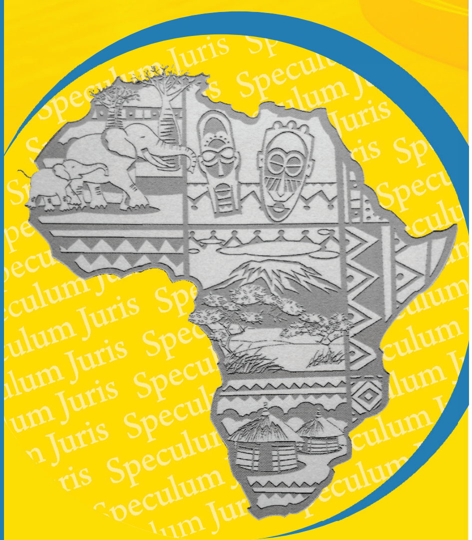
Article

Speculum Juris

Vol 36 No 1 (2022)
Published 31 July 2022

ISSN 2523-2177



Cite as: Korankye-Sakyi and Oluyeju "Leveraging Regulatory Interventions in the Receivables Financing Industry to Stimulate the Growth of Small Businesses in Ghana" 2022 (36) Spec Juris 183–200

University of Fort Hare
Together in Excellence

Leveraging Regulatory Interventions in the Receivables Financing Industry to Stimulate the Growth of Small Businesses in Ghana

Francis Kofi Korankye-Sakyi*
Lecturer, Faculty of Law, University of Cape Coast, Ghana

Olufemi Oluyeju**
Senior Lecturer, Department of Public Law, School of Law, University of Venda, South Africa

Abstract

Small and medium enterprises (SMEs) generally constitute about 92% of all registered companies in Ghana. Again, 85% of the SMEs in Ghana offer employment in the manufacturing sector alone to the citizens and contribute 75% to the GDP of Ghana. It is a no-brainer that capital constitutes the life-wire for every business entity, especially for SMEs. Lack of funding has been a major obstacle to suppliers and other business enterprises in the supply chain and a core reason for most insolvency. Given the challenging credit market today, receivables financing or factoring has become an indispensable financing vehicle for many enterprises, irrespective of their sizes. In addition, receivables finance or credit factoring serves as a better alternative to the traditional means of financing by allowing SMEs to achieve liquidity and solvency. In most developed countries, receivables financing has played a critical role in financing SMEs, and it has always received the support of governments and central banks, globally. In Ghana, however, an adequate and facilitative

* B. Ed, LLB, MA (Cape Coast); LLM (University of Pretoria).

** LLB; LLM; MILD; MIRSS; LLD (University of Pretoria).

regulatory regime has not been developed to stimulate and regulate the business and practice of credit factoring compared to other countries across the globe. Thus, it is in this context that this article argues that one of the reasons why factoring has not been developed and leveraged as an alternative financing source by SMEs in Ghana is due to the absence of a specific and well-developed regulatory framework to regulate the receivables financing industry. This article, therefore, aims at identifying the regulatory gaps in the receivables financing industry in Ghana and then makes a compelling case for a robust, specific legal and regulatory regime to promote the industry in the country.

Keywords: Factoring; Ghana; receivables financing; SMEs; trade finance.

1 INTRODUCTION

The contributions of small businesses and small and medium enterprises (SMEs) generally to national development are enormous and varied.[1] These contributions commonly cover issues such as employment, gross domestic product (GDP), innovations, human resource development, and poverty alleviation. These enterprises are, however, constrained by a lack of access to credit.[2] The challenges for the survival and continued relevance of SMEs cannot be divorced from the supply of reliable financing and sustainable trade credit. Traditionally, SMEs rely on sources of finance such as borrowing from banks and credit agencies in the forms of loans and overdrafts with the attendant requirements for guarantees and collaterals[3] that are usually almost impossible for these businesses to come by. It is estimated that in Ghana SMEs constitute about 92% of all registered companies.[4] Again, 85% of the SMEs in Ghana offer employment in the manufacturing sector alone to the citizens and contribute 75% to the GDP of the country.[5]

In most developed countries, receivable finance or credit factoring has played a critical role in financing SMEs, and it receives the support of governments and central banks, worldwide.[6] However, few countries in Africa, notably South Africa, Tunisia, Egypt, and Morocco, have the legislative and institutional framework for credit factoring.[7] In the Global North, credit factoring has been successfully utilised, especially in the European Union (EU) Member States, as well as in all five non-EU "benchmark" countries considered relevant such as Russia, Switzerland,

---

1 This article is adapted from an LL.M dissertation completed by Francis Kofi Korankye-Sakyi at the Faculty of Law, Centre for Human Rights, University of Pretoria. We are thankful to Dr. Oyeniyi Abe of the International Development Law Unit, University of Pretoria, who provided useful comments on earlier drafts of the article. The usual caveats apply.
For the purposes of this article, the words "small-businesses" and "SMEs" are used interchangeably.

2 Kwashie-Akorsu and Agyapong "Alternative Model for Financing SMEs in Ghana" 2012 *International Journal of Arts and Commerce* 136.

3 The Vienna Initiative Working Group on Credit Guarantee Scheme "Credit Guarantee Schemes for SME Lending in Central, Eastern and South-Eastern Europe" November 2014. Report available at <https://www.eib.org/attachments/efs/viwg_credit_guarantee_schemes_report_en.pdf> (accessed 02-05- 2019).

4 Sacerdoti "Access to Bank Credit in Sub–Saharan Africa: Key Issues and Reform Strategies" 2005 IMF Working Paper available at <https://www.imf.org/external/pubs/ft/wp/2005/wp05166.pdf> (accessed 17-04-2019).

5 Daily Guide "The Catalyst of Economic Growth: A Look at ILO Contribution to SMEs' Development" (Accra, 22 April 2017) available at https://dailyguidenetwork.com/catalyst-economic-growth-look-ilo-contribution-smes-development/ (accessed 28-04-2019); Bruce "Let's Position Our SMEs to Take Advantage of AfCFTA-Edward Gomado" Graphic online (Accra, 9 August 2019) available at https://www.graphic.com.gh/business/let-s-position-our-smes-to-take-advantage-of-afcfta-edward-gomado.html (accessed 9-08-2019).

6 Ivanovic, Baresa and Bogdan "Factoring: Alternative Model of Financing" 2011 *Journal of Economics* 189–206.

7 Kameni "An Insight into Recent Legal and Regulatory Reforms of Factoring in Africa" in Bickers (ed) *World Factoring Yearbook* 3 (2017) 27.

Norway, the United States (US), and Turkey.[8]

Unequivocally, capital constitutes the life wire for every business entity,[9] especially for SMEs. Lack of funding has, therefore, been a major obstacle to suppliers and other business enterprises in the supply chain and a core reason for most insolvencies.[10] In Ghana, for instance, it takes between 30 to 300 days for suppliers to get paid for services provided or goods supplied.[11] Given the challenging credit market today,[12] receivable finance or factoring has become an indispensable financing vehicle for many enterprises, irrespective of their sizes, and it, therefore, underscores its role in promoting the growth of SMEs in Ghana.

