

Federal Decree-Law No. (16) of 2021

On Factoring and Assignment of Accounts Receivable

We, Khalifa bin Zayed Al Nahyan

President of the United Arab Emirates,

Having reviewed the Constitution,

And Federal Law No. (1) of 1972 concerning the Competencies of Ministries and the Powers of Ministers, and its amendments,

And Federal Law No. (3) of 1983 concerning the Federal Judiciary Authority, and its amendments,

And Federal Law No. (5) of 1985 promulgating the Civil Transactions Law, and its amendments,

And Federal Law No. (11) of 1992 promulgating the Civil Procedures Law, and its amendments,

And Federal Law No. (10) of 1993 promulgating the Law of Evidence in Civil and Commercial Transactions, and its amendments,

And Federal Law No. (18) of 1993 concerning the Commercial Transactions Law, and its amendments,

And Federal Law No. (4) of 2000 concerning the Emirates Securities and Commodities Authority and Market, and its amendments,

And Federal Law No. (8) of 2004 concerning Financial Free Zones,

And Federal Law No. (1) of 2006 concerning Electronic Transactions and Commerce, and its amendments,

And Federal Law No. (2) of 2015 concerning Commercial Companies, and its amendments,

And Federal Decree-Law No. (9) of 2016 on Bankruptcy, and its amendments,

And Federal Law No. (7) of 2017 on Tax Procedures, and its amendments,

And Federal Decree-Law No. (10) of 2018 on Netting,

And Federal Decree-Law No. (14) of 2018 regarding the Central Bank & Organisation of Financial Institutions and Activities, and its amendments,

And Federal Decree-Law No. (19) of 2019 on Insolvency,

And Federal Law No. (4) of 2020 on Securing Rights in Movable Property,

And based on the proposal of the Minister of Finance and the approval of the Cabinet,

We have issued the following Decree-Law:

Chapter One

Definitions and Scope of Application

Article (1)

Definitions

For the purposes of this Decree-Law, the following words and phrases shall have the meanings assigned to them below, unless the context otherwise requires:

State	: The United Arab Emirates.
Ministry	: The Ministry of Finance.
Minister	: The Minister of Finance.
Person	: A natural or juridical person.
Factoring	: A transaction whereby the assignor assigns an existing or future account receivable, or both, to an assignee, or agrees that the assignee will maintain records related to the assigned account receivable, collect it, and provide protection to the assignee in case the account debtor defaults on payment.
Assignment	: An agreement under which the assignor's contractual rights to receive a sum of money from the account debtor are transferred to the assignee. The assignment includes an agreement to create a security right over the account receivable, its assignment as security, and its outright sale.
Assignor	: The person who has assigned the account receivable to the assignee.
Assignee	: The person to whom the account receivable has been assigned.
Competing Claimant	: Includes:

1- Another assignee to whom the assignor has assigned the same account receivable, including a person who claims a right granted by law in the assigned account receivable due to a right in the assignor's other assets.

2- A creditor of the assignor.

3- The bankruptcy trustee.

Account Receivable	: The contractual right to receive sums of money owed by the account debtor to the assignor.
Account Debtor	: The person obligated to pay the assigned account receivable.
Existing Account Receivable	: An account receivable that arose before or at the time of concluding the assignment contract.

Future Account Receivable	: An account receivable that arises after the conclusion of the assignment contract.
Notification of Assignment	: A written notification identifying the assigned account receivable and the assignee.
Original Contract	: The contract concluded between the assignor and the account debtor under which the account receivable arose.
Proceeds	: Everything received from the assigned account receivable, whether in whole or in part, and includes everything received in the form of proceeds, but does not include returned goods.
Publicity	: The registration related to the assignment of an account receivable in the Register, or any amendment or cancellation thereof, in accordance with the provisions of the aforementioned Federal Law No. (4) of 2020.
Register	: The electronic register designated for publicizing rights in movable property.
Accessory Rights	: Any personal or real rights that secure the payment of the value of the assigned account receivable, including security rights created over goods, guarantees, and credit insurance.
Writing	: Information that is created, transmitted, received, or stored in writing or by electronic means, including modern means of communication.

Article (2)

Scope of Application

1. The provisions of this Decree-Law shall apply to any assignment made in the context of commercial or civil transactions, even if made through a regulated financial market, and whether with or without recourse to the assignor.
2. Excluded from the application of the provisions of this Decree-Law are assignments of accounts receivable arising from:
 - a. Transactions conducted by a person for personal, family, or household purposes.
 - b. Financial contracts governed by netting agreements.
 - c. Foreign exchange transactions.
 - d. Inter-bank payment systems and agreements, netting systems, and settlement relating to securities or other financial assets or instruments.
 - e. The repurchase of securities or financial assets or instruments deposited with an intermediary.
3. Also excluded from the application of the provisions of this Decree-Law are the following:
 - a. The right to payments embodied in negotiable instruments.

