

THE COMMERCIAL FACTOR

Newsletter for the Factoring Industry



September 11, 2001

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by Bert Goldberg

With the world events of the last month, I thought a personal statement would be appropriate for this issue.

September 11, 2001 is a day that we will remember throughout our lives. Regardless of where we live or our religious views, it is a day that will be ingrained on our memories. We will each remember what we were doing when we first heard the news, in the same way people remember how the exact moment in their lives when they heard Kennedy was shot or Challenger exploded.

The tragedy on that date has affected each of us in a variety of ways. There are the obvious ones; such as the direct effect to each of your business through the forced economic slowdown, the decline of the stock market and the corresponding change in prime, but also more subtle effects. As Factors, you have learned to keep an eye open at all times regarding your business. You have learned to never trust your clients. That philosophy is now spilling over to our daily lives. For those of you that have served in the military, work as law enforcement, or live in a country that is constantly under the threat of terrorism, this is a normal part of your life. In the U.S., we now need to always keep a watchful eye open to potential risks at all times.

As a citizen of the U.S., I hope that our Government is thorough in its investigation of the terrorist activities and the prosecution of the parties that were involved in the plot. I have spent quite a bit of time traveling around the world, and have always been proud to be a U.S. citizen. Although I don't always agree with the U.S. policy on all matters, so far we seem to be following a proper and measured course for our response. Having traveled extensively through Asia, I spent quite a bit of time in the countries that border Afghanistan. I have been invited to stay at homes of Muslims and Buddhists. If I ever got into trouble, I know that a Sikh will always lend a helping hand. I feel that people

around the world are all fundamentally good, regardless of where they live or their beliefs. These activities are not founded in religious beliefs, but rather in extremist views of individuals.

Lastly I feel that we should expend our full resources to prosecute the groups involved with this crime. We must also learn from this experience and do our best to minimize terrorist activities against citizens. Although widely used as a mechanism throughout the world to make a statement, terrorism is the wrong way to make a voice heard. I hope that we will be equally diligent in prosecuting all terrorists regardless of their targets, including those in the U.S. that fund terrorist activities. In the process, we need to provide a forum so that groups who feel oppressed will be able to make their voices heard. This is something we need to be cognizant of, not only in a global sense, but also in our professional and personal lives.

I don't expect to learn the details of what is occurring militarily throughout the world for years to come. My hope is that out of the terrible tragedy of September 11th, and whatever subsequent events happen, we can become a closer and more tolerant world society. Hatred is a human emotion that will never be eliminated. This said, we must never turn our eyes from trying to restrain that hatred, by utilizing whatever means necessary to do so. There is no right answer or correct religion; beliefs are not a science. If we remember to treat others how we would like to be treated, perhaps the world will become a more peaceful and understanding place.

Bert Goldberg is an IFA Board Member and President of Distinctive Solutions. He can be reached at bert@dissol.com or 805-544-8327.



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Caveat Facteur

by Richard Kort

We happened to receive a nice referral for a company doing janitorial and maintenance services for both federal and state government entities. The initial paperwork looked pretty good - right up until the point where the prospect's name was mentioned (not the name on the application, but someone calling to follow up on the application submitted). The name rang a bell and I recalled it had something to do with a fraud I had read about in an earlier issue of the IFA Newsletter. To verify, we went straight to the IFA website to check the Fraud Forum and checked through the old issues of the newsletter. Sure enough, there she was... back in action doing the same thing, but with a new company name. No sooner had I added my new info to the Fraud Forum, another notice popped up as well from another factor that had seen the deal and also recognized the prospect. This prospect was out fishing for a new mark. Because of the IFA newsletter and Fraud Forum, at least two of us won't be suckered into this deal. Were you?

What is the lesson to be learned? Take advantage of the tools offered by the IFA and save yourself a big headache and possibly a big loss. Check out and contribute to the fraud forum. It's there for our benefit.

Richard Kort is with Accelerated Business Credit Corp. He can be reached at fastcash@acceleratedcredit.com, by phone at 805-370-0234, or by fax at 805-370-0235.

The Commercial Factor Newsletter for the Factoring Industry

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The International Factoring Association's (IFA) goal is to assist the Factoring community by providing information, training, purchasing power and a resource for the Factors. The IFA provides a way for Commercial Factors to get together and discuss a variety of issues and concerns to the industry. Membership is open to all banks and finance companies that perform financing through the purchase of invoices or other types of accounts receivable.

