

## **Article 386. The Debtor's Objections to the New Creditor's Claim**

The debtor shall have the right to put forward objections against the new creditor's claims, which he has had to the primary creditor by the moment it received the notification of the transfer of the rights under the obligation to the new creditor. **The Debtor shall within reasonable time following receipt of the said notification notify the new creditor of occurrence of the grounds for objections known to it and give the new creditor the opportunity to familiarize itself therewith. Otherwise the Debtor shall not be entitled to refer to such grounds.**

## **Article 448. Organization and realization of the tender**

7. If in accordance with the law entering into an agreement is possible only by means of tender, the winner of the tender shall have no right to assign rights (**with the exception monetary claims**) and transfer debt under obligations arising from the agreement entered as the result of the tender. Obligations under such agreement shall be performed by the winner of the tender in person, unless otherwise prescribed by the law.

## **Chapter 43. Financing Against the Assignment of a Monetary Claim**

### **Article 824. The Contract of Financing Against the Assignment of a Monetary Claim**

**1. 1. Under factoring agreement one party (client) undertakes to assign to the other party (factor) monetary claims to a third party (debtor) and pay for the rendered services, and the factor undertakes to perform at least two of the following actions related to the monetary claims being the subject matter of assignment:**

- 1) transfer money to in discharge of the monetary claims, including by means of loan or advance payment to the client;**
- 2) keep record of the client's monetary claims to third parties (debtors);**
- 3) exercise rights under the client's monetary claims , including presenting monetary claims to debtors for repayment, receive payments from debtors and effect settlements associated with monetary claims;**
- 4) exercise rights under the collateral agreements securing performance of the debtor's obligations;**

**2. Under the contract of financing against the assignment of a monetary claim the obligations of the financial agent may include the keeping of accounting for the client,**

and also the provision of other financial service to the client, associated with the monetary claims which are the subject of the assignment.

**3. To the extent not covered by this chapter, rules of chapter 24 of the present Code apply to relations associated with assignment of claims under factoring agreement.**

**4. Parties to civil transactions may also enter into other agreements pursuant to which assignment of monetary claims is effected and which provide for obligation of one party to perform one or more actions specified in subitems 1-4 of item 1 of this Article.**

**5. If by virtue of factoring agreement factor is under obligation to pay cost of monetary claims acquired by it, to extend loan (facility) to the client or to render services to the client, the relations of the parties under factoring agreement shall be accordingly governed by rules regulating sale and purchase, loans (facilities), fee-based services, to the extent they do not contradict the provisions of the present Chapter and the essence of relations under factoring agreement.**

### **Article 825. The Financial Agent**

Commercial organisations may conclude, in the capacity of a financial agent, **factoring agreements.**

### **Article 826. A Monetary Claim Assigned for Financing Purposes**

**1. The subject matter of assignment may constitute monetary claim or claims:**

**1) under existing obligation, including obligation arising from concluded agreement, due date under which has already occurred or has not occurred (existing claim);**

**2) under obligation which will become due in the future, including under an agreement to be entered into in the future (future claim) (Article 388.1)**

**2. Monetary claims passes to the financial agent (factor) from the moment the factoring agreement is concluded unless otherwise is provided for by such agreement. With regard to the above-mentioned a future claim passes to financial agent (factor) from the moment it arises, unless the agreement provides for later transfer of the future claim.**

**3. If the factoring agreement is concluded prior to the moment of transfer of monetary claim to the financial agent (factor), no additional formalization of transfer of monetary claims is required.**

### **Article 827. The Client's Liability to the Financial Agent**

**1. Unless the factoring agreement provides otherwise, the client shall bear liability to the financial agent for the invalidity of the monetary claim that is the subject of the assignment.**

**Subitem 2 shall be repealed.**

**3. A client shall not be answerable for the non-fulfilment or improper fulfilment by the debtor of the claim which is the subject of assignment in case the financial agent presents it for execution, unless otherwise stipulated by the contract between the client and the financial agent.**

### **Article 828. Invalidity of the Ban on the Assignment of a Monetary Claim**

**1. The assignment of a monetary claim to the financial agent shall be actual, if even there is an agreement on its ban or restriction between the client and his debtor or between the client and the transferor of claim.**

