Akademik Tarih ve Düşünce Dergisi *Academic Journal of History and Idea*
ISSN: 2148-2292
11(5) 2024

Derleme Makale | Review Article
Geliş tarihi |Received:17.08.2024
Kabul tarihi |Accepted:10.09.2024
Yayın tarihi |Published:25.10.2024

Mohammad Ekram Yawar

https://orcid.org/0000-0003-3198-5212
Dr., Turkey, ekramyawar93@gmail.com

Abdul Jamil Sharify

https://orcid.org/0009-0001-0727-6726
Post Graduate from Faculty of Business Administration Osmania University, Hyderabad-India. jamilsharify@yahoo.com.

Atıf Künyesi | Citation Info

Yawar, M. E. & Sharify, A. J. (2024). The Rights of the Financing Contract in the Field of International Trade with an Emphasis on The Agency Contract. *Akademik Tarih ve Düşünce Dergisi, 11* (5), 3225-3245.

The Rights of the Financing Contract in the Field of International Trade with an Emphasis on The Agency Contract

Abstract

The financing contract is a very important topic that must be examined with great care, other contracts in the light of the general principles and rules governing the contract. The importance of determining the nature of the financing contract in the aforementioned way in the world is due to the effects that come upon it by specifying the nature, for example, if we consider the financing contract as the sale of receivables or if we consider it as a mortgage contract, it has different legal effects. In this way, if we consider it as a type of sales contract, the result is that the buyer of accounts receivable (the agent) becomes the owner of the accounts receivable and has ownership rights over it, and in case of bankruptcy of the seller, the agent does not bear any risk and is among the creditors of the seller. Accounts receivable are not included, while if we consider it as a type of loan agreement with the collateralization of accounts receivable, a different legal situation arises, such that, for example, with the bankruptcy of the seller, the agent must be among the seller's creditors, and according to According to the bankruptcy rules, the claimant should collect because the ownership right has not been transferred to the agent in the recent assumption. The importance of determining the nature of the financing contract in Afghanistan doubles, because in addition to the legal effects mentioned above, it affects the

identification and legal recognition of this financing institution for its use in Afghanistan. The question is whether we can make the financing contract, which is used in most of the countries of the world and has a great role in facilitating trade, compatible with the current regulations of Afghanistan and definite or indefinite contracts that are stipulated by it.

Keywords: *Agency, Nature, Domestic Law, Transnational Documents*

Uluslararası Ticaret Alanında Finansman Sözleşmesinden Doğan Haklar ve Acentelik Sözleşmesi

Öz

Finansman sözleşmesi, sözleşmeye hakim olan genel ilke ve kurallar ışığında diğer sözleşmeler gibi büyük bir titizlikle incelenmesi gereken çok önemli bir konudur. Dünyada finansman sözleşmesinin niteliğinin yukarıda belirtilen şekilde belirlenmesinin önemi, niteliğin belirlenmesi ile üzerine gelen etkilerden kaynaklanmaktadır, örneğin finansman sözleşmesini alacağın satışı olarak değerlendirirsek veya ipotek sözleşmesi olarak değerlendirirsek farklı hukuki etkilere sahip olmaktadır. Bu şekilde bir tür satış sözleşmesi olarak değerlendirirsek ortaya çıkan sonuç, alacak hesapları alıcısının (acentenin) alacak hesaplarının sahibi haline gelmesi ve üzerinde mülkiyet hakkına sahip olması, satıcının iflası halinde ise acentenin herhangi bir risk taşımaması ve satıcının alacaklıları arasında yer almasıdır. Alacak hesapları dahil değilken, alacak hesaplarının teminat gösterilmesi ile bir tür kredi sözleşmesi olarak değerlendirirsek, farklı bir hukuki durum ortaya çıkar, öyle ki örneğin satıcının iflası ile acentenin satıcının alacaklıları arasında olması gerekir ve iflas kurallarına göre, son varsayımda mülkiyet hakkı acenteye devredilmediği için davacının tahsil etmesi gerekir. Afganistan'da finansman sözleşmesinin niteliğini belirlemenin önemi iki katına çıkmaktadır, çünkü yukarıda belirtilen yasal etkilere ek olarak, bu finansman kurumunun Afganistan'da kullanımı için tanımlanmasını ve yasal olarak tanınmasını etkilemektedir. Soru, dünyanın birçok ülkesinde kullanılan ve ticaretin kolaylaştırılmasında büyük bir role sahip olan finansman sözleşmesini Afganistan'ın mevcut düzenlemelerine ve öngördüğü belirli veya belirsiz sözleşmelere uyumlu hale getirip getiremeyeceğimizdir.