The Commercial Factor invites the submission of articles of interest to the Factoring industry. For more information on submitting articles or advertisements, please e-mail info@factoring.org, or call 800-563-1895.

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Establishing the Credit Limit Tools to Use

by Stephen Bastien

Establishing a credit limit for a new customer is probably the most important single evaluation you will make for your company. Taking all the aggregate credit limits that you have established for all your accounts has a profound affect on your company's revenue and bottom line.

THE CREDIT APPLICATION —WHAT TO INCLUDE

In spite of the fact that in today's technological age there are more tools than ever before to help properly establish the most efficient credit limit possible, still the most important tool is your own credit application.

There is really no official, formal, standardized credit application for all credit grantors. As a result we often find ourselves borrowing from the credit application of our fellow credit and finance executives. Nevertheless there is still no better or more complete source of information, to determine a new account's creditworthiness, than the credit application.

While the items to include on the credit application may seem like common sense to most of us, you'd be surprised how many of us simply forget to include one or more of these key items. Some of these are:

- 1) Complete and legal company name
- 2) DBA's
- 3) Physical street address
- 4) Mailing address
- 5) Phone, fax, email, and website address.
- 6) Officer's complete names and personal addresses w/phone, fax, and email addresses.
- 7) Latest audited financial statement with auditors notes (if a new company obtain their pro forma statement)
- 8) If no audited financial statement is available include a blank financial statement with signature line and date so the debtor can authorize that the information provided in the financial statement he completed is correct.
- 9) Five trade references with a section for physical street addresses, phone, fax, contact names, email addresses.
- 10) Bank references with physical street addresses, phone, fax, contact names, account numbers, balances on all accounts.
- 11) Type of company (corporation, proprietorship, limited partnership, etc.)
- 12) Federal I.D. number of corporation or social security number of all officers if a proprietorship or partnership.
- 13) Personal guarantee section with signature and date lines for all officers along with addresses, phone and email address of all officers.

ALSO INCLUDE QUESTIONS SUCH AS:

- 14) Have you ever filed bankruptcy (corporate or personal)?
- 15) Have you now or have you ever had a judgement or lien filed against you?
- 16) Do you have or have you ever had any SBA loans outstanding?
- 17) Are you currently delinquent on any outstanding loans or trade credit?
- 18) Have you ever owned or been part owner in another company? If so please furnish the complete legal name, address and any DBA's of that company.

WHAT TO LOOK FOR IN THE CREDIT APPLICATION

Remember that the credit application is only as good as the information it contains (or doesn't contain).

Compare the information on the credit application with any credit

report you pull. Does everything match up? Are the pay habits on the credit report similar to what you found out when calling on the references the debtor listed on your credit application. Are the banks the same? If not is the debtor changing banks for a reason? Are the account numbers the same? Does the financial information match up? Are the auditors/accountants the same? Are there sections of the credit application that are incomplete? If so, what is the debtor trying to "not tell you". Is the credit application filled out in a sloppy manner. If so, could this tell you how he runs his business? Worse, does he not consider you important enough to take his time in completing the application, and if

so, will he feel the same when deciding "who to pay" if his cash flow gets tight?

Remember that the credit application is only as good as the information it contains (or doesn't contain).

THE CREDIT REPORT

With the exception of the personal guarantee, the credit report should include all the information that your credit application contains and a bit more. Namely, it should contain any public record information such as judgements, liens or bankruptcy filings that may have been issued against the debtor.

Understand that some credit reports may only be as good as the information the debtor provides.

I recall one credit report I was writing up when I was a credit report [continued on page 5](#)



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FACTORING NEWS

L A S H E S

The Factors and Discounters Association reports a significant expansion in invoice discounting. The export invoice discounting sector has been up 33% in the first half or this year compared to 2000. Factoring has also increased substantially.

Financial Times (London), September 27, 2001

The Ministry of Finance in Taipei has issued a green light for **First Commercial Bank, Hua Nan Commercial Bank** and **Chang Hwa Commercial Bank** to launch banking services across the Taiwan Strait. The offshore banking units of the three banks will be allowed to conduct normal banking businesses with overseas branches of mainland Chinese banks, as well as foreign banks' branch offices in the mainland. They will be allowed to engage in financial transactions including deposit-taking business, remittances of foreign exchange, issuance and negotiation of letters of credit and other factoring services.