However, in Ghana, an adequate and facilitative regulatory regime has not been developed to stimulate and regulate the business and practice of receivable finance or credit factoring compared to other countries across the globe, including some North African countries like Tunisia, Morocco, and Egypt.[13] This article, therefore, aims at identifying the regulatory gaps in the receivable finance industry in Ghana. In pursuit of this research agenda, it will argue from the premise that one of the reasons why receivable finance or factoring has not been leveraged as an alternative finance source in Ghana is due to the absence of a specific and well-developed facilitative regulatory framework to regulate the receivable finance industry that would spur SMEs growth for economic development. A compelling case will then be made for a robust industry-specific regulatory regime to promote the industry in Ghana.

That said, the concept of factoring will be unpacked in the next section.

2 UNDERSTANDING THE CONCEPT OF FACTORING

2 1 The Meaning of Factoring

Basically, factoring is a financial business and a form of debtor finance scheme where businesses sell their account receivables to a factoring entity at a discount.[14] Its essence is for the supplier to meet an immediate and pressing cash need and to sustain or take up other business opportunities. It is, therefore, the purchase of account receivables, also called invoices, by a factoring company from an operating company known as the creditor or the exporter to provide instant financing to that business or creditor.[15] Usually, the creditor is permitted to offer the qualified receivables at 80% to 85% of the cost to mature within 45 days from the invoice date.[16] Various reasons inform the reliance of SMEs on factoring and they include high debt leverage, payroll tax problems, and the inability to meet payables within their terms with other people or partners.[17]

It is important to note that factoring has been part of the commercial world for over a century

8 Brehcist “Fourth EU Factoring and Commercial Finance Summit” 2018 The EU Federation Legal Study 2017 available at <https://fci.nl/en/event/4th%20EU%20Factoring%20Summit%20Athens%20 2018/4222> (accessed 28-03-2019).

9 Salek *Accounts Receivable Management Best Practices* 5 ed (2005) 1.

10 Lynch Capital Boss “Invoice Factoring, a Game Changer for Suppliers” Ghana Web (Accra, 4 June 2018) available at https://www.ghanaweb.com/GhanaHomePage/business/Invoice-factoring-a-game-changer-for-suppliers-Lynch-Capital-Boss-657279?gallery=19 (accessed 16-04-2019).

11 *Ibid*.

12 “Acounts Receivable Factoring History” available at http://www.promotionalcapital.com/factoring-history.html accessed 25-06-2019).

13 Priest-Stephens and Kameni “Building a Model” 2016 *Trade and Forfaiting Review* 1.

14 Lynch Capital Boss “Invoice Factoring”.

15 Wilkinson “History of Factoring” 2013 available at https://strategiccfo.com/history-of-factoring/ (accessed 25-06-2019).

16 *Ibid*.

17 *Ibid*.

now. It is one of the longest-standing and proven methods by which businesses accessed capital to mitigate their cash flow challenges, dating back to the ancient Mesopotamians.[18] While it has been suggested that domestic factoring emerged from the US in the mid-nineteenth century, European countries are considered the pacesetters for international factoring since the 1960s.[19] Factoring, therefore, emerged as a modern finance phenomenon in the 1960s, and the system has seen enormous expansion with acceptance, mainly due to the contributions of institutions like Factors Chain International (FCI) which has emerged as an essential force behind the trade today.[20] In Africa, Afreximbank has been a critical facilitator in the modern practice of factoring on the continent. It is, however, instructive to note that despite the many years of factoring activities in Africa, the system has received little or no attention in most African countries including Ghana.

Factoring services are not the preserve of the banks or other separate financial institutions, and depending on the jurisdiction and the regulatory framework, different entities may be licensed or registered to offer factoring services. Many businesses would usually choose the bank-operated factoring services against the smaller, independent factoring companies due to such considerations as the lower cost of charges-commitment fees, exit fees, delinquency fees, standard factoring fees offered by the banks, and the quest to maintain banking relationships for future and other transactions.[21] Klapper notes that factoring involves the outright purchase of receivables by the factor and does not demand any collateralisation.[22]

2 2 Types of Factoring

Factoring can be divided depending on different criteria because factoring has different functions critical to the industry.[23] This section is not intended to exhaust all the types of factoring that fall under such default criteria, however, such types relevant to the present discourse shall be examined.

Factoring can first be divided by its scope of function. According to Spasic *et al*., an important consideration for the divisions of factoring has to do with the scope of functions that comes under a specific factoring activity.[24] Based on the scope, factoring can be grouped into "real" factoring and "quasi" factoring.[25] In "real" factoring, the functions of crediting, payment ensuring, and rendering professional services are present.[26] In "real" factoring the factor assumes the position of the creditor to claim from the third party (the debtor) the payments for sales of goods or services, undertakes advance payment of the client, does bookkeeping, and assumes the risk of insolvency of the buyer.[27] In "quasi" factoring, some of the functions usually associated with real factoring are missing, such as the duty of assuming the risk of insolvency of the debtor.[28]

Factoring can be done either on a "non-recourse" or "recourse" basis against the factor's client

18 "A Brief History of Factoring (Accounts Receivables Financing)" available at https://www.rtsfinancial.com/articles/brief-history-factoring-accounts-receivable-financing (accessed 26-06-2019).

19 See https://fci.nl/en/solutions/factoring (accessed 07-07-2019).

20 "A Brief History of Factoring (Accounts Receivables Financing)".

21 Wilkinson "History of Factoring".

22 Klapper "Export Financing for SMEs: The Role of Factoring" (2006) Trade Note 29 The World Bank Group, International Trade Department.

23 Spasić *et al.* "Factoring - Instrument of Financing in Business Practice – Some Important Legal Aspects" 25(1) *Ekonomska Istraživanja* at 193–198.

24 *Ibid.*

25 *Ibid.*

26 *Ibid.*

27 *Ibid.*

28 *Ibid.*

(the sellers).[29] In non-recourse factoring, the factor does not only assume title to the accounts but also assumes most of the default risks because the factor does not have recourse against the supplier if the accounts default.[30] For recourse factoring, however, the factoring company has a claim (recourse) against the creditor for any payment default.[31]

Another group of divisions is the "open or disclosed" factoring and "undisclosed" factoring, which is common under Anglo-Saxon law.[32] In "open" factoring, the exporter who is a client to the factor offers his receivables to the factor which claims against the foreign buyer.[33] In this case, the client is to notify the foreign importer about the claim and demand payment when due to the factor. There are two kinds of "open" factoring. In the first instance, the exporter (client to the factor) transfers its claims against the importer to the factor; the factor then becomes the claimant of the cession.[34] For the assigned claim, the factor pays the client the value of that claim, with the deduction of interest, expenses and commission on the assignment.[35] Due to the risk that the factor undertakes and the high value attached to the transaction paid by the factor on the assignment of claims, the factor is expected to know about the creditworthiness of the foreign buyer.[36] In the other kind of "open" factoring, the exporter assigns the claim to the factor only for the collection but not to transfer the claims to the factor, but only so the factor could collect the claims from the foreign buyer in the name of the client.[37] A variant to the "open" factoring is "undisclosed" factoring, which is a complex legal business where the presence of the factor in business is not known to the third party (the debtor). In undisclosed factoring, the exporter sells the goods ready for export, for cash. The factor then resells the same goods, on credit, through the exporter, to the foreign buyer. Before the foreign buyer, there appears only the client, who is not the owner of goods since it has been sold to the factor. The client, as a commission agent of the factor, appears in his name and on behalf of the factor. This is a complicated transaction that allows the increase in price with the addition of the factor's profit and short-term credit given to the exporter.[38] This allows the client to access cash even though the goods are being sold on credit while the factor receives a relatively larger commission.[39]

