

Factoring Contract Suitability as a Financing Mechanism For Economic Enterprises

عن ملائمة عقد تحويل الفاتورة كآلية لتمويل المؤسسات الاقتصادية

Fatiha Naar

Faculty of Law and Political Sciences, Mouloud Mammeri
University - Tizi Ouzou
fatiha.naar@ummo.dz

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Abstract:

In the context of the legislative reform necessitated by the new orientations of the public authorities, we are witnessing the reception of new techniques such as that of factoring, which has marked its appearance in the Commercial Code. Dedicated to meeting the financial needs of economic enterprises, this study aims to understand the role that factoring contract can play as an financing alternative means of economic institutions, while analyzing the texts governing this type of contract.

Keywords: Economic Enterprises; Factoring Contract; Financing; Algerian Law.

ملخص:

في إطار الإصلاح التشريعي الذي فرضته التوجهات الجديدة للسلطات العامة، نشهد اعتماد تقنيات جديدة مثل عقد تحويل الفاتورة، الذي أدرجه المشرع الجزائري في القانون التجاري. تهدف هذه الدراسة، المخصصة لتلبية الاحتياجات المالية للمؤسسات الاقتصادية، إلى الإحاطة بالدور الذي يمكن أن يؤديه عقد تحويل الفاتورة كبديل تمويلي للمؤسسات الاقتصادية، مع تحليل النصوص التي تحكم هذا نوع من العقود.

الكلمات المفتاحية: مؤسسة اقتصادية: المؤسسات الاقتصادية: عقد تحويل الفواتير: تمويل: القانون الجزائري.

Auteur correspondant: Fatiha Naar

Introduction:

Economic enterprises function as the fundamental base of economic development because they advance growth through innovation and production and employment and market expansion. The economic value of these enterprises reaches further than their direct output because they create entrepreneurial environments that stimulate sectoral market competition. The maintenance of such a role depends on sustained access to sufficient financing resources which support operational needs and investment activities. Small and medium-sized enterprises (SMEs) experience severe difficulties in obtaining formal credit market access because of structural barriers.

Economic enterprises and SMEs operating in competitive and uncertain markets need to maintain sufficient liquidity as a fundamental concern. Bank loans as traditional financing tools require strict collateral standards and extended approval timelines which restrict their availability to small businesses¹. The global market has adopted factoring as an alternative financing solution to enhance short-term liquidity for businesses. Through factoring businesses can obtain immediate cash flow by letting a specialized financial intermediary take over their receivables which minimizes working capital limitations and credit risk exposure.

The adoption of factoring contracts in Algeria took place as part of economic and legal reforms that sought to modernize financial markets and expand enterprise financing options. The Algerian Commercial Code introduced factoring provisions through Legislative Decree No. 93-08², which demonstrated the state's goal to harmonize its legal system with international standards³.

However, the factoring contract in its entirety focuses on one of the specialized company (factor) paying the invoices of its customer (seller) on his debtor (the buyer), before the maturity date, and in return for that, it undertakes not to refer to the customer in the event of its inability to fulfill the rights at maturity.

This aspect represents the financing of the service, which is used by the creditor side of the member's current account, following the deduction of expenses from commissions and interest. The names given to the factoring contract differed, as there are those who call it a debt collection contract, a contract for the purchase of commercial rights, or a debt recovery contract. But it is agreed that it is a contract added to other well-known contracts in business life and directed to serve various economic operators from producers or distributors to meet the requirements of the market.

There is no doubt that the factoring contract serves the economic companies as it devotes itself to the practice of production activity, however, the practical use of this financing mechanism remains restricted which creates doubts about the operational preparedness of Algerian financial institutions and the understanding of economic actors about this financing tool⁴. In this context, there is reason to question what extent the factoring contract can meet the financial needs of economic enterprises?

Therefore, it is necessary to clarify the Financing Needs of the Economic Corporation, (Section I), Then highlight explores the factoring contract the responsiveness to the economic companies needs (Section II).