Taiwan Economic News, September 26, 2001

Warren Buffett's **Berkshire Hathaway Inc.** dropped its offer for \$500 million in notes from **Finova Group, Inc.** **Berkshire** could end the offer if there was a suspension of stock trading or "war or armed hostilities or other national or international calamity directly or indirectly involving the United States." The purchase was expected to close on September 26 and it was unclear how the move will affect **Finova's** recovery plan. In an interview Buffett said that he wasn't selling U.S. equities or dropping acquisition plans because of the World Trade Center attack. In an interview on CBS's 60 Minutes, he said, "We have an offer for a business that is going to get accepted. We could back away from that now if we wanted to. I don't have the faintest intention of doing that." Buffett helped arrange **Finova's** exit from bankruptcy court protection and implement its Chapter 11 recovery plan with the help of **Leucadia National Corp.**

Sun-Sentinel, September 19, 2001

Donald Weiner, who runs the dress chain **Dresses For Less**, is suing **CIT Group** and other accomplices, accusing them of running a factors' monopoly called the **Uptown Credit Group**. The group meets twice a week to decide which garment companies deserve credit and which don't. Weiner says that **CIT** squeezed a group of apparel manufacturers which he co-owned out of business by refusing to guarantee their sales to **CIT's** factoring clients. He claims the decision cost him \$3 million on factoring fees and \$5.5 million on lost sales. The complaint alleges that **CIT** controls 85% of the factoring market for piece goods which go into finished garments. As such, the **Uptown Credit Group** follows **CIT's** lead on credit decisions. Based on a Supreme Court decision designed to protect lenders, **CIT's** lawyers claim that sharing credit information is perfectly legal. The case will likely hinge on how the court defines the market. Weiner's lawyers are trying to prove that **CIT** controls the majority of factoring in the fashion business, while **CIT's** lawyers argue that the market here is financing, rather than factoring, which would bring in other banks and finance companies.

The Bulletin's Frontrunner, September 12, 2001

Alliance Financing Group Inc. announced a strategic relationship with **Intuit** that will benefit small business owners in Canada. **Alliance** provides financing solutions for small-to-medium-sized enterprises, while **Intuit** is a leading developer of small business and personal financial software. **Alliance Financing** will power **Intuit's** e-lease/loan Financing Service for Canadian users of QuickBooks® and QuickBooks® Pro. The service will offer several essential financial products including loans, lines of credit, equipment leases, factoring and other working capital solutions online to **Intuit's** small business customers. This will help small businesses in Canada expand their lease and loan financing options.

Canada NewsWire, September 11, 2001

O'Rane Cornish, former controller of **6C/Dahcor Industries Inc.**, a Tennessee corporation, was sentenced for swindling two companies out of nearly \$500,000. He was indicted in March 2000 on 10 counts. Cornish sold **Performance Financial** an account receivable of \$390,000, claiming a fictitious company called **Manufacturing Technologies** owed **Dahcor** that amount. He was also convicted of forging an endorsement on a check for \$114,000, as well as fraud involving a loan to another business he owned. By the time he was sentenced, Cornish had fired two attorneys and filed a number of affidavits complaining of everything from a judge's facial expressions to an attorney who offended him by inadvertently showing the bottom of his shoe. When the case ended, Cornish, acting as his own attorney, drew the maximum sentence possible under federal sentencing guidelines – 5-years, 11-months.

The Commercial Appeal, September 6, 2001

Towne Services Inc.'s shareholders approved a proposal to merge the company with a subsidiary of **Private Business, Inc.** **Towne Services** is a leading provider of products and services that process sales and payment information and related financing transactions for small and mid-sized retail and commercial businesses and banks. As part of the merger, President of **Towne Services**, Henry Baroco will become Chief Operating Officer of **Private Business**. In addition, three current **Towne** directors will join the **Private Business** Board of Directors. **Towne** shareholders will own approximately 33.3% of the shares of **Private Business** common stock that are outstanding after the merger.

Business Wire, August 9, 2001

If you have any news items you would like to include in the next issue of The Commercial Factor, please e-mail them to info@factoring.org.

specialist at Dun & Bradstreet. The debtor I was investigating sent us a financial statement that showed a net worth of over \$500 million, with two jet planes and numerous liquid assets—but no debt. This was a new company so I called to verify the financial information with the accountants listed on the financial statement. There was no such accounting firm.