Anahtar kelimeler: *Vekalet, Nitelik, İç Hukuk, Ulusötesi Belgeler*

Introduction

Agency is one of the financing methods that have old roots. Some researchers trace its origin during the Roman Empire (https://tinyurl.com/ycystj85) and some even go further and attribute its origin to Hammurabi, four thousand years ago (Phillips & Bedeian, 1994). The word factor comes from the Latin verb facio, which means "a person who does things". As the Latin verb indicates, the historical background of agency is the historical background of agents who do things for others. Thus, literally, an agent is someone who does things on behalf of others. Thus, for many years, the term agent referred to a business agent who did things on behalf of others, either disclosed or undisclosed. Agency was a developed activity in 14th century England, where it gradually evolved with the growth of the woolen industry. Agents

acted as sales representatives of textile factories. The distance between consumers and producers made trade difficult considering that transport and communication were in their primitive form, so agents adopted supplementary measures to solve the trade problems that arose from these distances. The rise and fall of agents took place in a fairly recognizable form in the 15th and 16th centuries with the advent of the great period of exploration and colonization of England, France, and Spain. Agency business has grown through agency business; In the 19th century, the risk of international trade was very high, so English textile mill owners, who at the time exported their products to the American market (which was unknown to them), hired an agent to sell their goods through the agency. Over time, American representatives have expanded the scope of their activities by checking the satisfaction of buyers, as well as performing a series of administrative actions and other operations on behalf of the customer. In this case, the representatives would take full care of the goods from the moment they were unloaded in some ports until the claims were received. Along with the development of business operations, at the request of the factory owners and with the increase of the agency, the agents have also agreed to guarantee the satisfaction of the buyers, so at the moment of delivery of the goods, the pre-agreed arrangements lead to an advance payment, which in effect pays the selling price, it has been with the deduction of agency fees. With the passage of time, this operation has taken on the characteristic of performing collection services, or risk-free and customer financing, whereby the initial agency business has grown into a new special business - agency business. As mentioned, the institution of agency originated from the commercial agency and has found its greatest growth and development in the United States. The development of the agency institution has been such that today it cannot be considered the same as the commercial agency institution, and it has this fundamental difference that in the agency, the claims are sold or transferred to the agent, while in the commercial agency, the agent acts on behalf of the client. Along with the change of the commercial representation institution and the establishment of the agency institution, there have been fundamental changes in the scope of the functions performed by the agent, and today the agent in the agency contract is responsible for various tasks such as managing claims, accounting, financing and guaranteeing claims.

1.Definition of Agency Contract

The definition of agency expressed by Black's legal culture cannot be the correct definition. Due to the fact that using "purchase of accounts receivable" absolutely includes financing through forfaiting, while one of the main differences between forfaiting and agency is that the agency is special for the purchase of short-term accounts receivable and forfeiting is about the purchase of long-term accounts receivable should be explained (Garner, 2004, p. 55).

Another important criticism that can be taken from the aforementioned definition is that the agency has different functions, one of which is the guarantee of receivables, and this definition has only focused on the aforementioned function and has not taken into account other functions of agency such as accounting. he secretariat of the International Institute for the Unification of Private Laws, which is abbreviated as UNIDEWA, in a report on the agency contract, describes agency as follows: In the general sense, agency can be defined as the transfer of short-term claims by a creditor or seller-customer in the terminology common law rights - in return for payment, to the specialist company or agent that guarantees their collection from the debtor or buyer - known as the customer in common law - even in case of default of the buyer or debtor. Although the term short-term claims are used in the definition of agency by the UNIDEWA Secretariat to distinguish it from forfeiting, it is not a comprehensive definition. For example, agency has different types and in this definition, agency without right of recourse is considered (Bryan, 1999, p. 55) because it has been stated that even in the event of the debtor's negligence, the agent is responsible for payment, while in another type it did not consider the agency that is opposite to the agency without the right of recourse, that is, the agency with the right of recourse, in which the agent is not responsible for non-payment. International chain agents, stating that the precise definition of agency is not practical, defines agency as follows: A continuing contract between an agency and a seller of manufactured goods or services on credit, whereby the agent purchases accounts receivable for cash payment, and based on the precise nature of the arrangement may:

1. Register sales and perform other administrative duties related to accounts receivable;
2. Collect the accounts receivable;
3. To support debts that have not been paid by bearing losses, which non-payment may be the result of the customer's inability to pay (https://t.ly/dH6OL).

In the definition of international chain agents, two important points have been taken into accounts that were not considered in the previous definitions, and these two points are:

First, it uses the term "continuous" in the definition of the agency contract and by using it. It is intended to state that agency is not applicable for individual claims and can be used when multiple claims of a company are transferred to the agent. And in this way, agency is distinguished from forfeiting; one of its characteristics is that it is used for specific claims.

Secondly, the flaw that was in the previous definitions of agency, which is that they did not take into account the various functions of the agency, was taken into account in the definition of international chain agents, and in paragraph 1, 2 and 3, respectively, performing accounting

affairs, collecting claims and has stated the guarantee of claims. According to the explanations above, in the definition of agency, we must pay attention to the following factors:

A. A company can provide the funds necessary for development in two ways:
    1. Through the funds that the company owns, which is called the provision of internal financial resources,
    2. Through financial resources outside the company, which is called the method of providing external financial resources, which agency is considered part of the method of providing external financial resources,
B. Agency is a method of financing that is used for small and medium-sized business institutions.
C. Accounts receivable that are transferred in agency are short-term, so it does not include long-term accounts receivable.
D. Accounts receivable that are transferred by the seller to the agent, are derived from the contracts for the sale of goods and the supply of services that the seller concludes with his customers.
E. Agency has different functions, which means that the agent is responsible for guaranteeing claims, financing, administration and accounting and collection of claims according to the contract he has with the seller. D- Using agency is appropriate when there are several accounts receivable. Therefore, agency is not applicable in relation to accounts receivable.
F. In addition, it should be noted that the agency takes place in the form of a contract between the seller and the invoice.

