

UDC 347.4

DOI <https://doi.org/10.32782/msd/2024.1/01>

COMPARATIVE ANALYSIS OF THE CREDIT AGREEMENT AND FACTORING AGREEMENT

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The article is devoted to the consideration of the comparative analysis of the credit agreement and the factoring agreement, in particular, the main features of the concept, subject, parties of the credit agreement and the factoring agreement are highlighted. The common and distinctive features of the factoring agreement and credit agreement are analyzed in accordance with the legislation of Ukraine.

It was established that the main advantages of the factoring contract are: cost and time savings, risk hedging, instant increase in the liquidity of the company of the business entity, which in turn leads to an improvement in the competitive position. Yes, the client has more freedom of action regarding future investments, as his equity ratio increases thanks to factoring. This, in turn, gives him the opportunity to quickly respond to market developments and take advantage of the discounts offered. The following benefits of a factoring agreement are security planning due to guaranteed claims, and the company's creditworthiness is strengthened through factoring and the associated balance sheet reduction. As a result, the company (client) constantly receives better conditions in relation to other possible loans. Thus, the company will be able to constantly improve its position in negotiations and strengthen its independence from banks.

Factoring and practice loan contracts can be closely intertwined with insurance contracts. Recently, we are increasingly observing the situation regarding the active use of credit insurance in Ukraine and European countries. Credit insurance is an effective financial risk management tool that helps protect a company against losses incurred as a result of non-payment of commercial debts.

One of the advantages of credit insurance is that it allows you to minimize the impact of the unforeseen non-payment of one or more customers on the company's solvency. Types of credit insurance include: financial, commodity, consumer credit insurance, as well as collateralized credit insurance, etc. During the period of martial law in Ukraine, residual credit (debt) insurance is increasingly used, it covers insured payments in the event of an emergency.

Key words: *credit agreement, factoring agreement, creditor, borrower, credit relations, insurance, contract, parties to the contract, credit insurance.*

Берназ-Лукавецька О. М., Кірсанов О. В. ПОРІВНЯЛЬНИЙ АНАЛІЗ КРЕДИТНОГО ДОГОВОРУ ТА ДОГОВОРУ ФАКТОРИНГУ

Статтю присвячено розгляду порівняльного аналізу кредитного договору та договору факторингу, зокрема виділено основні особливості поняття, предмету, сторін кредитного договору та договору факторингу. Проаналізовано спільні та відмінні риси договору факторингу та кредитного договору відповідно до законодавства України.

Установлено, що основними перевагами договору факторингу є: економія коштів та часу, хеджування ризиків, миттєве підвищення ліквідності компанії суб'єкта підприємницької діяльності, що, своєю чергою, веде до поліпшення конкурентної позиції. Так, клієнт має більше свободи дій щодо майбутніх інвестицій, оскільки його коефіцієнт власного капіталу збільшується завдяки факторингу. Це, своєю чергою, дає йому можливість швидко реагувати на розвиток ринку та скористатися пропонуваними знижками. Наступними перевагами договору факторингу є планування безпеки через гарантовані вимоги, а також кредитоспроможність компанії змінюється завдяки факторингу та пов'язаному з ним скороченню балансу. У результаті цього компанія (клієнт) постійно отримує кращі умови по відношенню до інших можливих позик. Таким чином, компанія зможе постійно поліпшувати свою позицію на переговорах і зміцнювати свою незалежність від банків.

Договори факторингу та кредиту на практиці можуть тісно переплітатися з договорами страхування. Останнім часом ми дедалі частіше спостерігаємо ситуацію щодо активного застосування кредитного стра-

хування в Україні та європейських країнах. Кредитне страхування є ефективним інструментом управління фінансовими ризиками, який допомагає захищати компанію від збитків, понесених у результаті несплати комерційних боргів.