This potential debtor, was eventually convicted of mail fraud (among other things) and did jail time.

With the large number of credit reports that have to be written and analyzed there are always going to be some errors that slip through the cracks. In fact, there may be many. So you must be your own best investigator and compare the information on your own credit application with those on the credit report you pull.

USING BUSINESS CLIPPING SERVICES

Many credit reports may be out of date before you even pull them. It's important to keep as up to date as possible on your accounts. That's where a good clipping service or company that exclusively reports on distressed companies can help. Such companies have sprung up over the last ten years and make it easy for today's credit, finance and collection executives to stay on top of all their accounts. In fact, some of these services specialize in reporting on specific industries. Such companies as Creditor's Edge and the U.S. Business Journal and its business information website, www.creditnews.com, provide you with the most up-to-date information on distressed companies while allowing you to search its archives of companies. Clipping services such as Bacons Clipping Service will follow specific companies for you while such newsletters as the Retailer/Supplier Watch exclusively follows companies in the retail industry.

The price of these services range from extremely reasonable to pricey.

Nevertheless, it may be cost effective if you can save your company thousands (and even millions) from extremely slow pay and bad debt accounts.

SETTING THE CREDIT LIMIT

Every company has a different credit policy. Much of that policy and the credit limits you can establish depends upon the profit margins of the company you work for. Are the margins high enough that you can afford to take risks? How does your company's financial and credit ratios match up with ratios in the industry? Using the ratio tools provided by such firms as Robert Morris, etc. you can best evaluate what your risks should be.

Also, where a 3A2, D&B, rating may be good for a \$100,000 credit limit with one company, it may be good only for a \$25,000 limit with another company in a different industry. So using your company's credit policy, profit margins and all the information you've obtained through your own credit application, credit reports you've pulled and clipping services you use, will help you set the most efficient credit limit possible for your new and even existing accounts.

Remember, the credit limit you set can always be increased or decreased. The difficulty is always having to decrease the credit limit and explain your reasoning for doing so, not just to the debtor but to your superiors and your company's sales and marketing executives. So getting the credit limit right the first time is imperative.

Stephen Bastien is president of Bastien Financial Publications, a business clipping and newsletter company located in Evanston, Illinois. To contact Mr. Bastien call 1-800-407-9044 or e-mail him at steve@creditnews.com.

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Dr. Ron...



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- What Factors are calling about

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Doug Morris, Celtic Investments

- How to value a Factoring firm

Stan Hammerman, Esq., Hammerman & Hultgren

- They are your receivables, how do you collect?
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Gil Weiner, Esq., KPMG

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Some Random Thoughts on Revised Article 9

by Steven Kurtz

Summer is over, schools are back in session, traffic has increased, and Revised Article 9 (RA 9) has been in effect for almost three months (with the exception of Alabama, Florida and Mississippi, where it takes effect January 1, 2002; and on October 1, 2001 in Connecticut). RA 9 constitutes a major revision and reorganization of the commercial code. Fortunately, most of the changes are beneficial to our industry.

RA 9 has altered the mechanics on how one obtains a security interest. In order to obtain a security interest two things must happen—attachment and perfection. Attachment means that all of the requisites for obtaining a security interest have taken place. Attachment requires three things: First, there must be an agreement; second, the debtor must have rights in the collateral; and third, value has been given. Perfection, means that your rights are secured against a third party such as a lien creditor, bankruptcy trustee, or another secured party.

Attachment, for the most part, under old Article 9, was normally accomplished through a written security agreement. RA 9 has changed this concept in that it is content neutral. In other words, you no longer need the debtor's wet ink signature. Instead, RA 9 focuses on the concepts of authentication and authenticated records. An authentication under RA 9 is basically obtaining the party's consent. This is accomplished by a signature, encryption or anything else one does to authenticate a record. A record is defined under RA 9 as information inscribed on a tangible medium and can be an e-mail, voice mail, computer encryption, and of course, a wet ink signature on your factoring agreement.

RA 9 has, for the better, changed the way in which one can describe collateral. Generic collateral descriptions are now allowed in the security agreement. As a practical matter, RA 9 provides a substantial marketing benefit. In order to get a blanket security interest, you no longer need the descriptions which go on forever and scare away clients. You can be succinct with general collateral descriptions and get more collateral by saying less in your documents.

