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Jurnal Ilmu Pemerintahan

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<sup>1,4</sup> Department of Communication and Islamic Broadcasting, UIN Alauddin Makassar, Indonesia

<sup>2</sup> Department of Communication and Islamic Broadcasting, IUN Syarif Hidayatullah Jakarta, Indonesia

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<sup>1,2</sup> Department of Public Administration, Universitas Negeri Padang, Indonesia

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<sup>1</sup> Department of International Relations, Universitas Hasanuddin, Indonesia

<sup>2</sup> Department of Government Science, Universitas Islam Riau, Indonesia

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<sup>1</sup> Department of Media and Communication Studies, Faculty of Communication, Ankara University, Ankara, Turkey

<sup>2</sup> Department of Political Science and Public Administration, Faculty of Political Science and Türkiye, Asia, and Indo-Pacific Studies (TAIPS), Institute of International Relations and Strategic Research (ULISA), Ankara Yildirim Beyazit University, Turkey

<sup>3</sup> Department of Media Management, Faculty of Social Sciences, Media and Communication, University of Religions and Denominations, Iran

<sup>4</sup> Department of Media and Communication Studies, Faculty of Communication, Ankara University, Ankara, Turkey

<sup>5</sup> Jimmy and Rosalynn Carter School for Peace and Conflict Resolution, George Mason University, USA

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<sup>1,4</sup> Department of Sosial Welfare, Universitas Muhammadiyah Sumatera Utara, Indonesia

<sup>3</sup> Jusuf Kalla School of Government, Universitas Muhammadiyah Yogyakarta, Indonesia

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## Trade finance evolution: a comparative study of regulatory reforms in factoring policies for SMEs in India and China

Amit Kumar Kashyap<sup>1\*)</sup>, Simran Lunagariya<sup>2</sup>

<sup>1</sup>Centre for Corporate Law Studies, Institute of Law, Nirma University, India

<sup>2</sup>Peter A. Allard School of Law, University of British Columbia, Canada

### Abstract

*This paper evaluates the effectiveness of the Factoring Regulation (Amendment) Bill 2021 in stabilizing the economic situation of micro, small, and medium-sized enterprises (MSMEs) in India using doctrinal research methods and comparative study. It compared the factoring regulations of India and China. The authors analyse the ramifications of the recent amendments to the Factoring law via a comprehensive literature review, legal frameworks, and comparative analysis of India and China. This study seeks to cast light on the potential of the Factoring Law in addressing the financial challenges encountered by SMEs in India. The findings provide policymakers, stakeholders, and researchers with vital insights into the regulatory framework's effectiveness and potential improvement areas. The research concluded that factoring is an important worldwide trade financing tool for economic development and financial inclusion since it promotes entrepreneurship, private enterprise, and supply chain finance. In order to raise its standing, India may consider adopting features from the Chinese Civil Code, setting regulations for factoring rights transfer, and prioritising creditor interests.*

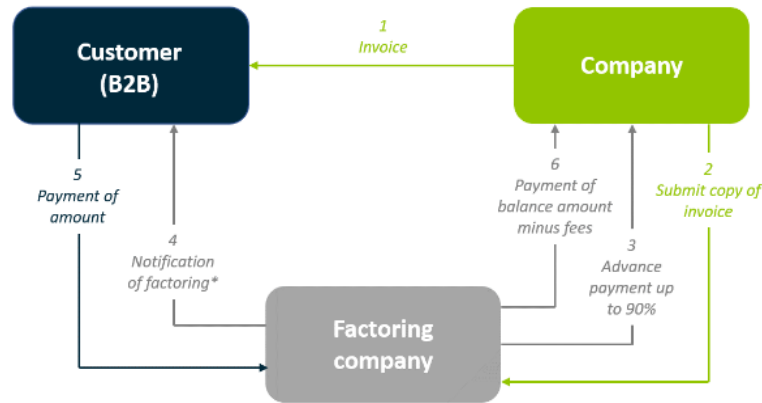
**Keywords:** factoring regulation, policy, trade financing, India, China

\*)corresponding author

E-mail : [amit1law@gmail.com](mailto:amit1law@gmail.com)

### Introduction

Commercial business subjects have enormous issues, making the practical realization of business more difficult (U.S. Department of Commerce, 2022). Technological development creates an increasing scope of business operations and networks. Business operations are becoming complex in enlarged modern business market issues. These issues are due to financial difficulties, including creditworthiness, risk of potential payment and expenses. (Mund, 2020) Factoring is one of the contemporary methods of crediting in the advanced setting of business operations. The most crucial role of modern Factoring is its assistance to SMEs (Hyz, 2011). Major commercial organizations are frequently in a situation to factor themselves. Factoring comprising short-term delivery of business's financial needs has a great scope in developing nations. (The African Capacity Building Foundation, 2021). The likely boost of factoring in the last several years can be attributed to two components: primarily, the requirement for credit guidance and lending guarantee to producers who lack the organization to manage their financial troubles proficiently; furthermore, a need for current assets that also emerges at some point in the operation among most enterprises (OECD, 2015).



