

Factoring Regulation Act, 2011, (Central)

Section 2 - Definitions

In this Act, unless the context otherwise requires,-

(a) "assignment" means transfer b by agreement, of undivided interest of any assignor in any receivable due from any debtor in favour of a factor and includes an assignment where either the assignor or the debtor, are situated or established outside India.

Explanation.-For the purposes of this clause, undivided interest of any assignor in any receivable shall not include creation of rights in receivables as security for r loans and advances or other obligations by a Bank or a financial institution;

(b) "assignee" means a factor in wh hose favour the receivable is transferred;

(c) "assignor" means any person who is the owner of any receivable;

(d) "Bank" means,

(i) a banking company;

(ii) a corresponding new bank;

(iii) the State Bank of India;

(iv) a subsidiary bank;

(v) such other bank which the Central Government may by notification specify for the purposes of this Act on the recommendations of the Reserve Bank; or

(vi) a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) and licensed to undertake business of banking by the Reserve Bank under the provisions of the Banking Regulation Act, 1949 (10 of 1949) ;

(e) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(f) "business enterprise" means any enterprise or medium enterprise, micro enterprise or small enterprise as defined in clauses (e), (g), (h) and (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006, (27 of 2006) respectively engaged in any business activity;

(g) "corresponding new bank" shall have the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(h) "debtor" means any person liable to the assignor, whether under a contract or otherwise, to pay any receivable or discharge any obligation in respect of the receivable whether existing, accruing, future, conditional or contingent;

(i) "factor" means a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934, (2 of 1934) which has been granted a certificate of registration under sub-section (1) of section 3 or anybody corporate established under an Act of Parliament or any State Legislature or any Bank or any company registered under the Companies Act, 1956 (1 of 1956) engaged in the factoring business;

(j) "factoring business" means the business of acquisition of receivables of assignor by accepting assignment of such receivables or financing, whether by way of making loans or advances or otherwise against the security interest over any receivables but does not include-

(i) credit facilities provided by a bank in its ordinary course of business against security of receivables;

(ii) any activity as commission agent or otherwise for sale of agricultural produce or goods of any kind what so ever or any activity relating to the production, storage, supply, distribution, acquisition or control of such produce or goods or provision of any services.

Explanation. -For the purposes of this clause-

(i) the expression "agricultural produce" shall have the meaning assigned to it under clause (a) of section 2 of the Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937) and;

(ii) the expressions "goods" and "commission agent" shall have the meanings assigned to them respectively under clause (d) and Explanation (ii) of clause (i) of section 2 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);

(k) "financial contract" means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, shares, bonds, debentures or any other financial instrument, any repurchase of securities and lending transaction or any other similar transaction or combination of such transactions entered into in the financial markets;

(l) "netting agreement" means any agreement among the system participants for the purpose of determination by the system provider of the amount of money or securities due or payable or deliverable as a result of setting off or adjusting the payment obligations or delivery obligations among the system participants, including the claims and obligations arising out of the termination by the system provider, on the insolvency or dissolution or winding up of any system participant or such circumstances as the system provider, may specify in its rules or regulations or bye-laws (by whatever name called), of the transactions admitted for settlement at a future date so that only a net claim be demanded or a net obligation be owned;

- (m) "notification" means a notification published in the Official Gazette;
- (n) "prescribed" means prescribed by rules made under this Act;
- (o) "property" means,
- (i) the immovable property;
 - (ii) the movable property;
 - (iii) any debt or any right to receive payment of money, whether secured or unsecured;
 - (iv) the receivables;
 - (v) the intangible assets, being know-how, patent, copyright, design, trade mark, licence, franchise or any other business or commercial right of similar nature;
- (p) "receivables" mean all or part of or undivided interest in any right of any person under a contract including an international contract where either the assignor or the debtor or the assignee is situated or established in a State outside India; to payment of a monetary sum whether such right is existing, future, accruing, conditional or contingent arising from and includes, any arrangement requiring payment of toll or any other sum, by whatever name called, for the use of any infrastructure facility or services;
- (q) "Reserve Bank", means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934; (2 of 1934).
- (r) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955; (23 of 1955).
- (s) "Subsidiary Bank" shall have the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959; (38 of 1959).
- (t) words and expressions used and not defined in this Act but defined in the Reserve Bank of India Act, 1934 (2 of 1934), the Banking Regulation Act, 1949 (10 of 1949), the Companies Act, 1956 (1 of 1956), the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Credit Information Companies (Regulation) Act, 2005 (30 of 2005), or the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006). shall have the meanings respectively assigned to them in those Acts.