CRITERIA
FECI COMMISSION

FINANCIAL FACTORING

Factoring is a financial activity that basically consists of a bilateral agreement or contract in which a person (the factor) acquires the commercial invoices, payable on demand or short-term, from a person (the customer), a supplier of goods and/or services that needs to obtain liquidity before such credits mature.

There are many legal entities that could enter into a factoring agreement. However, the transfer of credit seems to adhere to the main purpose of the contract, as is inferred in Law 4 of 1994. As a result, the factor acquires the right to the invoices and, theoretically, the customer is not responsible for the debtor's solvency, with the factor lacking the ability to make claims against the customer.

A contract in which the factor introduces clauses providing for claims against the customer should the debtor default on the invoices is called "factoring with recourse" under the law (Article 2 of Law 4 of 1994).

The 1% withholding against the total value of the ceded invoices is applicable to this type of contract. The Commission's determination is based on the fact that the factoring price is the same as the value of the invoices less fees, interests, and, if applicable, any other charge due to a risk of default.

The Commission considers that factoring, with or without recourse, **is not a loan** that can be contracted and later on be paid or cancelled in advance. As defined in Law 4 of 1994, Factoring is the transfer of credit. In that sense, the factor (bank or finance entity) acquires from its customer (the grantor) the rights to the invoices and that customer is not responsible for the debtor's solvency. In this case, the grantor does not owe anything to the factor and the factor will have to take all necessary actions to manage and collect the credits. Consequently, it would be wrong for the grantor to have to pay, in advance, a debt that he has not agreed to with the factor.

On the other hand, the Commission has determined that a loan secured by invoices would be a collateralized loan in which the finance entity grants loans for an amount less than the value of the collateral, among other things, assuming that the debt could increase because of interest, legal expenses, if applicable, and the eventual devaluation of goods at auction.

Under these circumstances, banks and finance entities may calculate interest, along with the 1% that corresponds to FECI, using the amount of the loan as the basis, and can, until now, claim a reimbursement in case of an advance payment. But it is important and mandatory to stop calling loan operations Financial Factoring. This is due mainly to the FECI Commission having to pay attention to the fact that factoring companies can be habitually engaged in granting loans without the authorization, regulation or financial control of any competent authority in the matter.

Furthermore, the Superintendency of Banks requires that all loans granted by its regulated entities be verified in accordance with credit risk management and other applicable provisions included in the banking regime.