

Federal Decree- Law No. (16) Of 2021
On Factoring And Transfer Of Receivables

We Khalifa bin Zayed Al Nahyan

President of the United Arab Emirates,

- Having Reviewed The Constitution;
- Federal Law No. (1) of 1972 Concerning the Competences of Ministries and the Powers of Ministers, as amended;
- Federal Law No. (3) of 1983 Concerning the Federal Judicial Authority, as amended;
- Federal Law No. (5) of 1985 Promulgating the Civil Code, as amended;
- Federal Law No. (11) of 1992 Promulgating the Civil Procedure Code, as amended;
- Federal Law No. (10) of 1993 Promulgating the Law of Evidence in Civil and Commercial Matters, as amended;
- Federal Law No. (18) of 1993 Concerning the Commercial Code, as amended;
- Federal Law No. (4) of 2000 Concerning the Emirates Securities and Commodities Authority and Market, as amended;
- Federal Law No. (8) of 2004 Concerning the Financial Free Zones;
- Federal Law No. (1) of 2006 Concerning the Electronic Transactions and Commerce, as amended;
- Federal Law No. (2) of 2015 on Commercial Companies, as amended;
- Federal Decree Law No. (9) of 2016 on Bankruptcy, as amended;
- Federal Law No. (7) of 2017 Concerning Tax Procedures, as amended;
- Federal Decree Law No. (10) of 2018 on Netting;
- Federal Decree Law No. (14) of 2018 Concerning the Central Bank and Regulation of Financial Institutions and Activities, as amended;
- Federal Decree Law No. (19) of 2019 on Insolvency;

- Federal Law No. (4) of 2020 on Securing Interest with Movable Property; and
- Based on the proposal of the Minister of Finance and the approval of the Cabinet,

Hereby decrees as follows:

Chapter I

Definitions and Applicability

Article (1)

Definitions

For the purpose of applying the provisions of this Decree Law, the following words and expressions shall denote the meanings assigned thereto respectively, unless the context requires otherwise:

The State: : The United Arab Emirates.

The Ministry : The Ministry of Finance.

The Minister : The Minister of Finance.

The Person : The Natural or Legal Person.

Factoring : A transaction whereby the Transferor transfers the current and / or future receivables to the Transferee, or an agreement between the parties that the Transferor shall retain the entries relating to and collect the receivable transferred and to afford protection to the Transferee in case the Receivable's Debtor defaults on payment.

Transfer : An agreement whereby the Transferor transfers to the Transferee its contractual rights for collecting a monetary amount owed by the Receivable's Debtor. The transfer involves an agreement to create a security interest over the receivable, to transfer as a collateral and irrevocably sell the same.

Transferor : The person who transfers the receivable to the Transferee.

Transferee : The person to whom the receivable is transferred.

	Includes:
Competing Claimant	: 1. The other Transferee to whom the Transferor transfers the same receivable, including the person who claims a legally prescribed right to the receivable transferred on the grounds of a right over the other property of the Transferor. 2. The Transferor's creditor. 3. Bankruptcy Trustee.
Receivable	: A contractual right to satisfy sums of money owed to the Transferor by the Receivable's Debtor.
Receivable's Debtor	: The person indebted with the receivable transferred.
Current Receivable	: The receivable that comes into existence before the transfer agreement is concluded or when the same is being concluded.
Future Receivable	: The receivable that comes into existence after the transfer agreement is concluded.
Notice of Transfer	: A written notice whereby the Transferor defines both the receivable transferred and the Transferor.
Original Contract	: The contract entered into by the Transferor and Receivable's Debtor and whereby the receivable is created.
Proceeds	: Each and every amount received from the receivable transferred, whether completely or partially, including all sums picked up as revenue, and not including the goods returned.
Registration	: The entry recorded on the Register and indicating the transfer of a receivable or any amendment or revocation of such registration according to the provisions of the above-cited Federal Law No. (4) of 2020.
Register	: The electronic register designated for the registration of rights over the movable property.

Ancillary rights	: Any personal or in-rem rights that secure payment of the receivable transferred, including the security interest over the goods, collaterals and credit insurance.
In writing	: The information created, transmitted, received or stored in a written form or by electronic means, including modern means of communication.

