

- Articles
- News
- Global Analysis
- Special Series
- Free Legal Line
- Publications
- Events
- Country List
- Links
- Glossary
- Advice Desk

Coming up in June

- [Credit insurance: a return to positivity](#)
- [Trouble in Thailand](#)
- [Special Series - supply chain finance](#)

Sponsored Links

- [The Asset Based Finance Association](#)
- [Factoring Pro](#)
- [IFGroup](#)
- [Russian Association of Factors](#)
- [Factors Chain International](#)

Survey - global legal environments

[Global Analysis](#), Thursday, 17 June 2010

The last couple of years have been difficult for those involved in the international offering and it is clear that understanding the legal environment of correspondent countries remains a key concern for factors. In response to the need for greater international clarity of legal conditions in foreign jurisdictions, Factorscan contacted factors in markets across the globe to provide an overview of their local legal environment. What follows are the results of the survey, with results brought together from 24 separate markets (with the intention of adding further country overviews in the future), providing a detailed overview of the legal situation faced by factors operating in, or cooperating with partners, in jurisdictions around the world.

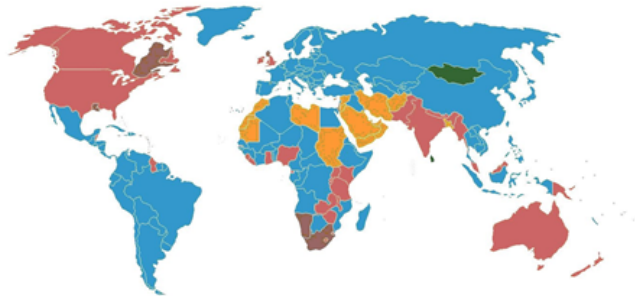
The survey covers comparisons of market conditions, including forms of law, the ability to make assignment without notification and the ability to assign debts across borders, as well as insights into specific legal issues that are impeding the development of receivables finance.

Those markets covered are: Argentina, Brazil, Bulgaria, Canada, China, Colombia, Czech Republic, Croatia, Egypt, France, Germany, Hong Kong, Malta, the Netherlands, Russia, Singapore, Slovakia, South Africa, Spain, Taiwan, Turkey, the UAE, the UK and the USA.

Insights are provided by a host of factors and serve to provide a general overview of global legal conditions for factoring.

Form of law

One issue that is complicating matters is the differences in form of law applied to global jurisdictions. Variations in form of law complicate international operations and represent an impediment to the understanding of legal conditions in foreign markets. What follows is a map of international forms of law, although country-specific variations are apparent across similarly positioned jurisdictions. The map is therefore best considered as a guide, but it does provide some indication of the form of law in those countries covered by the survey.



Legal Systems of the World

- Civil law
- Common law
- Bijuridical (civil and common law)
- Customary law
- Sharia

Evidently, the form of law applied has an impact upon international operations when the correspondent jurisdiction approaches legal issues in an entirely different way to that taken in the domestic market. Despite the presence of correspondents, complications about the application of law do therefore remain an issue in international business, presenting another potential hurdle to international operations.

When factors were next asked if there was a specific law related to factoring in their home market, it was clear that in most markets there were none that dealt specifically with factoring. In most instances general business law was applied to receivables financiers and their operations, and it proved itself to be more than sufficient. Law relating specifically to factoring was only reported in five markets – Colombia, Malta, Russia, Taiwan and Turkey – a mix of countries in terms of market maturity, which suggests that the presence of factoring law may well be more reflective of action by the legislature than an indication of the industry's development.

The lack of law on factoring was cited as an impediment to development in less mature markets, but in the most sophisticated markets, a lack of direct factoring law does not appear to have impaired development. In fact, in France, those surveyed stated that the lack of factoring law has actually enabled French factors to build their own operating architecture.

Assigning clarity

Factors across the 25 jurisdictions were asked if there was legal clarity for the assignment of debts in their home market. Their responses are detailed below:

Is their legal clarity in your home market regarding the assignment of debts?

Yes	Partial	No
Argentina	Bulgaria	
Brazil	China	
Canada	Czech Republic	
Colombia	Egypt	
Croatia	Slovakia	
France	UAE	
Germany		
Hong Kong		

Welcome Back

- [Update your details](#)
- [Log out](#)



Hong Kong		
Malta		
Netherlands		
Singapore		
South Africa		
Spain		
Taiwan		
Turkey		
UK		
USA		
Russia>	<Russia	

It is encouraging to see that legal clarity regarding assignment is a reality in the majority of markets, with none facing a total lack of clarity. It is a concern however that the issue of assignment remains unclear in Bulgaria, China, the Czech Republic, Egypt, Slovakia, Russia and the UAE. All of these markets appear to be a long way from reaching maturity, and it seems that a lack of legal or registry clarity is impeding the clear assignment of debts and their future development. The significance of assignments to the offering suggests that uncertainties in these markets will need to be resolved.