Однією з переваг кредитного страхування є те, що воно дає змогу мінімізувати вплив непередбаченої несплати одного чи кількох клієнтів на платоспроможність компанії. Видами кредитного страхування виступають: страхування фінансових, товарних, споживчих кредитів, страхування кредитів, що видаються під заставу, тощо. У період воєнного стану в Україні дедалі частіше використовують страхування залишкового кредиту (боргу), воно покриває застраховані платежі у разі надзвичайної ситуації.

Ключові слова: кредитний договір, договір факторингу, кредитор, позичальник, кредитні правовідносини, страхування, договір, сторони договору, кредитне страхування.

Formulation of the problem. With the adoption of the Civil and Economic Codes of Ukraine, many amendments were made to our legal system. Some of them immediately took root among the general public, while others did not gain much popularity. However, our state has been in a state of crisis for a long time, this situation is caused by many reasons. Initially, this was influenced by the situation with COVID-19, now the introduction of martial law on the territory of Ukraine.

However, despite the above-mentioned factors, business entities are trying to overcome such circumstances and work further to increase the economic development of the country. But now they have a new problem – it is the problem of attracting funds to carry out their activities. If earlier, in most cases, individuals used the legal mechanism of a bank loan when they needed to finance their activities, now they are beginning to consider alternative options that may be more effective and less risky. As an example, such an alternative can be factoring, which is gaining more and more supporters nowadays and which is so actively used abroad. The institute of credit insurance is also gaining popularity. Therefore, it is very important to carry out a comparative analysis of a credit agreement and a loan agreement taking into account credit insurance.

Analysis of recent research and publications. The analysis of domestic scientific publications in the field of factoring and crediting is quite limited, but scientists who research issues in this field can be noted. These are, in particular: A. I. Bezklubny, O.M. Bernaz – Lukavetska, N.Yu. Golubeva, I.V. Davydova, O.V. Dzyublyuk, M.O. Zelenova, Ya.A. Litvin, S.M. Leph, V.V. Luts, O.L. Malakhova, V.P. Makovii, E.O. Kharitonov, J. Marshall, J. Sinki. Foreign scientists who

studied the features of factoring operations are represented by J. Gilbert, E. Dollan, B. Gvozdiov, P. Rose and others.

However, despite the fact that many works were devoted to the study of these types of contracts, in most cases scientists studied them separately, and if they did compare, they mostly compared only their specific features, and not these two types of contracts in general.

The purpose of the article is to conduct a study of the peculiarities and problematic issues of bank credit and factoring, as well as their comparative characteristics under the current legislation of Ukraine and in the international space, including consideration of the peculiarities of credit insurance, based on the experience of foreign countries.

Presenting main material. Starting a comparative analysis, it is first necessary to define the concept of contracts according to the current legislation of Ukraine, as well as the sources of their legal regulation. A bank loan is one of the main types of credit. The Civil Code of Ukraine (hereinafter the Civil Code of Ukraine) contains a definition of a credit agreement, under which a bank or other financial institution (lender) undertakes to provide funds (loan) to the borrower in the amount and on the terms established by the agreement, and the borrower undertakes to return the loan and to pay interest [1]. This contract is a subtype of the loan contract in accordance with Art. 1054 of the Civil Code, which indicates that the general provisions on the loan and the special provisions on the loan agreement, enshrined in Chapters 1 and 2 of Chapter 71 of the Civil Code of Ukraine, respectively, as well as in other normative legal acts, apply to credit relations.

In turn, the factoring contract of the Central Committee of Ukraine defines it as financing

under the assignment of the right of monetary claim, according to which one party (the factor) transfers or undertakes to transfer funds to the disposal of the other party (the client) for a fee, and the client withdraws or undertakes to withdraw the factor has the right to a monetary claim against a third party (debtor). Chapter 73 of the Civil Code of Ukraine is devoted to factoring. In addition, Article 350 of the Economic Code of Ukraine [2] and Part 3 of Art. 49 of the Law of Ukraine "On Banks and Banking Activities" have almost identical definitions of the concept of factoring [3].