Section I: The relationship between economic institutions and factoring contract:

The markets are characterized by the abundance of merchandise and services varied and different offered by various economic operators from large, medium and small economic institutions - Especially after the amendment of Ministerial Decision No. 1275 relating to the startups, by Decision No. 008 of February 23, 2025⁵, where the startup was replaced by the economic enterprise.

Nonetheless, these operators are engaged in a competitive dynamic with the objective of attaining profits and catering to diverse customer segments. In the context of the business market, contracting with it is recognized as a primary method to achieve favorable outcomes, in accordance with a fundamental principle that governs the efficiency of business operations. This principle asserts that the effectiveness of a business's financing approach significantly influences its operational efficiency.

Indeed, Financing is the main pillar of the existence of the economic institution, and its continued existence. So, the financial management of each institution works to determine the institution's needs for financing, and then to choose the most appropriate financing method at the lowest cost, and the best conditions. In this regard, it is necessary to clarify the different needs of the economic institution, in particular financing and the need for guarantee (A), then to highlight the different specificities of the financial transfer contract in relation to the economic institution (B).

A) Economic Enterprises needs:

The economic institution's need for financing is related to the status of the institution and the stages it goes through, starting from its establishment, through its growth until its maturity (1). However, given the nature of investment operations involved in long-term loans, the area of intervention does not take into account the need of economic institutions for short-term financing, which is necessary to meet the periodic expenses imposed by the payment of wages and the payment of outstanding bills in light of the delay in their collection with others, which increases the importance of the factoring contract in meeting the needs of these institutions (2).

1 - Financial needs from the founding stage to the maturity stage:

Meeting the economic institution's need for financing by resorting to one of the available financing methods is not automatic, but based on planning by the financial department of the institution, in order to reconcile the collection of these funds and their employment through investment and thus activate the economic role of the institution. However, the financing needs of an economic enterprise vary according to the circumstances of the phase in which it going through. During the stage from the project idea to its implementation and initial growth until it enters the market, the business owner needs investment capital, which varies from one stage to another:

- Founding capital : The project needs capital in its founding stage, which is characterized by the difficulty of obtaining funds from external sources, which makes financiers hesitate in this type of financing, due to the risks facing the project, so the project owner works to exploit part of his capital to develop his idea and prove its effectiveness and effectiveness, and is used in order to

obtain the necessary funding in order to design and develop models for new goods and experience them in the market.

- Financing in the actual launch phase of the project: It is the financing needed by the economic institution in its early years, in order to manufacture and sell this product, and therefore the institution needs the necessary funds to meet the expenses related to starting the activity and continuing until it reaches the stage of reaping the proceeds resulting from the sale of different products.
- Financial needs in the growth phase: It is the stage that comes after the first construction and launch stage, this stage is characterized by a large number of sales after activating its products in the market, which leads to a large number of financial flows, and this stage is also characterized by rapid growth, and therefore the economic institution is obligated to obtain growth capital to support its own funds and in order to expand activity and investment, raise the level of production and create new products to penetrate more into the market.
- There are also financing needs in the second phase of the organization's growth, as at this stage it needs short-term financing to meet the needs resulting from the development of sales, especially when it opens payment maturities for its customers, as well as it needs long-term financing to a lower degree in order to manufacture new products or develop existing products in order to survive in the market and keep pace with competition.
- Financial needs in the expansion phase: The economic institution needs at this stage financial resources in order to expand its production capacities, and the use of advanced methods to achieve new expansions in the productive capacities of the institution in order to achieve high profitability of its turnover.
- Financial needs in the stage of maturity: At this stage, the problems of obtaining financing decrease, as the institution's access to maturity results in stability in sales as well as stability and growth of financial flows, which enables the institution to cover various costs. However, funding is still needed, but at a lower rate, in order to maintain its share of sales and maintain fixed capital and working capital.
- Financial needs in the decline stage: At this stage, the economic institution needs additional financing, due to the low level of sales and low competitiveness, so it is in dire need to enhance financing, especially when introducing new products, and here the financial institution plays an important role, not only in the financing aspect, but to rehabilitate the functions of this institution as well.