RA 9 allows that your UCC may contain descriptions such as all collateral, or mirror what you put in your security agreement. The perfect financing statement can now state "Debtor hereby grants Secured Party a security interest in all assets now owned or hereafter acquired and all proceeds of the foregoing." Reports from the field, however, indicate that clients ask so many questions relating to what the creditor means by stating all assets, that one person now states "all assets, including but not limited to," and then goes on to state what is described in the agreement. Although your financing statement may state all assets, RA 9 does not contemplate that you can increase your collateral base beyond what is granted in the security agreement, unless you later obtain an authenticated writing to that effect.

RA 9 also adds items of collateral which you can take as original collateral. For example, you can now obtain security interests in deposit accounts, commercial tort claims, and electronic chattel paper. RA 9 will also include software embedded in goods and if the software is not embedded in goods, it will be considered a general intangible, perfected by a UCC-1.

You perfect your security interest in the deposit account and elec-

tronic chattel paper through a control agreement. To perfect your interest in the commercial tort claim, you must specifically describe the tort claim and file a financing statement.

Your financing statement and subsequent amendments which grant additional collateral no longer need the debtor's signature. However, you do need the debtor's consent to file the financing statement which of course must be in an authenticated record. Practically, this consent should be in your security agreement. For those who file financing statements before the deal closes, make sure you obtain the debtor's prior consent.

RA 9 protects you from that rogue filing officer who may have rejected your wet ink UCC-1 for reasons known only to the filing officer. Financing statements can now only be rejected if it is filed using an improper means or does not have the correct filing fee. RA 9 will also require the filing offices to link the financing statements with all other records which relate to the original financing statement. RA 9 contemplates electronic filings when everything is up and running.

RA 9 also eliminates the old problem as to where to file the financing statement, which in certain transactions, resulted in filings in 50 states under the old system. You now must file your financing statement where the debtor conducts its business. If the debtor is a registered entity, such as a corporation, LLC, LLP, LP, you file the financing statement in the state where the debtor is registered. If the debtor is an individual, you file the financing statement in the state where the individual resides. If you have a foreign debtor not registered in the United States or an entity organized under the laws of the United States, you file the financing statement in Washington D.C.

RA 9 has expanded its definition of proceeds. It now includes supporting obligations, such as letters of credit and guarantees, if they support the debt. It also includes lease and license payments, stock dividends or distributions and damage claims relating to the condition of your collateral.

RA 9 also addresses a problem which continually plagued the factoring industry, that being priority between the levying creditor and the factor. Under old Article 9, a factor who purchased accounts would not normally be able to purchase accounts beyond 45 days after a creditor levied against a debtor. Now, if you purchase accounts, you are safe in a priority fight between an intervening creditor.

RA 9 has simplified notices of default. It contains a safe harbor statement to include in your default notice. Follow the notice language, and you should never be second guessed. In this case, saying less gets you more. The parties entitled to Notice of default has changed. You must provide notice to the debtor, any secondary obligors (typically a guarantor), and all junior lien holders of record who have perfected within 10 days of the foreclosure sale. Your foreclosure sale must provide at least 10 days notice. If you have conducted your lien search between 30 to 20 days before your foreclosure sale, you will be in the safe harbor for giving notice to junior lien creditors.

If a secured party fails to comply with default provisions of RA 9 pertaining to collection, enforcement, disposition or acceptance, then the liability for a deficiency is limited to an amount by which the sum of the secured obligation's expenses and attorney's fees exceeds the greater of: (A) The proceeds of the collection, enforcement, disposition, or (B) The amount of proceeds that would have been realized if the secured party had complied with the relevant provisions of Article 9. This al-

... the changes
are quite
beneficial ...

Stop The Bleeding

By Dr. Ron



“I FEAR ALL WE HAVE DONE IS TO AWAKEN A SLEEPING GIANT AND FILLED HIM WITH A TERRIBLE RESOLVE.” This is a quote from Admiral Yamamoto, Commander of the Japanese forces that attacked Pearl Harbor. From today’s perspective, it looks very much like

history is about to repeat itself. But this will be much more than just a military operation.

