of this study, this study finds that the existence of a specific legal and regulatory framework for factoring in Egypt provides a robust, precise and facilitative legal and regulatory environment encouraging the use of factoring services to thrive. In comparing Nigeria's extant legal and regulatory framework for factoring with Egypt's, this study revealed that Egypt's regulatory framework for factoring provides tailor-made regulations and rules to suitably guide factoring operations in Egypt as compared to the non-specific regulatory framework used to regulate factoring in Nigeria. Furthermore, Egypt's recent factoring legislation, Law No. 176 of 2018, creates more legal certainty and ease for factoring operations in Egypt as compared to the legal uncertainty created by the current absence of a specific factoring legislation in Nigeria. However, further analysis showed that, when passed into law, the Nigerian Factoring Bill will provide as much legal certainty for factoring in Nigeria as that provided by Egypt's factoring legislation.

Chapter Five of this study also found that to a commendable extent, the Nigerian Factoring Bill adopted very useful international best practices for factoring legislation. It found that the Bill is largely modelled on the IFG and Afrexim bank Model Laws for factoring. However, the Bill shares more similarities with the more recent Afrexim Model Law than the IFG Law.

Nevertheless, as identified above, there are still certain loopholes in the Bill that need to be addressed to ensure that the Bill provides a robust and facilitative legal framework for factoring in Nigeria upon its enactment.

### **6.3 Recommendations**

In view of the above findings, this study makes the following recommendations towards strengthening the legal and regulatory framework for factoring in Nigeria to promote and facilitate the use and provision of factoring services to boost trade financing availability, accessibility and sustainability in Nigeria.

#### **6.3.1 Recommendation One – Expedite enactment of the Nigerian Factoring Bill into law**

As found in this study, the absence of a specific law for factoring in Nigeria has greatly hindered the growth, acceptance and use of factoring in Nigeria. It is therefore recommended that the Nigerian Government should promptly pass the Nigerian Factoring Bill 2016 into law to provide a certain, clear, robust and facilitative legal framework to guide the use and provision of factoring services to unlock accessible and sustainable trade financing in Nigeria. The existence of a specific legal framework for factoring creates certainty, lower transaction costs and appropriate conduct of business in factoring transactions. The existence of a specific factoring law also provides strong legitimacy for the product which reassures both prospective users and providers of the service.<sup>363</sup> Lessons from Egypt show that, particularly in emerging economies such as Nigeria, the emergence of a specific legal framework for factoring remarkably improves the growth, use and provision of factoring services. Enacting a specific law on factoring will immensely enable the growth of the factoring industry in Nigeria and enhance the awareness and availability of factoring as a trade financing tool.

#### **6.3.2 Recommendation Two – Proposed amendments to the Nigerian Factoring Bill**

Although the Nigerian Factoring Bill presents immense prospects for providing a facilitative, certain and enabling legal framework for factoring in Nigeria, this study has revealed that there are certain loopholes in the provisions of the Bill which ought to be corrected in order to ensure that the Bill achieves its set purpose. Thus, it is recommended that the following amendments be made to the Bill either before it is passed into law or so soon thereafter:

---

<sup>363</sup>Klapper (n 23) 10.

- a.) The definition of factoring in the Bill should be amended to include credit protection as one of the services a factor can provide in Nigeria. As found in this study, credit protection is an essential service provided by factors usually in the maturity and non-recourse types of factoring. It provides clients with a guarantee against any assigned bad debts which is a service many Nigerian businesses, particularly Nigerian SMEs, would find very useful. It is in recognition of its importance that credit protection is listed in both the IFG and Afrexim Bank Model Laws as a service which a factor may provide.
- b.) It is important to correct the contradictory provisions of the Bill on determining priority where the same receivable has been assigned to different factors. In one provision, the Bill states that where there are no applicable general rules of law, the first assignee to give notice of the assignment to the debtor will take priority.<sup>364</sup> However, in another provision the Bill states that the date of registration of the assigned receivable shall be the determining criteria in ascertaining priority over the interest accruable to any factor over the receivable.<sup>365</sup> It is recommended that the foregoing inconsistency be resolved with the Bill providing that priority over competing assignments of the same receivable be determined solely by the date of registration of the assignments. The assignment which was registered first in time will take priority over subsequent ones. This is a more measured and certain mechanism for determining priority and is in accordance with the recommendations of both the IFG and the Afrexim Bank Model Laws.<sup>366</sup>
- c.) The Bill should be amended to expressly identify or establish the registry where assignments of receivables are to be registered. The Bill only provides that assignments are to be registered<sup>367</sup>, but fails to identify or establish a specific registry for that purpose. As noted above, a central registry for assignments will be vital in developing an adept mechanism for determining priority in assignments. It will also create an important comprehensive platform for factors to conduct due diligence on offered receivables before taking assignment of them.
- d.) The Bill should be amended to mandatorily require that notice of the assignment of receivables should be issued to the debtor. The language used in the current provisions of