2- Economic Enterprises need guarantee:

Another general rule in the market is that there is no loan without risk and no risk without collateral. This means that the economic institutions obtaining the appropriate amounts to continue

and expand in the market is accompanied by the possibility of exposing them to the risk of not recovering their rights that they have from the customers dealing with them, and then searching for how to return their rights and return the amounts they obtained in the form of financing to the institutions that helped them to finance from banking institutions or other persons. This risk increases when it comes to international markets and major, medium and long-term deals in which considerations and data are involved that make the lack of access to debt or right very likely.

Thus, these institutions need someone to guarantee and secure them that allows them to deal with buyers with comfort, and here comes again the mechanism of transferring the invoice through the competent companies to play a pivotal role in this regard. This is evidenced by the reasons for the emergence of the factoring contract itself, which dates back to the eighteenth century in the United States of America as a result of the large immigration of English industrialists, who were looking for a guarantee to pay the dues related to their various fabrics and cover goods sent to unknown places⁶. The first company created was called the House of Intermediaries. Its slogan was "Sell and we'll do the rest"⁷.

In this regard, the content of the factoring contract when it is stipulated to transfer commercial invoices from the economic institution to invoice transfer companies, which means the latter's purchase of the debts and rights of the economic institution and then its replacement in the maturity of those debts and rights with priority over other creditors.

This allows the institution to develop and remove the most important obstacles in its production and distribution activity in the market, which is the risk of non-payment, non-collection or non-payment, this is what the economic institution is looking for and that goal is to conclude a factoring contract.

B) The factoring contract specificity in relation to the economic enterprise:

Therefore, in view of the need of economic institutions to the factoring contract, it is necessary to determine its specificity that makes it suitable and suitable for economic institutions, which appears by determining the correct legal adaptation of it (1), and its advantages in achieving the objectives of the economic institution (2).

1- The factoring contract qualification:

Various names have been given to the factoring contract. Some call it a debt collection contract, a commercial rights purchase contract, or a debt recovery contract. However, the consensus is that it is a contract that complements other contracts known in business life and is designed to serve various economic agents, from producers to distributors, in order to meet market requirements⁸.

However, the correct legal qualification is not organized within the provisions of the legal texts, as it is an unnamed contract in some legislation, including French legislation, because it is the creation of customs and commercial customs and a contract named to some extent in Algerian legislation⁹. But returning to practical practices and the activity of specialized companies, we conclude that the legal qualification makes it a contract in the service of economic enterprises:

- A contract binding on both parties: This is evident from the commitment of its parties to fulfill their duties towards each other. The economic establishment delivers commercial invoices, pays a commission, and allows it to replace it. The invoice transfer company pays the value of those commercial invoices. This is inferred from the phrases of Article 543 bis 13 and bis 16 “ It undertakes the responsibility of payment, in exchange for a fee, and transfers all guarantees that guaranteed the implementation of obligations to the benefit of the intermediary”.
- Exchange contract: This means that the economic institution receives the financing and guarantee service in exchange for the payment of the commission and the company replaces itself in the recovery of the debt by giving it a subrogation receipt bearing the words "you can subrogate".
- Personal consideration: This means that the factoring company chooses the economic institution that enjoys credibility and a great commercial reputation in the market, which is inferred from its behavior and field and professional experience in the market in terms of the frequency of dealing with it or not, as well as its financial solvency and ability to pay, and the matter extends even more to the civilians with whom the economic institution deals by choosing the best and most excellent of them.
- Adhesion contract: This is evident from the fact that the bill transfer companies are the ones who set the preconditions for the economic institution with regard to the terms of purchasing commercial rights and the coverage percentage, and the economic institution has no choice but to reject or accept them.
- A complex contract of a special nature: It is agreed upon by the majority of case law, as it came to meet the needs of economic institutions for services related to the transfer of rights or debts and the agreement on solutions with execution. These are therefore successive and consecutive operations that accompany the economic institution. At the same time, the economic institution benefits from financing, guarantee and consulting services, which constitutes an advantage rarely found in contracts that generally involve a single commitment. This is a particularity that provides great services to these institutions of all sizes.
- Global contract: It is also called exclusive contract, since the billing company pays all the commercial invoices of the economic institution in a single payment and not in several installments with one hand. On the other hand, the economic institution will have to transfer all its current and future invoices to the intermediary (i.e. factoring company) and prohibit it from dealing with any other intermediary during the term of the contract. Another advantage that makes the economic institution very willing to resort to the conclusion of the contract¹⁰.
- Banking contract and guarantee: This means that factoring companies play the role of financiers and guarantors of the activity of economic institutions, which is what is inferred from the jurisdiction granted to them by the legislation in terms of their intervention to collect the value of