**Figure 1.** Plain Vanilla factoring structure  
*Source: processed by the author*

The banks or other financial institutions act as a factor to claim the funds from a third person based on the factoring contracts. In other words, through a factoring arrangement, the first-party creditor assigns the Factor to claim the dues from the third-party debtor (Daniel J. Borgia, 2003). Factoring is a popular method for short-term export funding, reducing payment delays. However, India's factoring services face challenges like insufficient knowledge, high interest rates, and regulatory issues despite the success of similar services in other countries in BRICS (Sinha M. K., 2018). Factoring services in India account for less than 1% of the whole export value.

The Indian Micro, Small, and Medium-Sized Enterprises (MSMEs) sector is considered the backbone of the Indian economy (Saleh, 2006), which includes 60 million people, generating 1.3 million employees each year and providing over 8000 quality things for the Indian and global markets (Sinha, 2020). In India, there are over 30 million Small and Medium Enterprises (SMEs), 12 million people are expected to enter the workforce in the next three years, and the industry is expected to grow at an annual pace of 8% (India Brand Equity Foundation, 2023). Factoring is essential for an Indian company's financial growth. In 1989, the Kalyanasundaram Committee, operating under the Reserve Bank of India (RBI), initiated discussions on the viability of factoring in India (Vaddepalli, 2014). However, it wasn't until 1991 that the RBI commenced the issuance of factoring licenses, with State Bank of India Global Factors Ltd. (SBIGFL) being the inaugural licensee (Kaur & Dhaliwal, 2016). The absence of regulatory frameworks posed challenges for factoring enterprises, leading to difficulties in adopting this method for many exporters until 2011. In India, The Factoring Regulation Act 2011 governs the factoring industry and describes the procedure for filing receivables assignments. This law specifies the rights and obligations of the parties to an assignment contract and resolves concerns about or related to the assignment.

This article aims to examine and assess the efficacy of the "Factoring Regulation (Amendment) Bill 2021" (Factoring Bill, 2021) in addressing the need to improve the financial stability of MSMEs in India. Moreover, this study aims to critically examine the current regulatory frameworks governing factoring in India and China, intending to identify areas that need improvement and highlight exemplary approaches to factoring regulation. This article examines the effects of factoring on the financial difficulties, creditworthiness issues, and payment delays faced by SMEs in India. The text further reads the provisions of the "Factoring Regulation Act 2022" concerning concerns about the availability of capital,

liquidity, and maintaining economic stability. Furthermore, this study engages in a comparative review of the factoring regulations in India and China. This article examines the historical development of factoring law in India and assesses its effectiveness in addressing the requirements of micro, small, and medium-sized firms. The paper further explores the economic ramifications of implementing efficient legislation for factoring inside India's MSME sector. With the passing of the Factoring (Amendment) Regulation Act of 2021, changes were made to the Factoring Regulation Act of 2011. The main goal of these changes is to get more financial and non-financial institutions that need quick cash for business bills to use factoring. To make these changes work with foreign standards, the meanings of important words like "assignment" and "receivables" have been changed. Of particular note is that the changes remove the rule that said non-banking financial firms (NBFCs) mostly did factoring work, and the government said they had to make sure that 50% of their assets and income came from factoring work.

### **Research Methods**

The methodology is based on the doctrinal method. The researcher examines legal texts, such as statutes, case law, and academic literature, to analyze the rules and principles governing factoring transactions in Indian and Chinese jurisdictions. The qualitative approach used to study the research problem explains why things are how they are. The author researches mainly by looking at what other people have said in various literature available in Secondary data sources.

The research method chosen for the paper is a literature review, an analysis of other sources and a comparative study. This research focuses on regulatory changes in factoring as a structured finance transaction and its relevance in the trade market with a descriptive analysis of factoring regulation in India. The secondary sources for the data used in this qualitative research include books, journal articles, conference proceedings, official documents, newspaper and magazine articles, and websites. Both print and digital sources have been used to collect the appropriate data. Because there is no primary data, this study's shortcoming is that it can only be concluded from secondary sources. The author has referred to critical pieces of factoring legislation in India, such as:

- Reserve Bank of India Act, 1934.
- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act 2002).
- The Micro, Small and Medium Enterprises Development Act of 2006
- the Credit Information Companies (Regulation) Act, 2005
- Finance (Amendment) Bill, 2020
- Transfer of Property Act, 1882
- Factoring Act of 2011
- Factoring Regulation Amendment Bill 2021
- Factoring (Amendment) Regulation Act of 2021.
- Unidroit Convention on International Factoring
- PRC Civil Code 2020

To conduct a comprehensive and compelling study, researchers use various online legal databases such as Manupatra, Westlaw, LexisNexis, and academic search engines like Dimensions, Google Scholar, and others. Moreover, Electronic research databases like SCOPUS, Elsevier, Hein Online, and SSC Online have been used to collect secondary data to analyze the legal provisions in context.

## **Result & Discussion**

### **Importance of factoring business**

Economically, factoring is considered a method of clearing commercial claims that profoundly improves the cash flow of participants in commercial claims and reduces business expenses (Silverman, 1948). A factoring contract governs because the contractual parties' roles are crucial, which is accomplished by entering into the contract. In legal interpretation, a factoring contract is primarily regarded as a type of contract in which: - The Factor agrees to assume the other party's excessively short-term claims;

- The client agrees to pay the Factor the counterclaims immediately or within a specific period, and
- guarantee payment under certain conditions, and the client agrees to pay the Factor the corresponding fee (Silverman, 1948).

