



CONTEMPORARY ISSUES IN AFRICAN TRADE AND TRADE FINANCE

C I A T

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The *Contemporary Issues in African Trade and Trade Finance (CIAT)* is introduced by the Bank to provide a platform for the staff of Afreximbank and other individuals knowledgeable in African trade and trade finance to publish articles in the areas of trade, trade finance and economic development in Africa. The CIAT publishes technical and non-technical papers. Edited by an Afreximbank team of editors, it also publishes relevant papers presented at conferences or seminars and those presented at the Bank's internally organized Knowledge Sharing Sessions.

The journal welcomes editorial comments and responses which will be considered for publication to the extent that space permits. Interested readers are invited to submit a proposal to the Editor on the above address.

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Statements of fact and opinion in the Afreximbank *Contemporary Issues in African Trade and Trade Finance* are those of the respective authors and do not necessarily reflect the position or policy of Afreximbank.

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FOREWORD

It is with great pleasure that I announce the launch of another publication of the African Export – Import Bank (“Afreximbank” or the “Bank”), titled “*Contemporary Issues in African Trade and Trade Finance or simply the CIAT*”. Over the last few years, the Bank has lived to its Vision of being the “*Centre of Excellence in African Trade Matters*” by providing, among others, platforms to African and non-African academics and industry practitioners to make presentations and/or publish articles on issues of trade, trade finance and economic development in Africa. In 2013, the Bank launched the “*Journal of African Trade*” (*JAT*), an international peer reviewed Journal devoted to publication of studies and research in the areas of African Trade and Trade Finance, as well as related matters as they relate to socio-economic development in Africa. Other publications of the Bank include *Distinguished Lecture Series (DLS)*, *African Trade Report*, *Occasional Papers* and *Proceedings of Afreximbank Advisory Group on Trade Finance and Export Development in Africa* among others.

The Contemporary Issues in African Trade and Trade Finance (CIAT) is introduced by the Bank to provide a platform for staff of Afreximbank and other individuals knowledgeable in African trade and trade finance to publish articles in the areas of trade, trade finance and economic development in Africa. The CIAT publishes technical and non-technical papers. Edited by an Afreximbank team of editors, it also publishes relevant papers presented at conferences or seminars and those presented at the Bank’s internally organized Knowledge Sharing Sessions.

The series covers topical issues on most recent developments in the African trade and trade finance markets, including trade and exchange rate policies and their implications for the development of African trade and trade finance; analyses of bilateral, multilateral and plurilateral trade issues and their implications for African trade and trade finance; analyses of major economic and trade-related developments in the global and African macroeconomic environments, studies on commodities/trade sectors and Africa’s global financial flows as they relate to

the development of African trade and trade finance. It also provides a platform for the Bank's staff and other trade finance professionals to share their experiences gained from handling complex trade finance deals in Africa.

The maiden issue of the CIAT has been dedicated to factoring to underpin its emerging importance in an African trade environment that is changing and creating opportunities for participation of SMEs in the Continent's and global supply chains. It is worth noting that Afreximbank is at the forefront of promoting the emergence and spread of factoring across Africa. Through the Bank's efforts, factoring companies are emerging across the Continent. Moreover, Afreximbank is working with legal practitioners to develop the legal framework for factoring at the national and regional levels. Through these efforts, the Bank is beginning to see the steady emergence of factors in Nigeria, Ghana, Kenya, Tanzania, and other parts of the continent. We are of the view that the prospect for factoring remains very bright and urge all actors in the factoring business in Africa to continue expanding the business as it presents enormous opportunities to growing the continent's SMEs, intra-regional trade and Africa's trade competitiveness in general.

This issue of the CIAT discusses the evolution of factoring business over the last few years, the challenges and prospects for factoring in Africa, and Egypt in particular and the existing legal and regulatory framework for factoring across the continent. It also highlights the contribution of Afreximbank to the development of factoring business in Africa. This issue also notes that Africa remains at the fringes of global factoring business accounting for a paltry share of 1% of the global factoring volume.

The first paper in this publication titled "*From the Periphery to the Centre: Africa as the Growth Market for Factoring*" highlights the major developments in factoring in Africa, the challenges and prospects. This paper was authored by Dr Benedict

Oramah, Executive Vice President at Africa Export-Import Bank. He is also the Chairperson of the Africa Chapter of the IFG and a member of the Board of Directors at the International Factors Group (IFG), one of two global industry associations devoted to factoring.

The second paper on the "*Evolution of Factoring in Egypt and Implications for Factoring Development in Africa*" highlights the evolution of factoring in Egypt and draws implications for Africa. This paper is co-authored by Dr Benedict Oramah and Mr Richman Dzene. Mr Richman Dzene is Manager, Research and Knowledge Management at the African Export-Import Bank.

The third paper authored by Mr Enga Kameni is titled "*An insight into recent legal and regulatory reforms of factoring in Africa*". This paper discusses recent legal reforms in Africa in relation to factoring. Mr Enga Kameni is a Manager at the Legal Department of the African Export-Import Bank.

I will like to thank the Afreximbank staff who worked on this publication, in particular I will like to thank Ms Betty Lumu and Mr Richman Dzene.

I will also like to use this opportunity to encourage readers to contribute papers in future editions of CIAT in order to widen the debate on African trade and trade finance issues and help us in coming closer to our goal of launching this important series.

Thank you,
Mr. Jean Louis Ekra
President
Afreximbank

CHAPTER ONE

FROM THE PERIPHERY TO THE CENTRE: - AFRICA AS THE GROWTH MARKET FOR FACTORING

Dr. Benedict Okey Oramah*

1. INTRODUCTION

Africa is today at the fringes of global factoring despite the immense advantages factoring offers to small and medium-sized businesses (SMEs) around the world. Recent developments, however, indicate that things are about to change for the better with Africa poised to move from the periphery to the centre of global factoring in the no distant future. We discuss briefly in Section 2 of this article the State of Factoring in Africa and the factors that had constrained its adoption across the continent. In Section 3 we give a forward-looking view of Africa's factoring market and factors that will drive the market before concluding in Section 4.

2. STATE OF FACTORING IN AFRICA AND CHALLENGES:

2.1 The State of Factoring in Africa

As mentioned in Section 1, Africa is currently an insignificant player in the global factoring market, more so in international factoring. Of the €2 trillion world

Figure 1: Percentage Share of Total Factoring Volumes by Region, 2012 (%) Total Global Factoring Volume == €2 Trillion

Source: IFG, 2013

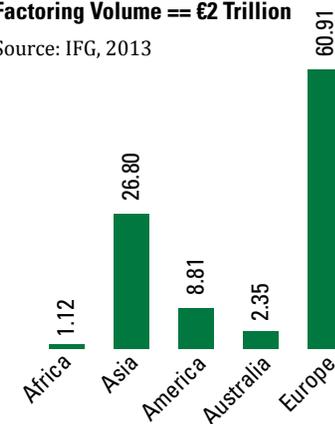
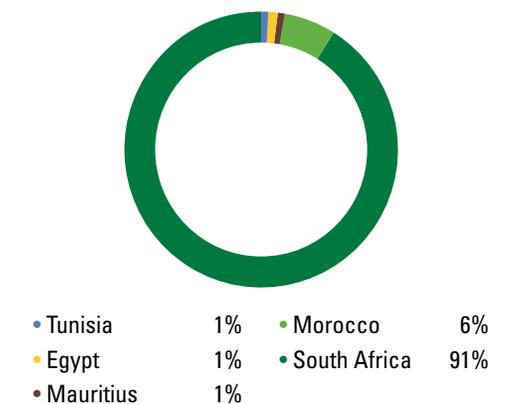


Figure 2: Country Share of Factoring Businesses in Africa, 2011 (%)

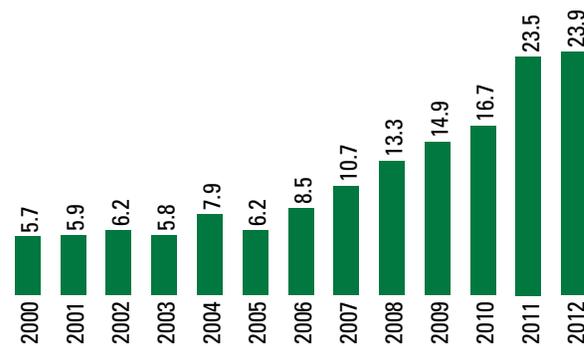


* Executive Vice President, Business Development and Corporate Banking, African Export Import Bank, Cairo.

factoring transactions recorded in 2012, Africa accounted for a paltry 1.2% (Figure 1), with only four countries in the continent accounting for this share, namely South Africa (largely domestic factoring), Tunisia, Morocco and Egypt. South Africa alone accounted for more than 90% of the total factoring volume of the continent (Figure 2), with domestic accounting for 99.3% versus 0.7% for international factoring.

