

Bill Summary

The Regulation of Factor (Assignment of Receivables) Bill, 2011

- The Regulation of Factor (Assignment of Receivables) Bill, 2011 was introduced in the Lok Sabha on March 24, 2011 by the Minister of Finance Shri Pranab Mukherjee. The Bill seeks to regulate the business of factoring by providing a mechanism for assignment of receivables of an industry to a factor and payment of consideration by the factor to the industrial unit.
- The Bill provides that no factor may commence or carry on the factoring business without a certificate of registration from the Reserve Bank of India. Applicants for registration must meet the eligibility requirements of a non-banking financial company under the Reserve Bank of India Act, 1934.
- The Bill provides for the regulation of the factoring business by the Reserve Bank of India. It empowers the Reserve Bank of India to issue directions, call for information from the factor, and prohibit financial institutions from undertaking the factoring business if they fail to comply with its directions. If any factor fails to comply with a direction issued by the Reserve Bank of India, the factor and every officer in default may be punished with a fine of up to 5 lakh rupees and an additional fine of Rs 10,000 for each day the default continues.
- The Bill refers to the factor as the “assignee”, the industry selling the receivable to the factor as the “assignor”, and the person liable to the industry as the “debtor”.
- Under the Bill, assignees shall have an absolute right to secure due payment of the receivable from the debtor and may exercise all rights of the assignor for this purpose.
- Debtors shall have the right of notification of assignment. The assignee will not be entitled to demand payment from the debtor until the notice is given. Where no notice is given by the assignor or assignee, any payment made by the debtor to the assignor shall be held in trust by the assignor for the benefit of the assignee.
- If the assignor is a micro or small enterprise, the liability of the debtor will be subject to certain provisions of the Micro, Small, and Medium Enterprises Development Act, 2006, which regulate payment and recovery of debt.
- After the assignment of receivables takes place, the payment instruction issued to the debtor may modify whom payment is to be rendered to, but not (a) the amount of debt specified in the original contract, (b) the place where payment is to be made, and (c) the date on which payment is to be made.
- On a claim made by the assignee against the debtor, the debtor retains all defenses and rights of set-off arising out of the original contract with the assignor.
- Every factor will be required to file the particulars of every transaction of assignment of receivables within 30 days from the date of assignment with the Central Registry, to be set up under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. If a factoring company fails to comply, the company and each officer failing to comply may be punished with a fine of up to Rs 5,000 per day.
- Factors are barred from disclosing personal information obtained from any assignor, its present and future customers, its commercial and business activities, and the terms of sale between the assignor and any debtor.

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