goods and services sold by economic institutions and their guarantee in following up on the debtor.

Thus, the factoring contract contains multiple legal aspects which combine different contractual elements. The factoring contract functions as a binding financial and operational agreement which requires both service delivery and exclusive commitments. Jurisdictions classify this contract differently yet Algerian law treats it as a commercial contract with significant commercial function.

2- The factoring contract Features:

Through the legal qualification of the factoring contract, we conclude its Features, which make economic enterprises benefit greatly from it, and which can be demonstrated in:

- The factoring contract is a financial mechanism and technique in its content: based on its objective of providing the financial amounts necessary for economic institutions to operate and develop in the markets, it is part of the banking operations carried out by banks and financial institutions and is regulated by banking law. This is confirmed by the texts of the French Monetary and Financial Code¹¹. While we note the position adopted by the Algerian legislator when he considered it a commercial paper when he included it in the book related to commercial papers within the provisions of commercial code¹², the factoring contract is not a payment paper or a means of payment as is known for commercial papers, but it is a financing and guarantee mechanism, and therefore this error must be corrected and taken out of the commercial legalization and included within the monetary and loan law, similar to what is in force for the rental credit because The most suitable place for her.
- Factoring contract is a management technique: The invoice transfer contract is characterized by being a mechanism for managing and administering the customer's cash flow, which is expressed by the management of the customer's paper portfolio, to the extent that the invoice transfer companies called intermediary provide auxiliary services for the benefit of economic institutions, through their application of the rule that a good customer is the one with the best invoices¹³ called non-financial services such as the selection of invoices, the provision of information and commercial consultations, and the holding of the billing service, the litigation service of the economic institution called in Algerian legislation the affiliate, as well as the management of its accounts.
- The nature of the companies intervening on behalf of economic enterprises: The factoring contract features, from which economic institutions greatly benefit, are evident in the specificity of the companies intervening to conclude it, according to the mechanisms they follow in this regard. The form presented to it differs between some legislations, such as French, Tunisian legislation, and Algerian legislation.

Section II: Factoring Contract as a Responsive Financing Mechanism:

The factoring operation is a complex in that it brings together in the same contract a set of various legal categories such as discounting, mandate, credit insurance, however the legal analysis makes it possible to differentiate the factoring contract from these technical deferents, which makes it an innominate contract . Due to its importance, the Algerian legislator - like most legislation - was keen to adopt this mechanism and include it in the Algerian commercial law. In fact, it enables the economic operator to obtain the necessary financial liquidity before the maturity of his debts on a commercial transaction concluded within the framework of practicing his economic activity.

Furthermore, it is necessary to show the extent to which the factoring contract responds to the financing need of the economic enterprise by highlighting its importance (A), and then the status and reality of the contract in Algeria (B).

A) The factoring contract importance:

Under the factoring contract, the affiliate or customer obtains his debts before the maturity date, so that the debts are transferred to the intermediary company, and this is what exempts the customer from the management of his Debts, as well as the contract gives him a guarantee against the potential risks of non-payment, so that it falls on the broker, and here the functions of the factoring contract appear (1), in addition to the advantages and benefits provided by this contract (2).