Despite its relatively low share of global factoring transactions, Africa is witnessing a quickening in the rate of expansion of factoring volumes. As can be seen in Figure 3, total factoring volume in Africa grew from €5.86 billion in 2001 to €23.93 billion in 2012, representing an average annual growth of approximately 14.2%. This growth is significant, when one considers that the rate of growth in world factoring volumes was at 8.6% and in Europe 9% during the same period.

Figure 3: Factoring in Africa, 2000-12 (€ Billion)



Another feature of factoring in the continent is that it is largely offered by banks and bank subsidiaries. This is the case in South Africa and Morocco and to a large extent in Egypt. Independent factoring companies are few and far between. This is not unconnected with the fact that an important service offered by factors in Africa is funded credit lines. Affiliation with a bank that can grant a credit limit is therefore a competitive advantage.

On the demand side, the market is narrow. An average of about 80% of the factoring business in the continent is domestic factoring, largely reflecting the dominance of South Africa where over 90% of the factoring volumes is accounted for by domestic factoring. In view of the limited credit insurance capacity, even in markets where factoring has flourished in appetite for risk is limited, with most factors focusing on the risk of governments and blue-chip corporates, especially those in mining, telecom and retail.

Due to limited insurance and reinsurance capacities for African risk and dominance of domestic factoring, the services most offered by factors in Africa are purchase of debtors and Sales Ledger Management. Credit cover is offered selectively, especially in North Africa, subject to availability of insurance cover.

Most factors are relatively small in terms of capitalization and turnover. Average turnover are €880 million in Morocco and €248 million in Tunisia. This is a limitation to the size of business they can write.

It is no wonder then that the factoring industry in Africa is highly concentrated with one country (South Africa) out of 54 accounting for about 90% of the continent's factoring volume; and 4 countries accounting for about 10% of the volume.

5 Companies in South Africa, 4 each in Morocco, Egypt, and Tunisia, and 1 in Mauritius account for the entire volume. Given the high concentration, the market in various countries is to some extent oligopolistic and therefore inefficient and does not encourage innovation. Market entry is also more onerous.

Let us now examine other challenges factoring face in Africa.

2.2 Challenges to Expanding Factoring in Africa

Why has factoring not expanded across Africa? Why is the factoring industry in the continent so concentrated? To answer these questions one needs to understand the constraints the factoring industry faced in the continent until 7-10 years ago.

First, there was a lack of, or very limited, knowledge of the product across a large swath of the continent. Until the mid-2000s, there was little or no effort to promote factoring in Africa by both the governments and the global factoring industry groups, namely Factors Chain International (FCI) and the International Factors Group (IFG). The industry groups had no interest because they had an erroneous view that, but for South Africa and some countries in North Africa, other countries in the Continent presented unacceptable country risks and would therefore be of no interest to their members. In addition, most of their members did not regard the continent as an economy of any global significance. For instance, as recently

as 2012, an economist invited to present prospects for the global economy at the annual meeting of one of the groups did not bother to discuss Africa!

In an environment dominated by a 2-factor mind-set, it was difficult to grow factoring where there is paltering among foreign factors to do business in Africa. Many African governments and regulators on their part had little interest in championing factoring partly due to limited knowledge of the product and partly because they thought that there was little scope for its use firstly because their exporters offered little or no credit to their buyers and second because domestic supply chains were rudimentary and could not sustain a viable factoring in industry.

Second, most businesses in Africa were also not prepared nor interested in factoring. Those involved in international trade exported mostly commodities to OECD countries. The payment terms were usually Cash Against Documents (CAD) and the buyers were largely large credit worthy companies, such as Cargill, ED&F MAN, Glencore, etcetera. Little or no post-export credit is involved creating little incentive for the services factoring offers. Domestic factoring could also not flourish because businesses dealt largely on cash and major corporations relied on international rather than domestic supply chains.

Third, given the lack of interest on the part of businesses and no support from regulators, banks had no incentive to pursue factoring as a line of business whether as a product offering or by way of credit lines to factors.

Another important constraint was lack of facilitating infrastructure by way of:

- a) Regulatory framework and laws, and
- b) Credit information services and credit insurance.

Across the continent, (excluding Egypt where a factoring law was enacted a few years ago and South Africa) there are no specific factoring laws. The regulatory environment in most countries was uncertain thereby creating risks and uncertainties that hindered the emergence of factoring. In addition, except for a

few countries there were no credit insurance and/or credit information services. And until recently, the international credit insurance business had little appetite for African risks. The near absence of these critical instruments raised the risk of offering factoring to unacceptable levels and hindered its expansion in the continent. Finally, the absence of specific factoring laws was compounded by the high cost of perfecting legal documents in the form of stamp duties and registration charges. In some Anglophone African countries, these costs were, and in some cases, still are anywhere between 3-5% of the collateral value. Given that the Assignment of Debtors/Receivables is a plank on which factoring is hinged, this additional cost makes factoring relatively more expensive than other competing products banks offer.

Despite the foregoing challenges, events of the past few years appear to indicate that factoring was in the process of turning the corner. We discuss in Section 3 below why we believe that this is the case by examining the prospects for factoring in Africa.

3. FROM THE PERIPHERY TO THE CENTRE – PROSPECTS FOR FACTORING IN AFRICA

Factoring is beginning to get a powerful tail-wind in Africa. The forces behind this are diverse but in combination, they are beginning to build a foundation for a viable factoring industry spread across the continent.

On account of these forces, one forecasts that factoring volumes in the continent will rise from €24 billion in 2012 to about €90 billion in 2017 and to €200 billion by 2020.

Countries that will drive the growth will be “new” entrants to factoring, namely Kenya, Nigeria, Ghana, Côte d’Ivoire, Zimbabwe, Zambia, Mozambique and Senegal. We anticipate that domestic factoring will dominate accounting for an average of about 80% of the market, although country situations may vary.

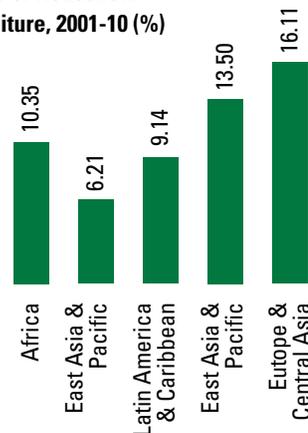
Our forecast is that sectors that will drive the growth will be:

- a) Oil and Mining Services in countries heavy on extractive industries, such as Nigeria, Ghana and Zambia. This will be policy-driven through local content promotion and also by the outsourcing policies now embraced by major oil/mining companies;
- b) Telecommunication Services as a result of a rapid growth of this sector and the tendency of telecom companies to outsource key services;

c) Retail sector as a result of the rapid growth of the middle class in the continent. Figures show that Africa has the fastest growing Middle Class in the world with household consumption rising by 10.4% during 2001-10 compared to 6.2% and 9.1% for East Asia and Pacific and Latin America respectively (Figure 4).

Figure 4: Growth Rate of Household Consumption Expenditure, 2001-10 (%)

Source: World Bank WDI, 2013



The rapid rise in the Middle Class will create domestic demand and reinforce the expansion of market economy;

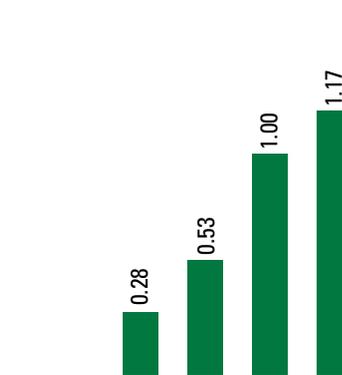
d) Non-traditional export sector to be driven by larger share of the South in Africa's trade forecast to be 45% in 2012 compared to 27% in 2000

Let us now elaborate on the forces behind the tail-wind we mentioned.