Another division of factoring business is the one where we can distinguish factoring between "factoring with right of recovery" and "factoring without right of recovery". In factoring with the right of recovery, the factor has the right towards the client in case of inability to collect the claim from the buyer, but in factoring without the right of recovery, when the buyer fails to pay, the factor has no right of claim from the client.[40] The latter comes naturally with a higher commission on the transaction.[41]

Another default criterion is to consider factoring under jurisdictions of agreement or the territorial principle; namely domestic and international factoring. Domestic factoring, as the name suggests, takes place within the boundaries of a country where all the participants in the factoring business are. International factoring is intended for exporters and importers and is a

29 Sharrock (ed) *The Law of Banking and Payment in South Africa* (2016) 397–399.

30 Baresa *et al.* 'Specific Form of Short-Term Financing' 2017 8 UTMS *Journal of Economics*.

31 *Ibid.*

32 *Ibid.*

33 *Ibid.*

34 *Ibid.*

35 *Ibid*.

36 *Ibid*.

37 *Ibid.*

38 *Ibid.*

39 *Ibid.*

40 *Ibid.*

41 *Ibid.*

kind of instrument for promoting international exchange. The exporter can finance, assure and manage the claims, which makes it easier for the importer to purchase goods from abroad. To the exporter, international factoring is ideal since he is not expected to concern himself with the creditworthiness of the buyer, the risk of non-payment, and socio-political risks.[42] The scope of Article 2(1) of the UNIDROIT Convention applies to international factoring where the client and the customer are in separate jurisdictions but the Convention is in force in both countries as well as the factor's location.[43] This depends on the territory within which the factoring contract was concluded, whether in the same country or not.[44]

The next section compares factoring with the traditional bank-lending modes commonly available to SMEs. Specifically, the objective is to point out the benefits of factoring as well as its challenges as an alternative means of finance.

3 SME FINANCING: BETWEEN FACTORING, LOANS AND OVERDRAFTS

Experts have alluded to the fact that in most emerging economies, where there are weak financial systems; SMEs are confronted with significant hurdles in accessing capital from financial institutions.[45] Baresa *et al*. have pointed out that SMEs usually "fall short of working capital and cash flows".[46] They contend that this quagmire pushes even larger enterprises as well as the majority of SMEs to rely on factors for optimum cash supply.[47] Evidence points to the fact that commercial banks will, almost all the time, demand secured collateral before granting loans to enterprises.[48] Kauffmann also points out that SMEs in Africa barely have access to finance, which hampers their growth and expansion.[49] She argues that this finance gap can be attributed to the high default risk associated with SMEs and inadequate alternative financial products on the market.[50]

Factoring, therefore, serves as a better alternative to the traditional means of financing by allowing SMEs to achieve liquidity and solvency.[51] Ivanovic *et al*. quoting Kallbergh and Parkinson[52] defined liquidity as "financial solvency of a company and can be expressed as the liquidity of asset as well as corporate liquidity or solvency".[53] Insolvency occurs when the company fails to make payments on its financial obligations when due. Ivanovic *et al*. defined insolvency as the situation "when [a] business entity is unable to settle its financial obligations".[54] They argued that one crucial indicator of the performance of a business is its

42 Ivanovic *et al*. 2011 *Journal of Economics* 189–206.

43 UNIDROIT Convention, Art 2(1).

44 Spasić *et al* 25(1) *Ekonomska Istraživanja* 193–198.

45 Chardon "ICC Endorses UNCITRAL Convention on the Assignment of Receivables in International Trade" 22 December 2014 Paris available at https://iccwbo.org/media-wall/news-speeches/icc-endorses-uncitral-convention-on-the-assignment-of-receivables-in-international-trade/CIio (accessed 27-07-2019).

46 Baresa, Ivanovic and Bogdan "Specific Form of Short-Term Financing" 2017 8 *Journal of Economics*.

47 *Ibid.*

48 Fatoki and Van Aardt Smit "Constraints to Credit Access by New SMEs in South Africa: A Supply-Side Analysis" 2011 *African Journal of Business Management* 420.

49 Kauffmann "Financing SMEs in Africa" 2004/2005 Policy Insights No.7 OECD Development Centre: Derived from the African Economic Outlook 2004/2005.

50 *Ibid.*

51 Ivanovic, Baresa and Bogdan 2017 *Journal of Economics*.

52 Kallbergh and Parkinson Corporate Liquidity: Management and Measurement (1993).

53 Ivanovic, Baresa and Bogdan 2017 *Journal of Economics*.

54 *Ibid.*

liquidity or solvency,[55] and explained further that a receivable can be liquid if "it can be sold in a short time without significant loss".[56]

In the next sub-section, receivable finance or factoring is compared with the traditional bank-lending modes commonly available to SMEs in Ghana.

3 1 Traditional Lending Terms and Conditionalities

Thorsten Beck and Robert Cull have stated that one of the looming obstacles for SMEs is the difficulty to access lending services in the financial market.[57] The duo argues further that the reason can be attributed to the closed, limited, and fewer but expensive financial services available to the enterprises.[58]

Basically, a loan is a financial facility extended by a bank to an individual or business, usually to be repaid with fixed interest. There are, however, different reasons why SMEs would rely on loans as means of financing their businesses, namely: to acquire additional working capital, for the lease of equipment, for business expansion, to balance their books and for short-term financing purposes. Depending on the purpose, loans can be classified as secured or unsecured. The former is the most common form of loan offered by banks which caters for short- and long-term loans, and automobile and real estate facilities, while the latter covers credit card, personal loan or short-term borrowing.[59] Both secured and unsecured forms of loans demand a personal guarantee from the SME operators to certify that they can repay on schedule,[60] but a secured loan will require additional security or collateral from the borrower.