Legislative hurdles

Despite the majority of factors stating that there were no legislative hurdles to the assignment of debt, when asked about specific obstacles, even those in mature markets gave voice to particular issues that were making the assignment of debt problematic. The survey question and its country-specific answers are detailed below:

What legislative hurdles (if any) continue to exist regarding the assignment of debts and the wider factoring environment?

Legislative hurdles varied widely across markets and in most mature markets they were relatively limited, but at the same time, and looking at the list of issues raised by other factors, it appears that there are a whole host of issues that continue to impede assignments and the general development of factoring.

Countries that indicated that there are no legal hurdles:

Canada, Croatia, French, Hong Kong, Malta, the Netherlands, Singapore, Taiwan, Turkey, the UK and the USA.

Countries where there were legal hurdles and the specific issues faced in each country:

Argentina

- Administrative costs are the main impediment
- Factors are obliged to notifying a Public Notary of assignments in order to validate them and make them enforceable against third parties.

Brazil

The only hurdle in factoring is the Doctrine and Case Law (Jurisprudence) debate on recourse and non-recourse factoring. Recourse factoring, thanks to the credit risks involved is not accepted by majority of those involved in Doctrine and Case Law (especially at the Final Level of Tribunals).

Bulgaria

A lack of regulation concerning factoring transactions.

China

Chinese law makes general provision for the assignment of debt, which forms the legal basis for factoring business in China. But further legal explanations and more detailed provisions are expected to aid with the practice and development of factoring industry in China. Future receivables are well accepted in practice, but it is not clear whether future assignments are practicable according to existing law.

Colombia

Assignments of receivables can only be made following the debtors acceptance of each receivable. This condition helps the assignee to receive the invoice without the risk of dispute, but at the same time, can delay assignment and therefore finance.

Czech Republic

- There is no definition of factoring in Czech legislation
- The Ministry of Finance has taken a negative approach to accepting tax deductible risk provisions
- The definition of adequate capitalisation and its consequences for the re-financing of factoring companies remains unclear

Egypt

- There is need for a public register of assignments to safeguard factors' interests
- There are no clear penalties for those factors operating without a factoring licence

Germany

- Certain rules and rulings on the retention of title complicate matters
- There are uncertainties regarding the rights of factors to blanket assignments
- The rules from the General Terms and Conditions Act can also be an impediment to assignments
- There are uncertainties over insolvency law

Russia

- The provision-building rules set out by the Central Bank of Russia (although these only apply to banking factors) create some problems
- Restrictive foreign exchange legislation acts as a block on international operations

Slovakia

There is insufficient legislation covering factoring and related issues. We have to rely on our

interpretation of the Civil Code and court decisions which are rare and often unpredictable.

South Africa

Large municipalities, government departments, mines etc. continue to insert non assignment clauses into their contracts. These can be waived in our experience, but it takes time.

Spain

Some buyers continue to refuse to accept factoring services.

UAE (and Gulf region)

- In the UAE, Qatar and Oman factoring is contractual, so often needs to be acknowledged by the buyer to form a contract. In Kuwait meanwhile it needs to be notarized.
- Assignment law has not been tested robustly enough to provide factors with adequate confidence in its durability.

Assignment notification

Factors were next asked whether assignments could be made without debtor notification, the issue being a key part of market maturity.

Can assignments be made without debtor notification?

Yes	With complications	No
Canada	Argentina	Bulgaria
Colombia	Brazil	Croatia
Egypt	China	Malta
France	Czech Republic	UAE
Germany	Russia>	<Russia
Hong Kong		
Netherlands		
Singapore		
Slovakia		
Spain		
Taiwan		
Turkey		
UK		
USA		
South Africa>	<South Africa	

The issue of debtor notification is an important one and it is clear that it represents an issue in around half of the market surveyed. This time, the results were divided, with the most developed markets stating that they could make assignments without notification and the less mature markets indicating that it was either not possible, or that it could only be done 'with complications'. Complications are apparent in a number of key markets – with issues such as an inability to assign against third parties and an unclear legal approach to notification – creating obstacles to the full development of receivables finance. A complete inability to assign debts without debtor notification meanwhile appears to reflect poor perceptions of receivables finance in a particular market or inhibits the development of the full scope of the offering.

Limits to the development of the offering

Building upon earlier points, factors were then asked to detail any legal obstacles to the development of a full product offering in their home market. Traditional factoring products were not highlighted as being of particular concern, but newer and more complex forms of finance such as supply chain finance and reverse factoring faced impediments to development in a range of markets. Limitations to product development varied widely between markets, but it is clear that it is an issue in a host of markets, and one that is predominantly – but not exclusively – a problem in emerging regions.

What impediments exist (if any) to the full development of the product offering in your market?

Argentina

The lack of a factoring law is impeding development.

Brazil

Banking regulations place banks in a special position and offer them specific credit instruments that provide little incentive to use factoring as a vehicle to finance international receivables.

Bulgaria

Regarding supply chain finance, the main obstacle is that factors cannot make order-based funding in case the goods/services are not delivered/rendered and no invoice is issued.