The continent is becoming an economy at last in terms of economic and trade size as well as the emergence of the Middle Class and in the process the market for "factorable" products is emerging. Over the last dozen years, the continent's merchandise trade has more than quadrupled, reaching approximately US\$1.2

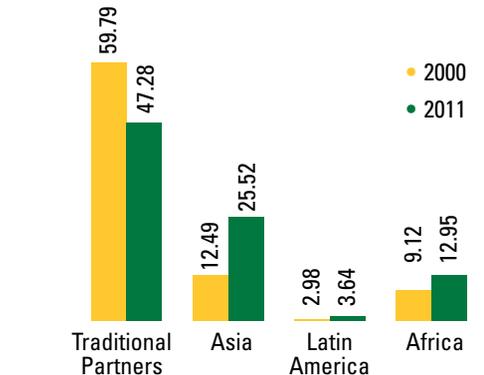
trillion in 2011, from US\$280 billion in 2000 (Figure 5). This represented an annual average growth rate of about 12.13% during 2000-11. An important characteristic of this growth is the rising share of the South, led by Brazil, India and China, in the trade. The share of developing South economies in Africa's total merchandise trade rose sharply during 2000-11, from 18% in 2000 to over 45% in 2010 while the share of the continent's traditional trade and economic partners, namely Europe and North America, declined from over 60% in 2000 to 47% in 2010. This trade between the South and Africa has primarily been led by Developing Asia, whose share of the continent's trade rose from 12% in 2000 to over 25% in 2010 (Figure 6). This is expected to reach about 30% by 2015. The budding trade relations with the relatively riskier/unknown markets has created an opportunity for the use of factoring, which is considered one of the most efficient risk mitigation tools for such markets. Another opportunity provided for the expansion of factoring in Africa is the rising volume of intra-regional trade. The trade has more than quadrupled between 2000 and 2011, reaching US\$144 billion in 2011. In a context of perceived high risks arising from a lack of knowledge of the markets, factoring is now recognized as a low risk way of facilitating the trade. Further, the products entering the trade with the South are largely manufactures, horticulture and semi-manufactures in addition to commodities. Most of the trade is conducted on open account basis and credit is granted to buyers. The trade items are therefore "factorable" raising interest in factoring.

Figure 5: Trends in African Trade, 2000-11, (US\$ Trillion)



Source: World Bank WDI, 2013

Figure 6: Regional Distribution of Africa's Merchandise Trade, 2000, 2011



* Traditional Partners include North America & Europe
Source: World Bank WDI, 2013; IMF Direction of Trade Statistics; UNCTADstat, 2013

Domestically, credible supply chains are beginning to emerge as a result of rising economic growth and through government regulations. In countries with large extractive industries, such as Nigeria, Angola, Zambia, etcetera, governments are promoting increased local value-added in the industries and this has created a huge market for invoice discounting and factoring. Further, Africa's rapid economic growth of the 12 years is expected to continue over the medium to long-term, despite the lingering adverse effects of the recent global financial and economic crises and the sovereign debt crisis in the Eurozone. In this regard, Africa is expected to experience robust expansion in output at an average annual rate of 6% during 2012-22. The IMF forecasts that 7 of the top 10 fastest growing economies in the world during 2011-15 will be in Africa. Further, opportunities are presented by Africa's rising middle class, which is estimated to be the fastest growing in the world. The continent's middle class, which stood at 60 million in 2011, is forecast to rise sharply to about 100 million in 2015 and to about 1.1 billion by 2060. The implication of this burgeoning African middle class is sustained expansion in demand for consumer goods and services. Additionally, Africa is at last enjoying peace and stable governments reflected by significant and steady transformation of the political landscape for the better. The very recent outcomes of presidential and parliamentary elections in Kenya and Ghana attest to this fact.

There is also evidence that the policy-makers and regulators are taking notice and doing something about factoring. Some are beginning to organize awareness seminars and are discussing possibilities of enacting factoring laws.

Afreximbank, the pan-African trade finance bank is adding impetus to the rise of factoring since the mid-2000s, the Bank has been promoting factoring in various ways namely:

1. As member of IFG and as Chair of Africa Chapter of IFG, the Bank has, and continues to facilitate, the sharing of experiences between local members in Africa; report on such experiences to the worldwide IFG Members; advance the best interests of African members and partners; lobby ministers, legislators, government officials and others whose decisions or advice may influence the

success or otherwise of members' and partners' businesses; engage in public relations activities designed to raise local awareness of the benefits of factoring; develop the skills of IFG members' on Factoring in Africa through educational activities and staff exchanges; attracting new members, partners and sponsors; and offer networking opportunities for members, partners and sponsors through seminars, meetings and other functions. Through the work of Afreximbank, a few factoring companies have been created in Ghana, Kenya, Nigeria and elsewhere. Two have started operations and others are expected to start very soon.

2. Introduced/Launched the Factoring Facility to Support African Trade Apart from acting as the chair of the Africa Chapter of the IFG, the Bank in 2009 launched a Factoring Facility to support intra- and extra-African trade as well as domestic factoring targeted at export supply chains (e.g. Mining Services). The purpose of this facility is to provide liquidity and payment risk protection to factors.
3. Noting that one of the constraints to the deployment of factoring in Africa has been inadequate knowledge and skill on the use and benefits of factoring, the Bank working closely with IFG, has since 2011 been organizing series of seminars/workshops on key elements of factoring for participants from factoring and finance companies as well as commercial banks.

Finally, the global factoring industry has taken note and has proactively started promoting factoring and sourcing membership in Africa. This is the case with FCI and IFG. This new interest is bound to have positive repercussions on the industry.

4. CONCLUSIONS

Until recently factoring had been of little or no importance in Africa, with only 4 countries accounting for 100% of the factoring volume. Many factors created this situation including near absence of factorable products. Country risks limited effort at promoting the product by governments and the global factoring groups

as well as the structure and direction of Africa's trade. Since about 10 years ago changes favourable to factoring are beginning to occur.

Since Open Account Terms have become standard practice in many markets, Factoring offers an instrument to African exporters to have access to financing by means of advances against outstanding accounts receivable. If only 50% of the 80% of trade currently done under L/Cs are done on Open Account basis, the market for factoring can be as high as USD139 billion for exports and USD158 billion for imports. Market forces are beginning to gradually force that switch from L/Cs.

Domestically, the rise of the middle class and government regulations are creating important opportunities for factoring. In Nigeria, for example, the oil service industry is a market of USD8-10 billion per annum. Currently most of that market is supported by invoice discounting.

Adding impetus to these factors is the support Afreximbank is providing to promote the product which ranges from awareness promotion, credit lines, lobbying etcetera.

The tail-wind arising from the foregoing makes us forecast that factoring volumes will rise from €24 billion in 2012 to about €90 billion by 2017, with new markets opening in Kenya, Nigeria, Ghana, Côte d'Ivoire, Tanzania, Zambia and elsewhere.

To take advantage of the opportunity will require an active participation of European and American factoring companies in the market to bring expertise and correspondent relationships critical under the 2-Factor framework. Notwithstanding, there will be no stopping the tail-wind that has formed and early entrants to the market will be the best for it.

This article also appeared in the World Factoring Yearbook 2013.

~ END ~

CHAPTER TWO

EVOLUTION OF FACTORING IN EGYPT AND IMPLICATIONS FOR FACTORING DEVELOPMENT IN AFRICA

Dr Benedict O. Oramah*
Mr Richman Dzene**

1. INTRODUCTION

This paper examines the evolution of factoring in Egypt and attempts to draw implications for Africa. Egypt is one of the 5 African countries with thriving factoring business. Factoring volume in Egypt grew at an impressive pace in 2013 as economic activity began to show signs of recovery and the political environment stabilized. Total factoring volume rose by more than 100% from €220 million in 2012 to €450 million in 2013. This is a sharp contrast to developments in 2011, which saw a reversal of the 5 consecutive years of expansion of factoring business as a result of the Arab Spring Revolution that broke in Egypt in January 2011.