Factoring improves the liquidity of stakeholders in commercial exchange. It minimizes the trade organization's legal and economic framework and market participants for products and services, generating more time and space for other business activities. (Spasić, 2015). This business operation has been considered a boon for SMEs. An SME's financial position is improved by including the factoring technique. This is also because the factors are financially and technically capable of providing various services at a low cost. Moreover, the task of collection done by Factor helps their client reduce their duties and responsibilities towards receivables (Spasić, 2015). Consequently, assisting the client diverts all their focus toward primary business operations. Financing is a prerequisite for running any business. Availability of finance whenever the company requires it is an essential aspect. This is paramount in small businesses, and Factoring is one of the critical drivers of this liquidity. In India, factoring is an essential source of MSMEs' short-term and working capital finance. It enables small businesses to get rapid financing based on invoices produced without putting undue burden on their balance sheets via excessive borrowing. It also has the following positive attributes for the Indian SME market;

- Financial institutions in India view factoring positively as it allows lending to lower credit-rated firms while transferring credit risk to more creditworthy ones.
- In India, factoring is crucial for firms, enhancing productivity, creditworthiness, agility, and cash flow optimization.
- It aids in managing seasons, refining procurement, and improving procedures by reducing invoicing-to-cash collection time.
- Furthermore, it shifts credit risk to the factoring provider, lowering the chance of nonpayment and strengthening financial stability.
- Receivables management outsourcing to a factoring business is rigorous, which appeals to companies trying to improve financial operations and invoicing.

Many companies worldwide specializing in Factoring have developed (Jalan, 2021). The emergence of these entities brings a key advantage to businesses—they possess expertise in the cash flow of diverse market participants. Their guidance aids enterprises in minimizing receivables collection risks, which is crucial in addressing market liquidity challenges and ensuring business security (Pujari, 2021).

Moving away from the primary function of collecting receivables, the factors also have ancillary parts of bookkeeping on behalf of clients, checking creditworthiness in the import-export business and ensuring unhindered business functioning. (Bhadouria, 2022). Suppliers swiftly secure working capital by financing based on the buyer's creditworthiness,

cutting administrative costs with factors. Buyers, in turn, extend payment periods, utilize reverse factoring, and enhance supplier relations. (Spasić, 2009). The overall impact of the invocation of factors in realizing receivables on the economy would be to transfer risk from the business sector to the financial market and support business growth (Pryor, Lynch, & Gray, 2020).

### **Evolution of Factoring Business – Global Perspective**

During the time associated with expanding emerging businesses, the factoring industry was established in international trading (Silverman, 1948). With the growing requirement to ensure the positioning of commodities and collect requests in marketplaces (of distant) abroad nations, new approaches, tools, and methods of doing trade are beginning to be adopted, mainly in the foreign commercial exchange between the United States and England (Sommer, 1998). The factoring firm emerged from the commission industry; international trade risk was significant in the eighteenth century. Thus, the English textile mill owners who marketed their goods to the unknown American market at the time used a commission-based representative to sell them. (Sinha, 2020). Initially, there was debate over the legal elements of Factoring and its economic validity.

The roles of factors were more channelized with the onset of the twentieth century. Eventually, certain aspects started to forsake a portion of their primary operations to focus on financial functions and credit obligations. This happened just before World War I; nowadays, "factoring" refers to a specialized process of background verification and funding the manufacturer and dealer of products (Tatge, 2012). Almost all factors are no longer concerned with marketing. The following are the essential features of the Factor presently:

- buying trade receivables;
- intended to guarantee the vendor against customer's credit mistakes;
- billing, ledgering, and collecting receivables; and
- financing clients' operations by advances before maturity against the accounts bought or loans secured by stocks on hand or in the manufacturing phase (Factor Funding Co, 2016).

As previously stated, payments paid against the commitment of products play a prominent part in the Factor's activities. As a result, advancing the legislation governing the Factor's security in such activities is essential. The English Parliament approved an act in 1695 that provided for licensing and regulating credit terms and restricted the time and method of settlement between the client and Factor. By 1823, an action had been established that laid the groundwork for Factor's lien legislation to be implemented in the United States (Pisar, 1970). Maybe because there have always been many factoring enterprises in New York, the first statute to enable Factor's liens was enacted there. In 1911, a statute required the submission of a declaration stating the lienor's name, business address, lienor's share in any goods, and contract duration and signing this measure into law (Sinha, 2020).

Factoring originated in foreign trade but has now gained complete acceptance (also) in domestic business, particularly in the United States. Factoring came a little later in European nations. In Europe, traders initially used factoring in Germany and later in other industrialized countries of the E.U., with Italy and Sweden being particularly influential (Sinclair, 2021).





**Figure 2.** Factoring Services Global Market Share 2023  
Source: <https://www.grandviewresearch.com/>

As per Figure 2, The Asia Pacific region comprises many emerging economies, including but not limited to Thailand, China, the Philippines, and India. These economies are receiving investments from developed markets that are already saturated, and these markets are investigating potential new opportunities in the region by utilising factoring services.

