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### **Legal Qualifications Of Factoring Companies**

The factoring is used to mean "the provision of financing by acquiring and then collecting the assets which are already appeared or are expected to be appeared on behalf of the assignor", deriving from the Latin word, "factor" as including "an action on behalf of another person or activity".

In Turkey, the concept of factoring has been entered to the banking terminology with the "Decree Law pertaining to Businesses of Lending Money" in 1983. However, with the development of finance sector in Turkey more detailed provisions were enacted with the "Regulation pertaining to Establishment and Activities of Leasing, Factoring and Financing Companies".

The aforementioned regulation besides its detailed structure, also provides rather strict provisions regarding the establishment of the financing companies including factoring companies. The reason behind this detailed and strict provisions is mainly the crises appeared in banking and financing sector during the last periods of 1990ies due to the corruptive activities covering a big part of the sector. Currently, the factoring companies' establishment and activities are subject to the authority of "Banking Regulation and Supervision Agency" (BRSA).

The establishment of a factoring company is subject to the permission of BRSA which is a two step procedure. BRSA during permission process, requires that the factoring companies must be established as a joint stock company with a minimum capital amount of 5.000.000 TL, the shares must be registered and issued in cash remuneration and other relevant conditions recited under the Regulation. Additionally, BRSA looks at the fact that the founders should have sufficient financial power to provide the sufficient funds necessary for the subscribed capital. Again, under Turkish law, the factoring companies can only be expended via branches and representative offices; however, establishing agencies is not permitted. There is also a minimum capital amount requirement of 1000.000 TL for the branches and representative offices of factoring companies.

As mentioned above, this strict examination process and requirements of BRSA appeared as a reaction against the corruptive activities in banking and finance sector. This strict control of BRSA is also backed up with the provisions providing severe punishments in case of any breach of these regulations. In this respect, the breach of the legislation regarding factoring activities is punished with both administrative and judicial pecuniary punishment and also with imprisonment starting from two years.

However, this strict monitoring structure appeared in Turkey, despite being pretty important for preventing the illegal activities, may sometimes push the market players to find ways to "coil around the law". In this respect the most common way used to escape from the monitoring of BRSA, is to carry out factoring activities through a factoring company established in abroad under the impression as if the Turkish entity is a legal branch of such foreign factoring company which received all the necessary permissions required under Turkish law. Another breaching activity is to carrying out financing activities in parallel to the activities of a factoring company. Under this route there exists a factoring company legally established under the permission of BRSA. However, since the activities of this factoring company are monitored by BRSA, the financial activities are run outside of this company. For instance, such financial activities are carried out through the bank accounts of the relatives of the shareholders of the factoring company. BRSA, in order to prevent such illegal activities operated outside of the factoring company, monitors the activities in banking accounts of the close relatives of the shareholders of the factoring company. Under circumstances where such parallel financing activities are caught by BRSA, beside the above mentioned punishments, a criminal prosecution on the grounds of usury is launched. Also, since monetary activities without any valid commercial cause would also be interpreted as an income by the tax authorities leading to significant tax punishments.

Since the results of any financial activity which may be considered in breach of the relevant legislation subject to the authority of BRSA is strictly punished, instead of finding gaps in legal texts or interpreting them to find ways to escape from monitoring, in Turkey, following the route determined by BRSA in establishing a new company to be engaged in factoring activities or instead of establishing a new company, acquiring the shares of a company which already has all necessary permissions seems to be the smoothest way of carrying out factoring activities