2.Features of Agency (Advantages and Disadvantages)

The main reason for the establishment of the agency was the development and facilitation of trade and commercial exchanges, and it has been successful in this way, and the increase in the use of this institution with each passing year has shown this and its positive effects on the development of trade. Despite the very good advantages that the mentioned institution has in the development and facilitation of trade, it also has weaknesses and disadvantages. In the following two paragraphs, the advantages and disadvantages of this institution are stated.

3.Advantages of Agency

Small and medium business enterprises play an important role in increasing production, supply, services, and job creation, etc. However, these institutions face many market problems and issues in their efforts to develop and grow, and eliminating the capital gap is necessary for their survival and growth. In relation to this weakness of small and medium business

institutions, banks and other financial institutions cannot provide appropriate credit support for these institutions due to disproportionate information and insufficient collaterals. Because of this problem, many small and medium-sized business institutions are looking for alternative ways of financing their operations, and agency is exactly the right alternative for such institutions. Small and medium business institutions do not have the necessary liquidity and capital to develop their business and reach new markets, agency is a method that removes this obstacle from the business path of these institutions. Small and medium-sized businesses can transfer their claims to agency companies to obtain the necessary liquidity and capital to advance their affairs without having to provide collateral and guarantees (Bryan, 1999, p. 45). Funding through agency is very appropriate, because the seller's credit and solvency are not taken into account, and what is considered is the value and credit of receivables. Therefore, even for sellers and exporters who have a high credit risk, it is possible to resort to agency to obtain the necessary financial resources and thereby improve their credit. In most cases, customers are looking to buy on credit and usually ask for 30 to 90 days to pay for the transaction from the moment the goods are delivered. Qaqtoring provides this facility for small and medium business establishments that can do their transactions on credit and in this way increase their customers and succeed in developing their sales market. This becomes more prominent in the field of international transactions, because business institutions that are thinking of reaching the market of other countries can do their transactions with foreign customers on credit and in this way export their products to other countries and thus their foreign market.

This advantage of agency is very appropriate in relation to countries like Iran that are looking for the development of their foreign market and exports, and it can greatly facilitate exports in these countries. The use of agency in the field of international transactions and exports also has the advantage of protecting sellers and exporters from exchange rate changes, which are among the most important risks in the field of international exchanges. This is more evident in our country, which has experienced a high exchange rate change in the last few years. One of the important issues that companies face is the vague information of their customers. The agency can provide useful information about the credit status of buyers. This advantage makes agency a powerful tool against obfuscated customer information. Usually, agency is non-recourse, and the agent who purchases accounts receivable assumes the risk of the buyer's ability to pay. Therefore, small and medium-sized business institutions can thereby transfer the risk of collecting their claims to agency companies without having to worry about receiving their claims from buyers and focus on their management measures and market development.

Finally, in relation to the benefits of agency, it should be noted that there are few formalities in the agency to provide credit facilities. This advantage makes this financing method different from other methods in this regard (Bryan, 1999, p. 87).

4.Disadvantages of Agency

Despite the many advantages of agency, it is not suitable for all branches of business. Agency is more effective in industries where the difference between the cost and the selling price of the product is greater, such as the clothing business. As the difference between the cost and selling price of goods (the difference between the cost of providing goods and services and the price calculated for delivery and supply to the customer) increases, the tendency to use agency also increases, this is because the supply finance through agency is expensive.

Agency can also be used by sellers and exporters who have more sales amount and volume of transactions. This can go back to this characteristic of agency that applies to multiple claims and is not appropriate in relation to case claims. This is because it is not cost-effective to resort to agency in the case of specific claims due to the costs involved. As mentioned in the previous paragraph, resorting to agency can be expensive. For example, when an agency contract is concluded without the right of recourse, since the risk of non-payment is transferred to the agent, financing in this way involves a higher cost, which can be considered one of the disadvantages of this institution (https://goo.by/cfNrbF). One of the other issues is reputation. The way the agency deals with debtors can affect the seller's relationship with its customers. Less reputable brokerage firms can damage these relationships with bad debt collection practices. One of the important elements that companies pay attention to in order to carry out agency operations is the information about the availability and credit of the persons from whom they must claim the transferred claims (debtors), because by this the amount of risk in collecting the claims is towards them. are evaluated. The lack of complete and correct information about the credit of customers or the impossibility of accessing such information, especially in emerging markets, causes agency companies to operate less in these spaces or because the risk is very high in these situations, they provide services by receiving a higher fee. This deficiency can be solved by providing appropriate information infrastructure. Fraud is also a significant issue in the brokerage industry (for example, fake accounts receivable and fake customers), and the weak legal environment and electronic business records and credit bureaus make it more difficult to detect these issues. An alternative solution commonly used by agents in emerging markets is for the agent to purchase accounts receivable with a "right of recourse," meaning that the seller is responsible if the buyer does not pay the bill, in other words, the seller bears the risk. Supports accounts receivable credit. However, this cannot successfully reduce the

credit risk of the seller's customers, because the seller may not have enough capital to repay the seller. Another important issue related to agency is the issue of legislation related to this institution. In the national arena, some countries do not have a specific law that governs agency contracts, and in these countries legal issues must be resolved by referring to general laws. But since these general laws have not been established with a specific view to the issues of agency and have not taken into account its features and characteristics, they cannot be recognized as appropriate and in turn, they can cause disruption in the process of such contracts and their existential goals.

5.Types and Process of Agency Financing

5.1.Types of Agency

Based on different criteria, there are several types of agency, which we will describe below.

