

## LAW OF THE FINANCIAL COMMITMENTS AND DELAYED PAYMENTS

### PUBLIC LAW

Regarding the control measures for budgetary execution foreseen in the Financial and Economic Assistance Program, it was published last February 21, Law no. 8/2012 (hereinafter designated as “Law of Commitments”)<sup>1</sup>, which establishes the **rules applicable to the assumption of commitments and delayed payments** of the entities referred to in article 2 of the Budgetary Framework Law, approved by Law no. 91/2001 of 20 August<sup>2</sup>, and of the public entities of the National Health Service. The principles conveyed in this law are also applicable to regional and local sub-sectors, including public reclassified entities in these subsectors<sup>3</sup>.

This law - whose wording is not always the clearest - has set tight rules regarding the assumption of financial commitments by the entities subject to it for the purposes of avoiding delayed payments, as well as the assumption of commitments that they cannot comply with.

As so, this law establishes that public entities may **only assume financial commitments<sup>4</sup> to the extent of its available funds** (article 5). The “available funds” refer to an amount available at very short term, generally available within three months following the assumption of the commitment<sup>5</sup>. Exceptionally, “**other amounts can be accrued to the available funds**” if expressly authorized by the competent entities provided for in paragraph 1 of article 4 of this law.

<sup>1</sup> The Law came into force on the day following its publication

<sup>2</sup> According to article 2, no. 1 of the Budgetary Framework Law (hereinafter designated as “LEO”), this law applies to the State Budget, which covers, within the general government, the budgets for the central government subsector, including the services and departments that do not have administrative and financial independence, the autonomous funds and services and the social security as well as the corresponding accounts.

<sup>3</sup> Article 2., no. 5 of LEO considers integrated into the general government as **autonomous services and funds**, in their respective central, regional and local government sub-sectors and of social security, the entities that, **regardless of its nature and form**, have been included in each subsector within the European System of National and Regional Accounts in the last sectoral accounts published by the national statistical authority referring to the year preceding the budget presentation.

<sup>4</sup> Pursuant to article 3., paragraph a) of the Law of Commitments, **commitments** are considered “*the obligations to make payments to third parties in compensation for the supply of goods and services or for the satisfaction other conditions.*”

<sup>5</sup> Pursuant to paragraph f) of article 3. of the Law of Commitments, **available funds** are considered the amounts at a very short term, which include, when applicable, and provided they have not been spent or committed:

---

*Public entities may only assume financial commitment to the extent of its available funds at very short term*

---

According to this law, **the assumption of commitments is only possible whenever the public entity in question undertakes a formal course of action**, such as the issuance of a purchase order, order form or equivalent document, or the signing of a contract, agreement or protocol, which may also be permanent and associated to payments for an undetermined period of time, namely, as is provided in this law, “wages, rents, electricity or payments for various services”.

Any public or private entity who enters into a contract with the entities subject to these new rules must ensure, before fulfilling their obligations, that the rules set out in this law were complied with, taking into account that:

- The **payments can only be made when the commitments have been concluded in compliance with the above mentioned legal requirements for the implementation of expenditure** and after the delivery of goods and services or the satisfaction of other conditions (see article 9).
- The law establishes that economic agents who carry out the supply of goods or services without complying with the above mentioned rules **may not claim from the State or from other public entities the respective payment or any compensation, in any form (it shall only be demanded the entities “responsible for the assumption of commitments”)**.

The Law of Commitments establishes that the entities subject to it shall be equipped with computer systems, in which the available funds, the obligations, the liabilities, the payable accounts and the delayed payments are registered, and with accounting systems to support the implementation of the budget in order to issue a **valid, unique and sequential number of commitment**, which will be reflected in the purchase order or in an equivalent document. Without this number, the **contract or obligation shall be null and void** (this effect may be overturned by a court or arbitral decision if it is found that this situation is unreasonable or contrary to good faith).