Recovery of tourism and manufacturing industries aided domestic factoring in 2012 and 2013. Total domestic factoring volume surpassed the country's international factoring volume in 2012, the first time since 2004. The strong growth of factoring business is a direct response to the steady recovery of economic activity, policy and legal reforms and introduction of business reforms to support the growth of Small and Medium Scale Enterprises (SME) sector in the country. Growth of factoring business is expected to accelerate in 2014 and 2015, supported by forecast strong growth of the Egyptian economy and the implementation of policy reforms.

In what follows, we highlight the current state of factoring in Africa in Section 2, and, discuss the Egyptian macroeconomic environment in Section 3. The legal environment for factoring and the factoring market performance in Egypt are discussed in Sections 4 and 5 respectively. Section 6 identifies the challenges to factoring in Egypt and Section 7 attempts to project future developments in factoring market in Egypt. Section 8 concludes with implications for Africa.

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2. CURRENT STATE OF FACTORING IN AFRICA

The factoring industry in Africa remains underdeveloped and continues to account for insignificant share of global factoring volume. Of the 54 African countries, factoring business is significant only in 5 countries, namely Egypt, Mauritius, Morocco, South Africa and Tunisia. A few small factoring companies are also emerging in Ghana, Cameroon, Senegal, Mauritania and Nigeria partly through the effort of Afreximbank. Recent entrants include Kenya, where two factoring companies have been created and Zimbabwe, where a factoring exchange has been created. South Africa alone accounts for a lion's share of at least 85% of the continent's factoring business between 2005 and 2013.

Africa's total factoring volume withered slightly to €23.12 billion in 2013 from €23.93 billion in 2012 indicating a 3.5% decline (Figure 1) as a result of a 9% contraction in factoring volume in South Africa. Weak economic activity in South Africa on account of prolonged labour unrest and lower commodity prices resulted in a sharp decline in domestic factoring activities in that country. The South African domestic factoring, which accounts for more than 98% of the country's total factoring business, declined from €21.24 billion in 2012 to €19.28 billion in 2013. As a consequence of the decline, the continent's share of total global factoring business retreated marginally from 1.1% in 2012 to 1% in 2013 (Figure 2). The other four African countries with significant factoring activities recorded growth in their factoring volumes in 2013 compared to 2012. Morocco, for instance, recorded

Figure 1: Country Share of Factoring Volume in Africa 2012-13 (%)

Source: Factor Chain International (FCI), 2014

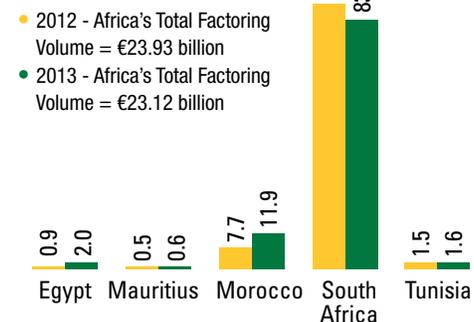
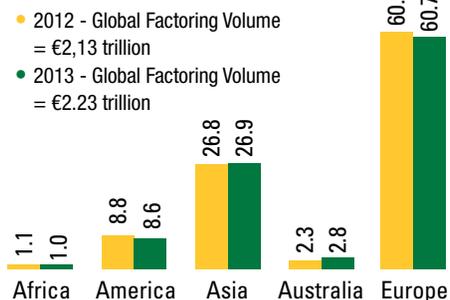


Figure 2: Regional Distribution of Global Factoring Volumes 2012-13 (%)

Source: Factor Chain International (FCI), 2014



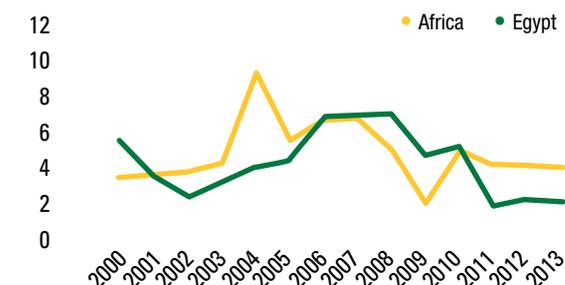
a total of about €2.76 billion in 2013, representing more than 50% growth over 2012. As a result, its share of Africa's total factoring volume rose to 11.9% in 2013 from 7.7% in 2012. Similarly, in Mauritius and Tunisia factoring volume rose by respective rates of 13.3% and 4.5% between 2012 and 2013 to reach €145 million and €373 million.

3. INDUSTRY ENVIRONMENT IN EGYPT

3.1 Economic Environment

The Egyptian economy, the second largest in Africa behind Nigeria, in constant PPP terms (see World Bank *World Development Indicators*, 2014), continue to make a steady recovery from the recession suffered in 2011. The economy, which grew at an average annual rate of 5% during 2000-10, slowed sharply to 1.7% in 2011 (Figure 3) on account of the Revolution which led to the ouster of former President Hosni Mubarak after more than 30-year rule. A tumultuous transition to stable democracy has contributed to keeping the pace of recovery at a snail speed. The economy grew by 2.2% in 2012 and is estimated to grow at over 2% in 2013 (Figure 3), significantly lower than the pre-crisis level. The tourism industry, which accounts for an estimated 6% of GDP, was the worst hit by the revolution. Total tourist arrivals shrunk by about 32% in 2011. The sector has however recovered with arrivals rising by 18% in 2012 and by an estimated 14% in 2013. Tourist arrivals are expected to reach the pre-crisis level of 14 million by the end of 2015.

Figure 3: Growth Rate of Real GDP, (%) 2000-13



Economic growth is expected to pick up in 2014 and 2015 backed by two major rounds of stimulus packages involving injection of about EGE29 billion (US\$4.3 billion) into the economy during September-October, 2013 and a second round

involving a total amount of EG£33.9 billion (equivalent of US\$4.9 billion) during the first half of 2014. The stimulus programmes were aided by bilateral loans estimated at about US\$13 billion from Saudi Arabia and Kuwait. Steady recovery of the tourism industry, and an expected return to growth of the manufacturing industry should help accelerate the pace of recovery of the Egyptian economy. Nevertheless, the pace of recovery might be delayed following the start of IMF-backed fiscal reforms, which involves removal of subsidies on energy products and increases in utility prices.

3.2 Merchandise Trade

Merchandise exports have remained relatively stagnant at around US\$30 billion since 2010 due to decreases in prices of energy, metals and mineral and underutilization of capacities across sectors and industries. Merchandise exports declined by about 3% in 2012 but is estimated to recover by about 7% in 2013 to end the year at US\$31 billion (Figure 4). Unlike other African countries, Egyptian exports are fairly diversified, eliminating market concentration risks. The main recipients of Egypt's exports are Italy (6.7%), India (6.5%), Saudi Arabia (6.1%), China (5.3%), Germany (4.6%) and Libya (4.5%). On a regional basis, the European Union is the largest market for Egypt's exports, accounting for 28% of the country's total merchandise exports, followed by the Middle East (24%) and Developing Asia (13%).

Figure 4: Merchandise Trade (US\$ Bn)

Source: World Bank WDI, 2014

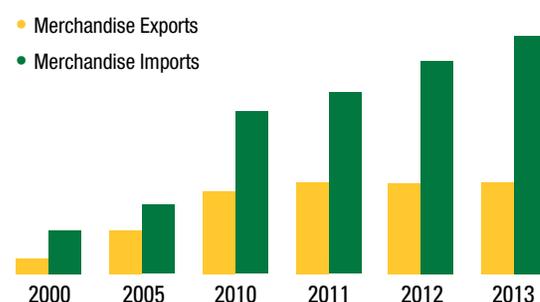
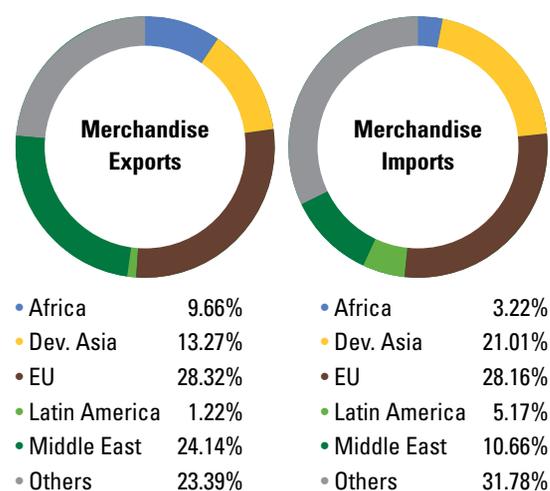


Figure 5: Regional Distribution of Egyptian Trade 2013

Source: IMF Direction of Trade Statistics, 2014



(Figure 5). Exports to other African destinations represent about 10% of Egypt's total exports. Not surprisingly, Egypt's largest import trading partners are China (13%), the US (8%), Italy (5.4%), Ukraine (5.1%), Turkey (4.8%) and Germany (4.5%). On regional basis, the European Union accounts for 28% of Egypt's total imports, followed by Developing Asia with a share of 21% and the Middle East, 11%. Egypt's imports from Africa averaged about 3% in 2013 (Figure 5).