1- The factoring contract functions:

Factoring constitutes a short-term financing instrument for enterprises, whereby the enterprise relinquishes its rights towards its customers for a proportion or all of the invoices, which are subsequently transferred to a price to be paid in cash at the time of fulfillment or in advance via a banking process based on debt mobilization. This process effectively transforms future debt into liquid assets. For the aforementioned purpose, a short-term credit line is frequently established with the contracting enterprise by the factor, in the form of advance payables based on waived invoices, thereby ensuring that the funding ratio is 80-90% of the fixed rights in the invoices accepted.

In fact, this contract also provides several services and functions for the beneficiary institution, resulting in:

- Direct and flexible financing of the institution:

Payment through the factoring contract addresses the urgent need of the economic institution to have the necessary liquidity to continue its operations. Indeed, the standard payment rules in commercial transactions does not serve much economic projects, as they require waiting for the agreed deadline to receive compensation for the transactions carried out. In this context, the factoring contract has been considered as an economic mechanism that helps the institution obtain its money for reuse as quickly as possible and at the lowest cost.

However, the importance of this contract as a means of financing has increased due to the difficulty of obtaining liquidity, and also the disadvantages that characterize conventional financing methods, so this contract greatly serves creditors who have undue debts or those incurred by debtors

residing abroad, by filling the value of the debts before collecting them. Considering that this contract allows the economic institution to carry out the immediate collection of debts that have not matured their repayment, during the invoice transfer company (intermediary company) to advance the value of the fixed rights in the invoices before the payment date. So it is a technique for mobilizing commercial receivables which allows creditors to obtain immediately available means of payment from a third party, in exchange for their term debt¹⁴.

Moreover, financing enables the company to obtain the necessary capital to recommence operations and reduce working capital turnover through immediate invoice payments. The use of the fund is unrestricted, allowing for its application in diverse corporate objectives. It is noteworthy that factoring stands as the sole financial instrument that enables a congruence between the pursuit of growth and the augmentation of revenue. The provision of detailed and structured reports is an integral feature of the functionality of factoring, which enables efficient cash flow management¹⁵.

- **Managing customer accounts:** In addition to the financing service provided by the factoring technique, it performs another function, which is an ancillary service through the intermediary company managing the customer's treasury and managing his accounts, which is expressed by managing the clients' portfolio of papers. The intermediary company known as factor functions as a vital operational component which handles accounts receivable management for the enterprise. The factor performs four main functions which include invoice verification and settlement processing and active follow-up for risk coverage and market intelligence provision. The functions enhance both billing efficiency and collection processes and deliver better financial transparency.
- **Guarantee against the risk of non-payment:** The factoring contract enables the economic institution to remove the obstacles that it can face when carrying out its activity, which is the risk of non-payment, non-collection or non-payment, as the bill transfer company works within the framework of this contract to buy the debts of the economic institution, and then takes the place of the latter in the fulfillment of the value of those rights.

It is the responsibility of the mediator to ensure the good performance of the contract, as the risk of non-payment is placed on him, and if he cannot collect the value of the invoices that were previously paid to the customer, it cannot be recourse to him (the customer) even if the reason for non-collection is due to the debtor's insolvency, or a legal or administrative obstacle that prevented payment¹⁶.

Thus, this contract was considered a technique for insurance or guarantee of transferred rights, according to which the affiliate informs the factor about the quality of his debtor, by providing a detailed statement of the financial position of each customer, which helps to determine the maximum limit that cannot be exceeded when lending it, which can avoid the consequences of the consequences, and in return, the factor conducts a free study in order to inquire about the financial situation of the factor's customers, until the customers choose the debt that the broker must deal with, after informing them of the use of conversion technology Invoices, all in order to choose clients with solvency, which makes them able to meet their factor at maturity and thus spare the broker the risk of non-payment.

