RECEIVABLES PURCHASE AGREEMENTS

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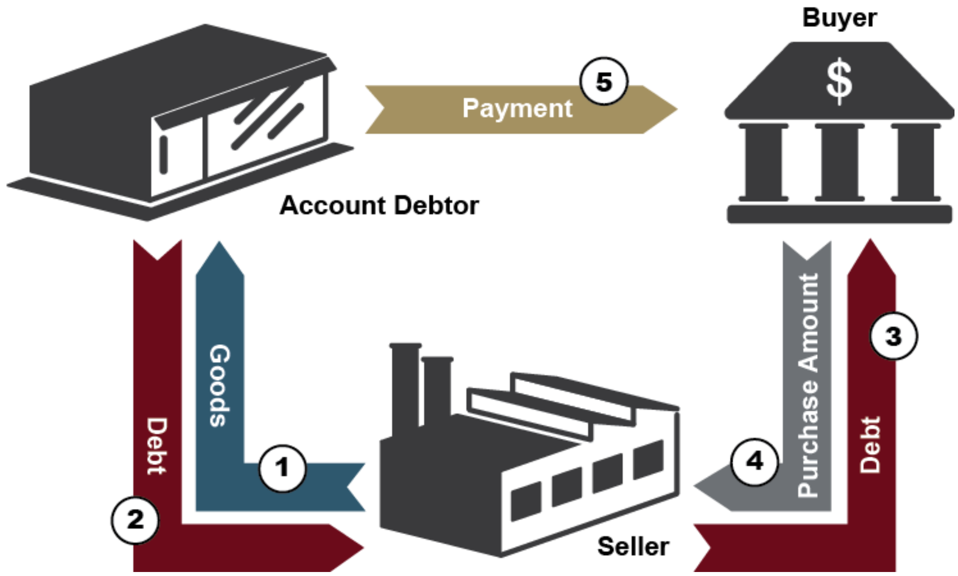
How Receivables Purchase Agreements Work

Receivables purchase agreements (RPAs) are financing arrangements that can unlock the value of a company's accounts receivable.

Here's how they work: A "Seller" will sell its goods to a customer (1). The customer becomes an "Account Debtor" since it owes the Seller a Debt for those goods (2). A bank or other financier as "Buyer" will then buy that Debt up front (3) through an RPA for an agreed Purchase Amount (4). When the Debt eventually becomes due, payment from the Account Debtor will be directed to the Buyer rather than the Seller (5).



PROs	CONs
• Manage working capital and cash flow • Primarily leverages the credit of the Account Debtor (not the Seller) • Can be available when a revolving loan is unavailable • Sale of an asset vs. indebtedness • Less stringent covenants than a loan agreement • Seller's assets (other than receivables) can remain unencumbered	• Somewhat technical • Can be more expensive than a loan • Requires careful planning – Cannot draw at any time – Requires existence of good receivables – Documentation needs to be planned in advance (e.g., UCCs) • Multiple parties to coordinate (Account Debtor, Seller and Buyer) • Potential stigma

Why Choose an RPA?

By selling its future flow of receivables, a Seller can better manage its cash flow without the burden of a loan, which may contain more stringent conditions. An RPA structure functions as a sale of assets rather than an increase in indebtedness for a Seller. Thus, a Seller can monetize future payables while ensuring its other assets remain unencumbered. But, the arrangement requires careful planning. Unlike a revolving loan, which can be drawn on at any time, RPA financing depends on there being receivables to sell. Furthermore, Buyers may often charge more for an RPA than a traditional loan.

* The information contained herein does not constitute legal advice and should not be construed as such. For advice related to a specific issue, please feel free to contact us using the information provided at the end of this summary.

CROSS-BORDER DO'S AND DON'TS

Additional issues must be considered when contemplating a cross-border, rather than purely domestic, RPA. Below are some key issues that Sellers and Buyers should evaluate when an RPA transaction involves multiple jurisdictions.