4. LEGAL ENVIRONMENT FOR FACTORING IN EGYPT

Development of Non - Banking Financial Services Industry (NBFSI) as alternative source of finance for Small and Medium Scale Enterprises (SMEs) is being promoted by the Egyptian government. The Government has adopted new regulations to promote the growth of the factoring industry. For instance, the enactment of Law 143 in 2006 (Law 143 of 2006) amended the Stamp Duty Law 111 of 1980, which had imposed stamp duties on factoring companies, among other financial institutions. This new law, which removes stamp duties on factoring companies, was expected to contribute to the development of a more favourable environment for factoring. Additionally, the law also covers rules regulating factoring activity, licensing requirements, registration requirements and procedures, financial adequacy, financial statements, and the role of external auditors, working-capital financing, credit-risk protection, accounts-receivable bookkeeping, and collection services. Another reform measure has been an amendment of the Executive Regulations of the Investment Law 8 of 1997, which governs factoring activities and assignment of the responsibility for setting factoring rules to the General Authority for Investment and Free Zones (GAFI). The amendments also facilitate the entry of factoring companies into the Non - Banking Financial Services Industry.

5. MARKET PERFORMANCE AND SUPPLY

The Egyptian economy is presently dominated by Small and Medium Scale Enterprises (SMEs), which jointly account for about 80% of the country's GDP

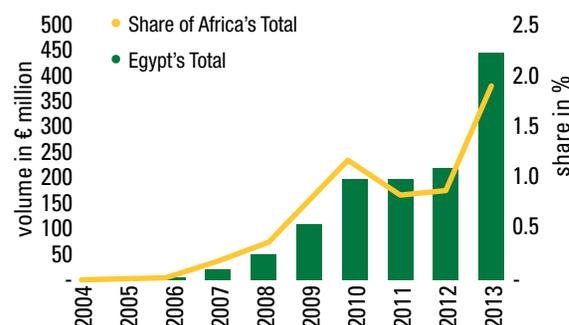
and employs 75% of the labour force. The large size of the SME sector presents enormous factoring business opportunities. Nonetheless, the volume of factoring business relative to the size of the economy and financial sector remains very small. Enterprises continue to finance their accounts receivables from their own savings or source financing from financial institutions that normally apply stringent requirements from credit applicants, particularly SMEs.

As at 2013, factoring business in Egypt was conducted by 7 companies, namely Cairo Factors, Egypt Factors, Drive Finance, Export Credit Guarantee Company of Egypt, Coface Egypt, QNB Alahli Factoring and Tamwel Mortgage. Egypt Factors, the first to enter the Egyptian factoring market, holds the largest share of the factoring transactions and

is jointly owned by International Commercial Bank and FIMBank Plc. The latest Factor to enter the industry was Cairo Factors, which was incorporated in 2013.

Total factoring volume rose remarkably in 2013 on the back of the sturdy recovery of the Egyptian economy, mainly on the back of strong surge in tourism arrivals and expansion of manufacturing output among SMEs. The total volume of factoring business amounted to €450 million in 2013, representing no less than 104% of the €220 million realised in 2012 (Figure 6). As a consequence, the country's share of Africa's factoring business doubled from 1% in 2012 to 2% in 2013 (Figure 1). Domestic factoring, which involves purchase of debtors, sales ledger management and credit cover, rose from €120 million in 2012 to €200 million in 2013. Nevertheless, its share of Egypt's total factoring volume declined by 10 percentage point to 44% in 2013. Credit cover is offered selectively subject to availability of insurance cover. Export (international) factoring volume, on the other hand, rose to €250 million in 2013, from €100 million in 2012.

Figure 6 Egypt's Factoring Volume 2004-13



6. CHALLENGES TO FACTORING IN EGYPT

Factoring companies, like many other non-bank financial institutions in Egypt, face various challenges similar to those impeding efficient intermediation by the formal banking system. Due to the near absence or limited availability of credit insurance, the appetite for risk is limited with most factoring companies focusing on the risk of governments and blue-chip corporates. Presently, only International Commercial Bank, COFACE, Export Credit Guarantee Company of Egypt and handful of others provide credit cover. The limited insurance and reinsurance capacities have also restricted the type of factoring services to only purchase of debtors (with recourse) and sales ledger management.

Further, most factors are relatively small in terms of capitalization and turnover and therefore are limited in the size of business they could write. Additionally, the lack of awareness among SMEs of the existence of factoring and its ability to address the financing challenges faced by them is hampering the growth of domestic factoring in Egypt. Another challenge is in the limited availability of information on potential clients and borrowers. Like other non-bank financial institutions, almost all the factoring companies operating in the country do not have access to potential clients' creditworthiness information, and are impeded by the cumbersome legal mechanism for collection of receivables. Other challenges include: large role played by the state in the financial services industry through ownership, as well as tightly prescribed regulations and the lack of well-functioning and efficient means of registering and enforcing property rights, especially on collateral.

7. FUTURE TRENDS

Improvements in social and political stability and security should restore confidence in the country's economy, drive tourism inflows and improve industrial activity. Further, the country has seen a rapid growth in its trade and investment relations with other African Countries. This also presents enormous factoring opportunities

for factors in the country.¹ Thus, factoring companies need to tailor their services to meet the needs of exporters and importers engaged in this type of business.

Additionally, continued pursuit of business and policy reforms by the Egyptian government with the view to developing SME sector and creating jobs should encourage factors to give attention to SME financing. Between 2006 and 2011, government has implemented several important SME-related reforms. Some of these reforms included:

- steady reduction of the minimum capital requirements for start-ups from EGP50,000 (equivalent of US\$704 at an exchange rate of EGP7.1=US\$1) to zero;
- simplification of administrative procedures, reorganized the business workflow between the real estate registry and the Egyptian Surveying Authority (ESA) and introduced time limits in several procedures. These reforms decreased the time to transfer a property in Cairo from 193 to 72 days;
- the upgrade of port facilities in Alexandria, speeded up customs clearance and greater competition in the banking sector led to a reduction in the time to open a letter of credit; and
- creation of private credit bureau with a view to easing access to credit information by bank and non-bank financial institutions. The new credit bureau distribute negative data about consumers and firms.

These developments, particularly the creation of the credit information bureau, should increase factoring business in Egypt during the near term. Nonetheless, the legal system should be further strengthened to ensure adequate legal mechanism for enforcing collection of receivables.

8. IMPLICATIONS FOR AFRICA

The remarkable growth of factoring business in Egypt in recent years, presents some useful lessons for the rest of Africa. First, deliberate policy reforms,

¹ Egypt-rest-of-Africa trade has grown from half a billion dollars in 2001 to about US\$7 billion in 2013.

particularly those that minimizes the stringent entry requirements and improve access to cheap credit, are required to support SME growth and development in Africa. Further, African governments should continue to pursue export oriented economic growth policies that are conducive to factoring. Last, but not the least, appropriate legal, regulatory and institutional reforms are urgently required to create the enabling environment for factoring to flourish. National government, for instance, should support the emergence and growth of companies offering credit insurance.

This article also appeared in the World Factoring Yearbook 2014.