Referring to the provisions of the legal texts regulating the factoring contract in Algerian law, there are no special provisions stating that the intermediary will not return to the customer in the event that he is unable to restore the rights when the payment deadline comes, with the exception of Article 543 bis 14 of Decree No. 93-08, which indicates that the broker bears the liability of non-payment in return for a fee, without another text explaining the details of the effects of this condition.

In fact, within the framework of the factoring contract, the intermediary is obliged to guarantee the execution, by bearing the risk of non-payment, as well as an undertaking not to disobey the member.

2- The factoring contract advantages :

The practical application of factoring by enterprises reveals its actual operational value. Factoring serves as an internal financing solution for 60% of businesses to handle their short-term liquidity requirements.

Factoring serves 30% of businesses to support export transactions because it provides risk reduction and early payment benefits in international business dealings. Factoring serves the remaining 10% of businesses to handle administrative work in credit management and customer account operations. The statistics demonstrate how factoring adapts to meet different business requirements including cash flow management and operational efficiency needs.

Hence, the factoring contract provides economic enterprises with both internal and external benefits. The domestic application of this contract improves liquidity while decreasing administrative work and enabling flexible financing based on invoice volume. The international application of this contract protects exporters from default risks while providing market insights and supporting logistics and customs processing. The benefits of factoring make it a strategic short-term financing tool which SMEs use to achieve competitiveness and border growth.

Considering the many functions of the factoring contract, it offers numerous advantages to the economic enterprise and gives it competitiveness both internally and internationally:

- **At the level of internal trade:** The factoring contract provides the economic institution with several benefits, as it reduces the burden placed on the latter in terms of financial, accounting and administrative management of files related to customers, so this function is assumed by the intermediary in this type of operations. This is what achieves a strong impetus for growth and development, as economic institutions are exempted, which allows them to reduce the time and costs of management, guarantee and financing resulting from these accounts.

Financing through the factoring contract does not define a specific ceiling , such as what is in force in other mechanisms to cover commercial debts, in which a previously defined financing line is followed, and this is what gives the invoice transfer contract the advantage of flexibility in use, as it does not know limits in financing, so the only restriction that determines the value of financing

remains the scope of the guarantee granted to the customer, according to the number of invoices accepted by the factor.

One of the most important results of this contract is to improve the situation of economic institutions, as the factor's waiver in whole or in part of the invoices due from his customers, leads to the demise of the customers' account from the budget of the economic institution, which results in a decrease in the need for working capital necessary to meet the renewable exploitation expenses, as well as exempting the institution from preoccupation and searching for the financial position of customers¹⁷.

Indeed, the contract is also a payment to the economic enterprise that is in the early stages of growth, as the possibility of obtaining financing in the establishment through this mechanism exempts it from waiting for the results of the final account for the first year of the start of the activity, as once it resorts to the factoring contract, it avoids resorting to loans when it is ready to conclude various commercial deals, and this is what enriches it from management expenses, which leads to a series of positive developments, so that it has the cash to pay its bills, so that it can reduce its bank expenses within a short period, which enables it to focus its attention and preoccupation with establishing more projects and investments.

- **At the external level:** In addition to the many advantages provided by the factoring mechanism of economic institutions at the level of internal trade it also has many external limits to conquer and develop foreign markets, and among these benefits can be mentioned as follows:

Increased export operations: The intermediary bears the burden of non-payment, and this is considered extremely important, especially for economic institutions that have the capacity to recover their rights abroad, whether in terms of means or practical experience, as well as in terms of the necessary financial costs, because their financial budget does not bear the burden of lost rights or non-payment. Indeed, the intermediary system is considered a way to develop exports, as it encourages institutions that lack strong administrative capacities to export their products and accessing international markets

B) Legal Reality of Factoring contract in Algeria:

In view of the importance factoring contracts and its multiple functions, as well as the many advantages it provides to the economic enterprise in terms of financing, and collecting rights, ensuring non-payment from civilians, as well as exempting the institution from the burden of managing the accounts of its customers, Algeria sought to devote this mechanism to support the economic sector and national development in general, within the framework of adopting reforms in the banking field, so it is necessary to clarify the extent of the dedication of this technique, By examining the reality of this contract from a legal point of view (1), and then the reality of the factoring contract from a practical perspective (2).

