

Factoring Companies

Approved by Decree-Law no. 171/95, of July 18. This
decree came into force after its *vacatio legis*.

This version, when it was made, took into account the repeal, in the meantime, approved by Decree-Law no.
186/2002, of August 21st.

The amendments subsequently approved are included in the articles
themselves.

Last amendment: Decree-Law no. 100/2015, of June 2.

Automatically generated on 15-Nov-2024 for 02-Jun-2015 from LegiX.
This does not dispense with consulting the Official Gazette.

Contents

DL 171/95	3
-----------------	---

Factoring companies

DL 171/95

The General Regime for Credit Institutions and Financial Companies, approved by Decree Law no. 298/92, of December 31, includes factoring companies among credit institutions.

As such, these companies automatically fall within the scope of the rules governing credit institutions, which regulate essential aspects such as the way they are set up, the rules governing their management and supervision and the supervision to which they are subject by the Bank of Portugal.

All these rules are therefore dispensable in the statute on factoring companies, which alone justifies amending the regime contained in Decree-Law no. 56/86, of March 18.

On the other hand, the reform now being carried out makes changes recommended by the experience gained during the validity of the aforementioned law, which result in clarification and deregulation of the factoring contract regime.

However, the requirement for factoring contracts to be in writing is maintained, as it is considered necessary for the security of the parties, given the complexity of the contractual relationships established.

The Bank of Portugal and the Portuguese Association of Factoring Companies were consulted. Thus: Under the terms of paragraph a) of no. 1 of article 201.º of the Constitution, the Government decrees the following:

Article 1º

Scope

This law regulates factoring companies and factoring contracts.

Article 2º

Factoring activity

1 - The activity of factoring or financial assignment consists of the acquisition of short-term credits, derived from the sale of products or the provision of services, in the domestic and foreign markets.

2 - Factoring activities include complementary collaboration between entities authorized to carry out factoring activities under the terms of the General Regime for Credit Institutions and Financial Companies, approved by Decree-Law no. 298/92, of December 31, and their clients, namely the study of credit risks and legal, commercial and accounting support for the proper management of the credits transacted.

(The wording of no. 2 was given by Decree-Law no. 157/2014, of October 24, which came into force 30 days after its publication).

Article 3º

Other notions

For the purposes of this law, the following are referred to as:

- a) "Factor" or "assignee" means entities authorized to carry out factoring activities under the terms of the General Regime for Credit Institutions and Financial Companies, approved by Decree-Law no. 298/92, of December 31st;
- b) "Adherent" means the party to the factoring contract who assigns credits to the factor;
- c) "Debtors" means the third party debtors of the credits assigned by the member to the factor.

(The wording of al. a) was given by Decree-Law no. 157/2014, of October 24, which came into force 30 days after its publication).

Article 4º

Form and truth of the firm

1 - (Revoked)

(Text revoked by Decree-Law no. 186/2002, of August 21.)

1 - Factoring companies take the form of a public limited company.

(Edited by Decree-Law no. 100/2015, of June 2.)

2 - The designations "factoring company", "financial assignment company" or any others that suggest this activity may only be used by entities authorized to carry out factoring activities under the terms of the General Regime for Credit Institutions and Financial Companies. (Renumbered by Decree-Law n. 100/2015, of June 2, corresponding to the previous n. 2.) (The wording of the heading was given by Decree-Law n. 100/2015, of June 2.)

Article 5.º

Resources

1 - Factoring companies may only finance their activity with their own funds and through the following resources:

(Edited by Decree-Law no.º 100/2015, of June 2.)

- a) Issuance of bonds of any kind, under the conditions laid down by law, in an amount not exceeding four times its equity, considering the sum of the subscription price of all bonds issued and not redeemed, as well as the issuance of commercial paper;

(Edited by Decree-Law no.º 100/2015, of June 2.)

- b) Financing granted by credit institutions, particularly within the framework of the interbank market, if the regulations applicable to this market do not prohibit it, as well as by international financial institutions;

(Redaction given by Decree-Law no.º 157/2014, of October 24, which came into force 30 days after its publication).

c) Financing provided for in paragraphs a) and d) of no.º 2 of article 9.º of the General Regime for Credit Institutions and Financial Companies, approved by Decree-Law no.º 298/92, of December 31.

2 - For the purposes of point a) of the previous paragraph, equity means the sum of paid-up capital, less own shares, reserves, retained earnings and adjustments to financial assets.

(Edited by Decree-Law no.º 100/2015, of June 2.)

Article 6º

Foreign exchange transactions

Factoring companies may carry out the foreign necessary exchange transactions for the exercise of their activity.

Article 7º

Factoring agreement

1 - The factoring contract shall always be in writing and shall include all of the factor's relations with the respective member.

2 - The transfer of credits under factoring contracts must be accompanied by the corresponding invoices or equivalent documentary support, namely computerized, or foreign exchange documents.

Article 8º

Payment of transferred credits

1 - Payment to the member of the credits transmitted by the latter to the factor shall be made on the dates on which they fall due or on the date of an assumed average maturity that is contractually stipulated.

2 - The factor may also pay all or part of the assigned credits in advance of their average or actual maturities or make it possible, by providing a guarantee or other suitable means, for them to be paid in advance through another credit institution.

3 - Advance payments of claims made under the terms of the previous paragraph may not exceed the member's credit position on the date the payment is made.

Article 9º

Subsidiary right

The General Regime for Credit Institutions and Financial Companies and complementary legislation shall apply to factoring companies in all matters not provided for in this statute.

Article 10º

Repealing rule

Decree-Law no. 56/86, of March 18, is repealed.

Seen and approved by the Council of Ministers on June 8, 1995. - Aníbal António Cavaco Silva - Eduardo de Almeida Catroga.

Promulgated on June 21, 1995.

Publish.

The President of the Republic, MARIO SOARES.

Referendum held on June 24, 1995.

The Prime Minister, Aníbal António Cavaco Silva.