In order to achieve real victory in the war against terrorism, we must conquer hatred. It will be difficult, if not impossible, to defeat hatred, especially in our lifetime. In parts of the Mid-East, hatred of everything western, particularly American, is being taught to children as a way of life in their homes, in their schools and in their streets. This mentality is simply wrong. It is also wrong for us hate all Mid-Easterners, all Arabs, all Muslims, all Islamic Fundamentalists or *all* anything. Attitudes need to change. And with the passing of the generations, perhaps someday there will be real progress in this regard.

We can only hope that the entire world will learn from this. There can be no sympathy and certainly no support for those who take the lives of innocent people anywhere in the world. But in some places, the United States being one until now, terrorism is treated almost cavalierly. A popular Italian magazine has recently run an article entitled “The Making of a Terrorist”. A popular song in Egypt, a moderate Arab country, is entitled “I hate Israel”. And, believe it or not, the Chicago Tribune has recently run stories designed to evoke sympathy for terrorist families, the latest one about a father in anguish over his suicide bomber son’s capture and subsequent incarceration after the son’s failure to detonate a bomb and kill innocent people. With most of the world rallying with us, this attitude is due to change. It has to.

Back to the world of finance and factoring. Let’s talk about one of my favorite subjects - offsets. But first, as always, I must advise you that I am not an attorney, this is not to be taken as legal advice and we urge each of you to check with your own counsel before accepting the following as gospel.

The Revision to Article 9 of the UCC has changed some of the rules about offsets, but in my opinion there is really no dramatic effect to our industry. Whatever non-offset agreements we have in our files that are dated prior to the Revision are as effective as they ever were. There is no need to get them re-signed. In addition, regardless of when these agreements were signed, the new law governs.

Many in our industry have always made a distinction between goods and services in a non-offset situation. Many have previously thought that only goods were covered and that there was no such thing as a non-offset agreement between two parties that would cover services. This thinking is incorrect. Two parties can contract to whatever they want to. Just be certain that the person who signs the non-offset agreement on behalf of the debtor is authorized to do so. In my mind an authorized person in a small company might be the president. In a very large company it might be the purchasing manager.

If there is no non-offset agreement between you and the account debtor, then you are stuck with the law, as it exists in your state. (I must confess that I am ignorant as to whether or not the Revision covers all states uniformly in this regard.) I do know that the law in Illinois is as follows: The only offset that can be asserted by an account debtor is an offset arising prior to the date the account debtor was notified of the

assignment of the Account. In other words, once the account debtor is notified, there can be no offsets regarding subsequent invoices unless it is provided for in the contract between your client and the account debtor unless the offset occurred prior to notification. So don’t let those nasty account debtors get away with your money! Unfortunately, this is not the law as it pertains to health care receivables

A few free tips from Dr. Ron follow. But be careful, you might just get what you pay for.

CHECK CLEARANCES. When a check clears your bank, it does not mean it cannot be returned NSF from the issuing bank. It only means that your bank is giving you credit for the check. To be truly safe from returns, you must call the issuing bank and ascertain if the check has cleared. If it has, you are probably O.K.

USURY. If you think that because you are “factoring” the usury laws do not apply to you, think again. Why? Because more than a few courts have determined that if you have recourse or reserves or guaranties or collateral other than Accounts or any of these things, you may be financing, not factoring. Who among us wants to take this risk, “Not I”, says Dr. Ron. So, how do we get rid of this problem? Well, while we cannot get rid of the issue entirely, we can mitigate it in two ways. One way, if you are lucky enough to reside in a state that has favorable usury laws, you can rely on “localization” laws if the Debtor’s state permits localization. You must know what your own state laws provide for with respect to localization as well as the client’s state laws. Both must be adhered to.

Another solution to mitigate usury may be to delineate your charges as defined in the factoring agreement in two different ways. Distinguish between charges for services and charges for advancing cash. And be certain that the implied interest rate corresponding to the charges for advancing cash are under most, if not all, state’s usury laws.

FRAUD. The IFA web site contains a section concerning fraud. It can be a great tool for us but only if we all use it. Two weeks ago Gibraltar Financial received a call from a fellow member of the IFA who was involved with an account whose principals are listed in the fraud section. Sure enough, after further investigation it turns out that these people were up to their old tricks. It appears that there will be little or no damage to the factor resulting from the fraudulent activity. We are happy for that. But the point is that we must all use this section to report suspicious activity or frauds and we must all check this section before booking new deals. Let’s make this work for us.

All our hearts and prayers go out to those who have been directly affected by the dreadful attack on our American way of life. Let’s all hope that when the time comes for the next publication of the IFA newsletter, we shall all be back to the business of doing business.