The fact is that businesses in Africa generally encounter challenges in accessing loans as compared to their counterparts in other developing countries of the world.[61] The challenge of getting lending services applies to enterprises relative to their sizes and ages. It has been observed that businesses in sub-Saharan African countries are less likely to rely on bank loans compared to business enterprises in other parts of the world.[62] This explains the reason why most African businesses see limited access to bank loans as a critical barrier to their development and growth.[63]

These conditions have set factoring apart as being business-friendly, less demanding and supportive for SMEs as compared to loans, even though factoring comes with some minimal conditions necessary to qualify a borrower to access the services. Factoring, therefore, presents some economic benefits that give it some advantages over loans. First, factoring provides liquidity to fund business entities by transforming their short-term assets in the form of receivables into cash without providing collateral or long-term securities.[64] Again, the creditor is absolved from any risk of insolvency from the factor where a factor takes responsibility for receivables payments and disclaims any right to claim a refund by the client in case of non-payment by the debtor.[65] All the services and management of the receivables of the client

55 *Ibid.*

56 *Ibid.*

57 Thorsten Beck and Robert Cull "SME Finance in Africa" 2014 23(5) *Journal of African Economies* 583-612.

58 *Ibid.*

59 Hoare "The Different Types of Bank Loans" 2013 available at https://businessecon.org/2013/02/19/the-different-types-of-bank-loans/ (accessed 21-07-2019).

60 *Ibid.*

61 Beck and Cull *Journal of African Economies*.

62 *Ibid*.

63 *Ibid.*

64 Ivanovic, Baresa and Bogdan 2017 *Journal of Economics*.

65 *Ibid.*

become the responsibility of the factor, including contacts to the final debtor, solvency test, testing debtor credibility, and creditworthiness.[66] In contrast to loans, factoring is an instrument that offers an efficient and straightforward financing model to assist SMEs in domestic and foreign transactions.[67] It is an effective and reliable intervention as a short-term financing facility for SMEs which are eager to expand their operations but are incapable of getting credits from a bank.[68]

Overdrafts are soft loan arrangements linked to the customer's current account wherein the bank allows the customer to draw on his account over and above his outstanding balance. The condition precedent for this facility is to be an account holder of the bank and have a guarantee of the regular flow of income into the account. It is defined as "a specified amount of money that a bank customer is allowed to owe his or her bank. In most cases, these arrangements are temporary".[69]

Like loans, overdrafts come with some costs, terms and conditions, and require a customer to do some careful assessment before using this for long-term financing because overdrafts by their nature are interventions for short-term necessities when an account is drawn on zero. An overdraft can be classified as (a) authorised (planned) or (b) unauthorised (unplanned). With an authorised overdraft, the amount to access is set and agreed upon before withdrawal with a fee. An unauthorised overdraft occurs when a customer exceeds the authorised limit and has a negative or zero balance but proceeds to draw on the account.[70] It is usually expensive and comes with higher interest and must be avoided.

Some of the advantages of factoring over overdraft resulting in enterprises resorting to the former are that factoring or receivables financing is a flexible form of finance that grows in line with business sales, offers a credit management service that frees up valuable time to grow a business, helps to collect debts quickly which improves cash flow and reduces the risk of bad debts, and, lastly, can also include credit protection, which can eliminate the risk of bad debts.[71]

By overcoming the strict demands of overdraft facilities, factoring is considered a financial service that can mitigate the difficulties that generally confront SMEs in seeking finances. Through factoring companies, many SMEs can enter into international trade arrangements with their credit risk borne by the factor.[72] Reisman concludes that factoring is a century-old service that possesses customised characteristics with flexible and adaptable commercial terms helping SMEs to record astounding growth in their operations.[73]

In the next section, attention will shift to interrogating the legal environment for receivables financing in Ghana, specifically the various laws, regulations and institutions that relate to the receivables financing industry in Ghana.

4 THE LEGAL ENVIRONMENT FOR FACTORING IN GHANA

In Ghana, there is no legal framework for factoring. What is generally applied to activities

66 *Ibid.*

67 *Ibid.*

68 *Ibid*.

69 Market Business News "What is an Overdraft? Definition and Meaning" available at https://marketbusinessnews.com/financial-glossary/overdraft-definition-meaning/ (accessed 28-07-2019).

70 *Ibid*.

71 "Factoring vs Overdraft Facility" available at http://www.invoicefactoringquotes.co.uk/factoring-vs-overdraft-facility/ (accessed 28-07-2019).

72 Baresa, Ivanovic and Bogdan 2017 *Journal of Economics*.

73 Reisman "What the Commercial Lawyer Should Know About Commercial Finance and Factoring" 1974 *Commercial Law Journal* 146.

of factoring is the adaptation of extant banking and commercial laws of Ghana.[74] Indeed, in jurisdictions where there are no such factoring laws to regulate receivables financing, there is the certainty of a challenge in defining the concept. For example, in *South African First Rand Bank v Consolidated Timber Exports Close Corporation*,[75] the court had to deal with a legal issue on a factoring contract but grappled with defining the concept of factoring with no reference to any specific legal framework on factoring throughout the ruling. Ghana has not yet had any reported judicial precedent on a factoring dispute in this regard. This presents a challenge in identifying the legal connection between factoring and the general concepts of the laws.[76]

Salinger argues that the essence of a legal framework specific to factoring is to delineate and define the concept and identify the rights and duties of those who engage in such factoring contracts.[77] It has therefore been suggested that a detailed and elaborate law is necessary to "define the term factoring and establish the rights, duties and obligations of various parties involved in such transactions".[78] Another point of view suggests that in a country where the expectation of an omnibus legal enactment would cause delay, the industry must be encouraged to function within the ambiance of the existing legal architecture to allow the system to evolve naturally.[79]

We consider that this later opinion will not help within the space of a growing global push for effective regulations for trade and business concerns.

Kameni has argued that factoring in Africa generally lags in terms of scope, legislative development and practice as compared to some countries in the global North.[80] A country of common-law practice such as Ghana will look to the judicial precedents together with other laws operating to create a regulatory framework in which factoring will thrive.

Across the continent of Africa, it is estimated that the average growth of factoring stands at about 14.2% annually.[81] The argument has been advanced that this trend is due to various factors. According to Kameni, the reasons include the fact that there is not a body of case law for adaption over the last century to guide the factoring product.[82]

The development of factoring occurs in a variety of legal and regulatory environments depending upon the country concerned.[83] Ghana has a purely common-law legal system with legal pluralism

74 The related laws of factoring in the Banking Laws of Ghana: The Company Act 992 of 2019, The Banking Act 673 of 2004, The Banking (Amendment) Act 738 of 2008, The Borrowers and Creditors Act 773 of 2008, The Non-Bank Financial Institution Act 774 of 2008, The Banks and Specialised Deposit Taking Institutions Act 930 of 2016.

75 *First Rand Bank v Consolidated Timber Exports Close Corporation* 2015 2743 (HC) Natal Division.

76 Salinger "Legal Issues in International Factoring" available at http://lib.unipune.ac.in:8080/xmlui/bitstream/handle/123456789/3077/15_chapter%208.pdf?sequence=15&isAllowed=y (accessed on 16-06-2019).

77 *Ibid.*

78 *Ibid.*

79 Kara "Factoring: To Regulate or not to Regulate?" in Bickers (ed) *World Factoring Yearbook* (2017) 4 available at www.ebglaw.com/content/uploads/2019/07/Tatge-World-Factoring-Yearbook-2017-eBook.pdf (accessed 08-07-2019).

80 Kameni "An Insight into Recent Legal and Regulatory Reforms of Factoring in Africa" in M Bickers (ed) *World Factoring Yearbook* (2017).