Article (2)

Applicability

1. The provisions of this Decree Law shall apply to any transaction carried out in the context of commercial or civil transactions, even if through a regulated financial market, and whether involving the right to recourse against the Transferor or not.
2. The provisions of this Decree Law shall not apply to the transfer of receivables that arise out of the following situations:
 - a. The transactions carried out by any person for his personal, family or household purposes;
 - b. The financial contracts regulated by netting agreements;
 - c. Foreign exchange transactions;
 - d. Systems and agreements of interbank payment, netting systems and adjustment relating to securities, assets or other financial instruments; and
 - e. Buyback of securities, assets or financial instruments deposited with a broker.
3. The provisions of this Decree Law shall not apply to the following cases:
 - A. The right to payments proven under endorsable instruments;
 - B. The right to payments deposited into the credit accounts with banks; and
 - C. The right to payments under securities, documentary credits and letters of guarantee.
4. Nothing in this Decree Law may prejudice the rights and obligations of the transferor and Receivable's Debtor arising out of the law that govern the protection of the parties to transactions made for personal, household or family purposes.

Article (3)

Will of the Parties

Subject to the provisions of Article (17.2) hereof, the Transferor, Transferee and Receivable's Debtor may enter into an agreement that defines the provisions regulating their respective rights and duties, provided that such agreement may not prejudice the rights of Third Parties not involved in such agreement.

Chapter II

Effect of Transfer between the Parties

Article (4)

Validity of Transfer

1. Once created, the transfer shall become a binding contract, unless either party retains the right to unilaterally terminate the same.
2. The transfer shall become effective vis-à-vis the transferor and transferee even if the Receivable's Debtor receives no notice of transfer.
3. The transfer shall become effective between the transferor and transferee and vis-à-vis the Receivable's Debtor and co-claimant, while the transferee shall retain the priority right, even if the transfer involves more than one receivable or divisible or indivisible rights over a receivable.
4. The transfer shall become effective provided that the receivables covered by the transfer are generally or specifically described in such a way that helps identify them, including their description as the entire current receivables of the transferor, the entire future receivables of the transferor, or a specific or general category or type of such receivables.
5. The transfer of one or more future receivables shall become effective with no need to engage in any new transaction for transferring any of which on a case-by-case basis.

Article (5)

Other Contractual Rights

1. The transfer shall secure one or more current or future obligations that are defined or capable of being defined, conditional or unconditional, fixed or changeable.
2. Any restriction affecting the transferor's right to transfer the receivables shall neither take effect nor affect the validity or enforceability of the transfer, and the Receivable's Debtor may invoke any netting rights or interests vis-à-vis the transferor, and the transferee shall not be held liable for any breach of the provisions that restrict the transfer provided for in the original contract.

Article (6)

Transfer of Ancillary Rights

1. Ancillary rights shall be transferred to the transferee with no new action taken for their transfer, unless the Law that prescribes such a right requires the transferor to take a new action for transferring the right to the transferee. In which case, the transferor shall be required to transfer such a right together with any proceeds to the transferee.
2. Ancillary rights shall be transferred pursuant to the provisions of Clause (1) of this Article, even if there is an agreement made between the transferor and Receivable's Debtor or any Third Party who creates such rights, and which restricts the right of the transferor to transfer the receivable or the extra right by any means whatsoever.

Chapter III

Enforceability Vis-à-vis Third Parties and Priority

Article (8)

Enforceability Vis-à-vis Third Parties by Registration and Priority of Transferee's Rights

1. The enforceability of transfers vis-à-vis third parties shall be subject to the provisions of Chapter V of the above-cited Federal Law No. (4) of 2020.
2. The transfer of receivables governed by the provisions of this Decree Law shall only become effective vis-à-vis Third Parties after being recorded on the Register.
3. The provisions of enforceability against Third Parties and the priority of transferees' rights over the proceeds of receivable transferred under Article (11) of the above-cited Federal Law No. (4) of 2020.

Article (8)

Priority among Competing Claimants

The provisions of the above-cited Federal Law No. (4) of 2020 shall apply to the following:

1. Determine the priority of rights of the transferees over the receivable as per registration priority.
2. Determine the priority of obligations assumed by the transferor and which arise following the registration and on the future receivable.
3. Determine the priority of the transfer against non-contractual rights, including the rights of bankruptcy trustee, judgments creditors, debts due to the State and the transferor's employees.

Chapter IV

Rights, Obligations and Defenses of Transferor and Transferee

Article (9)

The mutual rights and obligations of the transferor and transferee and arising out of their agreement shall be subject to the terms and conditions set out in such agreement.

Article (10)

Transferor's Acknowledgment

1. The receivables transfer agreement shall include the following undertakings and covenants on the part of the transferor upon the completion of transfer:
 - a. That he has the authority to transfer the receivable.
 - b. That he has never transferred the receivable to any other transferee.
 - c. That the Receivable's Debtor shall have no right to raise any objection or make a set-off, subject to the provisions of Article (16) of this decree law.
2. The transferor shall not guarantee the ability of the Receivable's Debtor to make current or future repayment of the debt.

