

## Considering the need and shape of future reform

### Survey on Bans on Assignment



What type of financing does your organisation provide?

☐ Invoice Discounting    ☐ Factoring    ☐ Other (please specify) .....

For each of the following questions, please indicate your answer in respect of the type of financing which your organisation provides or, if it provides more than one type of financing and your answer would be different for different financing arrangements, please answer in respect of each type of financing which your organisation provides.

1. Do you consider that the fact that the contract governing receivables contains a valid prohibition on assignment makes it impossible for some businesses to raise finance against those receivables, when it would be able to do so if such prohibitions on assignment were not binding as against an assignee?

Invoice Discounting	Factoring	Other (please specify) .....	Other (please specify) .....
<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No

2. If your answer to any of the above is yes, is it feasible to identify which of the business's contracts with its purchasers do contain a prohibition on assignment?

☐ Yes    ☐ No    ☐ Please specify.....

3. Do you request a waiver when seeking to fund debtors where there is a prohibition on assignment included in the contract

Invoice Discounting	Factoring	Other (please specify) .....	Other (please specify) .....
<input type="checkbox"/> Always	<input type="checkbox"/> Always	<input type="checkbox"/> Always	<input type="checkbox"/> Always
<input type="checkbox"/> Sometimes	<input type="checkbox"/> Sometimes	<input type="checkbox"/> Sometimes	<input type="checkbox"/> Sometimes
<input type="checkbox"/> Never	<input type="checkbox"/> Never	<input type="checkbox"/> Never	<input type="checkbox"/> Never



4. Where a waiver is sought what is your experience of the waiver being granted

☐ Always      ☐ Almost always      ☐ Sometimes      ☐ Almost never      ☐ Never

5. How much time and effort does obtaining waivers take?

☐ Insignificant      ☐ Significant      ☐ Substantial

6. Do you consider that:

- a. receivables are purchased at a greater discount to face value; or
- b. the advance rate applied to the purchase of receivables will be reduced,

as a result of the possibility that the contract governing the receivable may contain a valid prohibition on assignment than would apply if such prohibitions on assignment were not binding as against an assignee?

Invoice Discounting	Factoring	Other (please specify) .....	Other (please specify) .....
<input type="checkbox"/> Always	<input type="checkbox"/> Always	<input type="checkbox"/> Always	<input type="checkbox"/> Always
<input type="checkbox"/> Sometimes	<input type="checkbox"/> Sometimes	<input type="checkbox"/> Sometimes	<input type="checkbox"/> Sometimes
<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No

7. If you answered Always/Sometimes to 6, are you able to indicate how much you consider the increase in discount or reduction in advance rate to be?

Invoice Discounting	Factoring	Other (please specify) .....	Other (please specify) .....
<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No
<input type="checkbox"/> Yes - by up to 5%	<input type="checkbox"/> Yes - by up to 5%	<input type="checkbox"/> Yes - by up to 5%	<input type="checkbox"/> Yes - by up to 5%
<input type="checkbox"/> Yes - by up to 10%	<input type="checkbox"/> Yes - by up to 10%	<input type="checkbox"/> Yes - by up to 10%	<input type="checkbox"/> Yes - by up to 10%
<input type="checkbox"/> Yes - by 10% or more	<input type="checkbox"/> Yes - by 10% or more	<input type="checkbox"/> Yes - by 10% or more	<input type="checkbox"/> Yes - by 10% or more

8. Do you consider that the cost of finance is increased as a result of the inclusion of a prohibition on assignment within funded ledgers? If so, please give an indication of the likely impact on costs.

Invoice Discounting	Factoring	Other (please specify) .....	Other (please specify) .....
<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No
<input type="checkbox"/> Yes - by up to 5%	<input type="checkbox"/> Yes - by up to 5%	<input type="checkbox"/> Yes - by up to 5%	<input type="checkbox"/> Yes - by up to 5%
<input type="checkbox"/> Yes - by up to 10%	<input type="checkbox"/> Yes - by up to 10%	<input type="checkbox"/> Yes - by up to 10%	<input type="checkbox"/> Yes - by up to 10%
<input type="checkbox"/> Yes - by 10% or more	<input type="checkbox"/> Yes - by 10% or more	<input type="checkbox"/> Yes - by 10% or more	<input type="checkbox"/> Yes - by 10% or more

9. If you answered Yes to question 1 or 6, which concerns either make it impossible for businesses to raise finance or increase the discount which is applied:

Invoice Discounting	Factoring	Other (please specify)	Other (please specify)
<input type="checkbox"/> Concern about enforcement on the insolvency of the assignor <input type="checkbox"/> Concern about the ability to proceed against the debtor directly if the assignor is solvent but reluctant to pursue <input type="checkbox"/> Other (please specify)	<input type="checkbox"/> Concern about enforcement on the insolvency of the assignor <input type="checkbox"/> Concern about the ability to proceed against the debtor directly if the assignor is solvent but reluctant to pursue <input type="checkbox"/> Other (please specify)	<input type="checkbox"/> Concern about enforcement on the insolvency of the assignor <input type="checkbox"/> Concern about the ability to proceed against the debtor directly if the assignor is solvent but reluctant to pursue <input type="checkbox"/> Other (please specify)	<input type="checkbox"/> Concern about enforcement on the insolvency of the assignor <input type="checkbox"/> Concern about the ability to proceed against the debtor directly if the assignor is solvent but reluctant to pursue <input type="checkbox"/> Other (please specify)