The Asia Pacific region occupies a substantial position in the worldwide factoring industry, contributing to 24% of the overall volume, equivalent to €751 billion. Greater China, encompassing the territories of Hong Kong, Taiwan, and the mainland, substantially contributes to €562 billion in total value. China's economy has expanded at a rate of 8.4%, whereas India has experienced an exceptional growth rate of 141% (FCI, 2022). Mainland China notably impacts the volume, whereas the dynamic expansion of the Indian market is evidenced by its growth rate. Both nations notably influence the dynamics of the Asia-Pacific region in the context of the global factoring environment, which still remains a dominant player worldwide. In today's market, nations in transition often use this business strategy, which is understandable given their high need for financial assets. Its attainability and relative ease of implementation also contribute to its performance.

### **Evolution of factoring regulation in India & China**

The Reserve Bank of India's (RBI) Kalyanasundaram Study Group, founded in January 1988 to explore the feasibility and mechanics of establishing factoring firms in the country, cleared the way for providing domestic factoring services in India (Chakrabarty, 2013). Factoring in India has been regulated by various laws and regulations, with recent developments in sectors like banking, financial activities, and documentation certification. In addition to the "SARFAESI Act 2002", the "Micro, Small and Medium Enterprises Development Act of 2006", and "the Credit Information Companies (Regulation) Act of 2005", several other laws directly impact Factoring (Dun and Bradstreet Information Services India Private Limited, 2010). Section 130 of the "Transfer of Property Act 1882" allows for the assignment of debt by completing a written document. It states that the transfer of debt is complete and adequate upon signing a written document. The Act further states that no notification to the borrower is needed to finish the transition. Whatever defence the debtor had against the creditor before receiving the assignment notification would be unaffected.

Consequently, a factor's claim to the loan equals the clients. The SARFAESI Act 2002 allows secured creditors to execute strategic interests formed on their behalf without recourse to a court or tribunal. Nevertheless, the benefit of such an alternative is limited

because the Act has been the topic of a series of lawsuits involving questions of its length, breadth, and effects. Aside from that, the SARFAESI Act 2002 only applies to Banks and Financial Institutions. Consequently, as mentioned earlier, NBFCs engaged in Factoring cannot pursue their security interests against the supplier/obligations under the Act.

The Banking Regulation Act of 1949 expanded banks' factoring authorization through RBI's permissions, but a lack of specialized legislation and heavy stamp duty hindered its expansion. The Indian government enacted the Factoring Act in 2011, providing a legal framework for the industry and bridging this divide. The Act enhanced practicality by clarifying concepts such as factoring, factors, receivables, and assignment, expediting the transfer of receivables, and exempting pertinent documents from stamp duty. The RBI gained jurisdiction by acquiring the authority to define a factor's "main business," issue guidelines, and collect data. However, unlike established nations, India's lack of a robust legal system hinders factoring effectiveness. To stimulate expansion, the government should prioritize education and regulatory strategies.

Over the years, China's legislation concerning factoring has undergone significant transformations. Initially, factorization wasn't widely recognized as a prevalent financial practice in the country. China progressively introduced and improved regulatory frameworks related to factoring operations to optimise liquidity and streamline commercial transactions. Prominence was attributed to the concept of factorization during the 1990s. At this time, there are no explicit regulations in place that regulate factoring transactions. In response to the increasing significance of factoring, the Chinese government implemented legislative measures and established a legal structure. The China Banking Regulatory Commission (CBRC) significantly contributed to the development of legislation governing financial institutions' provision of factoring services. China formally recognised factoring as a legitimate financial service during the mid-2000s, providing a legal framework for its implementation. Regulatory bodies, such as the CBRC, were responsible for overseeing factoring businesses and affiliated financial institutions.

China reached a noteworthy achievement during the 2010s when it enacted comprehensive regulations specifically emphasising the factoring industry. The government instituted legal entitlements, obligations, and conflict resolution regulations. Under international standards, China made concerted efforts to improve transparency, safeguard stakeholders' interests, and promote the positive growth of the factoring industry. China is integrating factoring legislation to foster financial innovation and explores incorporating fintech advancements like blockchain and digital platforms to streamline and optimize factoring transactions.

### **Factoring Regulation Reforms in India**

The Banking Regulation Act was amended following the Kalyanasundaram Committee to empower commercial banks to conduct the factoring business (Sen Gupta, 2013). In pursuance of this, RBI guidelines 1991 were released that enabled banks to create subsidiaries in collaboration with other banks to carry out the factoring company. However, in a few years, banks could carry these services departmentally at certain branches with appropriate infrastructure and technical know-how (Reserve Bank of India, 2000). On the other hand, NBFC was still struggling with the cumbersome procedural requirements of RBI to carry out factoring services, including prior approval for international factoring business – Authorized Dealer License from RBI, foreign exchange compliance, cross-border laws and rules and a few more. Banks should adhere to standard factoring services, including finance

collections, sales ledger handling, receivable recovery, and earning approximately 80% of their revenue through factoring (Reserve Bank of India, 2015). Also, Factoring was treated at par with loans, and the capital-risk ratio was to be computed with total risk weightage. The NBFCs were mandated to have a capital adequacy requirement of 15% by 2011 (Reserve Bank of India, 2015).