81 Oramah "From the Periphery to the Centre - Africa as the Growth Market for Factoring" African Development Bank.

82 Kameni *World Factoring Yearbook* (2017).

83 Kara *World Factoring Yearbook* (2017).

holding sway from pre-colonial times till today,[84] which is moderated by an elaborate choice of law rules.[85] It has one of the most tested democratic credentials in Africa, and the rule of law is in place. Businesses are governed by various legal frameworks and regulations.

Kara has argued that, usually, factoring begins in a country where there is no factoring law, and the existing laws are applied.[86] The challenge, however, is that existing laws applied to factoring situations may lack the fundamental concepts and terms such as "receivables", "assignments", "the factor's rights" and so on,[87] which terms are so fundamental in understanding the industry and the rights and responsibilities of the parties.

For this reason, Kara suggests that, where factoring is a new concept, or there are gaps or difficulties within the legal framework for the assignment of receivables, there is a need for the enactment of a factoring law that defines the product, in order to raise the profile of factoring and to determine the rights and obligations of the parties.[88]

In line with Kara's recommendation,[89] and given Ghana's standing in the factoring industry,[90] enactment of new legislation to govern the industry will be most appropriate because factoring is a complex enterprise that needs to take advantage of the new developments in the industry to meet the exigencies of the present times.

In the ensuing paragraphs, various extant legislation that pertains to factoring in Ghana will be explored.

4 1 The Existing Laws that Relate to Credit Factoring in Ghana

4 1 1 The Banking Act 673 of 2004, Amended by Banking Act 738 of 2007

The banking sector of Ghana is considered the second largest in the West African monetary zone, recording rapid growth within the last few years.[91] This has been partly due to the privatisation of the sector which was, until the 1990s, state-owned and managed.[92] The entry of the private actors has culminated in a well-capitalised sector with new minimum capital requirements for new and existing players.[93] The Banking Act of Ghana[94] (as amended), serves as the major legislative framework that governs the operations of the banking sector. The Act was passed to amend and consolidate the laws relating to banking, regulate institutions that carry on banking business, and provide for other related matters.[95]

From all the sections and provisions of this Act, one finds no mention of factoring and a possible definition in the context of the permissible banking activities of banks in Ghana. In addition, the

84 Korankye-Sakyi "*The Civil Justice Reform Debate: An African Perspective"* in Yin and Kofie (eds) *Advancing Civil Justice Reform and Conflict Resolution in Africa and Asia: Comparative Analyses and Case Studies* (2021) 46; Essien "Researching Ghanaian Law" 2005 Hauser Global Law School Program available at https://www.hyulawglobal.com/index.htm (accessed 07-06-2019).

85 *Ibid.*

86 Kara *World Factoring Yearbook* (2017).

87 *Ibid.*

88 *Ibid.*

89 *Ibid.*

90 Lynch Capital Boss "Invoice Factoring".

91 Green Climate Fund Readiness Programme "Financial Sector Overview: Ghana" 4 available at https://www.gcfreadinessprogramme.org/sites/default/files/Financial%20Sector%20Ghana%20Assessment%20Report.pdf (accessed 28-07-2019).

92 *Ibid.*

93 *Ibid.*

94 The Banking Act 673 of 2004.

95 The Banking Act 673 of 2004.

Act does not provide a clue as to how factoring must be regulated and promoted in the banking sector. This reveals how factoring is placed in the scheme of affairs as an alternative banking service to support SMEs.

As mentioned above, the traditional banking lending schemes have not provided reliable, ample, and sustainable finance models to the private sector businesses dominated by SMEs in Ghana. The Bank of Ghana (BoG) reports that by the first quarters of 2017, 2018, and 2019, the private sector credit from the banking sector stood at GH₵31 121.50 million, GH₵ 32 842.77 million and GH₵34 007.59 million respectively.[96] The abysmal support from the traditional banks to the private sector is reflected in this report on private sector credit from the banks. The gaps in funding SMEs can therefore be filled with a robust factoring industry properly regulated with forward-looking legislation.

4 1 2 The Bank of Ghana Act 612 of 2002

The Bank of Ghana Act is the enabling instrument that established the BoG as the Central Bank. The BoG is an independent institution[97] with the broad objective of maintaining stability in the general level of prices and supporting the general economic policy of the government for economic growth through effective and efficient banking and credit systems and operations in the country.[98] Its general mandates include the following:[99] to formulate and implement monetary policies for the country; promote measures to stabilise the value of the currency; institute measures to shore up the balance of payment; protect public finances and engender national economic development; regulate, supervise and direct the banking and credit system of the country; to license, promote, regulate and supervise non-banking financial institutions; and to promote as well as maintain relations with international banking and financial institutions.

Factoring businesses would come under the direct control of the BoG within these mandates. Therefore, upon the satisfaction of all the requirements for establishing a business as a company in Ghana,[100] a factoring company would be obliged to be appropriately licensed and certified to operate as a financial institution.[101] The mandate of BoG allows it to set regulations and minimum qualification criteria that a company must satisfy to be licensed or to continue operations as such.

4 2 The Position of Common Law and Equity in Factoring

Section 14 of the 1876 Gold Coast Supreme Court Ordinance (No. 4 of 1876) which came into force in 1876 states that

> the Common law, the doctrines of equity, and the statutes of general application which were in force in England at the date when the colony obtained a local legislature, that is to say, on

96 Bank of Ghana "Banking Sector Report" (May 2019) 16 available at https://www.bog.gov.gh/privatecontent/MPC_Press_Releases/Banking%20Sector%20Report%20-%20January%202019.pdf (accessed on 28-07-2019).

97 Section 3(2) of the Bank of Ghana Act 612 of 2002.

98 Section 3(1) of the Bank of Ghana Act 612 of 2002.

99 Section 4(1) of the Bank of Ghana Act 612 of 2002.

100 Any person(s) intending to establish a business as a sole proprietorship, limited or unlimited is (are) required to follow all or some of the provisions under the Companies Act 992 of 2019, the Registration of Business Names Act 151 of 1962, the Incorporated Private Partnership Act 152 of 1962; depending on the nature of the business.

101 The Banks and Specialised Deposit Taking Institution Act 930 of 2016.

the 24th day of July 1874, shall be in force within the jurisdiction of the Court.[102]

This Ordinance underpins the historical antecedent of Ghana's legal system. Again, section 19 of the said Ordinance provides for the application of customary law in the colony to conform to the policy of indirect rule which the British had adopted as a policy. This legal pluralism under the 1876 Ordinance has manifested in all Ghanaian legal jurisprudence from independence till today. Ghana's law embodies the English Statutes of General Application as provided for under the Courts Act of Ghana.[103]

Under the current Constitution, Article 11 provides that the laws of Ghana shall comprise

> this Constitution; enactments made by or under the authority of the Parliament established by the Constitution; any orders, rules and regulations made by any person or authority under a power conferred by this Constitution-that will include a subsidiary or subordinate legislation; the existing law-comprising the written and unwritten laws of Ghana that existed immediately before the coming into force of the 1992 Constitution; and the common law-which include the English common law and doctrines of equity, as well as the rules of customary law.[104]

Even though Ghana's legal system had taken its root in British practice as illustrated above, it is imperative to note that the written nature of Ghana's jurisprudence requires a major departure from the United Kingdom (UK) system concerning the rules on factoring which is primarily guided by judicial precedents and established notorious principles. The UK is the leading country in factoring business in the world[105] with regulatory bodies that oversee factoring even though it has no written law as expected in line with its legal system.

