

MEASURES INCLUDED IN THE 2013 STATE BUDGET LAW PROPOSAL

PUBLIC LAW

On October 15th, the Government presented to Parliament the **2013 State Budget Law Proposal** (“2013 SBL Proposal”, or “the Proposal”). In this Briefing we highlight some measures included in this Proposal regarding three subjects: i) public procurement, ii) payment of debts and compliance with payment deadlines by local and regional authorities and iii) foundations.

1. PUBLIC PROCUREMENT

1.1 RENDERING OF SERVICES’ AGREEMENTS

In what concerns **the signing or renewal of rendering of services’ agreements**, the Proposal follows the policy set out by the 2011 State Budget Law¹ (“2011 SBL”) and by the 2012 State Budget Law² (“2012 SBL”), once again imposing **remuneration reductions over the values of those contracts and the need to obtain a previous binding opinion by the Minister of Finance** (article 73 of the 2013 SBL Proposal).

We stress that **the remuneration reduction is only applicable to the values concerning rendering of services’ agreements and not to any other type of agreements**. Therefore, agreements like acquisition or rental of goods, public works agreements, public works or services concession agreements are not subject to that rule.

The list of the public sector employees’ salary reductions is stated in article 26 of the 2013 SBL Proposal. Thus, the non liquid total monthly remunerations above €1.500 will be reduced in the following terms:

- i) 3,5 % over the total value of remunerations superior to € 1.500 and inferior to € 2.000;
- ii) 3.5% over the amount of €2,000, accrued with 16% above the total value of the amount that exceeds €2,000, totaling a global percentage that may vary between 3.5% and 10%, in what concerns amounts equal or over €2,000 up to €4,165;
- iii) 10% of the total value of remunerations superior to € 4.165.

¹ Law 55-A/2010, of December 31st, altered by Law no. 48/2011, of August 26th and Law no. 60-A/2011, of November 30th.

² Law no. 64-B/2011, of December 30th

It is maintained the rule of remuneration reduction over the values of rendering of services' agreements and the need to obtain a previous binding opinion by the Minister of Finance

We notice that **the 2012 SBL's scope of remuneration reduction is maintained**. This means that, on one hand, the rule of remuneration reduction is applicable to agreements that are signed or renewed in 2013 **when they have an identical object and/or an identical counterparty of an existing contract in 2012**. On the other hand, this rule is applicable to renewals/signing of agreements in which the parties are the following entities (no. 1 of article 73 of the Proposal):

- a) Services and public bodies, including, services under the direct and indirect administration of the State, services of regional and local administrations, President of the Republic and Parliament support bodies and services, services of courts and State Prosecutor and respective management bodies and of other independent bodies, institutes under a special regime and legal persons governed by public law;
- b) Corporate public entities, public companies with total or majority of public share capital and entities of the local and regional company sector³;
- c) Public foundations and other public establishments;
- d) Cabinets stated in article 26, no. 9, paragraph 1) of the 2013 SBL Proposal, such as, namely, the cabinets of the President of the Republic, of the President Parliament, of the Prime-Minister, of Parliament's members and of the Government's members.

To avoid a second remuneration reduction in agreements that have already been subjected to it, the Proposal establishes that the following situations **are not subject to the remuneration reduction**, being the second one an innovation when compared with the 2012 SBL (article 73, nos.7 and 8 of the 2013 SBL Proposal):

- a) The **renewal**, in 2013, of rendering of services' agreements whose previous renewal or signing has already been subject to reduction and a favorable opinion or communication register has been obtained;
- b) The **signing**, in 2013, of rendering of services' agreements whose signing has already been, in 2011 and in 2012, subject to reduction and, in the same years, have obtained favorable opinions or communication registers, as long as the quantities and amounts are not above the ones agreed in 2012.

The Proposal also states, in resemblance with the last State budgets, the **need for a previous binding opinion, issued by the Minister of Finance, for the signing and renewal of rendering of services' agreements, except higher education institutions** (article 73, no. 4 of the 2013 SBL Proposal)⁴.

It should also be noted, lastly, that the following situations (already stated in the 2012 SBL) are subject neither to the remuneration reduction nor to previous binding opinion:

It is maintained in €350.000 the value from which the acts and agreement are subject to prior supervision of the Court of Auditors

³ We highlight that according with article 7 no.3 of the Decree-Law no. 558/99, of December 17th, in its current wording (State-Owned Company Sector Regime), temporary exceptional rules can be established by law, regarding the contracts entered into by these entities.

⁴ Ordinance no. 9/2012, of January 10th, regulated the 2012 SBL in this particular matter, granting a "generic favorable opinion", as long as the annual amount of €5.000 (without VAT) is not surpassed, to certain agreements, which may happen as well during 2013 SBL's term.

*New measures
for re-privatizations
and public-private
partnerships*

- a) The celebration or renewal of rendering of essential services agreements, established in no. 2 of article 1 of Law no. 23/96, of 26 July, in its current version, such as water and electric energy supply services (article 73, no.6, paragraph a) of the 2013 SBL Proposal);
- b) The celebration or renewal of mixed agreements whose predominant contractual type is not rendering of services or in which the service is accessory towards a supply of goods (article 73, no.6, paragraph a) of the 2013 SBL Proposal);
- c) The celebration or renewal of rendering of services agreements by the contracting authority or services under the cover of a framework agreement (paragraph b) of no. 6 of article 73 of the 2013 SBL Proposal);
- d) The celebration or renewal of rendering of services agreements by bodies or services under the scope of Law no. 12-A/2008, of 27 February, in its current version, amongst themselves or with corporate public entities (paragraph c) of no. 6 of article 73 of the 2013 SBL Proposal);
- e) The renewal of the rendering of services agreements, when possible, where the contracts have been entered into following a public tender in which the awarding criteria is the lowest price (paragraph d) of no. 6 of article 73 of the 2013 SBL Proposal).