- b. The right to payments deposited in credit accounts with banks.
 - c. The right to payments under securities, letters of credit, and letters of guarantee.
4. Nothing in this Decree-Law shall affect the rights and obligations of the assignor and the account debtor under the laws governing the protection of parties in transactions conducted for personal, family, or household purposes.

Article (3)

Party Autonomy

Subject to the provisions of clause (2) of Article (17) of this Decree-Law, the assignor, the assignee, and the account debtor may agree to determine the provisions governing their respective rights and duties, provided that such agreement does not affect the rights of third parties who were not party to this agreement.

Chapter Two

Effect of the Assignment between the Parties

Article (4)

Validity of the Assignment

1. Once concluded, the assignment is considered a binding contract unless one of the parties reserves the option to terminate it.
2. The assignment is effective between the assignor and the assignee even if the account debtor has not received a notification of the assignment.
3. The assignment is effective between the assignor and the assignee and against the account debtor and the competing claimant, and the assignee shall have the right of priority even if the assignment relates to more than one account receivable or to divided or undivided rights in an account receivable.
4. An assignment is effective provided that the assigned accounts receivable are described in a general or specific manner that allows for their identification, including describing them as all of the assignor's existing accounts receivable, all of the assignor's future accounts receivable, or a specific category, type, or class of such accounts receivable.
5. An assignment of one or more future accounts receivable is effective without the need to enter into any new transaction to transfer each one individually.

Article (5)

Other Contractual Aspects

1. The assignment shall secure one or more obligations, whether present or future, determined or determinable, conditional or unconditional, fixed or fluctuating.
2. Any restriction on the assignor's right to assign accounts receivable shall be disregarded and shall not affect the validity or effectiveness of the assignment. The

account debtor may assert any defences or rights of set-off against the assignee, and the assignor shall not be liable for breaching the provisions that restricted the assignment in the original contract.

Article (6)

Transfer of Accessory Rights

1. Accessory rights are transferred to the assignee without the need for a new act of transfer, unless the law establishing the right requires the assignor to perform a new act for the purpose of transferring the right to the assignee, in which case the assignor is obliged to transfer that right and any proceeds to the assignee.
2. Accessory rights are transferred in accordance with the provisions of clause (1) of this Article, even if there is an agreement between the assignor and the account debtor or any other person who created such rights that restricts in any way the assignor's right to assign the account receivable or the accessory right.

Chapter Three

Effectiveness against Third Parties and Priority

Article (7)

Effectiveness against Third Parties by Publicity and Priority of the Assignees' Right

1. The effectiveness of assignments against third parties is subject to the provisions of Chapter Five of the aforementioned Federal Law No. (4) of 2020.
2. An assignment of accounts receivable subject to the provisions of this Decree-Law shall not be effective against third parties unless it is publicised in the Register.
3. The provisions for effectiveness against third parties and the priority of assignees' rights in the proceeds of the assigned account receivable are determined by Article (11) of the aforementioned Federal Law No. (4) of 2020.

Article (8)

Priority among Competing Claimants

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

1. Determining the priority of assignees' rights in the account receivable according to the priority in publicity.
2. Determining the priority of obligations of the assignor that arise after publicity and on the future account receivable.
3. Determining the priority of the assignment against non-contractual rights, including the rights of the bankruptcy trustee, judgment creditors, debts owed to the State, and the assignor's employees.

Chapter Four

Rights, Obligations, and Defences of the Assignor and Assignee

Article (9)

Rights and Obligations of the Assignor and Assignee

The mutual rights and obligations of the assignor and the assignee arising from their agreement are subject to the terms and conditions contained in that agreement.

Article (10)

Representations of the Assignor

1. The assignment of accounts receivable agreement may include the following representations and undertakings from the assignor upon completion of the assignment:
 - a. That he has the authority to assign the account receivable.
 - b. That he has not previously assigned the account receivable to another assignee.
 - c. That the account debtor has no right to raise any defences or exercise set-off, subject to the provisions of Article (16) of this Decree-Law.
2. The assignor does not guarantee the present or future ability of the account debtor to pay.