---

<sup>364</sup>Factoring Bill 2016, sec 21(1).

<sup>365</sup>Factoring Bill 2016, sec 12(3).

<sup>366</sup>IFG Model Law on Factoring 2014, annex; Afrexim Bank Model Law on Factoring 2016, annex.

<sup>367</sup> Factoring Bill 2016, sec 12(2)&(3).



the Bill appears to create only a discretionary requirement to give notice of assignment rather than a mandatory one.<sup>368</sup> This might create room for fraudulent double assignments. It is important that the Bill makes mandatory provisions requiring that, save in cases of invoice or non-disclosed factoring, either the factor or the client is to notify the debtor of an assignment either before the assignment or within a specified reasonable time after the assignment.

- e.) Finally, this study observed that the Bill failed to make any provisions on electronic assignments of receivables.<sup>369</sup> This is undesirable considering that, in modern day, just like every other financial service, factoring services are being provided electronically all over the world including in Nigeria. Through electronic factoring, businesses can unlock trade financing faster and easier by as little as a click of a button. Very recently, Getcapsa, Nigeria's first online invoice factoring platform, provided over 300 million Naira in financing to SMEs in just 30 days through online trading and assignment of invoices.<sup>370</sup> Furthermore, the immense digital wave in the provision of services globally that has followed the Covid-19 pandemic will also have an impact on the factoring industry.<sup>371</sup> The use of technology to enrich and enhance factoring services has become an industry consensus,<sup>372</sup> and as such, all legal frameworks for factoring ought to make provisions to regulate and guide online or electronic provision of factoring services.

It is recommended that Nigeria takes advantage of the fact that it is in the process of developing its specific legal framework for factoring to ensure that same captures relevant legal provisions regulating electronic factoring as it is the present and future of factoring services globally.

---

<sup>368</sup> Factoring Bill 2016, sec 12(1).

<sup>369</sup> See chapter 4 of the study.

<sup>370</sup> I Okeke 'Nigeria's first digital invoice factoring platform processes N300m payment in 30 days' *BusinessDay* 27 August 2021 <https://businessday.ng/news/article/nigerias-first-digital-invoice-factoring-platform-processes-n300m-payment-in-30-days/>(accessed 16 September 2021).

<sup>371</sup> Factoring Chain International '2021 FCI annual review' 2021 <https://www.smefinanceforum.org/post/2020-fci-annual-review>>(accessed 16 September 2021).

<sup>372</sup> As above.

### **6.3.3 Recommendation Three – The development of specific and facilitative regulations for factoring in Nigeria**

It is also recommended that the Nigerian Government, through the agency of the Central Bank of Nigeria, develops and provides specific and facilitative regulations and guidelines for the provision and conduct of factoring services in Nigeria. As learnt from the position of factoring regulation in Egypt, a specific and enabling regulatory framework for factoring facilitates and promotes the provision of factoring services. As earlier mentioned, the availability of factoring services in Nigeria is significantly low considering that as at October 31, 2020, there were only two licensed factors in Nigeria.<sup>373</sup> This low number of factoring service providers in Nigeria is largely attributable to the lack of regulatory incentives for prospective factoring service providers, and this is very much as a result of the absence of specific, suitable and facilitative regulations for factoring in Nigeria. Considering the vast commercial opportunities for factoring in Nigeria, there is no doubt that many entities will be more willing to obtain licenses to provide factoring services where specific, eased and custom-made regulations are put in place for factoring services in Nigeria.