Apart from the lack of mention of factoring in any of the laws discussed, Ghana has no record of reported judicial precedent, setting out any regulations or rules on factoring. The evolving and emerging trends in the international financial market make it imperative for Ghana to take up the challenge to institutionalise and regularise its laws to align with international best practices on factoring as a global player to attract the needed investment for SMEs.

In effect, since there are no specific regulations in terms of law and equity and practice in Ghana, it is important to enact a new law to regulate factoring in Ghana.

The next section examines the international standard model laws on factoring to offer guidance on any future factoring legislation for Ghana.

5 INTERNATIONAL MODEL LAWS ON FACTORING

The twenty-first century factoring business has been regulated under some international factoring conventions which serve as model laws for countries to adopt as guides in making domestic national factoring legislation. This section is relevant to identifying the strengths or otherwise of such model laws and how Ghana can adopt the same in enacting its own factoring legal framework.

5 1 The Afreximbank Model Law on Factoring

Afreximbank's Model Law was developed on the existing International Factors Group's Model

---

102 Section 14 of the 1876 Gold Coast Supreme Court Ordinance (No. 4) of 1876.

103 Section 119 (1) of the Courts Act 459 of 1993.

104 Article 11 of the 1992 Constitution of the Republic of Ghana.

105 Bickers (ed) *World Factoring Yearbook* (2017) available at https://bcrpub.com/system/files/World_Factoring_Year_2017_O.pdf (accessed 07-07-2019).

Law of 2014 and the 2001 UNCITRAL Convention.[106] The law concedes that it has a limited scope because it covers only the assignment of receivables.[107] A vital feature of this law in comparison to other international models is the simplification of confusing words to make them specific in the document.[108] For example, UNIDROIT and the UNCITRAL Convention's words like "assignor", "assignee", "contract of assignment", "original contract", "security rights" and "notification of assignment" are interpreted in the Act as "client", "factor", "factoring contract", "supply contract", "related rights" and "notice of the assignment", respectively.[109] It is essential to mention that this model law is not meant to be adopted wholesale for a country's factoring operations but to serve as a guide for the adoption of domestic legislation and that it is not binding on any jurisdiction.

5 2 The UNIDROIT[110] Convention on International Factoring (Ottawa 1988)

This is the first-ever known model law that sought to address factoring regulation in the world. The scope of this Convention applies to international factoring where the client and the customer are in separate countries (jurisdictions), but the Convention is in force in both countries as well as the factor's location.[111] An assignment under factoring is deemed international if the creditor and the factor are located in different countries and if the creditor and the debtor also have their locations in different countries.[112] In this regard, the test considers the location of the registered offices or place of incorporation of parties or the individual residences located in different countries.[113]

It has a limited application as well in scope because it requires the supply contract to be governed by the laws of a contracting State, and the factor must be provided at least two finances such as ledger accounting and a debt collection portfolio or a guarantee against bad debt.[114] It must be said that this Convention does not create any new perspective on factoring on an international basis, despite its strength of outlining the duties and rights of each party where it applies and again making provisions for prohibitions against assignments to be ineffective against a factor.

In line with Article 14(1),[115] this Convention came into force on 1 May 1995 after it was adopted in Ottawa, Canada on 28 May 1988. So far, the Convention has seen only 15 countries signed up to it with nine contracting states,[116] making its impact in the factoring industry less felt. The Convention has been adopted and passed into law by countries like France, Germany, Belgium, Italy, Nigeria, and Latvia. Other countries like Russia and Lithuania have merely followed the dictates of the Convention to modernise their factoring laws. It allows for the adoption of a part as in the case of Belgium which decided to forgo the provisions related to the prohibition of assignment and followed the rest of the provisions of the Convention in enacting its law.

Ghana was one of the first countries in Africa that signed the Convention on 28 May 1988 but has since not ratified or adopted it. Other countries in Africa such as Guinea, Nigeria, Morocco,

106 Afreximbank *Afreximbank Model Law on Factoring* (2016) available at https://afreximbank.com/wpcontent/uploads/2016/10/Model-Law-on-Factoring.pdf (accessed 15-05-2019).

107 *Ibid.* 4.

108 *Ibid.* 8.

109 *Ibid.*

110 The International Institute for the Unification of Private Law (UNIDROIT).

111 Article 2(1) of UNIDROIT Convention.

112 Article 3 of Draft Convention of UNCITRAL Uniform Law on Assignment.

113 Article 5(j) of Draft Convention of UNCITRAL Uniform Law on Assignment.

114 Article 1 of UNIDROIT Convention.

115 Article 14(1) of UNIDROIT Convention.

116 See https://www.unidroit.org/status-1988-factoring (accessed 28-07-2019).

and Tanzania have signed the Convention. However, only Nigeria has moved on to ratify and adopt it.[117] Because this model law is so specific to factoring, it is important that any country seeking to legislate on factoring considers its provisions and relevance to such new law. In this sense, Ghana as a signatory to the Convention will achieve a useful legislative environment to promote factoring if it adheres to the relevant provisions of this model law.

5 3 The UNCITRAL Convention on the Assignment of Receivables in International Trade of 2001

This Convention covers receivable products; not limited to credit factoring but also securitisation and forfaiting.[118] It takes a broader scope to include all forms of factoring. The irony is that this Convention has since its inception seen no country adopting it as part of its factoring legislation, and there is no account of its impact so far.[119] So far only Luxembourg, Madagascar and the United States have signed the Convention but have not fulfilled the five actions required to adopt it into force.[120] In 2014, the Convention received the endorsement of the executive board of the International Chamber of Commerce (ICC) at its world council session held in New York.[121]

The ICC considered the Convention to be a major step towards a system of globalised asset-based lending and hoped that the Convention removed any legal obstacles to receivables financing contracts. The recommendation of the ICC seeks to convince and motivate member countries of the ICC to consider signing, ratifying, and adopting the Convention into force. As a member of the African Union (AU) and the Economic Community of the West African States (ECOWAS), Ghana's businesses become automatic members of the ICC[122] and are expected to take their cue from the position of the Chamber. Ghana has not fulfilled any of the actions required to adopt the Convention to govern its receivables trading. As a step to creating an enabling environment for factoring by legislation, it is critical for Ghana to ratify and adopt this Convention since its provisions will serve as an essential basis for a new legal framework for the country. Due to the wider scope of the Convention, Ghana will stand to benefit as an international trade hub by incorporating relevant provisions of the Convention into the new law on factoring.