Credit Information Bureau has been pivotal in furnishing credit information to factoring companies since its establishment in 2004. It gives essential information about the elements affecting the credit histories of its customers as well as the consumers of its products. As per Doing Business 2009 (World Bank), credit reporting agencies only serve 10.5% of the adult population, compared to 100% in industrialized nations like Australia, Canada, the USA, and the U.K. (International Bank for Reconstruction and Development, 2020). The Credit Information Firms (Regulation) Act 2005, now in effect, regulates credit information agencies and facilitates the quality acquisition and transmission of credit information. As part of the Act, every credit institution must join at least one credit information firm. Clause (b) of the Act of 2005 defines the word "borrower" so broadly that any records gathered by financial information businesses can eventually encompass a considerable portion of the lending facilities supplied through credit institutions. According to Section 14 of the "Credit Information Act (Ministry of Finance, 2005), a credit information corporation may participate in any or all of the following commercial activities:

- a. Gather, analyze, and aggregate statistics on commerce, lending, and economic position of debtors of lending organization members;
- b. The provision of financial data and scoring to its designated customers, or the defined customers of another firm, affiliate or not;
- c. To carry out a research study and commercial ventures approved by the RBI.

Therefore, the above tasks delivered relevant information to stakeholders, removing the ambiguity in their selection process due to a lack of such data. An electronic registry secured lending company rights, allowing factoring entities to register collaterals and notify creditors but limited small businesses' ability to do so (Reserve Bank of India, 2014). The Trade Receivables Discounting System is an institutional system for easing the financing of MSMEs' trade receivables from corporate and other customers, including government departments and PSUs (TReDS) (Kumar, 2023). Banks, NBFC Factors, and other financial institutions engaging in the TReDS and adopting the factoring unit for funding. They were called financiers. The TReDS facilitate posting, accepting, lowering, selling, and settling MSMEs' invoices/bills.

KYC compliance was required to create an onboarding process on TReDS. TReDS were to standardize KYC documents and handle disclosure to all stakeholders (Reserve Bank of India, 2023). This was a one-time agreement between buyers/MSMEs/financiers and other stakeholders. The TReDS system ensures timely payment of funds among member financiers and MSME sellers and later settlement among member purchasers and financiers on the factoring unit due date. The TReDS are managed under the "*Reserve Bank of India's Payment and Settlement Systems Act 2007*" (PSS Act). It's an approved payment method under the 2007 PSS Act. Those interested in building and running the TReDS must meet the financial, due diligence, and technical requirements.

## **The Factoring Regulation (Amendment) Act, 2021**

The Factoring Regulation Act 2021 regulates the registration of factors, the assignment of receivables, the parties' rights and responsibilities, and the consequences for non-compliance with RBI directives (Umarji, 2013). In response to the revisions to the Factoring Regulation Act, the RBI also released the Registration of Factors (Reserve Bank) Regulations 2022 and the Registration of Assignment of Receivables (Reserve Bank) Regulations 2022. In January 2019, the RBI set up a successful group on MSMEs headed by Shri U.K. Sinha to recommend lengthy fiscal and macroeconomic initiatives for the industry. The 2011 Factoring Regulation Act was amended to consider the committee's suggestions. Consequently, the "*Factoring Regulation (Amendment) Bill 2020*" was tabled in Lok Sabha in September 2020. Moreover, in the "*Factoring Regulation Amendment Bill of 2020*", the word "receivables" was broadened, allowing all NBFCs to Factor. The law permitted the RBI to regulate and expand the Trade Receivables Discounting System function (PRS Legislative Research, 2020).

The amendments align the meanings of "assignment", "factoring business", and "receivables" with global terminology. It is clear from the "*UNIDROIT Convention on International Factoring*" rules that the terminology will match the agreement. The convention's regulations explicitly control factoring agreements and debt assignments. Recipients allocated under a factoring contract for sales of products, including services, are covered by the convention regulations (Unidroit, 1988). Earlier, banks or NBFC-Factors may factor in. The RBI regulates the factoring industry. Banks can factor without RBI clearance. Nevertheless, NBFCs wishing to focus on Factoring must first acquire RBI clearance (Reserve Bank of India, 2017). The Act also stipulated that NBFCs intending to participate in Factoring must meet the principality test/principal business criteria (Reserve Bank of India,). Following the Act's implementation, a significant issue prompted much discussion and controversy over NBFCs' Factoring practices. The "*RBI FAQ on the Factoring Regulation Act, 2011*" recommended that an NBFC either undertake a transfer of operations over 50% of its total assets or chop it back to zero (Reserve Bank of India, 2012). According to the suggested terminology change, Factoring would no longer include NBFCs' trade credit financing. Before the advent of the amendment of 2021, only banks were allowed to arrange trade credits. Nevertheless, NBFCs that provide trade credit facilities are exempt from the criteria. Further, Section 3 of the Act is proposed to be revised to allow other NBFCs to engage in factoring activity without a principality barrier and extend the purview of lenders (PRS Legislative Research, 2021).