The **assumption of multi-annual commitments**<sup>6</sup>, regardless of their legal form, including new investment projects or its reprogramming, leases, agreements for technical and financial cooperation with municipalities and public-private partnerships, **are subject to prior authorization from the:**

- i. Government members responsible for finance and responsible for the sector, when they involve entities belonging to the subsector of the direct, indirect or central government, and to the social security and public entities of the National Health Service, except when resulting from the execution of legally approved annual plans;

---

*The compliance with this Law is a condition for the payments to be made and, if not, economic agents may not claim from the State or from other public entities the respective payment or any compensation*

---

*i)* The corrected amount without captives, for the three following months;  
*ii)* The transfers and subsidies from the State Budget, for the three following months;  
*iii)* A effective revenue that has been collected or received as an advance;  
*iv)* The forecasted effective revenue to be collected within the three following months;  
*v)* The sum of the loans executed in accordance with the Law of Commitments;  
*vi)* The transfers due to programs and projects of the National Strategic Reference Framework (QREN) which have not been executed and whose invoices are receipted and duly certified or validated;  
*vii)* Other amounts authorized under article 4. of the Law of Commitments.

<sup>6</sup> Pursuant to art. 3., paragraph b) of the Law of Commitments, **multi-annual commitments** are considered as commitments that imply payments on more than one fiscal year.

*The assumption of multi-annual commitments is subject to prior authorization procedures*

- ii. Member of the Regional Government responsible for finance when involving entities of the regional government
- iii. Municipal assembly, when involving local government entities.

Finally, with regard to **entities with delayed payments**<sup>7,8</sup>, article 7 of the Law of Commitments determines that the budget execution cannot lead, at any time, to an increase of the delayed payments towards the existing amount in the previous month.

The entities that do not comply with the above mentioned rule **(i)** are prevented from benefiting from the use of the foreseen revenue to be collected within the three following months in order to determine the defined available funds and **(ii)** can only benefit from the temporary increase of available funds with the prior authorization of the member of the Government responsible for finance.

The political officeholders, officers, managers or people responsible for accounting who assume commitments which do not comply with the Law of Commitments incur in civil, criminal, disciplinary and financial, sanctionary and repossession liability, according to the legal terms (see article 11., no. 1). Moreover, the entities who do not comply with the Law of the Commitments are subject to periodic audits by the General Inspectorate of Finance, or by the sectorial inspection.

<sup>7</sup> Pursuant to art. 3., paragraph e) of the Law of Commitments, **delayed payments** are accounts payable that remain in this situation for more than **90 days after the due date agreed or specified in the invoice, contract or equivalent document**.

<sup>8</sup> Note that the entities with delayed payments on December 31, 2011 are subject to the following limitations / obligations, which cease only when those entities no longer have delayed payments:

- i) The effective revenue forecasting to charge within the following three months has as upper limit 75% of the average of the effective revenue collected in the last two years in the same periods, less the amounts of the sporadic or extraordinary revenue;
- ii) Presentation to the Directorate General of Budget of a plan of settlement of payments within 90 days after the entry into force of the Law of Commitments, and in the cases of local government to the Directorate General of Local Government.

Contact  
Fernanda Matoso | fmatoso@mlgts.pt



MEMBER OF  
MLGTS LEGAL CIRCLE  
INTERNATIONALITIES WITH THE PORTUGUESE-SPEAKING WORLD

*To address the growing needs of our clients throughout the world, particularly in Portuguese-speaking countries, MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA has established solid associations and alliances with leading law firms in Angola, Brazil, Mozambique and Macau (MLGTS Legal Circle).*

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA

ASSOCIADOS  
SOCIEDADE DE  
ADVOGADOS

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

São Paulo, Brazil (in association)  
Mattos Filho, Veiga Filho, Marrey Jr.  
& Quiroga Advogados

Luanda, Angola (in association)  
ALC – Angola Legal Circle Advogados

Maputo, Mozambique (in association)  
SCAN – Advogados & Consultores

Macau, Macau (in association)  
MdME | Lawyers | Private Notary

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

www.mlgts.pt