Vietnamese Legal Framework on International Payment and Supply Chain Finance

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Vietnamese Legal Framework on International payment and Supply chain finance

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1. Overview on International payment and Supply chain finance in Vietnam
Overview on International payment and Supply chain finance in Vietnam

Import, Export and Trade balance (2010-2016)

Source: Vietnam Customs

Participation of Vietnamese corporations in global supply chain

Top Exports of 2016

Source: International Conference on Supply Chain Finance in Vietnam (27/10/2016)
2. Vietnamese Legal framework on International payment and Supply chain finance
Vietnamese legal framework on International payment and Supply chain finance

- **International payment** is defined as a *civil relationship involving a foreigner* and subject to Vietnamese law.

- In case any provision of an *International Agreement* to which the Socialist Republic of Vietnam is a signatory is different from domestic law, the provision of such Agreement shall prevail.

- The parties can apply *international customs and practices* if such practices are not against fundamental principles of Vietnamese laws.

- Contracting parties may agree on *foreign law* as the governing law.
Vietnamese legal framework on International payment and Supply chain finance

Article 4 – Law on Credit Institutions

14. **Credit extension** means an agreement allowing an organization or individual to use a sum of money or a commitment allowing the use of a sum of money on the repayment principle by such professional operations as lending, discount, financial leasing, factoring, bank guarantee and other credit extension operations.

15. **Provision of services of via-account payment** means the provision of payment instruments; provision of services of payment by check, payment order, payment authorization, collection, collection authorization, bank card, letter of credit and other payment services for clients via their accounts.

17. **Factoring** means a form of extension of credit to a goods seller or buyer through redeeming receivable or payable amounts arising from the purchase or sale of goods or provision of services under a contract on goods purchase or sale or service provision while-reserving the right to claim such amounts.

19. **Discount** means purchasing on a definite term, or purchasing while reserving the right to claim, negotiable instruments and other valuable papers of beneficiaries prior to their due date.
Trade activities that are not covered by Vietnamese law

**Accounts Receivable**
- Pre-shipment or Purchase Order – based finance
- Inventory Finance (including Warehouse Finance)

**Accounts Payable**
- Approved Payable Financed (also known as Reserve Factoring or Confirming)
- Dynamic Discounting

**Related**
- Documentary Trade Finance
- Bank Payment Obligation (BPO)
- Asset – based lending
- Payments and Foreign Exchange

**Other SCF**
- Receivables Finance
- Receivable Purchase
- Invoice Discounting
- Factoring
- Forfaiting

**Risk participation**

**Border Trade payment entrustment**
Conflict of Vietnamese law with international practices on International payment and Supply chain finance

1. DISCOUNT/NEGOTIATE

Article 4 - Law on Credit Institutions 2010

19. Discount means purchasing on a definite term, or purchasing while reserving the right to claim, negotiable instruments and other valuable papers of beneficiaries prior to their due date.

Article 18 – UCP 600

A. Provided that the stipulated documents are presented to the confirming bank or to any other nominated bank and that they constitute a complying presentation, the confirming bank must:

i. honour,............

ii. Negotiate, without recourse, if the credit is available by negotiation with the confirming bank.

Discount without recourse?
Conflict of Vietnamese law with international practices on International payment and Supply chain finance

2. STANDBY LETTER OF CREDIT

Article 4 - Law on Credit Institutions 2010

14. Credit extension means an agreement allowing an organization or individual to use a sum of money or a commitment allowing the use of a sum of money on the repayment principle by such professional operations as lending, discount, financial leasing, factoring, bank guarantee and other credit extension operations.

VS

15. Provision of services of via-account payment means the provision of payment instruments; provision of services of payment by check, payment order, payment authorization, collection, collection authorization, bank card, letter of credit and other payment services for clients via their accounts.

Gov. by Circular 07/2015/T-TNHNN dated 25/06/2015 on Bank guarantees and other related regulations

Standard letter of credit is considered as bank guarantee or letter of credit?
# Conflict of Vietnamese Law with International Practices on International Payment and Supply Chain Finance

## 3. FACTORING

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<th>According to FCI</th>
<th>Decision 1096/2004/QD-NHNN</th>
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<tr>
<td><strong>Definitions</strong></td>
<td>Factoring is a form of <strong>credit extension</strong> by credit institution to the <strong>Seller</strong></td>
<td>Factoring is a form of <strong>credit extension</strong> by credit institution to the <strong>Seller</strong> or the <strong>Buyer</strong></td>
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<td><strong>Classification</strong></td>
<td><strong>With recourse</strong></td>
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<td><strong>Without recourse</strong></td>
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<td><strong>Assignment</strong></td>
<td>Import Factors collect payment from Buyers in accordance with the <strong>authorization</strong> of Export Factors</td>
<td>With recourse</td>
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</table>

- **Definitions**
  - Factoring is one of the following services:
    - Account receivables management;
    - Collection of receivables;
    - Protection against Buyer’s default;
    - Account receivables financing.

- **Classification**
  - **With recourse**
  - **Without recourse**

- **Assignment**
  - Upon the assignment of account receivables, Factors shall be entitled to all rights and benefits of such account receivables.
  - Import Factors collect payment from Buyer under their names.
3. Solutions to enhance International payment and Supply chain finance in Vietnam
Changes in policies of the State Bank of Vietnam in banking activities

Decision 1355/QD-NHNN dated 28/06/2016 of the Governor of the State Bank of Vietnam publishing the action plan of Banking sector to improve the business environment, enhance national competitiveness, support and develop enterprises in the period of 2016-2017, guiding toward 2020

1. Enhance the national credit rating
2. Enhance the availability and diversity of banking services
3. Transparency in credit information system; Facilitate everyone with equality, convenience and access to financing and banking services
4. Simplify and abolish inappropriate administrative procedures
5. Improve, simplify transaction procedures with customer
Solutions of the State Bank of Vietnam to enhance International payment and Supply chain finance

Decision 1355/QD-NHNN dated 28/06/2016 of the Governor of the State Bank of Vietnam publishing the action plan of Banking sector to improve the business environment, enhance national competitiveness, support and develop enterprises in the period of 2016-2017, guiding toward 2020

- Improve legal framework on payment service and banking services
- Strengthen supervision, security, safety of the payment system
- Invest in technology infrastructure; diversify new, modern payment services, means in accordance with international standards and practices
Solutions of banks to enhance International payment and Supply chain finance in Vietnam

Propose to the SBV to newly issue, amend, supplement regulations regarding International Payment in accordance with actual and global business activities.

Simplify service provision, review and streamline internal procedures

Research and develop new products to catch up with global trend, in compliance with customary and banking practice (For example: BPO, Factoring, Supply chain finance...)

Improve its business model to be dynamic, modern with the application of IT, technology modernization, online transaction performance to cut cost and time

Transparency in publishing procedures, forms relating to its products/services on its website

THANK YOU!