To share your experiences or to seek the advice of the author, Ron Winicour can be reached by email at ron@gibraltarfinancial.com or by snail mail to Gibraltar’s corporate address, Gibraltar Financial Corporation, 60 Revere Drive, Suite 840, Northbrook, IL. 60062.

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allows the secured creditor to still recover a deficiency if it can be shown that a commercially reasonable disposition would have recovered proceeds in an amount less than the unpaid debt. This is known as the rebuttable presumption rule.

RA 9 eliminates the presumption that the secured creditor has retained its collateral in full satisfaction of the debt, while waiting to conduct the foreclosure sale.

For the creditor who sells its collateral to an affiliated entity in a foreclosure sale, there are presumptions against you if you do not obtain a reasonable price. Thus, it is always advisable to obtain an appraisal before you conduct the foreclosure sale.

RA 9 has its own set of transition rules. The most important of which being, if you are not perfected under RA 9 on a particular item of collateral, you have one year to perfect under RA 9 in order to maintain your priority. For example, under the old Article 9, California allowed a creditor to obtain a security interest in a deposit account which was perfected by the debtor maintaining the deposit account at a bank with the interest in the deposit account, or giving notice to the bank (which is what many California factors did). Under RA 9, a security interest in a deposit account is perfected by a control agreement with the bank. If the factor does not have a control agreement with the bank, it has one year from July 1, 2001 to perfect by getting the control agreement. For those who have financing statements filed in a state other than the state where the debtor resides (or is registered), you will file an "in lieu" financing statement in the state where the debtor is registered, at the time your Continuation Statement is due. You will maintain the same priority.

The changes to Article 9 are much more comprehensive than the scope of this article. As a practical matter, if you have not already done so, review your agreements to monitor your collateral and your filings. Make sure you are perfected, if not, make sure you take the required steps to perfect your collateral, and finally note when you will need to file your "in lieu" financing statements. As noted, the changes are quite beneficial and you should get up to speed quickly.

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Russia Credit Grantor's Fact Sheet

Information Available on Companies and Individuals in Russia

Background: Russia has 11 time zones, 100 nationalities, roughly 150 million inhabitants and some of the world's richest wood, oil and gas resources. Russia's retail sector is growing rapidly. Difficulties in doing business include ownership disputes; high tax rates and frequent changes to the tax code; high operation costs; corruption and commercial crime; payments arrears, frozen accounts and the financial illiquidity of many Russian firms; changing regulatory requirements; a lack of market information; an embryonic legal framework; cultural and language differences; infrastructure problems and frequent changes in government personnel. Taxes are often not collected, even from foreign firms, causing infrastructure problems.

Business Structures: There are 2.8 million registered enterprises (over 575,000 in Moscow). Legal forms are limited liability (OOO since 1995 totaling 562,000 companies, TOO before 1995 totaling 599,000), public joint-stock (OAO) totaling 58,000, private joint-stock (ZAO) totaling 341,000, limited with additional liability, general partnership, limited partnership, subsidiary, production cooperative, state/municipality unitary enterprise, and sole proprietorship. Private joint-stock companies are not publicly-traded and shareholders cannot sell shares without permission of all other shareholders.

Locating Businesses: Free Internet databases include OPM's List of Public Companies, Russia on the Net company and Web directory, and Moscow Business Telephone Guide (see 200+ Free Directories on Owens OnLine). Kompass offers a CD-Rom with 30,000 Russian manufacturers and distributors.

Banking Information: Russia's central bank is Centrobank of the Russian Federation. The largest commercial banks are Incombank, Onexim-Bank, Vneshtorgbank, SBS-Argro, Natsionalnyj Rezervnyj Bank, Rossijskij Kredit, Menatep, Mosbiznesbank, Mezhdunarodny Moskovskij Bank and Avtobank. Commercial banks are not allowed to disclose information without their client's written authorization.