~ END ~

CHAPTER THREE

AN INSIGHT INTO RECENT LEGAL AND REGULATORY REFORMS OF FACTORING IN AFRICA

Enga Kameni*

1. INTRODUCTION

African countries have witnessed a significant increase in factoring volumes over the past few years, with growth averaging 14.2 % annually. Estimates are that, in monetary terms, factoring volumes will grow to about US\$200 billion by 2020. While impressive, growth starts from relatively low volumes and both the growth to date, as well as prospects for future growth, have been hampered by lack of a comprehensive facilitative legal and regulatory infrastructure governing factoring transactions in Africa, as well as lack of awareness on the continent of what the product is (and is not). These challenges range from inaccurate terminology (what some call factoring in one country may not be the same product, as others understand it in another country), lack of judicial precedents, and the absence of appropriate enforcement mechanisms, among other things. In recent years, there has been a concerted effort to combat these issues with progress being made on all fronts. For example, in certain African countries new legislation has recently been enacted governing factoring transactions. This article discusses recent legal reforms in Africa in relation to factoring. It argues that the current growth of factoring internationally, greater awareness of the nature of factoring as a business product, generally, and the efforts of multilateral institutions such as the African Export-Import Bank (Afreximbank) to educate both the market and regulators about factoring will spur more countries to enact factoring legislation that will facilitate growth of factoring and allow it to thrive across Africa.

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I am grateful to Dr. B Oramah (Executive Vice President, Business Development and Corporate Banking, African Export-Import Bank) and to Dr. George Elombi (Executive Secretary and Director, Legal Services, African Export Import Bank) for his very useful comments.

1.1 Part 2 of this article looks at the nature of the legal and regulatory challenges that impede the carrying out of factoring. Part 3 examines the progress that has been made thus far in a number of African countries in terms of the enacting of factoring laws. Part 4 discusses the role that Afreximbank is playing in supporting and driving the regulatory and legal process.

2. NATURE OF THE LEGAL AND REGULATORY CHALLENGES THAT IMPEDE FACTORING IN AFRICA

2.1 Different legal systems

Africa has a myriad of legal systems. These systems include: customary laws (which became permanent features in the legal systems of most African States as they achieved independence¹ and have been given considerable recognition under the Constitutions of certain African countries)²; English Common Law; Civil Law; Roman Dutch Law and Islamic Law. Added to these are international best practices that have been developed through international treaties and conventions. The English Common Law, the Civil Law and the Roman Dutch Law are products of colonial legacies. Former British colonies apply the English Common Law while former French, Spanish and Portuguese colonies apply the Civil Law, with most of the Civil Law drawn from the Napoleonic Code. Botswana, Namibia, South Africa and Zimbabwe apply the Roman Dutch Law as a result of the Dutch influence in the Southern African region. Islamic Law came as a result of the Islamization of most part of North Africa as a result of conquest by the Ottoman Empire.³ The panoply of legal systems makes it difficult for factors from one legal system to satisfactorily conduct business in another system. This is because contractual principles and doctrines which for the most part govern factoring agreements and as enshrined in the different legal systems are different. A factoring company from a civil law

1 A.N Allot 'The Judicial Ascertainment of Customary Law in British Africa' *Modern Law Review* 1957 London.

2 For example the 1996 Constitution of South Africa. See also J Miles 'Customary and Islamic Law and its development in Africa'. Access online at: <https://www.mcgill.ca/files/isid/LDR.3.pdf> (accessed on 21 July 2014)

3 J Miles *Customary and Islamic Law and its development in Africa*. Page 110. Access online at: <https://www.mcgill.ca/files/isid/LDR.3.pdf> (accessed on 21 July 2014)

country would have to be ready to face a different legal culture if it decides to do business in a common law country. Regarding factoring, under the civil law system, there must be notice of assignment of the debt and disclosure to the debtor. However, this is not the case with the English Common Law as factoring can be carried out on either a disclosed or on an undisclosed basis. The implication is that a factoring company which does business on an undisclosed basis would have to be ready to now conduct business on a disclosed basis. Likewise, a factoring company moving from a system which favours disclosure to one which does not have a culture of disclosure would have to contend with the following legal issues: '(i) intervening third party rights to the cash flow; (ii) difficulties in bringing legal action in the factor's own name; (iii) ability of the debtor to pay its debt directly to the seller without going through the factor and (iv) the debtor being able to exercise its right of set-off against the seller.'⁴ These divergences in the legal systems therefore hamper the smooth operation of factoring.

2.1.1 In addition, generally, under the civil law, it is not very common to assign future receivables. Although France made a big move by adopting the *Loi Dailly*⁵ which permitted the assignment of future receivables⁶, other civil law countries continued to restrict the assignment of future receivables. However, under common law, it is possible to assign future receivables. From the forgoing, it might be challenging from a legal point of view for a factoring company that has been used to a system that allows for undisclosed factoring to effectively conduct business since it would always be faced with issues relating to the legality of assignment of future receivables.

2.1.2 Aside the differences in legal systems, there is a great variance in different jurisdiction on what is or is not factoring. Some jurisdictions consider it as a banking activity,⁷ while others do not.⁸ For jurisdictions that consider factoring

4 G Wynne *A practitioner's guide to trade and commodity finance* (2012) 208 Sweet & Maxwell, London.

5 Loi Dailly of 2 January 1981.

6 For instance, the Cameroon Factoring Law

7 Comment from a participant from Ghana during An Afreximbank Factoring Workshop for Regulators and Lawmakers held on 13 June 2014 in Lagos, Nigeria.

8 or instance Morocco, Egypt and Tunisia

as a banking activity, regulators expect factors to meet minimum banking capital adequacy and prudential risk ratios. Considering the fact that most factors in Africa have limited capital and target small and medium size enterprises, it becomes difficult for them to operate. This is because they will be unable to meet the huge capital requirements of banks which in certain countries are at least US\$2 million dollars.⁹ The effect of this is that most factors will go out of business, SMEs will go bankrupt as they will be deprived of cash flows that would have been provided by factors as banks will not lend to them because they don't have sufficient bankable collaterals. In such systems, it will be difficult for any inroads to be made with regard to the development of factoring laws as governments and legislators would find it redundant since their perception (though not totally true) is that it is a banking activity which ought to be regulated under banking laws.

2.2 Factoring not being a traditional trade finance product in most part of Africa

Not until recently, factoring was not a meaningful form of financing in Africa. This is because of several reasons. First, there was little government effort to promote it and the two leading global factoring organizations – the International Factors Group (IFG) and the Factors Chains International (FWG) - were not very interested in Africa.¹⁰ Second, most companies in Africa traded on Cash Against Documents (CAD) basis and were not prepared to enter into factoring arrangements.¹¹ Third, domestically, exporters offered little or no credit to buyers and supply chains were not fully developed to accommodate factoring.¹² All these led to the absence of a corpus of practice from which the courts, legislators, regulators, lawyers and business people could build any meaningful expertise on factoring and factoring law, hence little enthusiasm and interest in the development of factoring.

2.3 Absence of factoring laws and lack of judicial precedents

For a long time, very few African countries had specific pieces of legislation dealing

with factoring. In fact, before 2012,¹³ only a few African countries¹⁴ had pieces of legislation dealing with factoring. Since it was neither employed as a means of financing nor contemplated to be used as a means of financing, there was no opportunity for it to be tried and tested. As such, legal rules or instruments could not be enacted especially as regulators and governments thought there was little or no possibility for its current and future use.

2.3.1 The consequences of the absence of factoring laws do create ambiguity in the regulatory environment which can lead to risks and uncertainties. This problem is further compounded by the huge costs in perfecting legal documents and the assignment of receivables as there is lack of clarity on how, when and on which kinds of transactions would registration and stamp duty costs apply.

2.3.2 The absence of a law on factoring might hinder the growth of factoring. In certain countries, the absence of factoring law means general principles of contract law are used in factoring operations. The challenges of having factoring regulated only by contract law are:

- Contract law does not define factoring. There might be problems in determining whether or not a particular activity can be considered as factoring;
- In civil law countries, contract law is mostly based on principles developed by the Napoleonic Code and Civil law systems¹⁵. It might not adequately reflect international best practices that have evolved over time as contained in UNIDROIT and UNCITRAL Model Factoring Laws;
- The current dispensation will not be able to regulate international factoring and as such may inhibit its use in many countries.

⁹ For instance, the Central African sub-region.

¹⁰ B Oramah 'From the periphery to the center: Africa as the growth market for factoring'. *2013 Factoring Year Book*

¹¹ As above.

¹² As above.

¹³ Cameroon enacted a factoring law in April 2014. Senegal is in the process of enacting a law on factoring.