	ISSUE	DO	DON'T
BUYER CONCERNS	**Representations and warranties**	**DO** bring down representations and warranties on (i) the date of execution of the RPA, (ii) the submission of each purchase request and (iii) each purchase date.	**DON'T** limit the bring-down of representations and warranties only to the execution date and the submission of each purchase request. You want to be warned of any events, such as commercial disputes, that may subsequently occur.
	Definition of "Commercial Dispute"	**DO** make sure that the definition of "Commercial Dispute" in the RPA is sufficiently broad.	**DON'T** limit the definition to just litigation and the initiation of court procedures. It should cover other forms of disagreement over the nature of the receivables since commercial disputes trigger repurchase events.
	Recharacterization of transactions	**DO** make sure that the RPA has a provision recharacterizing a purchase of receivables as a secured loan.	**DON'T** leave out such a provision from the RPA. Without a recharacterization provision, any obligations owed under the RPA will not be secured by receivables if you do not obtain "true sale" treatment.
COMMON CONCERNS	**Local law**	**DO** conduct due diligence in jurisdictions of the Seller and the account debtors regarding issues such as enforceability, rules on filings, licenses/consents, notification of account debtors, etc.	**DON'T** assume that all jurisdictions treat these matters the same. Laws vary across jurisdictions even if it seems that the legal traditions are similar. Rules and legal processes may in fact differ.
	UCC searches	**DO** conduct UCC searches earlier rather than later to give additional time to resolve unexpected problems.	**DON'T** wait until the last minute to conduct a UCC search for a prospective Seller. The search may uncover pre-existing liens on the receivables to be sold under the RPA being negotiated.
SELLER CONCERNS	**Notification to Account Debtor**	**DO** give consideration to whether the Account Debtor will be notified of the sale of receivables. In the United States, notification is not legally required.	**DON'T** assume that other jurisdictions treat notification the same as the United States. In some jurisdictions, notification is required in order to perfect the sale of receivables.
	True sale	**DO** engage your accountants or other financial advisors to assess whether "true sale" treatment can be accorded to the transaction, as this is typically an accounting rather than a purely legal concept.	**DON'T** assume a "true sale" analysis will be the same in other jurisdictions as in the United States.

Rick Martinez
Partner

rick.martinez@haynesboone.com
T +1 212.835.4844
F +1 212.884.8218

Based in New York, Ricardo Martinez is a co-leader of the firm's Trade and Export Finance practice and an active member of the Project Finance and Development team. Clients consistently seek Rick's guidance on cutting-edge matters and engage him in one-of-a kind assignments. Rick focuses on representing lenders and borrowers in complex, cross-border finance transactions across a broad spectrum of contexts, including project finance, acquisition finance, general working capital facilities as well as trade finance by means of letters of credit, pre-export credit facilities and the purchase and sale of trade receivables. Most of these transactions have involved leveraged borrowers and thus have benefited from some form of credit support, whether in the form of a guarantee, letter of credit, a security interest in pledged property or additional sponsor or parent company support.

Eric Filipink
Associate

eric.filipink@haynesboone.com
T +1 212.835.4851
F +1 212.884.8210

Eric Filipink focuses his practice on trade finance and cross-border project finance in the energy and renewable energy sector, representing both leading global banks and project developers. Eric has worked on highly bespoke deals on the cutting edge of the market, including advising EDF Renewable Energy, part of the global French electric company, in securing a first-of-its kind investment from Google in a Texas wind farm and advising U.S. Overseas Private Investment Corporation (OPIC), the U.S. government's development finance institution, in financing a Latin American export credit fund, which won a 2014 Deal of Year award from Trade Finance Magazine.

Firm Overview

Haynes and Boone, LLP is a full service law firm with a national presence and an international reach. With more than 575 lawyers located in Texas, New York, California, Chicago, Denver, Washington, D.C., Mexico City and Shanghai, we are trusted advisors, zealous advocates and creative strategists. We have a client-first philosophy, defining our success as providing exceptional value and practical business-minded solutions to our clients and innovative contributions to their businesses. Haynes and Boone is ranked among the largest law firms in the nation by *The National Law Journal*. The firm was named the 2015 Best National Firm for Diversity in North America in the Americas Women in Business Law Awards.