5.1.1.Consensus criterion

5.1.1.1. Real Agency and Similar Agency

As previously stated, various functions (financing, payment guarantee, accounting and debt collection) are provided by the agency. The division of agency into real and similar agency is based on the scope of work that is provided in an agency. In "real" agency, the agent receives the short-term claims of the applicant (seller) resulting from his contract (sale of goods or provision of services) with third parties, and provides advance payment (financing) to the applicant, keeping commercial documents that are a record of transactions. Also, the risk of bankruptcy of the buyer (debtor due to the contract of sale of goods or provision of services) is assumed. In other words, in "real" agency, all (potential) functions, i.e. financing, guaranteeing payment and providing professional services, are provided. While in "similar" agency, some (possible) functions of the agency are missing, and this lack is mainly the function of accepting the risk of debtor's bankruptcy (https://goo.by/uDLLiZ).

5.1.1.2. Agency with Recourse and Agency without Recourse

One of the risks in the agency contract is the inability or bankruptcy of the debtor. The question that arises is that in case of bankruptcy or incapacity of the debtor, does the agent have the right to refer to the seller to compensate the amount paid or not? The answer to this question should be based on the agreement of the parties in each agency contract. According to the agreement of the parties in each agency contract, based on whether the agent has the right to refer to the seller to compensate the amount paid to the seller or not, agency is divided into agency with the right of referral and agency without the right of referral. In the agency with the right of recourse, the agent does not accept the risk of the debtor's inability and bankruptcy to

pay, and as a result, if the debtor pays the debt, the agent can refer to the seller and request compensation for the amounts paid (Nereus, 1987, p. 88-104). Agency without the right of recourse involves more risk, in such a way that together with the assignment of accounts receivable, the risk of bankruptcy and the debtor's inability to pay is also transferred to the agent, and as a result, if the debtor defaults on payment, the agent can no longer refer to the seller. Therefore, if it is proven that the debtor is financially unable to pay, the seller or agency applicant does not have any responsibility towards the agent. In such cases, the agent must either suffer loss or resort to direct enforcement action against the debtor. It should be noted that in the agency without the right of recourse, the agent does not have the right of recourse only if the reason for non-payment by the debtor is his disability and bankruptcy, but if the non-payment by the debtor is due to another reason such as the seller has not delivered the goods or If the delivered product is not in accordance with the subject of the sales contract, the agent has the right to refer to the seller to compensate the amount paid. In relation to the use of these two types of agency, it should also be said that agency in developed countries is usually done without recourse. For example, in Italy, 69% of the agency is done without the right of appeal. But in emerging markets, where risk assessment of accounts receivable involves difficulty, recourse agency is often used.

5.1.1.3.Disclosed Agency and Undisclosed Agency

According to whether the debtor is aware of the process of agency and assignment of claims or not, agency is divided into disclosed and undisclosed agency. Of course, another title is also used for both of these, that is, instead of disclosed agency, informed agency is used, and instead of undisclosed agency, uninformed agency is used (Bakker, Udell & Klapper, 2004, p. 123). In the disclosed agency, as it can be seen from its title, the assignment of claims is notified to the debtor. This notification is usually made by the seller along with the presentation of the invoice to the debtor (buyer). But in undisclosed agency, the debtor is not aware of the transfer of claims by the seller to the agent, and the seller collects the claims on behalf of the agent. Undisclosed agency is useful for sellers who do not want their business competitors to know that they are assigning their claims to the agent. Under this type of agency, the seller (debtor) pays his clients directly to him, and he immediately delivers the payments to the agent. It should be noted that the legal validity and application of these two types of agency are not the same. In this way, in relation to the legal validity, the disclosed agency has been recognized in all countries, and as a result, the transfer of claims is given effect in all countries along with the notification of the debtor, but in relation to the undisclosed agency, this comprehensive recognition exists. and some countries do not recognize this type of agency. For example, in

England, it is only legal agency, while in America; undisclosed agency is also recognized along with disclosed agency. As a result of the difference in the legal validity of these two types of agency and since the disclosed agency is recognized in all countries, it is more useful and the undisclosed agency is done less and in resorting to such an agency, the agent's fees are higher due to the risk the more he endures, the more he receives (Bryan, 1999, p. 40).

5.1.1.4.Prepaid Agency and Paid Agency

Based on the time when the agent pays the purchased receivables to the seller, the agency is divided into advance payment agency and receipt agency. In advance payment agency, the agent immediately pays the value of the purchased claims by assigning the claims by the seller. This advance payment or pre-receipt payment is usually 70 to 90% of the value of transferred claims. The rest is paid after receipt of the agency fee, which is no longer called prepayment. By adopting this type of agency, the seller can benefit from the provision of financing by the agent. As the name implies, in the maturity of the receivables, the value of the assigned claims is paid by the agent to the seller at the maturity of each claim. In this type of agency, no advance payment is made and as a result, no financing service is provided to the seller. In the agency head reached, if the purchased accounts are confirmed only because of the debtor's financial incapacity. If they are not collected at the end of the receipt, the agent will still pay the purchased price. Therefore, in this type of agency, the seller benefits from a predictable income stream and also the acceptance of credit risk by the agent. Or in simpler words, agency in this type takes place without recourse.