However, in the course of the analysis of the normative basis of the legal regulation of these contracts, it was concluded that it is necessary to carry out a separate definition of credit relations, as well as relations arising from credit and factoring contracts. Since according to Art. 49 of the Law of Ukraine "On Banks and Banking Activities", credit relations can be defined as relations that arise in connection with the implementation of credit operations in relation to: placement of deposits (deposits); carrying out operations on the securities market on its own behalf; provision of guarantees and sureties and other obligations from third parties, which provide for their fulfillment in monetary form; acquisition of the right to demand the fulfillment of obligations in monetary form for delivered goods or services, assuming the risk of fulfilling such requirements and accepting payments (factoring); leasing [3].

That is, we can say that credit relations include a set of other relations, which are somewhat different in nature. We are interested in relations arising from the loan agreement, as well as factoring relations.

For example, according to L.P. Oplachko, relations under a credit agreement should be distinguished in broad and narrow meanings. In a broad sense, it is a relationship regulated by legal norms that arises between participants in property turnover regarding the provision of cash and goods and material values for a specified period with deferred payment upon redistribution of material funds under the conditions of urgency, return and payment in the form of interest on the loan. In the narrow

(own) sense, relations under a credit agreement are relations governed by civil law rules that arise on the basis of a credit agreement between banks, other financial institutions (creditors), and, in accordance with the requirements defined by them, natural or legal persons (borrowers) and provide for the transfer of funds by lenders to borrowers for a specified period under the conditions of maturity, repayment and payment in the form of interest on the loan [4, c. 10; 5].

Factoring relationships can be defined as relationships that involve the acquisition of the right to demand the fulfillment of obligations in monetary form for the supplied goods or services, assuming the risk of fulfilling such requirements and receiving payments. In essence, factoring relations are a complex of relations arising in connection with the assignment of the right of claim, as well as relations arising from the credit agreement.

In this regard, scientists have formed mixed opinions about the nature of factoring relationships. The first say that factoring is a type of loan and credit operations, according to which the factor's obligations to provide financing are based on the principle of a loan agreement or credit agreement. Other scientists point out that factoring is an exclusively independent civil law construction, the purpose of which is to transfer funds to the client at the expense of ceding the client's claim to another person.

For example, in France, factoring is understood as a financial service to protect against unpaid debts and overdue payments, and the following are among its main advantages:

- Factoring allows you to quickly increase cash flow
- The factoring company provides customers with credit information about potential new customers, which allows them to make better credit decisions, i.e. conducts quality credit checks
- Factoring is always quick and easy. The application required to establish a factoring relationship is much simpler than other types of financing. No tax returns, financial statements, business plans or projections are required.
- Factoring is carried out without a personal guarantee. Company managers are not obliged to

personally guarantee the return of financing. They usually have to guarantee for fraud or disputes, but not for customer insolvency.

– Credit control. Factoring eliminates the need to collect accounts receivable, allowing business staff and/or owners to focus on core business [6].

However, this method of financing has its drawbacks:

– it is expensive, because the fees that the company collects to reward itself are withheld from the collected sums;

– the factor sometimes requires a minimum amount in invoices to confirm them;

– the commitment is not flexible, it is usually offered for a full year;

– the company deprives itself of part of its relations with customers, which can sometimes worsen them [7].

Regarding the subject of the loan agreement, it is exclusively monetary funds in national or foreign currency. The subject of the factoring contract is not money, but the right to a monetary claim, the payment term for which has arrived (current claim), as well as the right to a claim that will arise in the future (future claim). The future claim is considered transferred to the factor from the day the right of claim to the debtor arises. If the transfer of the right to a monetary claim is conditioned by a certain event, it is considered transferred from the moment of the occurrence of this event. In these cases, additional registration of the assignment of the right to a monetary claim is not required [8, p. 683; 9, p.40; 10].

As for the parties, in the case of a bank loan, only the bank can be the creditor. In order to carry out such a financial transaction as providing funds for a loan (including on the terms of a financial loan) at the expense of the funds raised, the bank must have an appropriate license.