Establishing the Trade Receivables Electronic Discounting System (TReDS) has helped increase factoring activity in the Indian industry. Various banking organizations (NBFC-Factors and others) may use the TReDS electronic markdown system (Modak, 2017). To facilitate the funding and trading of MSME collections by more prominent firms, the MSME Ministry issued a notification ordering all significant enterprises with revenue of Rs 500 crores or more to join TReDS (Press Information Bureau, 2020). NBFCs, besides those whose primary activity is factoring, will be eligible to discount bills on the Trade Receipts Discounting System following the Budget 2020 proposal to broaden the range of financiers (Pillai, 2020). Regarding operational efficiency, the Trade Receivables Discounting System should be allowed to represent financiers when submitting claims with the Central Registry (Chatnani, 2018).

A new provision, 31A, has been suggested to give the RBI the authority to regulate factoring businesses. RBI will also be able to set regulations about when, how, and where

invoices may be registered and how charges can be paid. The time frame should be shortened to see whether dual financing is possible.

Section 32 of the Act gives the Central Government the authority to make regulations, and the RBI has an advisory function. The watchdog of the capital markets, the RBI, should be given more flexibility to guarantee that rules for Factoring align with the industry's demands (Reserve Bank of India). Despite the stated Act's aim to address these issues, there has been no proper resolution to the challenges of late payment and cash flow encountered by all businesses, including MSMEs. The proposed revisions benefit MSMEs greatly, notably via the TReDs Platform, which provides more channels for obtaining loans. In addition, the NBFC sector would welcome the increased factoring of the business's operational parameters.


### **Factoring Regulation in China**

The worldwide factoring services market is estimated to develop at a CAGR of 8.4 per cent from 2021 to 2028, reaching a value of USD 3,235.88 billion in 2020 (Grand View Research, 2021). The factoring services market is experiencing growth due to increased credit trading, rapid company development in Asia, cross-border factoring, and European expansion. SMEs are expanding the need for alternative funding sources, and factoring solutions help reduce default risk. Most of the money in the market came from the United States in 2020, with demand increasing in countries like China, where government incentives encourage purchasing. New countries like China, India, Malaysia, Indonesia, the Philippines, and Thailand are attracting significant investments from wealthy nations and seeking new opportunities. China, for example, was ahead of the world in the number of MSMEs when factoring became more prevalent ten years ago. When a business decides to sell accounts receivables at a price reduction, they can clear their debts and get money for their business. This is called "debtor financing." In the banking and e-commerce sectors, it is a viable business strategy. Many large corporations, notably e-commerce, have established an in-house finance or Factoring company as a subsidiary to provide funding and assistance to hundreds of SMEs. Double Factoring refers to a factoring model that has two layers of factors. Subsidiaries are financed by banks independent of the parent firm (Poojari, 2021).

In the Chinese Civil Code's Contract Part, distinct sections address the transfer of civil and commercial obligations, particularly factoring. Chapter 6 (Modification and Assignment) in the revised Contract Part outlines crucial provisions for transferring civil rights obligations. This encompasses assigning obligatory rights, accessory rights, obligor's offset claims against assignees, and expansion (Zhao, 2012). Since 2012, commercial factoring has experienced significant growth, while bank factoring has declined. Three million SMEs have secured 4 trillion yuan in financing from commercial factoring, proving it to be a crucial tool for SMEs in addressing financial challenges. China aims to finalize the Civil Code compilation by 2020 (Guo, 2021). China is set to pioneer the inclusion of mandatory economic rights transfer (factoring) in the Civil Code, establishing it as a distinct and customary agreement. This landmark move will propel China's factoring industry growth, setting a significant precedent globally. Recent flexible factoring approaches have eased financial institutions in various countries, enhancing enterprises' access to financing (Yanmei, 2021). The long-term consequences of this are apparent. Companies will benefit from the Factoring Regulation Bill well beyond the pandemic-induced difficulties they are now experiencing. Financial growth in India will continue to rise due to the increased availability of capital in the coming years (Ahad, 2021).