### **6.4 Conclusion**

Trade is an important catalyst for economic growth and development in any country. Nigeria is Africa's largest economy and yet it continues to account for poor levels of trade year after year. The increasing wide trade financing gap in Nigeria is a major reason for the dwindling state of trade in Nigeria. To further exacerbate the situation, SMEs which form the backbone and major source of economic activity in Nigeria are the actors chiefly affected by the high unavailability of trade finance in Nigeria. It has therefore become more important than ever to promote, ease and facilitate the use of factoring as an innovative, safe, simple, resilient and SME-friendly trade finance tool, to improve the availability and accessibility of trade financing in Nigeria and to ultimately improve the state of trade in Nigeria. However, to do this, a robust and facilitative legal and regulatory framework for factoring must be put in place in Nigeria.

The current absence of a specific legal and regulatory framework for factoring in Nigeria has greatly blighted the use, availability, provision, acceptance and awareness of factoring as a trade financing tool in Nigeria. The legal uncertainty, high transaction costs and perceived illegitimacy currently associated with factoring in Nigeria is principally as a result of the poor state of

---

<sup>373</sup>Central Bank of Nigeria (n 31).

Nigeria's extant legal and regulatory framework for factoring. However, the Nigerian Factoring Bill can be a game-changer for factoring in Nigeria as it bears huge prospects of improving the use, provision and regulation of factoring services in Nigeria. Thus, if Nigeria is to begin to enjoy the immense trade financing benefits and the consequent boost in international and domestic trade that come with the improved use of factoring, it must promptly pass the Nigerian Factoring Bill into law to provide a robust and facilitative legal environment for factoring to thrive. Furthermore, the loopholes in the Bill must be properly addressed and the provisions of the Bill must be tailored to address the peculiar legal challenges affecting factoring in Nigeria whilst drawing from modern international best practices. Additionally, specific regulations for factoring which create ease and availability of factoring services must also be put in place by the Nigerian financial services regulator – the CBN.

Increased trade has the potential to significantly improve the Nigerian economic landscape and ultimately the quality of life of Nigerians. However, this can only be achieved by the availability of accessible and sustainable trade finance through dynamic trade financing tools like factoring. Thus, to provide a robust and facilitative legal and regulatory framework for factoring in Nigeria is to greatly improve the accessibility and sustainability of trade financing, which will in turn improve the levels of trade in Nigeria. No doubt this will be a giant leap towards achieving sustainable development in Nigeria, and provide the average Nigerian, and by extension the average African, with the opportunity of a flourishing present and the hope of a brighter future.

## **Bibliography**

### **TREATY**

UNIDROIT Convention on International Factoring 1988.

### **LEGISLATION**

African Export-Import Bank Model Law on Factoring 2016.

Banking and Other Financial Institutions Act of 2020.

Central Bank of Nigeria Revised Guidelines for Finance Companies in Nigeria 2014.

Companies and Allied Matters Act 2020.

Constitution of the Federal Republic of Nigeria 1999(as amended).

Egypt's Law No. 176 of 2018.

Egypt's Law No. 95 of 1995.

International Factoring Group Model Law on Factoring 2014.

Judicature Act 1873.

Law of Property Act 1925.

Secured Transactions in Movable Assets Act 2017.

### **CASE LAW**

*Alexander v Stenhardtwerker & Co.* (1903) 2 KB 208.

*Julius Berger Nigeria Plc & Anor v Toki Rainbow Community Bank Ltd* (2009) LPELR-4381.

*Pfeiffer Weinkellerei-Weineinkauf GmbH & Co. v Arbuthnot Factors Ltd.* (1987) BCLC 522.

*Rebold Industries Ltd. v Magreola & Others* (2015) LPELR-24612(SC).

### **BOOKS**

Sagay, I *Nigerian law of contract* 2<sup>nd</sup> ed (Spectrum 2000).

Salinger, F *Factoring Law and Practice* (London: Sweet & Maxwell 1991).

### **JOURNAL ARTICLES**

Achor, A 'Methods of international trade and payments: The Nigerian perspective' (2015) 3 *Global Journal of Politics and Law Research* 21.