5 4 International Factors Group (IFG) Model Law of 2014

Considering the shortcomings of the UNCITRAL Convention, the IFG 2014, modelled its factoring law based on this Convention. The IFG model law's objective is to avail legislators of a draft law on factoring that considers and ties in internationally accepted and tested legal principles of factoring. It was developed on a framework that allows for a specific adaptation of legal assignments. The IFG model law excludes securitisation from its scope to narrow it to cover only factoring. It, however, extends its reach to cover both domestic and cross-border

117 *Ibid*.

118 *Securitisation* is a financing procedure where the issuer promotes a marketable financial instrument by merging various financial assets (debt instruments) such as loans and mortgages into one instrument and sells the repackaged assets as bonds to interested investors. *Forfaiting* is a non-recourse payment method that allows private placement of medium- and long-term trade receivables of exporters to obtain cash at a discount to a forfaiter, usually a specialised finance firm or bank. Whereas factoring can be used in both domestic and international trade, forfaiting is only concerned with international trade financing.

119 Kameni *World Factoring Yearbook* (2017)

120 See https://www.jus.uio.no/lm/un.conventions.membership.status/doc.html#81 (accessed 19-08-2019).

121 Chardon "ICC Endorses UNCITRAL Convention".

122 See www.iccwbo.org (accessed 16-07-2019).

arrangements and receivables. In the same way, it includes both present and future receivables.

The following are excluded under the IFG model laws: assignments to individuals for personal or household purposes; sale of a business; receivables arising out of financial services transactions such as non-regulated exchange, foreign exchange transactions, or netting agreements; bank deposits; letters of credit and other negotiable instruments; and the sale or lease of land that is not permitted under the laws of the relevant country. These are transactions regarded as being regulated by legislation in most countries. Under the IFG model law, it is required a factor to perform the following functions; provision of finance, ledgering activities, and collection and protection of bad debts.[123] In addition, non-disclosed factoring is permissible.[124]

In contrast to the UNIDROIT Convention, the IFG model law allows for more factoring transactions than the former. While the UNIDROIT takes its scope to cover other trade financing schemes, the IFG law exempts activities on forfaiting and securitisation from its scope with a concentration on only factoring. Again, it stretches to cover both domestic and cross-border arrangements and receivables which makes it more holistic.

To clearly establish the theme of this article which is to argue for an appropriate and facilitative legal and regulatory environment for receivables financing in Ghana, it is prudent to identify lessons from two African countries (South Africa and Tunisia) which motivated such a call. Hence, the next section will be devoted to this task.

6 CASE STUDIES

6 1 South Africa

South Africa leads the factoring industry in Africa with a volume of about 85%. In order of volumes, Morocco and Egypt follow and account for 10% and 2% respectively, and Mauritius, Tunisia and Kenya each contribute 1%.[125] The factoring industry in South Africa is well established having been in business since the middle of the 1970s.[126] According to Brehcist, the volumes of factoring grew at 11.03% in South Africa from about €14 672 in 2015 to approximately €16 291 in 2016.[127]

Even though there is a relatively vibrant factoring industry in South Africa, no specific legislation regulates domestic or international factoring. Some extant laws regulate the sector, but the courts of South Africa are adequately versed in factoring. The Banks Act[128] provides for the regulation and supervision of the taking of deposits from the public and serves as the regulating framework for the banking factors. Other vital laws applied in the regulation of factoring include the Consumer Protection Law[129] which regulates the provision of goods and services, including financial services to consumers unless exempted[130] and the National Credit legislation[131] which regulates consumer credit and prohibits certain unfair credit and credit-

123 Article 1 of International Factors Group Model Law of 2014.

124 Article 2 (1) of International Factors Group Model Law of 2014.

125 Awani "Africa on the Rise in 2016" (2017) *FCI Annual Review* available at https://www.fci.nl (accessed 29 -06-2019) 13.

126 Cory "South Africa" in Bickers (ed) *World Factoring Yearbook* (2017) 166 available at https://bcrpub.com/system/files/World-Factoring-Yearbook-2017_0.pdf (accessed 07-07-2019).

127 Brehcist "Fourth EU Factoring and Commercial Finance Summit".

128 Banks Act 94 of 1990 of South Africa.

129 The Consumer Protection Act 68 of 2008 of South Africa.

130 Banking Laws and Regulations in South Africa available at https://www.globallegalinsghts.com/practice-areas/banking-and-finance-law-and- (accessed 26-07-2019).

131 The National Credit Act 34 of 2005 of South Africa.

marketing practices as well as reckless credit granting.[132] This regulatory regime adequately and practically manifested in the case *of First Rand Bank v Consolidated Timber Exports Close Corporation*[133] in which the high court made rulings on issues of factoring based on other legislation than a factoring law.

The history of South Africa's receivables or credit factoring can be traced to the 1960s when some factoring groups were formed. With the coming of the banking sector as a stronger institution in the business and finance enterprise, these factoring groups were naturally absorbed by the banks as their subsidiaries or units.

Standard Bank, the Amalgamated Bank of South Africa (ABSA), Nedbank, First National Bank (FNB), Sasfin, Merchant Factors, Reichmann and Grinrod are the eight institutions that make up the Debtor Finance Committee (DFC) of South Africa.[134] Sasfin, Standard Bank and Nedbank are the only ones that are members of the FCI.[135] Apart from the official members of the DFC, there are between 20 to 30 business entities that also offer invoice financing in the country. This organised involvement of financial institutions in the factoring business is absent in Ghana. The overall volume turnover from factoring services in South Africa, made up of invoices received, increased to R229 billion in 2016, more than 4.5% above that of 2015, but advances were down by 15% on average within the same period.[136] These figures, according to Cory, did not take into account the figures of privately owned debt-funding entities that are not members of the DFC.[137]

Clients of factoring services, both large listed companies and SMEs, are found in various sectors of the economy including manufacturing, clearing and forwarding companies involved in exports and imports, foods, wholesaling, transport, automobile equipment supply, pharmaceuticals, clothing, textiles, footwear and steel.[138] Cory also reveals that the factoring industry in South Africa is not focused even though it has highly regarded and established extant laws and regulations that work. In line with Kara's first approach, in jurisdictions where the national laws are clear and well tested, as to their applications and enforceability, factoring can develop without any specific legal or regulatory framework.[139] This may explain the position of Cory as to the status of South Africa's factoring industry in the absence of a clear factoring legal framework. This admission reinforces the call of this article for a definite law on factoring in Ghana because even though factoring may survive and do well under subsidiary laws, giving it a focus will require nothing short of a legal framework dedicated to that effect.

The contributions of SMEs to the South African economy cannot be disputed, and they serve as the catalyst for job creation in the country. This position was confirmed by the Small Enterprise Development Agency (SEDA) of South Africa, which posited that small businesses could function as "key drivers of economic growth, innovation and job creation."[140] There is every indication that players in the business and finance industries are keen on finding ways of assisting these enterprises in maximising their growth potential. In 2013, the Association for Savings and Investment South Africa (ASISA) founded the Enterprise and Supplier Development (ESD) Fund to assist the development capacities of the SMEs in South Africa by way of an innovative

132 Cory *World Factoring Yearbook* (2017) 166.

133 *First Rand Bank v Consolidated Timber Exports Close Corporation*.