**Table 1.** Comparative Analysis India and China

Category		
<b>Definition of Factoring</b>	<p>Section 2 (j) of the Factoring Regulation Act, 2011, defines "factoring business" as "the business of acquiring receivables from assignors by accepting the assignment of such receivables or financing, whether through loans, advances, or otherwise, against the security interest over any receivables," but excludes the following:</p> <ul style="list-style-type: none"> <li>- any acquiesced debts that are not factoring debts;</li> <li>- any credit facilities offered by a bank in the usual course of business against the security of receivables.</li> </ul>	<p>Commercial Factoring is when a creditor gives its accounts receivable to a third party, and the creditor gives up its rights. Because there is no specific law in China about commercial Factoring, applying the rules already in place is essential in ensuring that the retail factoring business runs smoothly.</p>
<b>Legal System</b>	<p>The Indian Constitution, despite establishing a federal system and Central and State Acts, typically allows a single integrated system of courts to administer Union and State legislation. The Supreme Court is at the top, with High Courts in each state and several Subordinate Courts following.</p>	<p>The Financial Supervision Bureau must be notified within ten working days of significant transactions, primary liabilities exceeding 10% of the company's net assets, contingent liabilities exceeding 20%, and numerous outstanding legal and arbitration proceedings, all of which must exceed 5% of the company's net assets.</p>
<b>Transactions Volume</b>	<p>Since 2019, India has accounted for less than 0.1 per cent of worldwide factoring volume (Services, 2021). Furthermore, according to the FCI annual evaluation for 2021, India's overall factoring volume during the last seven years is - 30 %. (FCI, 2021). From 2014 to 2020, it varied between 3500 and 5000 million (EUR), with the peak being 5089 million EUR in 2019.</p>	<p>China alone comprises about 14% of the entire factoring volume in Asia-Pacific. Moreover, the total factoring volume of China in the past seven years is 7.3%, according to the FCI annual review of 2021 (FCI, 2021). It ranged between 3 lakh million and 4.3 lakh million (EUR) from 2014 to 2020, with the highest of 4,33,162 million EUR in 2020.</p>
<b>Contract Law</b>	<p>Contract Law in India does not provide any regulation for factoring agreements.</p>	<p>The Contract Law of China outlines general rules for assigning obligatory civil rights and accounts receivable. Still, no law exists for assigning commercial mandatory rights, leaving judges without legal rules to follow when ruling on cases.</p>
<b>Factor Licence</b>	<p>Non-registered entities are not allowed to engage in factoring unless they are banks, corporations established by Parliament or State Legislature, or Government Companies, as defined in Section 617 of the Companies Act, 1956, or NBFCs registered with the RBI.</p>	<p>Domestic Factoring in China is one of the primary types of factoring business. On the other hand, the International Factoring business also contributes.</p>

<b>Capital Adequacy Requirements</b>	Following RBI guidelines, NBFCs must have at least a 15 per cent CRAR, with 10 per cent in Tier 1 capital and the remainder in Tier 2. Government-owned banks must maintain a CAR of 13%, whereas scheduled commercial banks in India must keep a CAR of just 9% of their total assets.	On January 1, 2013, the Chinese banking regulator announced the implementation of Basel III capital norms for all 511 commercial banks. The revised capital rules raised the minimum capital adequacy ratio (CAR) for systemically important banks from 8% to 10%.
<b>Categorization of Factoring</b>	The RBI circular identifies three types of factoring services: <ul style="list-style-type: none"> <li>• Factoring without recourse, which prevents banks from taking legal action against the assignor;</li> <li>• Factoring with recourse, where the sale of receivables by assignors does not represent an actual sale on their books and</li> <li>• They were factoring in limited recourse, where contractual conditions of recourse can be agreed upon between the Bank and assignor.</li> </ul>	Domestic Factoring in China is one of the primary types of factoring business. On the other hand, the International Factoring business also contributes to the progress of the factoring ecosystem in China with the advent of the developed technology in finance and financial operations from other countries.
<b>Rights of Factors</b>	The RBI advises banks and factors to share information on similar debtors to prevent duplicate financing. Banks can use the Central Registry of Securitization Asset Reconstruction and Security Interest of India's information. Factoring transactions are treated as loans and advances, and all services are subject to KYC checks.	It is possible to categorize factoring financing into two types: factoring with recourse right and Factoring without recourse right (buy-out). The distinction is based on whether the Bank can sell the seller's account receivables. The Bank acquires the creditor's right over valid accounts receivables from sellers once they have sold commodities or provided services on credit to the buyers.
<b>Assignment of Receivables</b>	The legislation regulates receivables transfers to factors affecting overseas debtors or assignors. Factors, assignors, and debtors have defined roles. Assignment notification is required, and transactions must be recorded with the Central Registry within 30 days to maintain data accessibility. No stamp duty is imposed on documents related to receivable assignments.	The sale of receivables is an assignment of contract rights under the People's Republic of China's Civil Code. According to the People's Republic of China's Civil Code, a creditor may assign its contractual rights to a third party, subject to any assignment limits incorporated in the original contract or otherwise provided by PRC law in the case of a debtor.
<b>Central Record of Transactions</b>	Within 30 days of making an assignment of receivables in his favour, a Factor must file the details of that assignment with the Central Registry, which will be established under Section 20 of the " <i>Securitisaton and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002</i> " (54 of 2002).	China lacks specialized registration processes for receivables assignment in the factoring sector. The People's Bank of China's Credit Reference Centre provides registration and enquiry services. However, the Contract Law requires debtor notification before the assignment takes effect. A central registration system assigns creditor rights through public notice, not legal notification.