Article (11)

The Right to Notify Debtor

1. The transferor and transferee may each serve notices and instructions to the Receivable's Debtor. In case the Receivable's Debtor receives such a notice, the right shall be limited to issuing instructions for payment to the transferee.
2. The notice of transfer or payment instructions served pursuant to the provisions of Clause (1) of this Article shall be effective for the purposes of Article (15) of this decree law, even if their sending constitutes a breach of a particular agreement, provided that the same shall not prejudice any obligation or liability on the party breaching the agreement for any damage arising out of such breach.

Article (12)

The Right to Satisfy

1. Whether the notice of transfer is sent or not, the rights of the Transferor and Transferee shall be determined based on the following:
 - a. If the receivable transferred is paid to the Transferee, the latter may retain the proceeds and goods returned and which relate to the receivable transferred.

- b. If the receivable transferred is paid to the Transferor, the Transferee shall be entitled to pick up the proceeds and tangible movable property relating to the receivable transferred and which has been returned to the Transferor.
 - c. If the receivable transferred to a Third Party of a lower priority rank than that of the Transferee, the Transferee shall be entitled to pick up the proceeds and tangible movable property returned to such Third Party and which are relating to the receivable transferred.
2. The Transferee may not satisfy any items in excess of his rights over the receivable.

Article (13)

1. Without prejudice to the provisions of this Decree Law, the transfer shall not affect the rights and obligations of the Receivable's Debtor, including the payment terms set out in the original contract, unless accepted by the same.
2. The payment instructions may involve an amendment to the person, address or account required to be fulfilled by the Receivable's Debtor, but in all cases, the amendment may not involve any of the following:
 - a. The currency of payment defined in the original contract; or
 - b. The Country of payment defined in the original contract, so that no other Country where the Receivable's Debtor is not located may be involved.

Article (14)

Notice to Receivable's Debtor

1. To notice of transfer or payment instructions shall become effective once received by the Receivable's Debtor if they are executed in the same language of the original contractor or in any other language of which the notice recipient is expected to be aware.
2. The notice of transfer or payment instructions may relate to a receivable that comes into existence after the notice is served.
3. If the same receivable is transferred in a consecutive way, the notice of subsequent transfer shall constitute a notice for all prior transfers.

Article (15)

Discharge of Receivable's Debtor through Repayment

1. If the Receivable's Debtor pays off the debt according to the conditions of the original contract before the notice of transferred is received by it, such debtor shall be discharged from the transfer.
2. Without prejudice to the provisions of this Article, after the Receivable's Debtor receives the notice of transfer, the Receivable's Debtor shall only be discharged from debt when the receivable transferred is paid to the Transferee or according to the payment instructions set out in the notice of transfer or mentioned in a subsequent written notice sent from the Transferee to the Receivable's Debtor.
3. If the Receivable's Debtor receives multiple payment instructions relating to the transfer of the same receivable and from the same Transferor, such debtor shall be discharged from debt if payment is made by it according to the last payment instructions received from the Transferor before payment is made.
4. If the Receivable's Debtor receives several notices relating to several transfers over the same receivable and from the same Transferor, the Receivable's Debtor shall be discharged from debt if the receivable is paid by it according to the first notice received.
5. If the Receivable's Debtor receives a notice relating to one or more subsequent transfers, such debtor shall be discharged from debt if payment is made by it according to the notice relating to the last of such subsequent transfers.
6. If the Receivable's Debtor receives a notice of transfer relating to part or an undivided part of one or more receivables, such debtor shall be discharged from debt if payment is made by it according to the notice of transfer received or according to the provisions of this Article as if the Receivable's Debtor has not received the notice.
7. If the Receivable's Debtor pays off the debt according to the notice of transfer set out in (6) of this Article, such debtor shall be discharged form debt in proportion to the part or undivided part settled by it.

8. The Receivable's Debtor may, when a notice of transfer is received from the Transferee, request the Transferee to furnish, within seven (7) business days, a proof that the transfer has been created between the First Transferor and First Transferee and any other transfers made. If the Transferee fails to do the same, the Receivable's Debtor shall be deemed discharged from debt when the debt is paid off by it according to the provisions of this Article, as if the same has not received a notice from the Transferee. Any written instrument executed by the Transferor shall serve as sufficient evidence for the occurrence of the transfer.
9. The provisions of this Article shall not affect any other reason for releasing the Receivable's Debtor from debt as a result of payment of the receivable to any eligible person, competent judicial authority or any other competent authority.

Article (16)

Defenses and Netting Right of Receivable's Debtor

If the Transferee institutes legal proceedings against the Receivable's Debtor to claim settlement of the receivable transferred, the Receivable's Debtor may invoke the following vis-à-vis the Transferee:

1. All legal defenses and netting rights arising out of the original contract or any other contract that is deemed part of the same transaction, and of such the Receivable's Debtor shall take advantage as if the transfer has never take place and that the claim has been made by the Transferor.
2. Any other netting right established in favor of the Receivable's Debtor once the notice of transfer is received.