Alayemi, S; Oyeleye, O and Adeoye, E 'Factoring as Finance Alternative: Reasons for Non-Patronage in Nigeria' (2015) 1 *American Journal of Economics, Finance and Management* 504.

Awani, K 'Factoring: An Alternative SME Financing Instrument for Intra-African Trade Promotion' (2020) 6 *Contemporary Issues in African Trade and Trade Finance* 78.

Bigsten, A 'Credit Constraints in Manufacturing Enterprises in Africa' (2003) 12 *Journal of African Economies* 104.

Hillyer, W H 'Four Centuries of Factoring' (1939) 53 *The Quarterly Journal of Economics* 305.

Hoti, U 'Factoring: A Financial Instrument' (2014) 2 *Interdisciplinary Journal of Research and Development* 22.

Ivanovic, S, Baresa, S and Bogdan, S 'Factoring: Alternative Model of Financing' 2 *UTMS Journal of Economics* 196.

Kameni, E 'An Insight into Recent Legal and Regulatory Reforms of Factoring in Africa' (2014) 1 *Contemporary Issues in African Trade and Trade Finance* 27.

Kara, H 'Factoring: to regulate or not to regulate?' (2017) *World Factoring Yearbook* 4 [www.ebglaw.com/content/uploads/2019/07/Tatge-World-Factoring-Yearboo-2017-eBook.pdf](http://www.ebglaw.com/content/uploads/2019/07/Tatge-World-Factoring-Yearboo-2017-eBook.pdf)> (accessed 13 August 2021).

Kirby, J 'Assignments and transfer of contractual duties: Integrating theory and practice' (2000) 31 *Victoria University of Wellington Law Review* 317.

Onuoha, A 'Novation of contracts: Examining the effects in modern information and communication technology agreements' (2021) 9 *Global Journal of Politics and Law Research* 34.

Oramah, B 'From the Periphery to the Center – Africa as the Growth Market for Factoring' (2014) 1 *Contemporary Issues in African Trade and Trade Finance* 5.

Oramah, B and Dzene, R 'Evolution of Factoring in Egypt and implications for Factoring Development in Africa' (2014) 1 *Contemporary Issues in African Trade and Trade Finance* 17.

Spasic, I 'Factoring - Instrument of financing in business practice: Some important legal aspects' (2012) 25 *Economic Research* 191.

Vaddepalli, S 'Factoring: An alternate payment method in international trade' (2014) 1 *International Journal of Business Quantitative Economics and Applied Business Research* 49.

Verdier, P and Verst, M ‘International law in national legal systems: An empirical investigation’ (2015) 109 *The American Journal of International Law* 514.

Wehberg, H ‘Pacta sunt servanda’ (1959) 53 *The American Journal of International Law* 775.

### **NEWSPAPER ARTICLES**

Okeke, I ‘Nigeria’s first digital invoice factoring platform processes N300m payment in 30 days’ *BusinessDay* 27 August 2021 <https://businessday.ng/news/article/nigerias-first-digital-invoice-factoring-platform-processes-n300m-payment-in-30-days/> (accessed 16 September 2021).

Westlake, M ‘Factoring’ *Financial Times Management* 21 June 1975 at 12.

### **REPORTS AND/OR PAPERS**

African Development Bank (2020) ‘Trade Finance in Africa: Emerging Trends and Opportunities’ <https://www.afdb.org/en/documents/trade-finance-africa-trends-over-past-decade-and-opportunities-ahead> (accessed 25 May 2021).

African Export-Import Bank and African Development Bank ‘Trade Finance in Africa: Trends over the past Decade and Opportunities Ahead’ 2020 [https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.mfw4a.org/sites/default/files/resources/trade\\_finance\\_report\\_sept2020.pdf&ved=2ahUKEwjNxeOs5OXwAhWJgf0HH\\_T4rBH8QFjAJegQIBhAB&usg=AOvVaw1foFMfPEq2YNgByx\\_dL3Z5](https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.mfw4a.org/sites/default/files/resources/trade_finance_report_sept2020.pdf&ved=2ahUKEwjNxeOs5OXwAhWJgf0HH_T4rBH8QFjAJegQIBhAB&usg=AOvVaw1foFMfPEq2YNgByx_dL3Z5) (accessed 25 May 2021).