1.2 OTHER NOVELTIES IN PUBLIC PROCUREMENT

The 2013 SBL Proposal also introduces other rules and novelties that may be interesting when regarding public procurement and the signing of agreements with public bodies. We highlight the following:

- a) **It is maintained in €350.000 the value from which the acts and agreements are subject to prior supervision (prior approval) of the Court of Auditors** (article 143 of the Proposal);
- b) Concerning the **sale and rent of property belonging to public bodies**, despite the need for the authorization of the Minister of Finance as a general rule, this Proposal establishes an **exceptional exemption regime dispensable when dealing with sale, encumbrance and rent of property belonging to certain public bodies**, such as the Institute for Housing and Urban Renovation (no. 3 of article 4 of the Proposal);
- c) For **re-privatizations** and for the **sale of other State holdings**, it is highlighted that **the Government can sign by direct award**, between pre-qualified companies, **the setting up of transfer and public share subscription operations, the underwriting and placement and other related operations** (article 121 of the Proposal);
- d) In what **public-private partnerships** are concerned, it is expressed **the intention to renegotiate the road sector agreements that are deemed unbalanced**, with the purpose of **obtaining a reduction of 30% to the public funds in 2013**(article 141 of the Proposal);
- e) Regarding the **use of budgetary resources**, it is stressed that, despite the adoption of several blockages, **there is also a set of funds that will not suffer any blockage**, such as the expenditure financed by own revenue entered in the services budgets and autonomous funds in the areas of education and science

Adoption of new rules concerning the settlement of debts with suppliers of local and regional authorities, as well as the reduction of the respective payment deadlines

- and in State's laboratories' and public investigation institutions' budgets (article 3 of the Proposal);
- f) In **the area of Defense projects**, during the year of 2013, **budgetary resources referring to the Law of Military Program will be reduced in 45, 71%** (article 15 of the Proposal);
 - g) In what **fixed-term hiring of employees or with transitory appointment in public bodies** is concerned, the Proposal establishes an **obligation to reduce in 50%** those situations, adopting also **restrictions to the hiring of personnel in those situations** (article 57 of the Proposal);
 - h) The Proposal also provides for a **reduction of 2% in the hiring of employees for local and regional authorities when comparing with the existing ones in December 31th of 2012**. Infringement of this rule determines a reduction of the State Budget's transfers to the local or regional authority in question (article 63 of the Proposal);
 - i) In the **State-owned company sector the Proposal determines a reduction of 3% of the global amount of employees** (except in corporate public hospitals) when comparing to the existing ones in December 31th, 2012, as well as a **reduction of 20% when faced with the existing ones in January 1st, 2011 in companies of the land transport sector and of the railway infrastructure management and in participated ones** (article 61 of the Proposal);
 - j) Finally, in the **hiring of employees that hold a doctorate degree for public bodies, it is highlighted the opportunity to hire doctorates for the National Scientific and Technological System to the limit of 400 new signings** (article 59 of the Proposal).

2. SETTLEMENT OF DEBTS WITH SUPPLIERS OF LOCAL AND REGIONAL AUTHORITIES

The 2013 SBL Proposal also adopt an amount of rules concerning the settlement of debts with suppliers of local and regional authorities, as well as the reduction of the respective payment deadlines. We stress the following:

- a) It is expected that, in 2013, the **Municipal Settlement Fund** regime will be **applied to all of the overdue debts**, regardless of their maturity term, **as well as to the amortization of short/medium term loans** (article 85 of the Proposal);
- b) It is established that **local or regional authorities that have overdue debts to entities that manage multi-municipal water supply systems should present them, in the term of 60 days, a settlement plan intended to sign a settlement agreement** (article 86 of the Proposal);
- c) It is determined that, until the end of 2013, the entities included in the subsector of local administration **should reduce at least 10% of their indebtedness, including overdue payments with more than 90 days** registered in the Integrated Information System of the Local Administration in September 2012 (article 93 of the Proposal);
- d) **It is authorized, during the year of 2012, the signing of medium/long term loans intended to pay debts to the suppliers** (article 99 of the Proposal).

Prohibition of any transfers of the State Budget funds for the foundations that didn't access the census developed in execution of Law no.1/2012, of January 3rd

3. FOUNDATIONS

In the context of the foundation census and of the new foundations Framework Law (Framework-Law no. 24/2012, of July 9th), some relevant provisions can be highlighted.

Thus, on one hand, we stress that **any transfers of the State Budget funds are prohibited for the foundations that didn't access the census** developed in execution of Law no.1/2012, of January 3rd, or whose wrong or incomplete information made their evaluation impossible (article 13 of the Proposal).

On the other hand, **the list determining the financing of foundations and associations by Budget State funds is subject to public disclosure.**

Contacto
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, 1º
Sala 113 – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt

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

Luanda, Angola (in association)
Angola Legal Circle Advogados

Maputo, Moçambique (in association)
Mozambique Legal Circle Advogados

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

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

www.mlgts.pt