Article (17)

Agreement to Not Invoke Defenses or Netting Rights

1. The Receivable's Debtor may enter into a written agreement with the Transferor to waive the right to invoke any objection or to invoke the netting right that is prescribed in its favor pursuant to Article (16) of this Decree Law vis-à-vis the Transferee.

2. The Receivable's Debtor may not waive the following objections:
 - a. The objections arising out of fraudulent acts committed by the Transferee.
 - b. Any objections relating to the lack of eligibility of the Receivable's Debtor.
3. The Receivable's Debtor may amend the waiver, so that such amendment shall be executed in writing, and the effect of such amendment with regard to the Transferee shall be subject to the provisions of Article (18.2) of this Decree Law.

Article (18)

Amendment of Original Contract

1. The agreement entered into by the Transferor and the Receivable's Debtor prior to the notice of transfer, and which affects the rights of the Transferee, shall become effective vis-à-vis the Transferee and shall entitle the latter to the rights arising out of such agreement.
2. The agreement entered into by the Transferor and the Receivable's Debtor following the notice of transfer shall become effective only in the following cases:
 - a. If approved by the Transferee; or
 - b. If the transfer is relating to future receivables.
3. The application of (1) and (2) of this Article shall not prejudice any right of the Transferor or Transferee arising out of the agreement entered into by them.

Article (19)

Recovery of Payments

The Receivable's Debtor may neither request the Transferee to get back the amount paid by it nor make any claim from the Transferor, in the event that the Transferor is in breach of its obligations under the original contract.

Article (20)

Collection of Receivable

1. If the transfer takes the form of a security interest created over the receivable or if the transfer itself is made as a security interest:
 - a. When the breach is committed by the Transferor, the Transferee shall have the right to collect the payments from the Receivable's Debtor according to the provisions of both this Article and Article (21) of this Decree Law.
 - b. Prior to the Transferor's breach, the Transferee may exercise its right to collect the receivable if so approved by the Transferor.
2. In the event of sale of the receivable, the Transferee shall be entitled to collect the receivable at any point of time once it falls due.
3. The Transferee, who exercises the right to collection of the receivable under this Article, may enforce its right against of the ancillary rights.

Article (21)

Disposition

The Transferee may collect its rights over the receivable by any means agreed upon under the transfer agreement or under Chapters VII and VIII of the above-cited Federal Law No. (4) of 2020.

Chapter V

Laws Applicable to Transfer of Receivables

Article (22)

Law Applicable to Transfer of Receivables

1. The law applicable to the creation and enforceability of the transfer of receivables vis-à-vis third parties, priority rights, enforcement of the transfer of receivable and proceeds shall be determined based on Article (42) of the above-cited Federal Law No. (4) of 2020.
2. The following matters shall be subject to the law that governs the rights and obligations of the Debtor and Transferor:

- a. The rights and obligations of both the Transferee and Receivable's Debtor;
- b. The cases where the transfer may be invoked vis-à-vis the Receivable's Debtor, including the latter's right to rely upon the agreement that restricts the rights of the Transferor of the receivable.

Article (23)

Enforcement of Other Laws

The provisions of above-cited Federal Law No. (4) of 2020 shall apply to the transfer of receivables governed by this Decree Law, insofar as they do not go against the provisions of this Decree Law.

Chapter VI

Final Provisions

Article (24)

Prior Transactions and Adjustment of Affairs

1. The Transferee may have the transfer arising out of any transaction carried out prior to the date of entry into force of this Decree Law recorded on the Register without the approval of the Transferor, within six (6) months of the date of entry into force of this Decree Law.
2. The priority of transfer that is registered within the time limit described in Clause (1) of this Article shall take effect as of the date of being enforceable vis-à-vis Third Parties according to the provisions of law whereby the transfer is created. Other than that, the transfer shall become effective and enforceable vis-à-vis Third Parties once recorded on the Register.

Article (25)

Regulatory Aspects

The factoring business may only be carried on in the State after a relevant license is obtained from the Central Banks and according to the terms and conditions to be defined under a resolution of the Central Bank.

Article (26)

Repeal of Legislation

Each provision that goes against or is repugnant to the provisions of this Decree Law shall be repealed.

Article (27)

Publication and Entry into Force

This Decree Law shall be published in the Official Gazette and shall enter into force ninety (90) days following its publication date.

Khalifah Bin Zayed Al Nahyn

UAE President

Issued by us at the Presidential Palace in Abu Dhabi On:

Muharram 20, 1443 AH

Corresponding to: August 29, 2021