**2. The provision established by Item 1 of this Article shall not release the client from obligations or liability to the debtor or other party in connection with the assignment of the claim in violation of the existing agreement between them on its ban or restriction.**

### **Article 829. The Subsequent Assignment of a Monetary Claim**

**1. If assignment of monetary claim to the financial agent (factor) is effected for the purpose of it acquiring the relevant claims, subsequent assignment of monetary claim by the financial agent (factor) is permitted, unless the factoring agreement provides otherwise.**

**2. If assignment of monetary claim to the financial agent (factor) is effected for the purpose of securing the client's obligation towards financial agent (factor) or for the purpose of financial agent (factor) rendering services associated with the monetary claims being the subject matter of the assignment**

**to the client, subsequent assignment of monetary claim by the financial agent (factor) is not permitted, unless the factoring agreement provides otherwise.**

**3. The provisions of this Chapter shall be accordingly applicable to the subsequent assignment of a monetary claim.**

### **Article 830. The Execution of a Monetary Claim by the Debtor to the Financial Agent**

**1. The debtor shall be obliged to make a payment to the financial agent, provided that he has received from the client or the financial agent a written notification about the assignment of a monetary claim to this financial agent and that the notification defines the monetary claim subject to execution or the procedure to define it , and the person to which the payment is to be made is also specified therein.**

**2. At debtor's request the financial agent shall be obliged to submit to the debtor within a reasonable period of time evidence of the fact that the assignment of the monetary claim has in fact taken place. If the financial agent fails to execute this obligation, the debtor shall have the right to make payment to the client in pursuance of his obligation to the latter.**

**3. The execution of the monetary claim by the debtor in keeping with the rules of this Article shall release the debtor from the relevant obligation to the client.**

### **Article 831. The Rights of the Financial Agent (Factor) to the Amounts Received from the Debtor**

**1. If under the contract of financing against the assignment of a monetary claim the client shall be financed by means of buying from his this claim by the financial agent, the latter shall acquire the right to all the sums of money he will receive from the debtor in fulfilment of the claim, while the client shall bear no liability to the financial agent for the fact that the received sums of money have proved to be less than the price for which the agent has bought the claim.**

**2. If a monetary claim has been assigned to the financial agent for the purpose of providing the execution of the client's obligation for him and unless the contract of financing against the assignment of the claim stipulates otherwise, the financial agent shall be obliged to submit his account to the client and transfer to him the sum of money exceeding the sum of the debt of the client, secured by the assignment of the claim. **By virtue of assignment of monetary claim for the purpose of securing performance of the client's obligations when the financial agent (factor) receives monetary funds under the assigned monetary claim from the debtor, the client's obligation to the financial agent (factor) is considered discharged in due manner****

**and in the scope, in which the debtor has performed its obligation to the financial agent (factor).** If the pecuniary means received by the financial agent from the debtor have proved to be less than the amount of the debt of the client to the financial agent, secured by the assignment of the claim, the client shall remain liable to the financial agent for the remainder of the debt.

**3. If assignment of monetary claim is made for the purpose of rendering by the financial agent (factor) of services associated with monetary claims being the subject matter of assignment to the client, the financial agent (factor) shall provide the client with a report and transfer to it all amounts received under assigned monetary claims, and the client shall pay for the services rendered.**

**4. Financial agent (factor) has the right when transferring monetary funds to the client to set off its monetary claims under the agreement.**

### **Article 832. Counter Claims of the Debtor**

**1.** If the financial agent applies to the debtor with the claim for payment, the debtor shall have the right, in keeping with Articles 410 - 412 of this Code, to present for the offset his monetary claims based on the contract with the client, which the debtor had by the time when he received the notice about the assignment of the claim to the financial agent.

**2.** The claims which the debtor could present to the client in connection with the breach by the latter of the agreement on the ban on the restriction of the assignment of the claim shall be invalid in respect of the financial agent.

### **Article 833. The Return to the Debtor of the Amounts Received by the Financial Agent (Factor)**

**Should the client fail to perform its obligations under the agreement entered into with the debtor, the latter has no right to claim from financial agent (factor) recovery of amounts paid to it. The corresponding claim may be presented by the debtor to the client.**