Article (11)

Right to Notify the Debtor

1. Both the assignor and the assignee have the right to send a notification and payment instructions to the account debtor. If the account debtor receives the notification, the right to issue payment instructions is exclusive to the assignee.
2. A notification of assignment or payment instructions sent in accordance with the provisions of clause (1) of this Article are effective for the purposes of Article (15) of this Decree-Law, even if sending them constitutes a breach of an agreement, provided that it does not

This shall not affect any obligation or liability of the party in breach of the agreement for any damages arising as a result of such breach.

Article (12)

Right of Collection

1. The rights of the assignor and the assignee, whether a notification of the assignment has been given or not, shall be determined as follows:
 - a. If the assigned receivable is paid to the assignee, the assignee is entitled to retain the proceeds and returned goods related to the assigned receivable.

- b. If the assigned receivable is paid to the assignor, the assignee is entitled to receive the proceeds and tangible movable property related to the assigned receivable that have been returned to the assignor.
 - c. If the assigned receivable is paid to another person with a lower priority rank than the assignee's priority rank, the assignee is entitled to receive the proceeds and tangible movable property returned to that person related to the assigned receivable.
2. The assignee is not entitled to collect more than its rights in the receivable.

Article (13)

Protection of the Debtor of the Receivable

- 1- Without prejudice to the provisions of this Decree-Law, the assignment does not affect the rights and obligations of the debtor of the receivable, including the payment terms contained in the original contract, unless the debtor agrees thereto.
- 2- The payment instructions may include a modification of the person, address, or account to which the debtor of the receivable must make payment, and in all cases, the modification may not include any of the following:
- a. The currency specified in the original contract in which payment must be made.
 - b. The state specified in the original contract in which payment is to be made to become another state where the debtor is not located.

Article (14)

Notification to the Debtor of the Receivable

1. A notification of assignment or payment instructions are effective when received by the debtor of the receivable if they are written in the language in which the original contract was written or in another language that the recipient of the notification is expected to know.
2. A notification of assignment or payment instructions may relate to a receivable that arises after the notification is given.
3. If the same receivable is assigned successively, a notification of a subsequent assignment constitutes a notification of all prior assignments.

Article (15)

Discharge of the Debtor of the Receivable by Payment

1. If the debtor of the receivable makes payment in accordance with the terms of the original contract before receiving a notification of the assignment, its obligation is discharged.
2. Without prejudice to the provisions of this Article, after the debtor of the receivable receives a notification of the assignment, its obligation is discharged only by paying the assigned receivable to the assignee or in accordance with the payment

instructions contained in the notification of assignment or in a subsequent written notice sent from the assignee to the debtor of the receivable.

3. If the debtor of the receivable receives more than one set of payment instructions relating to the assignment of the same receivable from the same assignor, its obligation is discharged if it makes payment in accordance with the last payment instructions it received from the assignee before making the payment.

4. If the debtor of the receivable receives several notifications relating to several assignments of the same receivable from the same assignor, its obligation is discharged if it pays the receivable in accordance with the first notification it received.

5. If the debtor of the receivable receives a notification relating to one or more subsequent assignments, its obligation is discharged if it makes payment in accordance with the notification relating to the last of those subsequent assignments.

6. If the debtor of the receivable receives a notification of an assignment relating to a part or an undivided interest in one or more receivables, its obligation is discharged if it pays in accordance with the notification of assignment or in accordance with the provisions of this Article as if the debtor of the receivable had not received the notification.

7. If the debtor of the receivable pays in accordance with the notification provided for in Clause (6) of this Article, its obligation is discharged to the extent of the part or undivided interest that it paid.

8. The debtor of the receivable is entitled, upon receipt of a notification of assignment from the assignee, to request the assignee to provide, within (7) seven working days, proof of the creation of the assignment between the first assignor and the first assignee and any other assignments that have taken place. If the assignee fails to do so, the debtor of the receivable is deemed to be discharged when it makes payment in accordance with the provisions of this Article as if it had not received the notification from the assignee. Any writing issued by the assignor shall be considered sufficient proof of the existence of the assignment.

9. The provisions of this Article shall not affect any other reason for the discharge of the debtor of the receivable as a result of its payment to any person entitled to it or to a competent judicial authority or other competent authority.

Article (16)

Defences and Rights of Set-Off of the Debtor of the Receivable

If the assignee brings an action against the debtor of the receivable to claim the assigned receivable, the debtor of the receivable is entitled to raise against the assignee the following:

1. All defences and rights of set-off arising from the original contract, or any other contract that is part of the same transaction, which the debtor of the receivable could

have raised as if the assignment had not been made and the claim had been made by the assignor.