6.Place Criteria

6.1.Domestic Agency and International Agency

The division of agency into domestic and international is according to the territorial criteria and whether the place of business of the parties is located in the same territory or not. In international agency, the contract for the sale of goods or the supply of services from which the accounts receivable assigned in the agency contract is derived is between a buyer and a seller with places of business in different countries (for example, an Italian car manufacturer sells spare parts produced in Spain is purchased), and domestic agency is when the place of business of the seller and the buyer is located in the same country. International agency is more risky than domestic agency due to the difference in the language of the parties, currency fluctuations, the problem of checking the credit of buyers, and many applicable laws. For example, when the agency is domestic, considering that the country involved in the agency is one country and the buyer, seller and agent are all under the law of the said country, the governing law is easily recognizable, but in the case of international agency, since The countries

involved in the agency are at least two countries, it is not easy to distinguish the governing law. In the latter case, if there is an applicable convention (such as the International Agency Convention of 1988), the convention is the governing one, otherwise, it is necessary to find the governing law by resorting to conflict resolution rules, which is not an easy task.

6.2.Direct Agency and Indirect Agency

According to the number of people involved in an agency contract, agency is divided into direct and indirect agency. In addition, it should be said that these two types of agency can exist when the agency is international. Direct agency in which there is an agent can be divided into "direct export agency" and "direct import agency" which will be described below. In direct export agency, there is only one export agent in the exporting country (seller) with whom the exporter concludes an agency contract and based on that, he submits his claim to the agent regarding the price resulting from the contract of selling goods or providing his services with a foreign buyer. Therefore, in direct export agency, the seller enters into an agency contract with an agent from his country, and the said agent performs the tasks assigned based on the agency contract, for example, assessing the credit of the foreign buyer and collecting the debt from the foreign buyer.

The beauty of this type of agency is that it is cheap and it is easy to establish relations between the parties because the seller and the agent are in the same country. However, because of a single agent, the problem of establishing relations between the agent and the foreign buyer and the risk of credit of the foreign buyer as well as the length of the agency process can be disadvantages of this type of agency. Import direct agency refers to times when the exporter assigns its claims to an agent in the debtor country (foreign buyer or importer). This type of agency is usually resorted to where a major volume of exports is made to a particular country. It is a cheap solution and it is a convenient way to collect the debt in terms of time, but it does not provide the purpose of financing the exporter. The agent provides a debt collection service and does not check the importer's credit. Advance payment is not possible because it exposes the agent to a high risk. In indirect agency, which is also called "two-agent system", there are two agents, the export agent (in the exporting country) and the import agent (in the buyer or importer country). In this type of agency, each of the parties to the contract for the sale of goods or supply of services communicates with the agent who resides in their own country, so that the seller or exporter communicates with the export agent and the buyer or importer with the import agent. The agency process in this system is such that the seller concludes an agency contract with the export agent and then the export agent communicates with the import agent based on

the said agency contract. The importer gives the amount to the import agent at the due date, and the import agent sends the amount to the export agent after deducting his fee.

Indirect agency involves three contracts, a sales contract between the exporter, an agency contract between the export agent and the exporter, and a contract between the export agent and the import agent. It is important to remember that the import agent's obligations are only against the export agent, which includes the determination of the credit rate of the importer and the actual collection of the debt. The import agent accepts the credit risk related to the confirmed debt and is responsible for transferring the funds to the export agent. On the other hand, the export agent is responsible for any recourse to the import agent. "The relationship between the export agent and the import agent, who may be affiliated companies, is sometimes a reciprocal relationship" (Klapper, 2005). Indirect agency has many advantages, including that the exporter and importer both communicate with an agent from their own country, which facilitates and speeds up this agency operation. However, this type of agency involves higher costs due to the fact that two agents are involved in it, which is not suitable for low price transactions. Finally, it should be noted that some of the divisions mentioned above can exist simultaneously in an agency operation, for example, advance payment agency can be done with or without recourse.

7.Transfer of Obligations in Agency Contract (USA and UK)

It was said that the tool used by the majority of countries in the world to use is the transfer of obligations. In the definition of an obligation, it can be said as Dr. Langrodi says: "An obligation is a legal relationship between two persons, whereby the obligee can oblige the obligee to pay a sum of money or transfer something or perform an action (which is an act or omission of an act) (It is a certain action) to do. The term obligation has two positive and negative aspects, so that the obligation towards the obligee (creditor) who gives him the right to claim something is the positive aspect of the obligation, which is called "rights" or "demand", and the obligation towards the obligee (debtor) who is obligated to do something is the negative aspect of the obligation, which is called "duties" or "religion". The transfer of the obligation also includes the transfer of the positive and negative aspects of the obligation, but what is used for financing is the transfer of the positive aspect of the obligation. (Nereus, 1987, p. 78). The old theories in Roman law as well as in the old English common law considered the obligation in its positive sense, that is, rights as a personal relationship between the creditor and the debtor, whose transfer was unthinkable. However, it soon became clear that such transfers are economical and efforts were made to make the transfer without the involvement of the debtor. The tool that was used was that the personal creditor under the title of "transferee" allowed the collection of claims in his own name. But the main issue that remained was that the creditor

could refuse his permission. With the passage of time and the development of commercial relations, countries have considered rights or claims (the positive side of the obligation) as financial assets with economic value that can be transferred independently and regardless of the personal relationships of the parties, and have established an institution under the title of "transfer of rights" or They have established "Transfer Requester" for it.