African Union ‘Impact of the corona virus (covid-19) on the African economy’ <https://www.tralac.org/documents/resources/covid-19/3218-impact-of-the-coronavirus-covid-19-on-the-african-economy-african-union-report-april-2020/file.html> (accessed 25 May 2021).

Bangladesh Bank Core Committee on Factoring ‘Guidelines on international factoring’ 2017 <https://www.bb.org.bd/aboutus/regulationguideline/draftguide.php> (accessed 11 August 2021).

Center for Trade and Business Environment Advisory ‘Position Paper on Factoring Assignments (Establishment, Etc) Bill, 2019’ <https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://centre-tba.org/wp-content/uploads/2021/03/POSITION-PAPER-ON->

[FACTORING.pdf&ved=2ahUKEwiGjvrxfHwAhX3VRUIHd0dCb84ChAWMA16BAgAEAE&usg=AOvVaw1Vkhwj7YRjt5zB8OKA2aph](#) (accessed on 30 May 2021).

Central Bank of Nigeria ‘List of Licensed Financial Institutions in Nigeria’ 2020  
<https://www.cbn.gov.ng/Out/2020/FPRD/FC%20OCT%202020.pdf> (accessed 29 May 2021).

Common Market for Southern and Eastern Africa ‘The Role of Trade Finance in promoting Trade: The implications of Covid-19 on Trade Finance in Africa’ 2020  
<https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.comesa.int/wp-content/uploads/2020/07/The-Role-of-Trade-Finance-in-Promoting-Trade-and-the-Implications-of-Covid-192.pdf&ved=2ahUKEwiiqyOmx1PPwAhVRuXEKHR25AhsQFjAAegQIAxAB&usg=AOvVaw0yw3RdQMoc-WSHjCJmDA3-> (accessed 25 May 2021).

EU Federation ‘Factoring and commercial finance: An introduction’  
<https://euf.eu.com/category/4-brochures.html?download=375#:~:text=Factoring%20and%20Commercial%20Finance%20is,period%20the%20invoice%20is%20financed>> (accessed on 11 August 2021).

European Bank for Reconstruction and Development ‘Factoring survey in EBRD countries of operation’ September 2018  
<https://www.ebrd.com/documents/ogc/factoring-survey.pdf>> (accessed 9 September 2021).

Factoring Chain International ‘2021 FCI annual review’ 2021  
<https://www.smefinanceforum.org/post/2020-fci-annual-review>> (accessed 16 September 2021).

Factoring Chain International ‘Factoring Chain International Annual Review 2020’ 2020  
<https://fci.nl/en/media/26962/download> (accessed 25 May 2021).

Kim, K and Others ‘2019 Trade Finance Gaps, Growth, and Jobs Survey’ 2019  
<https://www.adb.org/publications/2019-trade-finance-gaps-jobs-survey> (accessed 25 May 2021).

National Bureau of Statistics ‘National Survey of Micro, Small and Medium Enterprises, 2017’ 2017  
<https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.nigerianstat.gov.ng/download/967&ved=2ahUKEwihcT27eXwAhVyh0HHQ7yB1MQFjABegQIBhAB&usg=AOvVaw2tonSqxM8WR6yV9elnBwg1> (accessed 25 May 2021)

National Bureau of Statistics ‘Nigerian GDP Report, 2020’ 2020  
[https://nigerianstat.gov.ng/elibrary?queries\[search\]=trade](https://nigerianstat.gov.ng/elibrary?queries[search]=trade) (accessed 25 May 2021).

World Bank ‘Policy note on SMEs access to finance in Tunisia’ 2009  
<https://openknowledge.worldbank.org/handle/10986/12951>> (accessed 11 August 2021).

World Bank ‘Strengthening Africa’s capacity to trade’  
[https://www.wto.org/english/res\\_e/booksp\\_e/strengthening\\_africas\\_capacity\\_to\\_trade\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/strengthening_africas_capacity_to_trade_e.pdf)  
(accessed 25 May 2021).