Public Records and Financial Information: Public records are kept at the State Register and State Statistics Committee (SSC) offices situated nationwide. Registration includes place and date of establishment, legal form, and activities share capital and directors (individual shareholders are not disclosed). Companies of all types except proprietorships, production cooperatives and general partnerships are supposed to submit their financials to the SSC, but since enforcement is lax, compliance is low. Banks must also file to avoid losing their licenses. Financial filings are available to the public for a fee. Lien and judgment filings are not officially available. The two stock exchanges are the Moskovskaya Mezhhbankovskaya Valutnaja Birzha (Moscow Interbank Value Exchange) and Moskovskaya Centralnaya Fondovaya Birzha (the Moscow Central Stock Exchange). Only large public joint-stock companies (OAOs) are quoted. Due to lack of demand, smaller OAOs sell shares directly to investors instead of through the exchanges.

Personal Information: Data is not generally available outside of address, surname, parent's name and birthdate. Only state institutions (e.g., the taxman or police) may legally inquire on individuals. Criminal records are available but expensive.

Trade Payment Histories: Lacking a commercial repository, trade payment history databases do not exist. Agencies rely on references supplied by the subject companies, who often respond slowly and only list their best-paid vendors.

Standard Terms: Recommended terms are cash-in-advance or letter of credit (usually 90-180 days). Risks are high but justified by reforms and opportunities. Debt collection remains difficult due to poor legal enforcement.

Spain Credit Grantor's Fact Sheet

Information Available on Companies and Individuals in Spain

Background: The 39 million residents of Spain are 96 percent literate and speak four languages (Castilian Spanish, Catalan, Galician and Basque). They are governed by a legal system grounded in civil laws under a parliamentary monarchy. Old and inflexible labor laws restrain economic growth. Since Spain has been an EU member since 1986, US exporters face stiff price competition because of duties on nonmember products, but can contend with high technology, quality, speed, and service. Good opportunities exist for electric power systems, medical equipment, building products, chemical machinery, industrial controls, telecommunications, franchising, and architectural/engineering services.

Business Structures: There are roughly 2,090,000 businesses in Spain. Other than sole proprietorships, the most common types are private limited (SLs) and joint stock (SAs) which together total 995,000 firms. Another 2000,000 companies have less common structures that included General Partnership (SRC, unlimited liability), Limited Partnership (SC, partners' liability limited), Joint Property (CB, liability proportional to share of capital), 450 firms are traded on Spain's four stock exchanges, which take their names from the cities where they are located: Madrid, Barcelona, Bilbao and Valencia. Each company's VAT (Value-Added Tax) Number consists of a letter specifying the business type followed by numbers referring to the province where registered and the company's identifier.

Locating Businesses and People: Guia de Alojamiento offers a free access Internet Yellow Page directory, but only in Spanish (see 200+ Free Access Directories on Owens OnLine). Kompass offers a directory and CD ROM with 30,000 Spanish manufacturers and distributors.

Public Records and Financial Information: SLs and SAs must file audited financial statements at the provincial office of the Registro Mercantil (commercial registry). However, audits are not required for SAs that meet two of the following three criteria: sales under 480,000,000 pesetas, total assets under 230,000,000 pesetas or 50 or fewer employees. Financial data is available to the public via printed report or through Madrid's central database. Both, public and privately held SLs and SAs must publish their financials in the press, and, when applicable, in each of the stock markets' official newspapers. Companies with sales less than 50 million pesetas need only file abbreviated balance sheets (Balance Abreviado). The 30 percent of companies that do not keep up with the annual filings are not permitted to make any cooperate changes until their filings are brought up to date. Sole Proprietorships and other companies register at their local Chamber of Commerce, which disclose little more information than a company name, address, owners and types of business activity, though occasionally they included financial statements.

Banking Information: Banks give verbal references regarding depositor experience, but information can be inaccurate. Spain's central bank is Banco de Espana. The largest commercial banks are Banco Bilbao Vizcaya, Banco de Santander, Banco Central Hispano, and Banco Espanol de Credito. Currently there are over 150 officially registered private banks.

Trade Payment Histories: There are no commercial databases that track trade payments. Credit agencies rely on trade references supplied by the company being investigated and through a CD from SEIDO (Sociedad Espanola de Impagados) that lists unpaid bills and lawsuits.

Personal Information: Commercial repositories of personal information do not exist. Consumer credit reports are little more than a verification tool.

Standard Terms: Payments are made by check, bills of exchange and bank transfer. Terms are 30 days but payments take 60 to 90 days depending on the industry, delays being the norm.

Collections: Average collection agency success rate is 40 percent. Continued nonpayment after judgement results in auction of tangible assets. Delays in tax payments are common due to feeling that rates are unreasonable. Number of bankruptcies remains low.

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