In the description of the transferor in which the positive aspect of the obligation is transferred, it should also be said: "As the name implies, it is said to transfer the claimant from another property. In this transfer, the transferee becomes the successor of the transferor in all respects and has the same benefits, as in the transfer of property, the possessor is the special representative of the possessor. Therefore, the new owner of the claimant can claim it from the debtor under the same conditions as his previous owner, benefit from the claimant's guarantees in the implementation of the right, and invoke it against others. On the other hand, he cannot claim more than what he has transferred or ignore the defense that the debtor could have done against the transferor. The claimant's transfer can be done forcibly as a result of the death of the creditor and its transfer to the heirs' property or contractually and as a result of an agreement between the creditor and a third party, and we are dealing with a contractual transfer of the claimant. Because the seller transfers his claims to the agent as a result of agreement with the agent and in return benefits from financing facilities (Garner, 2004, p. 459). Accounts receivable (receivables) are considered neither movable nor immovable property, instead they are classified as liabilities – rights. In financing through the seller, he transfers the claims arising from his sales contract with the buyer to the agent, and in return for this transfer, the agent pays the seller in advance. Therefore, what is transferred is the positive side of the obligation, which is called demand or rights, and this is the reason why most of the countries of the world use the means of transferring obligations (although its positive side is rights) to use this financial institution. In order to be able to present a picture of the transfer of obligation approach that is used by the majority of countries in the world, it seems very appropriate to examine the laws of countries that have adopted the transfer of obligation approach, but since the number of countries that have adopted this approach There are many and the review of all of their laws is not included in this article, in the following we will try to review two of the countries that are advanced in terms of law and the statistics of their use are high, and these two countries are America and England. The United States in Chapter 9 of its uniform law and the United Kingdom in Section 136 of its property law, which we will examine below.

7.1.America

The United States Uniform Commercial Code, abbreviated as "UCC", was first published in 1952, and is among the uniform laws that were published in connection with the uniformity of rights related to sales and other commercial transactions in all 50 United States of America. This law was amended several times, the last time was in the chapter related to the subject of this research in 2001. In Chapter 9 of the said law, the United States has paid attention to financing through and has established relatively good regulations for the use of this institution in the United States. Chapter 9 of the Uniform Commercial Code entitled "Security" is set up with the purpose of facilitating commercial transactions, and governs the creation, completion and enforcement of security interests in personal property. Personal property is divided into two categories - tangible personal property and intangible personal property.

Tangible personal property is usually movable and includes "hard assets" such as cars, equipment, and goods. Intangible personal property includes assets such as accounts receivable, promissory notes, securities, letters of credit, and interests in business enterprises. What we are considering among the personal property are the accounts receivable that are assigned to the agent in financing through and the agent provides the seller with financing facilities in return. Section 102 of Chapter 9 of the Commercial Uniform Law describes accounts receivable as follows: "account", except when used in the sense of being "liable for", means a right to payment of a monetary or financial obligation, whether or not performed, and arising from:

1) Properties that have been or will be sold, leased or will be, the right to use them has been assigned or will be, or have been or will be expropriated in another way,
2) Services that have been or will be provided, 39 insurance policies that have been or will be issued,
3) The secondary obligation that they have incurred or will incur,
4) Energy that has been or will be provided,
5) Using or renting a ship under a charter or another contract,
6) Arising from the credit or charge card or information contained therein or for use with the card, or
7) As a winner in a lottery or other game of chance conducted or sponsored by a state, a governmental entity of a state, or a person authorized to operate the game by a state or governmental entity.

The term of the account includes claims arising from health care insurance. The said phrase does not include the following:

1) The right to payment evidenced by a property document or a document,

2) Claims arising from a quasi-commercial crime,
3) Deposit accounts,
4) Investment assets,
5) Rights arising from credit. letter or documentary credit,
6) Rights to payment of money or funds advanced or sold, other than rights arising from the use of the credit or charge card or the information contained therein or for use with the card.

Section 109 of Chapter 9 of the Uniform Commercial Law for the account meaning "the right to pay a monetary or financial obligation" stipulated in Section 102 of the same chapter, has considered two types of functions and specified criteria for their use. The first function is that the holder of accounts receivable can use them as a guarantee to receive a loan from lending institutions without transferring ownership, so that in case of non-repayment of the received loan, the lender can use the accounts receivable to compensate the amounts.

The second function is that accounts receivable, since they are part of the property with economic value and part of the owner's positive assets, can be transferred for consideration, which is called sale. In the latter case, unlike the previous case, with the conclusion of the contract, ownership is transferred from the seller of accounts receivable to the buyer. Of course, it should be mentioned that despite the fundamental differences between the sale of accounts receivable and its use as a guarantee of payment, Chapter 9 of the above-mentioned law has incorrectly used the title "guarantee" to cover both uses of accounts receivable, which this term is intended to cover The sale is not correct considering that it is transferred against the guarantee of ownership. Removing accounts receivable sales from Chapter 9 and setting up a separate legal regime solves this structural and definitional flaw. However, the second function, i.e. the sale of accounts receivable, is the same thing that takes place in financing through, and the Uniform Commercial Code of America has allowed it in Section 109 of Chapter 9.

Banking and non-banking institutions in the United States of America act according to the provisions of the aforementioned law. Therefore, the United States of America has adopted the obligation transfer system in financing through such that accounts receivable, which are considered the positive aspect of the obligation in the assets of individuals, are transferred to him against financing from the agent (Nereus,1987, p. 88-104).