¹⁴ Egypt, Morocco, South Africa and Tunisia.

¹⁵ J Miles Customary and Islamic Law and its development in Africa. Page 110. Access online at: <https://www.mcgill.ca/files/isid/LDR.3.pdf> (accessed on 21 July 2014)

3. SHINING LIGHT AT THE END OF THE TUNNEL: RECENT LEGAL AND REGULATORY REFORMS IN AFRICA.

Notwithstanding the above challenges, factoring laws have begun emerging in a number of African countries and the trend is changing. Though the legislative process is piecemeal, it is a step in the right direction. In April 2014, Cameroon enacted a law on factoring which entered into force in June 2014. There are ongoing discussions in Senegal for the need to enact a law on factoring.¹⁶ Recently, the Organization for the Harmonization of Business Law in Africa (OHADA), which is an initiative that had thus far harmonized business laws in some 17 African States,¹⁷ commissioned a study on the feasibility of having a harmonized law on factoring, with a view having a unified factoring law to apply in all its member states¹⁸. These legal initiatives are being supported by African institutions like Afreximbank, international financial institutions like the International Financial Corporation (IFC) and African governments.

3.1 Legal developments in North Africa: Tunisia and Morocco

3.1.1 There is no specific law governing factoring in Tunisia. Factoring companies based their transactions under contract laws which are provided for by the Tunisian Contract Code of 2010. However Law - Law No. 2001-65¹⁹ (as supplemented by Law No. 2006-19²⁰) which governs banks and financial institutions has certain areas dealing with factoring. Factoring companies are considered as non-banking institutions. Notwithstanding this, certain capital requirements must be met before a factoring operation can be undertaken. For instance, the registered capital

16 Ndakhté Gaye 'Le gouvernement souhaite développer l'affacturage au Sénégal et faciliter la résolution des contentieux bancaires.' Available online at: <http://ecofinance.sn/index.php/component/k2/item/402-credit-senegal--une-%C3%A9tude-sur-l%E2%80%99affacturage-et-les-contentieux-bancaire-en-vue> (Accessed on 22 July 2014).

17 Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Niger, Senegal and Togo

18 Telephone discussion with Mr. Diarra Boubacar, Director of Legislative Affairs, OHADA Secretariat Yaoundé on 28 of March 2014.

19 See article 4 of Law N° 2001-65 of 10 July 2001 on Credit Establishments

20 Law n°2006-19 of 2 May 2006 amending and supplementing Law N° 2001-65 of 10 July 2001 on Credit Establishments.

required is at least ten millions Tunisian Dinars (about 4.4 Million EUROs).²¹ In addition, an approval must be obtained from the Minister of Finance before any factoring activity is undertaken and the factoring company is subjected to control by the Central Bank.

3.1.2 Like Tunisia, there is no specific law on factoring in Morocco. Factoring is regulated under the banking law of Morocco.²² Factoring companies are classified as finance institutions. As such, they need to have a capital adequacy requirement of 30million Moroccan Dirhams which is about 2.6 million Euros.

3.1.3 The Tunisian and Moroccan Laws raise an important issue. There is a capital adequacy requirement of about 4.4 million Euros for Tunisia and 2.6 million for Morocco. With regard to Tunisia, this amount is small to what the banks are required to present – twenty five million Tunisian Dinars, which is about 10 million Euros. The lingering question is whether this amount is not too large as to deter factors from entering the market or giving big commercial banks undue advantage. Compared to most countries in sub-Saharan Africa, until the 2011 revolution, Tunisia had a buoyant economy. The banking regulation was enacted during the era of economic growth and prosperity. One could argue that it was a reflection of the economy at the time. This might not be the case today as the country grapples with the effects of the 2011 revolution. Whatever the case it is better to have the capital adequacy requirement than not having it at all, especially as it pales in comparison to what commercial banks are required to hold.

3.2 Legal development in Francophone Africa: The case of Cameroon

Cameroon recently enacted a factoring law in April 2014. The law entered into force in June following its publication in the official gazette. The law has 20 articles divided under five chapters covering the following: general provisions; conclusion and effects of a factoring contract; termination of factoring contract; financial terms and conditions and miscellaneous and final provisions. The law

21 Article 13 of Law n°2006-19 of 2 May 2006 amending and supplementing Law N° 2001-65 of 10 July 2001 on Credit Establishments.

22 Dahir n ° 1-05-178 on the promulgation of law n ° 34-03 on the establishment of credit and associated entities (B.O. n ° 5400 of 2 March 2006).

is largely inspired by the legal system of France²³ and was enacted as a result of several requests from commercial banks.²⁴

Some of the important issues covered by the new law include:

- Definition of factoring
- Definition of subrogation receipt
- Factor has the right to collect receivables
- The law is in keeping with international best practices as enshrined in the UNIDROIT and UNCITRAL Model Laws on Factoring
- The law covers service fees and discounts
- The law prescribes for factoring to be in written form
- There is capital adequacy requirement for factoring companies
- A factoring company must have a license before it commences factoring operations
- Assignment can be effected either manually or electronically.

3.2.1 Some of the shortcomings of the law include the following:

- The law does not provide for the assignment of future receivables. However it has simplified the process of effecting assignment.²⁵
- The law states that only credit institutions can undertake the business of factoring. Under the local banking laws, a credit establishment must have a capital of US\$2 million before it can commence operations. This provision has the potential of discouraging small operators who cannot raise the US\$1 million capital requirement. This might lead to monopoly as there will be very few players. Having a capital requirement is good, but the amount must reflect the size of the economy.

23 Remarks by Erik Timmermans, Secretary General of the International Factoring Group during an Afreximbank Factoring Workshop for Regulators and Lawmakers held on 13 June 2014 in Lagos, Nigeria in Lagos, 13 June 2014.

24 Remarks by a participant from Cameroon during an Afreximbank Factoring Workshop for Regulators and Lawmakers, held on 13 June 2014 in Lagos, Nigeria

25 According to article 6, once the factoring contract takes effect, the adherent shall assign to the factors all or part of its eligible and available receivables. Assignment shall be done through a summary statement of the invoices issued to the same customer and validated by mutual agreement.

3.2.2 Irrespective of the above, the law in Cameroon is a step in the right direction. Factoring business in Cameroon is estimated to be in the region of US\$ 6 million²⁶ and is said to grow in the next few years. With this growth in mind, the logical step was therefore a need to have a clear and efficient legal regime to regulate the business. Prior to the entry into force of the law, there was ambiguity as to the exact form of a factoring contract. Regulators and judges confronted with the interpretation of factoring contracts struggled. Some were of the view that it was a banking activity and as such, had to be regulated by the banking laws in place. Others said it was a pure contractual issue and ought to be interpreted and analyzed using the contractual principles as laid down by the Civil Code for the French speaking regions of Cameroon and judicial precedents for the English speaking regions of Cameroon. Another group of judges and lawyers were of the view that it should be governed by security laws. The entry into force of the factoring law has thus put an end to these diametrically opposed views. The law has taken the 'King Solomon Approach' by giving to the different views something to hold on. This is because the law has an element of contract law²⁷ banking regulation²⁸ and securities law²⁹ all merged into one.

3.3 Legal development under the OHADA initiative

OHADA is the French acronym for *Organisation pour l'Harmonisation en Afrique du Droit des Affaires* which translates into English as the Organization for the Harmonization of Business Laws in Africa (OHADA). It is an initiative aimed at streamlining, reforming and harmonizing business laws in Africa. It comprises of 17 countries³⁰ which are mostly former French colonies³¹ and has its headquarters in Yaoundé, Cameroon. Thus far,

26 As above

27 Article 5 provides that factoring shall take the form of a private agreement or an instrument drawn by a solicitor

28 Article 1 provides that Factoring shall be carried out by credit establishment approved by the monetary authorities with the assent of the Central African Banking Commission.

29 For factoring to be effected it must be registered at the Trade and Personal Property Credit Register.

30 Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Niger, Senegal and Togo

31 Except for the English Speaking Regions of Cameroon (colonized by the British) Equatorial Guinea (colonized by the Spanish) and Guinea Bissau (colonized by the Portuguese).

OHADA has succeeded in harmonizing laws in the fields of general commercial law, corporate law, arbitration, bankruptcy, accounting etc.