10. How do you currently seek to protect yourself against the insolvency of an assignor?

Invoice Discounting	Factoring	Other (please specify)	Other (please specify)
<input type="checkbox"/> Declaration of trust of contract rights <input type="checkbox"/> Declaration of trust of proceeds <input type="checkbox"/> Requirement to hold proceeds in a separate account Requirement of additional security <input type="checkbox"/> All asset debenture <input type="checkbox"/> Personal guarantee <input type="checkbox"/> Other (please specify)	<input type="checkbox"/> Declaration of trust of contract rights <input type="checkbox"/> Declaration of trust of proceeds <input type="checkbox"/> Requirement to hold proceeds in a separate account Requirement of additional security <input type="checkbox"/> All asset debenture <input type="checkbox"/> Personal guarantee <input type="checkbox"/> Other (please specify)	<input type="checkbox"/> Declaration of trust of contract rights <input type="checkbox"/> Declaration of trust of proceeds <input type="checkbox"/> Requirement to hold proceeds in a separate account Requirement of additional security <input type="checkbox"/> All asset debenture <input type="checkbox"/> Personal guarantee <input type="checkbox"/> Other (please specify)	<input type="checkbox"/> Declaration of trust of contract rights <input type="checkbox"/> Declaration of trust of proceeds <input type="checkbox"/> Requirement to hold proceeds in a separate account Requirement of additional security <input type="checkbox"/> All asset debenture <input type="checkbox"/> Personal guarantee <input type="checkbox"/> Other (please specify)

11. Have you experienced any particular difficulties in relying on the methods of protection which you identified in your answer to question 10? (please specify)

.....

**12.** How have you dealt with collection on the insolvency of a debtor or when the debtor otherwise fails to pay?

Invoice Discounting	Factoring	Other (please specify)	Other (please specify)
<input type="checkbox"/> Persuade the assignor to pursue the debtor	<input type="checkbox"/> Persuade the assignor to pursue the debtor	<input type="checkbox"/> Persuade the assignor to pursue the debtor	<input type="checkbox"/> Persuade the assignor to pursue the debtor
<input type="checkbox"/> Enforce contractual obligation on assignor to pursue the debtor	<input type="checkbox"/> Enforce contractual obligation on assignor to pursue the debtor	<input type="checkbox"/> Enforce contractual obligation on assignor to pursue the debtor	<input type="checkbox"/> Enforce contractual obligation on assignor to pursue the debtor
<input type="checkbox"/> Invoke the <i>Vandepitte</i> procedure, joining the assignor as co-defendant	<input type="checkbox"/> Invoke the <i>Vandepitte</i> procedure, joining the assignor as co-defendant	<input type="checkbox"/> Invoke the <i>Vandepitte</i> procedure, joining the assignor as co-defendant	<input type="checkbox"/> Invoke the <i>Vandepitte</i> procedure, joining the assignor as co-defendant
<input type="checkbox"/> Rely on a power of attorney to bring a claim in the name of the assignor	<input type="checkbox"/> Rely on a power of attorney to bring a claim in the name of the assignor	<input type="checkbox"/> Rely on a power of attorney to bring a claim in the name of the assignor	<input type="checkbox"/> Rely on a power of attorney to bring a claim in the name of the assignor
<input type="checkbox"/> On an administration appointment ensure that an administrator is appointed who will conduct the administration so as to collect in the receivables	<input type="checkbox"/> On an administration appointment ensure that an administrator is appointed who will conduct the administration so as to collect in the receivables	<input type="checkbox"/> On an administration appointment ensure that an administrator is appointed who will conduct the administration so as to collect in the receivables	<input type="checkbox"/> On an administration appointment ensure that an administrator is appointed who will conduct the administration so as to collect in the receivables

**13.** Have you experienced any particular difficulties in relying on the methods of enforcement against the debtor which you identified in your answer to question 12?

**14.** If the law were changed so that prohibitions on assignment were not valid as against the assignee but could result in a claim in damages against an assignor who assigned in breach of such a prohibition, do you anticipate that companies may be reluctant to seek financing backed by their debtor book due to concerns of inadvertent breach?

☐ Yes ☐ No

**15.** Do you think that the incidence of the use of prohibitions on assignment being included in contracts is

☐ Increasing ☐ Decreasing ☐ Much the same as before

**16.** In your experience which companies are most likely to include prohibitions on assignment within their contracts

☐ Large companies ☐ Small companies ☐ Government agencies  
☐ Other (please specify) .....

**17.** In your opinion what is the key driver that causes companies to include prohibitions on assignment in their contracts?  
Please specify.....

**Would you be willing for us to contact you for more information?**

Name: .....

Company/Organisation: .....

Telephone:.....

Email: .....

**STLRP**

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