134 Cory *World Factoring Yearbook* (2017) 166.

135 FCI is the Global Representative Body for Factoring and Financing of Open Account Domestic and International Trade Receivables.

136 Cory *World Factoring Yearbook* (2017) 166.

137 *Ibid.*

138 *Ibid.*

139 Kara *World Factoring Yearbook* (2017).

140 Merchant Factors "A Solution to the Small Business Finance Gap" available at www.mfactors.co.za (accessed 19-07-2017).

combination of tailored business acceleration and investment support.[141]

In respect of the challenges that have been identified as inimical to the growth of SMEs in South Africa, factoring has so far intervened with tremendous support which is well acknowledged.

6 2 Tunisia

Tunisia's national legal architecture is made up of a fused legal system that is mainly based on the French civil law system, with some influence from Islamic law in the areas of personal status and property.[142] The success of Tunisia's economy is largely dependent on the success of its small businesses.[143] It is estimated that there are over 80 000 SMEs in Tunisia which contributes approximately 40% to the GDP of the country's economy and offers jobs to more than half of the country's population. However, access to funding and liquidity remains a serious predicament in the growth of these businesses.[144]

Against this background, the government of Tunisia has seen the need to support companies in their search for financing.[145] In the past ten years, the government has strengthened legal and regulatory frameworks in the financial sector, by putting in place public financing systems, supporting the development of financial markets and helping to expand the supply of financial products, especially those targeted at SMEs.[146]

In 2019, the European Bank for Reconstruction and Development (EBRD) advanced a loan of €24 million to the country's largest factoring company, Tunisie Leasing and Factoring, to facilitate access to finance for SMEs in Tunisia.[147] This comes at the backdrop of robust factoring regulations integrated into the enactments in Tunisia in regulating the budding factoring industry in that country. Tunisie Leasing and Factoring Company was the first company to venture into leasing operations in Tunisia with a strategic mandate of supporting small businesses.[148] Since it started operations in Tunisia in 2012, the EBRD has invested €840 million in support of about 38 projects and provided technical assistance to nearly 800 SMEs.[149]

Even though there is no specific legislation on factoring governing the system in Tunisia, the industry is regulated under the general contract laws under the contract code of 2010. The legal regime places factoring activities under the non-banking sector of the country. Law No. 2001-65[150] and Law No. 2006-19[151] provide some legal impetus for the regulation of factoring in Tunisia. The connection between the law and factoring has given factoring activities in Tunisia some miles of advantage in terms of attracting international financing support in the industry to boost SMEs' access to finances as against other African countries without such

141 Hamanyati "Factoring as an International Trade Finance Product: Making a Case for the Enactment of a Factoring Act in Zambia" (LL.M-dissertation, University of Pretoria, 2017) 32.

142 Commercial Laws of Tunisia March 2013: An Assessment by the European Bank of Reconstruction and Development.

143 Zgheib "€24 million EBRD Loan to Tunisie Leasing and Factoring' (27 March 2019) available at https://www.ebrd.com/news/2019/24-million-ebrd-loan-to-tunisie-leasing-and-factoring.html (accessed 13-07-2019).

144 *Ibid.*

145 World Bank "Policy Note on SMEs Access to Finance in Tunisia" 2009 Washington, DC. available at https://openknowledge.worldbank.org/handle/10986/12951?locale-attribute=fr (accessed 02-07-2019).

146 *Ibid.*

147 Zgheib "€24 million EBRD Loan".

148 *Ibid.*

149 *Ibid.*

150 Article 4 of No. 2001-65 of 2001 of Credit Establishments.

151 Law No. 2006-19 amending and supplementing Law No. 2001-65 of 10 July 2001.

enactment.[152] Apart from being controlled by the central bank, the requirement for the approval of the operator of a factoring business by the Ministry of Finance is compulsory in Tunisia.[153] The capital requirement for the operation of a factoring business in Tunisia is not less than 10 million Tunisian Dinars (approximately €4.4 million) as provided.[154] Tunisia was one of the countries in Africa that reported on factoring activities in 2012 as well as Mauritania, Mauritius, Morocco, and South Africa.[155]

The robustness of the factoring industry also received a positive rating from Fitch. Fitch Ratings affirmed Tunisie Factoring's national long-term rating at BBB(tun) and upgraded the national short-term rating to "F2(tun)" from "F3(tun)".[156] The outlook on the long-term rating has been reviewed as positive from stable.[157] According to Reuters, Tunisie Leasing is known as a leading provider of non-bank financing services in Tunisia, and factoring products are an increasingly strategically important product within the group.[158] The specificity of provisions in the laws of Tunisia which directly deal with factoring activities is a positive development in the country which reinforces thisarticle's call for a legal framework to govern factoring in Ghana.

The overwhelming evidence from the above narrative points to the fact that these two countries (South Africa and Tunisia) have leaped in supporting their SMEs through the activities of factoring through conducive regulatory and legal arrangements.

7 CONCLUSION

The international trade landscape is fast changing across countries as well as regional and multinational boundaries. In the same vein, the facilitation mechanism for trade and finance is also running with the times. The contributions of SMEs to the general economy of Ghana have long been acknowledged by scholars and successive governments. Over the years, interventions from the banking sector to finance SMEs through traditional modes such as loans and overdrafts have not yielded the desired result due to some demand and supply factors. The challenge of most SMEs is that they operate as informal businesses, often working under sole proprietorships. It is in this context that the authors have argued for the legal and regulatory interventions that follow the best principles from internationally accepted Model Laws for the receivables financing industry to spur the growth of SMEs in Ghana as a strategic trigger for economic development. It is envisioned that the enactment of an appropriate and specific regulatory framework would create an enabling environment to regulate and facilitate the factoring business that would make the country competitive and put the nation in good stead amongst its peers.

In line with international best practices, it is submitted that any legislation contemplated must capture all the rudimentary matters as suggested in the Afreximbank Model Laws on factoring as well as the three conventions of IFG, UNCITRAL, and UNIDROIT. With Ghana as the administrative headquarters of the AfCFTA, the nation must set the pace for all other countries in creating the regulatory environment for all segments of trade and investment.

152 Zgheib "€24 million EBRD Loan".

153 Kameni *World Factoring Yearbook* (2017).

154 Article 13 of Law No. 2006-19 of 2 May 2006 as amending and supplementing Law No. 2001-65 of 10 July 2001 on Credit Establishments.

155 Tomusange "Factoring as a Financing Alternative for African Small and Medium Scale Enterprises" in Bickers (ed) *World Factoring Yearbook* (2013) available at http://www.semanticscholar.org/paper/Factoring-as-a-Financing-Alternative-for-African-Tomusange/294f736886477bce364510250911fe3e9d43083e (accessed 15-05-2019).

156 Reuters "Fitch Affirms Tunisian Factoring Companies" (London, 14 December 2017) available at https://af.reuters.com/article/africatech/idaffit1qlpz8 (accessed 25-07-2019).

157 *Ibid.*

158 *Ibid.*