In turn, in the factoring contract, the parties are the factor and the client. The client in the factoring contract can be an individual or a legal entity, which is the subject of entrepreneurial activity. As for the borrower under the bank loan agreement, it can be any person, regardless of the type of activity. A factor can be a bank or a financial institution, as well as an individual — a subject

of entrepreneurial activity, which, according to the law, has the right to carry out factoring operations. In the factoring contract, there are also 3rd parties to whom the factor assigns the right to a monetary claim. Based on this, we can conclude that factoring can be used only in the field of business activity.

In Spain, the parties to the factoring contract are the assignor: the company that transfers the rights to receive its invoices; factor: the financial institution that accepts the assignment and provides the financial service and debtor: the customer of the assignor who is obliged to pay the bills. An example of concluding a factoring agreement can be the following. Let's imagine "Company 123" that has sold products or services and has an invoice pending payment for one million pesos with a deadline of 60 days. Under the factoring contract, Company 123 transfers the account to the factoring organization or bank. In exchange, the factoring organization immediately provides you with an amount equivalent to 90% of the invoice value. After 60 days, the factoring organization receives an invoice directly from the customer, who makes the payment to the financial institution, not to Company 123. The difference between the total amount of the invoice and the amount that has already been transferred is the profit of the financial institution [11].

The analysis of the norms of the Central Committee of Ukraine gives reason to believe that the credit agreement is a consensual agreement, and the factoring agreement is real, but when the right of claim is transferred in the future, it becomes consensual. Both contracts are paid, bilateral, casual and refer to contracts in the field of financial services. A credit agreement is always fixed-term, and factoring is usually fixed-term, but it can also be open-ended [12].

The essential terms of the loan agreement are the subject (amount of funds), term and price (interest rate). The essential terms of the franchise agreement are identical, but with certain clarifications. The subject is the right of claim, and the price is the amount of the factor's remuneration. Both contracts are concluded exclusively in writing.

Also, both contracts can be closely intertwined in practices with insurance contracts. Analyzing the latest trends, we see that such an institution as credit insurance is actively used in Ukraine and European countries. It is an effective financial risk management tool that protects the company from losses incurred as a result of non-payment of commercial debts.

One of the advantages of credit insurance is that it allows you to minimize the impact of the unforeseen non-payment of one or more customers on the company's solvency. Credit insurance is an important tool for effective risk management. So, for example, in Spain it can include 3 additional services: information about the financial status of current and potential customers, recovery of unpaid debts, compensation in case of non-payment [13].

As for Germany, the data of the Federal Statistical Office show that the most common reasons for excessive indebtedness of individuals are unemployment, illness and death of a partner. Residual debt insurance or loan default insurance covers insured payments in the event of unemployment through no fault of the client or long-term incapacity, or repays the insured amount of the loan in the event of his death.

It is not uncommon for credit insurance to be included in factoring. Especially if the person chooses a service provider that offers a factoring contract. In this case, credit insurance is a guarantee within the contract. The operation

then becomes much simpler for a company that only has one contract to manage [14].

Conclusions. In summary, it is necessary to address the practical differences of these contracts: credit and factoring are used by individuals to meet different needs; the loan is returned to the bank exclusively by the borrower, and with factoring, funds are received from the client's debtors; as for the means of securing the obligation, the loan is often issued as collateral, while factoring does not use this; regarding the amount, according to the terms of the loan, its size is always determined by the contract, and according to the terms of factoring, the amount is not limited and can increase depending on the growth of the client's sales volume; the loan, in turn, is repaid on a pre-arranged day, but factoring financing – on the day of actual payment by the debtor for the delivered goods. And finally, in connection with the opening of the loan, it is necessary to draw up a significant number of documents, factoring financing is paid automatically if there is only a waybill and an invoice. Analyzing the above, we can come to the conclusion that credit and factoring agreements inherently have both similar and distinctive features that make it possible to identify them. In each specific case, business entities weigh all the circumstances in which they find themselves and choose the most effective and efficient tool for financing their activities.

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