7.2.England

England has provisions in its 1925 Property Rights Act that can be properly applied in operations. The aforementioned law has been discussed in section 136 and it has stated the formalities that must be followed for the legal effect of the transfer of "claimed objects", which

means the same claims. The said section 136 under the title of legal transfers of claimed objects provides as follows:

1) Any absolute transfer of debt or other claimed legal objects (the only intention is not to be against us in exchange) in writing by the transferor, of which written notice is given to the debtor, trustee or other persons that the transferor can demand from them the said debt or other claimed objects. It is given in law (subject to the rights of persons who have priority rights over the transferee) for the transfer of the following items from the date of the announcement:
    a. The legal right regarding the debt or the claimed objects,
    b. All statutory or other remedies alike; and
    c. The power to perform the same obligation in a similar way without the consent of the transferor.

According to the aforementioned provision, in order for the claims and other claimed objects that are transferred by their owners to have legal effect or to be recognized as a legal transfer, it is necessary to meet the following conditions:

1) The transfer of claims or other claimed objects must be done in an absolute manner, that is, without conditions.
2) All claims or other claimed objects must be transferred, in other words, the transfer must not be partial.
3) The transfer must be made in writing by the transferor,
4) The debtor or other persons who, as a result of the transfer, undertake to pay the transferee must be informed of the transfer in writing.

In England, in addition to the legal method of transferring accounts receivable, which is carried out in the light of section 136 of the Law on Property Rights and in compliance with the conditions stipulated by that provision and called "legal transfer", there is also another method for transferring accounts receivable. There is one that is opposed to a legal transfer and does not require compliance with the conditions stipulated in section 136 and is called "fair transfer". (Garner, 2004, p. 345). In the transfer of accounts receivable in a fair manner, other than the agreement of the parties and consideration of exchange, compliance with other formalities stated in section 136 is not mandatory. This usually means that the agent pays the seller a certain minimum amount in advance. This is a type of transfer used to discount bills without notice. In the form of financing through accounts receivable, the most important advantage of fair transfer is that there is no need to inform the buyer about the transfer. Another important legal difference between fair transfer and legal transfer in English law is that although the transfer of accounts

receivable in the latter method is the same as legal transfer subject to compliance with the rules of the right of priority against individuals, but the agent alone and in his own name cannot receive He has the right to file a claim with the transferor. As a result, in relation to the legal status of through financing in the UK, it should be said that in both legal and fair transfer methods, accounts receivable in through financing are transferred against the agent's obligation to prepay a certain minimum amount. Therefore, in the United Kingdom, as in the United States, financing is considered through a type of sales contract, and in that case, the issue of sale is also a positive aspect of the obligation, which is transferred to the agent's obligation to provide financing.

7. 3. Contractual Succession System (France)

France is also one of the countries where the statistics of the use of through financing are high, and in this country accounts receivable and receivables are mostly used as a method of financing. Unlike the majority of countries that have used the legal system of transfer of obligations to transfer accounts receivable for use, France uses a system called "contractual succession" to benefit from and transfer accounts receivable. Of course, it should be noted that in France, there are various methods such as conversion of the obligation by changing the creditor, assigning the claimant, various types of transferable documents that are organized by commercial law, and there are contractual substitutions for the transfer of rights or claims.

Among the aforementioned methods, only contractual substitution is used for the transfer of trade receivables and the resulting accounts receivable. The origin of the contractual succession system is in Roman civil law and it has been identified and developed based on the rule of fairness, and in many cases the contractual succession system has been referred to as a "creature of fairness" (https://t.ly/qP7sh). The doctrine of subrogation today is closely related to the general concept of guarantee and is well established in such a way that a guarantee can be transferred to the obligor independently of the original property and rights. The concept of succession is not dependent on the contract, but as a legal consequence of the relations of the parties. Contractual substitution system in its common way of application in most countries of the world such as Afghanistan is used in the form of a contract for compensation by the insurer, in such a way that the insurer pays the damages caused to the policyholder by using the substitution system. The aggrieved party is to receive damages and can refer to the cause of the loss to receive the paid damages. Despite the common way of using contractual substitution in insurance contracts, France has adopted the contractual substitution tool for transferring accounts receivable (Sarıgül, 2012, p. 2-11).