2. Any other right of set-off that was available to the debtor of the receivable at the time it received the notification of assignment.

Article (17)

Agreement Not to Raise Defences or Rights of Set-Off

1. The debtor of the receivable may agree in writing with the assignor to waive its right to raise any defences or assert the right of set-off available to it under Article (16) of this Decree-Law against the assignee.

2. The debtor of the receivable may not waive the following defences:

a. Defences arising from fraudulent acts committed by the assignee.

b. Any defences relating to the incapacity of the debtor of the receivable.

3. The debtor of the receivable may modify the waiver, provided that the modification is in writing, and the effect of such modification with respect to the assignee shall be subject to the provisions of Clause (2) of Article (18) of this Decree-Law.

Article (18)

Modification of the Original Contract

1. An agreement concluded by the assignor with the debtor of the receivable before the notification of assignment that affects the assignee's rights is effective against the assignee and the assignee acquires the rights arising from that agreement.

2. An agreement concluded by the assignor with the debtor of the receivable after the notification of assignment is not effective except in the following two cases:

a. The consent of the assignee.

b. If the assignment relates to future receivables.

3. The application of Clauses (1) and (2) of this Article shall not prejudice any right of the assignor or the assignee arising from a breach of the agreement concluded between them.

Article (19)

Recovery of Payments

The debtor of the receivable is not entitled to claim from the assignee the recovery of what it has paid to it or to claim from the assignor if the assignor has breached its obligations under the original contract.

Article (20)

Collection of the Receivable

1. If the assignment takes the form of a security right created on the receivable or is made as security:

a. Upon a breach by the assignor, the assignee shall have the right to collect payments from the debtor of the receivable in accordance with the provisions of this Article and Article (21) of this Decree-Law.

b. Before a breach by the assignor, the assignee may exercise its right of collection if the assignor agrees thereto.

2. In the case of a sale of the receivable, the assignee is authorised to collect the receivable at any time after it becomes due.

3. The assignee who exercises the right of collection under this Article is entitled to enforce against any of the ancillary rights.

Article (21)

Disposition

The assignee may obtain its rights in the receivable by any means agreed upon in the assignment contract or under Chapters Seven and Eight of the aforementioned Federal Law No. (4) of 2020.

Chapter Five

Applicable Laws to the Assignment of the Receivable

Article (22)

Applicable Law to the Assignment of the Receivable

1. The applicable law to the creation of an assignment of a receivable, its effectiveness against third parties, priority, and enforcement of the assignment of the receivable and proceeds shall be determined under Article (42) of the aforementioned Federal Law No. (4) of 2020.

2. The following matters are governed by the law governing the rights and obligations between the debtor and the assignor:

a. The rights and obligations of the assignee and the debtor of the receivable.

b. The conditions under which the assignment may be invoked against the debtor of the receivable, including whether the debtor of the receivable can rely on an agreement that restricts the assignor's right to assign the receivable.

c. The extent to which the debtor of the receivable has discharged its obligations.

Article (23)

Application of Other Laws

The provisions of the aforementioned Federal Law No. (4) of 2020 shall apply to the assignment of receivables regulated in this Decree-Law, in a manner that does not conflict with its provisions.

Chapter Six

Final Provisions

Article (24)

Prior Transactions and Reconciliation of Status

1. The assignee may publicise the assignment arising from any transaction concluded before the date of entry into force of the provisions of this Law by registering it in the Registry without obtaining the consent of the assignor, within (6) six months from the date of entry into force of the provisions of this Decree-Law.
2. The priority of an assignment publicised within the period specified in Clause (1) of this Article shall be determined from the date it became effective against third parties in accordance with the provisions of the laws under which it was created; otherwise, it shall become effective against third parties from the date of its publicisation in the Registry.

Article (25)

Regulatory Aspects

The activity of factoring may not be practised in the State except after obtaining a licence to do so from the Central Bank, and in accordance with the terms and conditions issued by a decision of the Bank.

Article (26)

Repeal of Legislation

Any provision that violates or contradicts the provisions of this Decree-Law is hereby repealed.

Article (27)

Publication and Entry into Force of the Decree-Law

This Decree-Law shall be published in the Official Gazette and shall come into force (90) ninety days after the date of its publication.

Issued by us at the Presidential Palace in Abu Dhabi:

Date: 20 / Muharram / 1443 H

Corresponding to 29 / August / 2021 AD

Khalifa bin Zayed Al Nahyan

President of the United Arab Emirates