3.3.1 In recent years, there have been discussions within OHADA about harmonizing the factoring laws of its member states. Around the late 2000s, discussions on the need for a uniform factoring law intensified and a study was commissioned on the feasibility of and utility of having such a unified factoring law. Prof Bloch, a renowned legal scholar and professor of law at the University of Sorbonne, France, was one of the consultants recruited to undertake this exercise. The results of their study have since been submitted to the OHADA Secretariat. Given the success and track record of OHADA with regards to the development and harmonizing of business laws, it is hoped that it would not be long before they come up with a uniform factoring law.

3.3.2 The above notwithstanding, the greatest challenges may be institutional conflicts between OHADA and certain regional organizations. For instance, the Central African region and the Western African region that make up the majority of OHADA's membership have two banking regulating bodies and two central banks. The Central African Banking Commission (COBAC) and the Bank of Central African States (BEAC) are the main banking regulatory bodies in the Central African region while Economic and Monetary Union of West African States (UEMOA) and Central Bank of West African States (BCEAO) are the main banking regulatory bodies in the West African region. In most countries, these institutions treat factoring as a banking activity and are not convinced it is different from banking. In fact, their view is that it should be undertaken only by banking institution. As a result, they may resist any attempt to have a uniform law on factoring that might take it out of their sphere of control.

3.3.3 As a way forward, it is recommended that extensive consultation should take place with the banking and monetary authorities. OHADA might consider including the following oversight to alleviate any perception of exclusion of the banking regulators:

- Requirement for a license before undertaking factoring;
- Capital adequacy requirements (though this should reflect the socio-economic

- realities of the countries as a higher amount will exclude prospective factors);
- Clear rules on how to undertake factoring operations.³²
- Opening dialogue and lobbying of regulators and legislators so that they buy into the idea;
- Getting factors involved from the outset as they had to drive the idea within their respective countries;
- Getting factors to form regional/continental bodies or associations so that they could maintain continental dialogue as well as share best practices;
- Draw from common law and civil law approaches as there are benefits from each system;
- Review existing laws e.g. in Cameroon, Egypt and South Africa;
- Involve development institutions like the World Bank, the International Finance Corporation (IFC) and Afreximbank, which is already pioneering the move towards a uniform factoring law across the continent.
- Approach insurance companies that could give examples of failures where there were no regulations.

4. THE ROLE OF AFREXIMBANK IN PROMOTING A FACILITATIVE LEGAL AND REGULATORY ENVIRONMENT FOR FACTORING IN AFRICA.

Afreximbank is a pan-African multilateral financial institution with a mandate to finance and promote intra and extra African trade. Afreximbank was established in 1993 and has its headquarters in Cairo, Egypt. There are 2 branch offices, one each in Abuja, Nigeria and Harare, Zimbabwe. Two more were approved recently for Abidjan, Cote d'Ivoire and Nairobi, Kenya. Operations were suspended in the Tunis branch office in 2008.

4.1 The increasing importance of factoring as an efficient means of trade finance especially as factoring volumes are estimated to reach US\$200 billion in the continent has not gone unnoticed by Afreximbank. In fact, the Bank has been at the

³² P Mulroy 'Spotlight on the development of factoring in Africa'. Available online at www.factorscan.com/folder_detail.aspx (accessed on 21 July 2014).

forefront of the promotion and development of factoring in Africa since the mid-2000s. The Bank has done these through the following ways:

- Membership of the International Factors Group and Chair of Africa Chapter wherein Afreximbank shares experiences with African and worldwide members;
- Launching of a factoring facility to support African Trade
- Organizing an annual seminar on factoring.

It should be noted that in the decade in which Afreximbank has been involved in factoring, the absence of a facilitative legal and regulatory environment has been the constant and recurrent challenge often highlighted by African factors for impeding the development of factoring in Africa. As a result there have been a number of concerted efforts at the level of Afreximbank to address this challenge. Central to these efforts has been: (i) the creation of a factoring working group within the Bank with the overall objective of the development of a model law on factoring; (ii) Organizing seminars on factoring law (iii) participation in international fora on factoring like IFG, FCI and ICC-Banking Commission annual meetings. These efforts will in turn be discussed below.

4.2 Creation of a Factoring Working Group (FWG) and its mandate of developing a Model Law

Afreximbank created the FWG in 2012 to specifically address factoring related issues. The FWG is made up of 6 staff and is chaired by Afreximbank's Executive Vice President in charge of Corporate Banking and Business Development. Members of the FWG are drawn from the Bank's trade finance, operations and legal departments. One of overriding FWG 2014 objectives is to identify strategies for the development of a model law on factoring. To this end, the FWG has put in place an action plan for the realization of this objective; developed a terms of reference for the consultant and engaged with prospective legal consultants and experts through meetings. At the moment, FWG is examining proposals from interested consultants for the development of the model law.

4.2.1 The aim of the model law would be to help African countries develop their national laws on factoring based on the model law. They will use the model law to

inspire and inform their own local laws. Factoring companies would henceforth have a piece of legislation to turn to and others especially foreign companies that cited absence of a clear factoring regime and enforcement mechanisms as reasons for not conducting businesses in a number of African countries would have their fears allayed.

4.3 Organizing seminars on factoring law.

Afreximbank has realized that before moving towards the development of factoring law, it would be better to conduct a series of training, information and awareness campaigns on factoring law. There is confusion as to what factoring is or is not. As mentioned earlier, some regulators often treat it as a conventional banking activity and are adamant to change their perceptions. To address all these issues, the Bank has earmarked two trainings; the first, held in Nigeria brought regulators, lawmaker and factors from more than 15 West and Central African countries; the second, to be held in Zambia, would bring together regulators, lawmakers and factors from Eastern and Southern Africa.

4.3.1 Afreximbank's seminar in Lagos had over 60 participants. Topics covered included : evolution of factoring, legal aspects of factoring; implementation of a factoring law in Africa: the case of Egypt and Cameroon; the role of central banks, legislators, lawyers and factors in promoting factoring in Africa. The seminar provided regulators, central bank governors, legislators and factors from 15 West and Central African countries with opportunities to discuss the legal and regulatory challenges that impede the smooth operation of factoring in their respective countries. The overall conclusion was the impending necessity of putting in place a facilitative regulatory environment under which factoring would thrive.

4.4 Participation in international fora on factoring with IFG, FCI and ICC-Banking Commission annual meetings and collaboration with the African Development Bank (AfDB)

Afreximbank is a member of the International Factors Group. It's Executive Vice President in charge of Business Development and Corporate Banking is the President of IFG Africa Chapter. In recent years, Afreximbank has participated in factoring events organized by Factors Chain International (FCI) and the

ICC-Banking Commission. Participation at these events have given Afreximbank the opportunity to advance the best interests of Africa, lobby ministers and legislators whose decisions or advice may influence the success or otherwise of members and engaged in activities designed to raise local awareness of the benefits of factoring. This year, some of the discussions³³ have centered on the IFG Model Law and the Model Law currently being drafted between FCI and the ICC Banking Commission. Afreximbank attended sessions on the presentation of some of the key provisions of the model laws and learned viable lessons from the discussions that ensued. These lessons included the best international practices contained in these laws as well as the approach adopted in their drafting. These lessons will be useful tools when Afreximbank commences the development of a model factoring law for Africa.

5. CONCLUSION

From the forgoing, there is strong momentum and a great need for an efficient and facilitative legal and regulatory regime in Africa. For this to emerge there is a need for factors in the continent to engage with regulators and lawmakers and express the challenges caused by the absence of a predicable, certain and clear legal regime on factoring. Driven by its development mandate, Afreximbank has identified factoring as an important catalyst for economic development and has added impetus to the idea of facilitative legal and regulatory environment through its support and promotion of factoring initiatives. The idea of developing a model law to fill in the lacunae created by the absence of factoring laws in most African countries is commendable and salutary. It would not only pave the way in terms of legislative activism, but will sound the death knell for the aged old problems of loan sharking by unscrupulous individuals who are taking advantage of the unregulated markets and charging exorbitant fees.

This article also appeared in the World Factoring Yearbook 2014.

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³³ ICC-Banking Commission meeting that took place in Dubai in April 2014 and the FCI Annual Meeting that took place in Vancouver in June 2014.

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