Conclusions

Most of the institutions that operate in the business world are small and medium-sized and they usually face problems in terms of access to financial resources, and resorting to financing in a way that is specific to this type of institutions solves their financing issues. The use of this method of financing in developed countries has a very high figure, and it is increasing rapidly in developing countries and emerging markets. In addition to the advantages of financing through financing, there are also a few disadvantages of using this method, which is due to the lack of appropriate laws in some countries, as well as the lack of a proper and complete contract between the parties to the contract. These disadvantages can be solved by passing comprehensive laws in relation to and setting up a proper and complete contract between the parties. It should be noted that since financing is based on a contract between the seller and the agent, the parties to the said contract can agree on most of the items in their contract in order to avoid future disputes and ambiguities. By removing these disadvantages, it is possible to use the main feature of this institution, which is the facilitation and development of trade. Based on the criterion that is considered, there are different types, including real and similar, with information and without information, advance payment and receipt, with right of recourse and without right of recourse, domestic and international, and direct and indirect. Despite the aforementioned division, it is possible to fall into several aforementioned divisions at the same time, and in this article, the most common one, i.e. advance payment without the right of recourse with the debtor's notice, is considered and the process of doing it is described in terms of this division (Klapper, 2005). Funding is based on a contract that is concluded between the creditor (facility recipient or exporter or seller) and the agent, which are usually banks or specialized financial institutions, and by which the claims and usually the risk of non-payment are transferred to the agent, and the agent In return, he is responsible for providing financial resources. The importance of determining the legal nature of the financing contract in the world is due to the effects that are imposed on it as a result of determining the nature. The importance of determining the nature of the said contract in Iran is doubled, because in addition to the legal effects, identifying and giving legal credit to this institution affects the financing for its use in our country. The majority of countries in the world have adopted the legal form of transferring the positive aspect of the obligation, i.e. demand, for the use of financing through. Unlike most countries, France uses another approach called contractual substitution in financing in the aforementioned way. Two conventions related to the subject have also acted in a different way in order to standardize the rules and regulations. United Nations Convention on International Accounts Receivable by using the English term "Assignment of receivables"

means "transfer of accounts receivable" in defining the common method in most countries, i.e. transferor. Anstiral Convention has acted in a more comprehensive manner and by using the word "Transfer" in the definition of the transfer of accounts receivable, it has taken into account both the usual method, i.e. transferee, and includes contractual substitution. Since the financing structure is based on transfer requester, countries that do not have specific laws in relation to benefit from financing facilities in the aforementioned manner from the general regulations that govern transfer requester, that is, the same tool that is used in most countries of the world. In the country of Iran, due to the lack of specific laws, we refer to the rules and regulations governing the transfer of applicants. In Afghanistan, there is no format called transferable demand, but demand can be transferred under other contractual formats under the title of definite and indefinite contracts (Klapper, 2005). In Abta, with the conditions that the financing contract must have in order to be recognized as valid, it was observed that the necessary conditions for forming the said contract can be divided into two general and special categories. The said contract is no different from other contracts in terms of compliance with the general and basic conditions of validity of contracts and the guarantee of their execution, and it is also necessary to verify the items stipulated in Article 190 of the Islamic Law, and based on this, in the said contract, verifying the agreement and consent of the wills, eligibility Conditions related to the subject of the transaction as well as legitimacy are necessary for the transaction. In relation to the special conditions, they should be specified based on the governing law and according to the agreement of the parties in each financing contract, however, some of the most important special conditions have been examined and it has been observed that the accounts receivable subject of the said contract should be have a commercial and contractual origin, in some countries the notification of the debtor in relation to the transfer or registration of the transfer is necessary for the contract to have legal effect and also in accordance with the law.-In Afghanistan, when banks and non-bank credit institutions (with certain conditions) are the agents, it is necessary and necessary to comply with special rules and regulations for financing by them. After examining the general and specific conditions of legal validity, the condition of non-transfer and its effect on the consent of the parties, which is the basic pillar of the contract, was examined. -As a result of concluding the financing contract by observing the general and special conditions, direct contractual relations are established between the seller and the agent, and as a result, each of the seller and the agent have duties that are considered part of their rights for the other. It is not possible to define all the rights and obligations of the parties definitively because their cases can be different according to the governing law and the agreement of the parties. However, usually in all contracts of this type, the seller is obliged to transfer all his

existing and future accounts receivable to the agent along with their guarantees, although the agent does not have the obligation to accept all items in return for this transfer and has the right to choose for He foresees in the contract that he will finance the accounts receivable that he deems appropriate. In order to cooperate with the agent in order to receive the transferred account receivable, the seller is also obliged to hand over all related documents to the agent and also guarantee the existence of the transferred account receivable.-On the other hand, the agent is also obliged to provide financing with interest deduction and provide other services in case of agreement and receive the necessary fee after checking the proposed accounts receivable and as a result of confirming the credit and accepting the risk of the cases that are considered appropriate.

References

Bakker, M. R., Udell, G. F., & Klapper, L. (2004). *Financing small and medium-size enterprises with factoring: Global growth and its potential in Eastern Europe* (Vol. 3342). World Bank Publications.

Black's Law Dictionary Garner. (1999). (Ed. A, G.A. Bryan). (7th Edition). West Group.

Garner, B. A. (2004). Black's law dictionary 8th edition. *St Paul Minnessota: West Publishing Co*.

Klapper, L. (2005). The role of factoring for financing small and medium enterprises. *Journal of banking & Finance*, *30* (11), 3111-3130.

Nereus, J. (1987). *The legal nature of the factoring contract.* S. African LJ, 104, 88.

Phillips, AS, & Bedeian, AG (1994). Lider-takipçi değişim kalitesi: Kişisel ve kişilerarası niteliklerin rolü. *Yönetim Akademisi Dergisi*, *37* (4), 990-100.

Sarıgül, H. (2012, June). *Factoring as a financing option in Turkey: A comparative study.* International Istanbul Finance Congress, Istanbul Okan University.

UNIDROIT, Report on the contract of factoring. (1976). Available at.

http://www.unidroit.org/english/studies/study

http://www.ulcc.ca.

https://goo.by/cfNrbF

https://goo.by/uDLLiZ

http://law.alphaleader.com/enshownews.asp?id=2 74.

https://www.solh.ir/book/8

https://t.ly/qP7sh

https://tinyurl.com/ycystj85

https://t.ly/dH6OL