<b>Documentation</b>	Factoring is when an exporter provides a debtor with essential documents such as a sales contract, payment terms, and track record. The Factor assesses the seller's credit history, business type, and performance. It simplifies paperwork for MSMEs by adhering to rules, and due to increased awareness, involvement of banks and NBFCs, and technological advancements, more small businesses are using Factoring.	The Bank of China processes a Domestic Factoring Application from a seller, where the Seller's Factor assesses the buyer's credit. Once agreed, the seller assigns accounts receivable to the Buyer's Factor, who sends a Notification of Assignment/Confirmation of Accounts Receivable to validate the deal and payment due date. If the Buyer's Factor fails to receive a dispute notification or payment, it transfers the money under guarantee, deducting financing principal and interest.
<b>Transaction costs</b>	The RBI has urged the Receivables Exchange (TReDS) to digitalize operational flow and reduce operating costs associated with factoring transactions for small-ticket suppliers, as short-term loans require less work.	Factoring offers a more flexible duration than working capital loans, potentially reducing financing and management costs through credit surveys, fiscal management, and processing schemes.
<b>Special Status for MSMEs</b>	NBFCs get TRDS platform access. This reform will benefit MSMEs as they will have many financiers for bill discounting on the TRDS platform.	The Chinese factoring business is rapidly expanding, but SMEs still face funding barriers due to banks controlling firms, primarily targeting SMEs with good credit ratings, which restricts standard factoring for manufacturing cycles.
<b>Export Factoring Authorization</b>	The Reserve Bank of India (RBI) introduced non-recourse export factoring on July 16, 2015, enabling dealer banks to offer liability export factoring to exporters. This move boosted India's trade finance institutions and facilitated the maturation of the country's trade financing industry.	The Bank of China has been involved in international factoring since 1993, with a longer history than domestic factoring. Despite its two-decade existence, China has not adopted specific laws controlling the factoring industry; instead, it relies on the 1999-enacted China Contract Law provisions.
<b>Regulatory Body</b>	The RBI India is the regulatory entity in charge of keeping an eye on the factoring industry.	The China Banking Regulatory Commission and the Agency oversee and manage commercial banks in line with these measures and relevant legislation and regulations on Factoring.
<b>Prudential Regulations</b>	The RBI issued " <i>Prudential Norms (Reserve Bank Directions)</i> " to businesses to regulate non-deposit-accepting or holding financial institutions. These institutions are not considered banks (Deposit Accepting or Holding). Companies, whether factoring firms, lending companies, or NBFCs, must adhere to the same standards as other companies.	No such regulation

<b>Reporting and Compliance Requirements</b>	<p>To start a company, implement effective control and reporting methods. Banks should provide pre-payments of no more than 80% of the invoice value for factoring receivables, ensuring adequate margin for payment failures. Conduct a comprehensive credit evaluation before entering into factoring agreements or creating lines of credit with export factors. Offer factoring services for legitimate business transactions and have a board-approved limit for underwriting obligations made on behalf of the Factor.</p>	<p>The Financial Supervision Bureau must be notified within ten working days of any of the following events taking place:</p> <ol style="list-style-type: none"> <li>1. A significant transaction involving related parties, the total value of which exceeds 5% of net assets;</li> </ol> <p>There must be at least two primary liabilities that are more than ten per cent of the company's net assets, and there must be at least one contingent liability that is greater than twenty per cent of the company's net assets;</p> <p>A large number of outstanding legal and arbitration proceedings.</p>
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*Source : processed by the author*

If we compare India with China, we can find that Factoring aids in resolving liquidity problems in China. Factoring assists in transferring payment risk from a smaller and somewhat weaker business to a more significant corporate buyer (who likely has access to superior financial resources). China embraced Factoring a decade ago, and they are well ahead of the rest of the globe regarding the number of MSMEs. They have used debtor financing, in which the firm sells accounts receivable at a discount to settle existing obligations and get funds for the smooth operation of the business. This has been discovered to be a viable business strategy across multiple industries by the banking and e-commerce sectors.

## **Conclusion**

Factoring has developed into its current form for centuries. The dynamic enterprise that has stretched its tentacles over five continents today. Its influence is undeniable. Its value overcomes any shortcomings, real or imagined. To ensure long-term economic progress, it's essential to emphasize the importance of entrepreneurship, private industry, and financial inclusion. Delays in repayments to individuals at the bottom of the supply chain can't be disregarded. It is an established trade financing product that offers companies much-needed cash flow sans the need for security or an excellent credit record from the firm. The numerous situations demonstrated unequivocally that the growth of this trade financing instrument had been expedited in nations with favourable legislative regimes. China's experience shows how a mix of factors is critical for industrial expansion; the approach reaffirms that SMEs, when encouraged, are not just a vital means of reducing joblessness in a country but also possess the capacity to increase GDP considerably. Additionally, access to credit information is critical to Factoring's best functioning. Therefore, factoring is a trusted method of financing provided by banks and other financial institutions like NBFs. Moreover, they portray that Factoring is a method of funding that is achieving a prominent position in financing SMEs.

The recent modifications to India's factoring legislation, the market for delayed payments, the working capital needs of SMEs, and the integration of the supply chain finance ecosystem have greatly aided in recent months. On the other hand, factors are relatively new in India and account for just 2% of worldwide factoring volumes (CNBC, 2022). Increasing India's global prominence still needs more sophisticated legal underpinnings. Factoring businesses in India must take an understanding of the Chinese Civil Code. India must

develop rules governing the assignment of commercial creditors' rights for factoring to safeguard the interests of Indian creditors. Though digital platforms (TREDs) have been designed in India to speed up the payment process, creditors' rights have not yet been fully protected. The Chinese Civil Code defines a factoring contract as a separate conventional contract. India should adopt this breakthrough in factoring legislation to build a more mature, protected, and transparent market for creditors and other stakeholders by considering factoring transactions as different contracts. If the changes mentioned above are brought to Indian factoring laws, factoring volume in India can increase by assuring a secured factoring market.

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