

Standing Committee Report Summary

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

- The Standing Committee on Finance submitted its 39th Report on 'The Regulation of Factor (Assignment of Receivables) Bill, 2011' on August 30, 2011. The Chairperson was Shri Yashwant Sinha.
- The Bill seeks to provide for and regulate the assignment of receivables by making provisions for registration of factoring organisations and their regulation by the Reserve Bank of India (RBI). In addition, the Bill provides for the rights and obligations of parties to contract for the assignment of receivables from one to another.
- The Committee opined that there is a lack of clarity in the definitions and title of the Bill, which gives the impression that a law to regulate factors already exists. In addition, the Committee noted that the Hindi version of the Bill translates 'factor' to 'adhatia'. This may give the impression that factors are to serve as intermediaries between enterprises and buyers of products, which is prohibited by the Bill.
- The Report noted that the Ministry, in response to the Committee's concerns, has stated its intention to replace the word 'adhatia' in the Hindi version with the word 'factor' and to specifically exclude agents of agricultural produce from the definition of 'factor' in the Bill. In addition, the Ministry has stated its intention to change the name of the Bill to 'The Factoring Regulation Bill, 2011'. The Committee recommends that the Ministry incorporate these modifications in to the Bill.
- The Committee noted that the 1988 report of an Expert Group headed by C.S. Kalyansundaram, former chairman of State Bank of India, recommended that assignment of receivables in favour of a factor be exempt from stamp duty. The Committee stated that although it is in agreement with the recommendation of the Expert Group, no such provision is included in the Bill.
- The Report of the Committee states that the Ministry, in response to the Committee's concerns, has agreed with its view and will bring an amendment to the Indian Stamp Act, 1889 through a schedule to the Bill. The Committee found this appropriate.
- The Report notes that the Bill does not include any provision on the amount of commission or discount charged by factors. The Committee stated its concern that unregulated pricing will lead to exploitative practices, and recommends that guidelines on factor pricing be issued by the RBI.
- The Committee opined in its Report that clauses 8 and 18 of the Bill are inconsistent. Clause 8 provides that the debtor is responsible to make payment to the assignee (factor) only after notice of assignment is served upon him by the assignor. Clause 18 provides that in case the assignor commits a breach of contract against the debtor, the debtor is not entitled to recover payments already made to the assignor or assignee (factor). The Committee felt that clause 18 does not mention the rights of the debtor and is thus inconsistent with clause 8, which determines the responsibilities of all parties.
- The Report notes that the Ministry, in response to the concerns of the Committee, submitted that clause 18 does not preclude the right of the debtor to claim any losses on account of defective goods or short supply from the assignor, and that an explanation to this effect may be added to clause 18. The Committee recommends that such amendment be made to the Bill.
- Clause 32 of the Bill states that the government may make rules in respect to the "form and manner in which transactions of assignments of receivables in favour of a non-banking financial company shall be filed." The Committee recommends that the phrase 'non-banking financial company' be changed to 'factor', since the definition of 'factor' includes other statutory companies as well. The Report notes that the government has agreed to this change.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of PRS Legislative Research ("PRS"). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.