

PUBLIC
LAW

MANDATORY INTEREST PAYMENT
ON LATE PAYMENTS BY PUBLIC ENTITIES
AMENDMENT TO THE PORTUGUESE PUBLIC PROCUREMENT CODE

On April 27th, Law no. 3/2010 was published in the Official Journal, **forcing the**

*Public entities
are now forced to pay
interest on late
payments*

Portuguese State and other public entities, as municipalities and regions, to pay interest on late payments. This Law will enter into force on September 1st 2010.

————— This obligation was already recognized in various legal provisions, including article no. 806 of the Portuguese Civil Code. However, this Law expressly and unequivocally clarifies that this obligation is also applicable to the public entities, extending this legal regime into the sphere of the public contractual activity.

Public entities therefore can not refuse to pay interest on late payments owed by them to private parties on the basis of dubious applicability of the general rules of the Civil Code. And the nature of the debt is only relevant to find out the applicable interest rate.

Under the public contractual activity, the Law now published amends the Portuguese Public Contracts Code (“PCC”) stipulating new rules regarding *payment deadlines*.

*Assumption rules
on maturity date
of debts*

In the event that the contract is silent in relation to such provision of deadlines, it is now assumed that the maturity date of debts takes place, without further notice, within 30 days:

- (i) from the date when the public entity has received the invoice or equivalent document;
- (ii) from the date of acceptance of goods or provision of services, whenever the date of invoice or equivalent document reception is uncertain;
- (iii) from the date of acceptance of goods or provision of services, whenever the public entity receives the invoice or equivalent document prior to the delivery of goods or services;

*Automatic maturity from
any obligation to reimburse
interest on late payments once
the debt matures*

(iv) from the date of acceptance or inspection of goods or services, if it is provided a process to verify the compliance of such goods or services, and whenever the public entity receives the invoice or equivalent document prior to such delivery of goods or services. This process of acceptance or inspection cannot although exceed 30 days unless otherwise specified in the contract and duly substantiated.

As for new rules regarding *payment delays* the PCC is also amended providing an **automatic maturity, also without further notice, from any obligation to reimburse interest on late payments, once the debt matures.**

Finally, under this amendment to the PCC, **are now considered null and void all contract clauses which:**

*All contract clauses which set more
than 60 days to the maturity
of the debts or exclude or restrict
liability for payment delays
considered null and void*

- (i) without cause, considering each case, **set more than 60 days to the maturity of the debts**, considering these clauses as not written and considering the debt matured in accordance with the rules described above;
- (ii) without cause, considering each case, **exclude or restrict liability for payment delays.**

Contact
Fernanda Matoso | fmatoso@mlgts.pt

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA

ASSOCIADOS
SOCIEDADE DE
ADVOGADOS

www.mlgts.pt

LISBON

Rua Castilho, 165
1070-050 Lisbon
Telephone: (+351) 213 817 400
Fax: (+351) 213 817 499
mlgtslisboa@mlgts.pt

OPORTO

Av. da Boavista, 3265 - 5.2
Edifício Oceanvs – 4100-137 Oporto
Telephone: (+351) 226 166 950
Fax: (+351) 226 163 810
mlgtsporto@mlgts.pt

MADEIRA

Avenida Arriaga, Edifício Marina Club, 73, 2º
Sala 212 – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt

MEMBER
LEX MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

Partnership in Brazil
Mattos Filho, Veiga Filho,
Marrey Jr. e Quiroga