1- The factoring contract reality from a legal point of view:

Economic institutions need support from the state, so that they can carry out various production and distribution processes, in order to contribute to the development of the national economy, by finding techniques that would grant these institutions the necessary guarantees and financing. In this regard, the Algerian legislator, like other legislations, has sought to embody several mechanisms in the light of the reform of the economic system in general and in particular the banking system, especially after the promulgation of Act No. 23-09 containing the Monetary and Banking Law¹⁸, which repealed Act No. 90-10 on Currency and Credit¹⁹.

As for the invoice contract, the Algerian legislator codified it by Legislative Decree No. 93-08 - in addition to other commercial papers - where he allocated provisions to this contract included in Articles 543 bis 14 to 543 bis 15, where Article 543 bis included, in fact, the provisions relating to factoring have been incorporated into Book IV of Commerce, which deals with the subject of commercial paper, the book is subdivided into four titles²⁰.

It is therefore clear that the legislator treats factoring as a commercial paper in the same way as a promissory note or a check.

However, it is not possible to consider the factoring contract among the commercial papers of the check, the bill of exchange or the promissory note due to the lack of distinctive characteristics in this contract, as it is not negotiable by endorsement and delivery, as it is not a means of payment or guarantee, but rather an autonomous contract whose object is to transfer or assign trade receivables.

It also notes the space granted to this contract, where five articles were allocated to it, which does not give all the details of this contract.

Moreover, if we compare the definition of the Algerian legislator with the definition given by the French legislator to this contract, we find that the definition of the Algerian legislator is marred by inadequacy by limiting the function of this contract to the factor mastering the amounts fixed in the invoices that bear the risk of non-payment, without referring to the functions performed by this contract.

Furthermore, referring to Executive Decree No. 95-331 issued pursuant to Article 543 bis 18, this decree sets out the conditions for qualifying companies approved to factoring, indicating that the control nature imposed on factoring companies is in contradiction with the provisions of the Act relating to the monetary and banking²¹ by not unifying the competent bodies. While the factoring companies qualification and control fall within the competence of the Finance Ministry, at the time of granting the qualification and exercising control over factoring companies, the qualification of banks and financial institutions is granted to the Monetary and Banking Council, while supervision falls within the competence of bank commission, despite the adaptation of factoring companies into financial companies constituted in the form of commercial companies (joint stock companies or limited liability companies).

Not to mention the contradiction that arises when examining the provisions governing the factoring contract, in order to seek the legal basis for the transfer of rights under from this contract from the affiliate to the intermediary. All these contradictions indicate something about the random codification adopted by the Algerian legislator regarding the factoring technique, as it was incorporated into the commercial papers, and regulated by provisions that contain numerous contradictions. What increased the ambiguity was the fact of not having activated this mechanism in the process, because if the factoring contract had been effectively implemented, there would have been practical solutions to try to eliminate this contradiction and establish clear rules for practicing this legal technique.

2- The factoring contract reality from a practical perspective:

The Algerian legislator's desire to adopt the factoring contract as a financing mechanism, by enabling economic institutions to obtain their financial liquidity before the maturity of their debts by resorting to the factoring company, was not accompanied by an actual and applied embodiment on the ground, as the Algerian economic environment has not witnessed a recovery or a wide application of this mechanism.

Indeed, the financial sector of Algeria shows factoring as a minor component because it represents less than 0.1% of GDP according to IMF estimates²². The financial system maintains its dominance through traditional banking instruments including overdrafts and short-term credit lines which serve as the primary financing tools for small and medium-sized enterprises (SMEs) that constitute the majority of the private sector.