World Bank ‘Stronger open trade policies enable economic growth for all’  
<https://www.worldbank.org/en/results/2018/04/03/stronger-open-trade-policies-enables-economic-growth-for-all> (accessed 25 May 2021).

World Bank ‘World Bank Databank (Trade % of GDP)’  
[https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?name\\_desc=true](https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?name_desc=true) (accessed 25 May 2021).

World Bank ‘World Bank in Africa Overview’ 2021  
<https://www.worldbank.org/en/region/afr/overview> (accessed 25 May 2021).

## **ONLINE ARTICLES**

Abraye, E ‘Creating new opportunities for Nigerian businesses through factoring’ 2020  
<https://www.mondaq.com/nigeria/corporate-and-company-law/928460/creating-new-opportunities-for-nigerian-businesses-through-factoring>> (accessed 25 August 2021).

Akintunde, J ‘Factoring could be a Game Changer for Nigerian SMEs and Trade’ 2020  
<http://www.financialnigeria.com/factoring-can-be-a-game-changer-for-nigerian-smes-and-trade-feature-317.html> (accessed 25 May 2021).

Alarcon, R B ‘International Factoring and Development: The Impact of the Factoring Model Law 2014’ (2014) <https://fci.nl/about-factoring/international-factoring-rosana-bastos-sep2014.pdf>> (accessed on 11 August 2021).

Andersen Legal Team ‘Legal Alert 112: Updates in financial leasing laws’ 2020  
<https://eg.andersen.com/legal-alert-112/>> (accessed 9 September 2021).



Bărbuță-Mișu, N 'Factoring – alternative of short-term financing for companies' 2014 [https://www.researchgate.net/publication/320269640 Factoring - alternative of short-term financing for companies](https://www.researchgate.net/publication/320269640_Factoring_-_alternative_of_short-term_financing_for_companies)> (accessed 14 August 2021).

Brink, U 'Factoring laws and their impact on factoring and the receivable finance industry' 2019 [https://fci.nl/en/news/Factoring%20Laws%20and%20their%20Impact%20on%20Factoring%20%20Receivables%20Finance%20Industry?language\\_content\\_entity=en](https://fci.nl/en/news/Factoring%20Laws%20and%20their%20Impact%20on%20Factoring%20%20Receivables%20Finance%20Industry?language_content_entity=en)> (accessed on 25 August 2021).

First Bank of Nigeria Ltd. 'Payments systems in Nigerian international trade: An Overview' 2012 [https://web2.customs.gov.ng/wp-content/uploads/2019/07/First\\_Bank\\_PAPER.pdf](https://web2.customs.gov.ng/wp-content/uploads/2019/07/First_Bank_PAPER.pdf)> (accessed 16 August 2021).

Karim, D and Zahid, J 'Factoring as an Alternative Mode of International Trade Finance' 2019 [https://papers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID3536156\\_code3986725.pdf?abstractid=3536156&mirid=1](https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3536156_code3986725.pdf?abstractid=3536156&mirid=1)> (accessed on 11 August 2021).

Nigerian Export-Import Bank 'NEXIM Bank calls for Speedy Passage of Factoring Bill' 2020 <https://neximbank.com.ng/nexim-bank-calls-for-speedy-passage-of-factoring-bill/> (accessed 29 May 2021).

PricewaterhouseCoopers Ltd. 'Factoring the Gap: Improving Access to Working Capital for MSMEs' 2020 [https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.pwc.com/ng/en/assets/pdf/factoring-the-gap.pdf&ved=2ahUKewjpm6rq8O\\_wAhX6QEEAHUIZDHgQFjAAegQIARAB&usg=AOvVaw3f8nC0H4Pw53OWeNjbDxpE](https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.pwc.com/ng/en/assets/pdf/factoring-the-gap.pdf&ved=2ahUKewjpm6rq8O_wAhX6QEEAHUIZDHgQFjAAegQIARAB&usg=AOvVaw3f8nC0H4Pw53OWeNjbDxpE) (accessed 29 May 2021).

Tatge, D 'Legal aspects of factoring' 2014 <file:///C:/Users/ME/Documents/1-LEGAL-ASPECTS-OF-FACTORING-Lagos-June-4-2014-2.pdf>> (accessed 25 August 2021).