Colombia

Colombian factoring law is a modern law that tries to protect the assignee from disputes related to the business transaction. It also permits the invoice to be assigned electronically, so the assignment of receivables can be made separately from the invoice.

In general, Colombia has very secure regulation relating to financial business, particularly regulation relating to receivables finance and negotiable instruments.

Czech Republic

Legal uncertainty and tax restrictions limit invoice discounting as a product.

Germany

Regulatory issues (in particular demarcation between factoring and credit business), partial tax issues and the legal consequences of insolvency law are all impediments to full product development.

Russia

- Tax issues relating to factoring commission in order to develop reverse factoring
- Foreign currency exchange legislation in order to develop international factoring
- Legislation on electronic signature/electronic document interchange in order to develop supply chain finance and factoring in general

UAE

- Acceptance of assignment
- Knowledgeable financial professionals
- Financial transparency

Problems generated by uncertainties

Following questions relating to assignment and legal clarity, factors were asked to detail those problems that a lack of legal clarity has created for the industry. Again, it is those markets where there is legal clarity that development has been faster, and it is generally in those markets where laws are most absent that major uncertainties emerge. The various answers of the factors regarding the impact of legal opacity are detailed below:

Argentina

The lack of clarity constrains the development of domestic and international factoring.

Brazil

The problem is not the lack of clarity for the industry, but its lack of understanding of the rules applicable to international trade and changes following the de-regulation of currency exchange controls.

Bulgaria

Factors face difficulties regarding the collection of assigned receivables through court procedure.

China

It implies risks to factors as well as other stakeholders, which serves to impede the development of the industry.

Czech Republic

- It has negative taxation consequences
- There is not a unified approach from courts in cases of dispute
- There are high volumes of fraud
- This means higher prices for the client
- This means that credit insurers take a reluctant approach to the market

France

There is no connection between the absence of a specific law and a lack of clarity; actually, the absence of law has enabled French factors to build their own legal environment on the basis of Roman law principles.

Germany

A certain lack of understanding of the different concepts and forms of factoring due to the lack of a definition for private/contract law purposes can sometimes create problems.

Slovakia

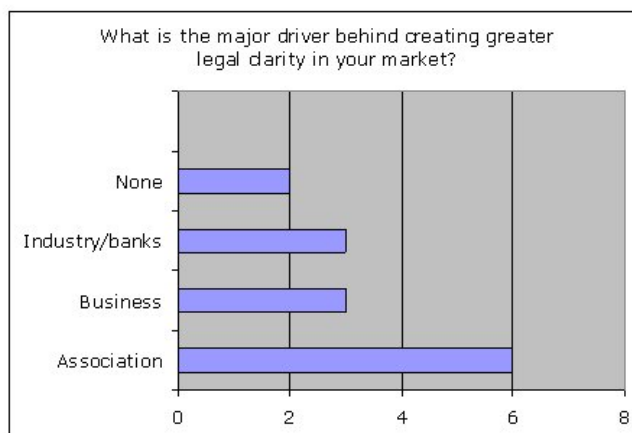
Product recognition is spreading slowly (factored volume was only approximately 1.7% of Slovak GDP in 2009) and the local factoring association is more of a data collector than a lobbyist. However, it is clear that there is a need to introduce specific national legislation relating to factoring.

UAE

A fair degree of uncertainty remains leading to debates on all factoring related transactions.

Drivers of clarity

Finally, factors were asked what the major driving force was in creating greater legal clarity in their market.



Not all markets surveyed gave an answer to this question

The results varied widely between markets and in some instances no specific body was cited as directing greater legal understanding for the factoring industry. Associations, where they existed, were often the leading drivers of positive legal change, but the industry and business

industry, were often the leading driver of positive legal change, but the industry and business were given almost equal prominence in their driving role. It appears that legislative change can also be a spur to greater clarity for the industry, but the results suggest that there is no definitive driver for legal clarity.

Conclusions

The results of Factorscan's survey present a decidedly mixed picture of the international legal environment. In mature markets, it appears that legal complications have been largely cleared up, representing few impediments to operations and the further development of the offering. Such issues have been recognised and dealt with over time. In less mature markets however, a lack of legal clarity continues to represent an obstacle to factoring development. Legal uncertainties over assignment, product development and cross-border activities are all creating problems for financiers looking to develop the offering in less mature markets.

Education and greater understanding of the product within governments, the business community and among legislators is evidently a key area the industry needs to focus upon in order to resolve such obstacles in emerging markets. Even in mature markets like Germany, specific legal uncertainties remain, and it is clear that associations – national, regional and global – need to play a role in resolving uncertainties in the international legal environment. The good news is that with maturity comes clarity. The bad news is that uncertainties are evident in a number of key emerging markets and it is not clear how long it will take before greater clarity will be forthcoming. Associations and major players need to see that is fast-tracked.

Related articles:

[From infancy to maturity](#)

[A rising voice in Europe](#)