Considering that the problem facing economic institutions in Algeria is that the factoring mechanism does not define any effectiveness or any application, as no factoring company has been established, which these institutions may resort to, despite the passage of several years since the establishment of this mechanism.

However, the most important institution in Algeria is Sonelgaz, which has a level of expertise in the factoring , it has a specialized institution factoring, in order to recover its debts, works annually to expand and develop production and distribution networks as well as meet the increasing demand.

However , the most important obstacle hindering the activity of this institution is the problem of large debts and the difficulty of collecting them, and in front of the high rates of debts and the difficulties and costs they impose in terms of managing rights, following them up, collecting them, and even resorting to the judiciary in case of non-payment, it was necessary to find a banking institution specialized in factoring to get rid of these burdens, and also to secure this financing, which enables this institution to expand the activity and develop production and distribution.

It is worth noting that the company faces three main obstacles to factoring adoption because of its rigid public accounting procedures, and lack of private financial intermediary partnerships.

Finally, in general, the factoring contract remains insufficiently applied in Algeria, and this is another confirmation of the ineffectiveness of the legal texts in their entirety, which does not serve the economic institution and prevents its development. While the Algerian market needs such a

mechanism to face the conditions and data of trade, especially with the intensity of competition and the accelerated pace of commercial transactions, especially abroad.

Conclusion:

Currently, an increasing number of governments have resorted to this financing mechanism. A significant number of successful international experiences utilise factoring as a financing instrument for economic enterprises.

Thus, the use of the factoring technique serves to illustrate that the Algerian legislator does not appear to prioritize the applicability of the legal rules it promulgates. Indeed, it is content to adopt texts so that foreign investors are convinced that Algeria is engaged in a process of economic and financial reforms that will put it on the path to liberalization.

Given Algeria's integration into a globalised economy, it is imperative to clarify the provisions of the commercial code relating to factoring, ensuring the invoice is recognized as a commercial paper, and to issue the implementing texts of the law. Factoring adoption brings significant benefits to enterprise liquidity management while promoting business growth and enhancing export market competitiveness. Factoring provides enterprises with fast working capital access and credit risk management outsourcing capabilities which enables them to pursue strategic growth instead of administrative tasks. The integration of factoring into the Algerian financial market will function as a catalyst to enhance national economic resilience.

Although the factoring contract in Algeria is regulated through texts, they remain ambiguous, and the factoring contract not only as a means of financing, but also as a technology for commercial management in which information is provided and rights are collected . However, the utilization of a successful factoring technique as a contemporary financing mechanism requires the establishment of a legal and legislative framework, in addition to the development of an infrastructure of specialized banking and financial institutions to undertake this particular activity.

However, the legal framework should focus on improving the enforceability of factoring contracts, state-owned enterprises should be given greater flexibility to use factoring mechanisms as part of financial reform initiatives, which will create opportunities for market adoption.

Therefore, a special system must be set up for the factoring contract, and it should not be included in the commercial papers, because it differs from other forms of paper.

Citations:

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³ International Monetary Fund. (2024). *Algeria: 2023 Article IV Consultation—Press Release; Staff Report*. IMF Country Report No. 24/88.
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⁷ Mahmoudi Bachir, factoring Contract, A Means of Financing Small and Medium Enterprises and Modern Instrument for Buying Commercial Debts, National Office of Educational Works, Algeria, 2003, p. 9.

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¹⁴ Courtenier. B, *Techniques for mobilizing international claims: aspects of international law and comparative law*, International Business Law Review, No. 3, 1999, p. 296.

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¹⁷ For more details on the issue, see : Talhi Samah, Aouadi Abdelkader, Aouam Nisreen, *The Role of factoring in Financing Small and Medium Enterprises in Algeria*, Journal of Economics and Sustainable Development, Vol. 04, No. 02, 2021, p. 387.

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¹⁹ Law No. 90-10 of April 10, 1990 on Currency and Credit, Official Journal. No. 16 of April 18, 1990 (repealed).

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²¹ Law No. 23-09, previous reference.

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