The African Capacity Building Foundation 'Factoring in Africa to Support trade development: challenges and opportunities for growth through capacity development' 2021 <https://www.africaportal.org/publications/factoring-africa-support-trade-development-challenges-and-opportunities-growth-through-capacity-development/>> (accessed 12 August 2021).

Uyanik, R ‘Factoring’s protection against bad debts versus credit insurance’ 2019 <https://www.linkedin.com/pulse/factorings-protection-against-bad-debts-vs-credit-insurance-uyanik/>> (accessed 25 August 2021).

Wilde, E ‘Regulatory and legal aspects of factoring’ 2014 <https://s3-eu-west-1.amazonaws.com/demo2.opus.ec/afrexim/Regulatory-and-Legal-Aspect-of-Factoring.pdf>> (accessed 25 August 2021).

Youssery Saleh & Partners ‘Egypt’s new financial leasing law’ 2019 <https://www.mondaq.com/leasing/855804/egypt39s-new-financial-leasing-law>> (accessed 9 September 2021).

### **WORKING PAPERS**

Klapper, L ‘The Role of Factoring for Financing Small and Medium Enterprises’ (2005) *World Bank Policy Research Working Paper* 3593.

World Bank ‘Covid-19 and the future of work in Africa: Emerging trends in digital technology adoption’ (2020) 23 *Africa’s Pulse* <https://openknowledge.worldbank.org/bitstream/handle/10986/35342/9781464817144.pdf?sequence=10&isAllowed=y> (accessed 25 May 2021).

### **THESES**

Hamayanti, M ‘Factoring as an international trade finance product: Making a case for the enactment of a factoring act in Zambia’ LLM Thesis, University of Pretoria, 2017 <https://repository.up.ac.za/handle/2263/64646>> (accessed on 11 August 2021).

Saari, D ‘Challenges faced by SMEs when accessing loans from financial institutions in Nigeria’ BBA thesis, Helsinki Metropolia University of Applied Sciences, 2020 [https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://core.ac.uk/download/pdf/323463079.pdf&ved=2ahUKEwjZ5JOkivHwAhVCrHEKHZP6B-YQFnoECAQQAg&usg=AOvVaw1Y2kSPdZIk\\_8hbfstykh91](https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://core.ac.uk/download/pdf/323463079.pdf&ved=2ahUKEwjZ5JOkivHwAhVCrHEKHZP6B-YQFnoECAQQAg&usg=AOvVaw1Y2kSPdZIk_8hbfstykh91) (accessed 25 May 2021)

Tomusange, R ‘Factoring as a financing alternative for African Small and Medium Enterprises’ PhD Thesis, Walden University, 2020 <https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://scholarworks.waldenu.edu/cg>

[i/viewcontent.cgi%3Farticle%3D2577%26context%3Ddissertations&ved=2ahUKEwiZx-jH7vHwAhUtQxUIHennBxQQFjABegQIBxAB&usg=AOvVaw2q3xKZAhZZmibBY0O4E1do](https://www.garantibbvafactoring.com/files/pdf/IFG_GRIF.pdf)  
(accessed on 30 May 2021).

## **WEBSITES**

International Factors Group ‘General rules for international factoring’  
[https://www.garantibbvafactoring.com/files/pdf/IFG\\_GRIF.pdf](https://www.garantibbvafactoring.com/files/pdf/IFG_GRIF.pdf)> (accessed 11 August 2021).

International Finance Corporation ‘Supply chain finance knowledge guide’ 2014  
<https://www.ifc.org/wps/wcm/connect/> (accessed 12 August 2021).

International Trade Administration ‘Methods of payment: Letters of credit’  
<https://www.trade.gov/letter-credit>> (accessed 16 August 2021).

International Trade Administration ‘Methods of payment’ <https://www.trade.gov/methods-payment>> (accessed 16 August 2021).

Status of UNIDROIT Convention on International Factoring <https://www.unidroit.org/status-1988-factoring>> (accessed 21 August 2021).

UNIDROIT Convention on international factoring explanatory note  
<https://www.unidroit.org/explanatory-report-factoring-1988>> (accessed 21 August 2021).