

**December 2012**

## **In focus: Law on Payment Terms in Commercial Transactions**

On December 15<sup>th</sup>, 2012 the Parliament of the Republic of Serbia adopted the Law on Payment Terms in Commercial Transactions ("Official Gazette of the Republic of Serbia" no. 119/2012 - hereinafter referred to as: the "**Law**").

The main goal and *ratio* of passing the Law is to improve discipline in the execution of contractual monetary obligations, which is why it mainly comprises of imperative rules on payment terms in contracts between private and public sectors, as well as the consequences following the violation of these rules.

In the following text we shall present the most important provisions of the Law, as well as notes on some practical consequences of those provisions and actions that would be recommendable to undertake in the future.

### **I. Scope of the Law**

The Law applies to commercial transactions agreed upon by the public sector and business entities as well as between business entities themselves.

Exceptionally, the limits on payment terms established by the Law do not apply to commercial transactions in which

business entities in bankruptcy proceedings appear as the debtors.

### **II. Terms of payment in transactions between business entities**

#### General rule

The payment term in agreements between business entities must not exceed 60 days.

The Law explicitly determines that the debtors in commercial transactions are required to fulfill their monetary obligation within 60 days, without prior notice, even in cases when:

- the payment term was not determined in the agreement, or
- the agreement is not concluded in written form, or
- the agreed payment term exceeds the limits stipulated by the Law.

➔ *By aforementioned regulations the legislator enacted a statutory payment term of 60 days for all oral agreements. The result of such a rule is increased need and recommendation for all transactions to be agreed upon in writing, particularly in the event when the intention of the parties is to determine a shorter payment term than the one stipulated by the Law.*

### Exceptions to the general rule

Exceptionally, in the event of **payment in installments**, the term for fulfilling the monetary obligation may be **up to 90 days**, provided that at least 50% of the amount of the obligation must be paid until the expiration of half of such a term.

Contracting parties are **free to set a longer term of payment**, provided that the debtor or recipient of goods/services provides **an instrument of security** in the form of a bank guarantee or availed promissory note to the creditor.

### **III. Terms of payment in transactions with the public sector**

#### General rule

The payment term in agreements between business entities and the public sector cannot be longer than:

- **45 days** – in the event when the debtor is a subject from the public sector;<sup>1</sup>
- **60 days** – in the event when the debtor is a business entity.

Similar to transactions between business entities, in a situation when the payment term was not determined in the agreement, the business entity as debtor is required to fulfill its monetary obligation within 60 days, without prior notice.

### **IV. Calculation of payment terms**

Pursuant to the provisions of the Law, the term for the fulfillment of monetary obligations starts on:

- the date of receiving the invoice by the debtor, or other corresponding payment

request, provided that the creditor has previously fulfilled its obligation, or

- the date on which the creditor has fulfilled its obligation, in the event when it is not possible to determine the date of receipt of the invoice or other corresponding payment request or when the debtor has received an invoice i.e. the payment request before the creditor has fulfilled its obligation, or
- the date of expiry of the agreed or statutory term for examination of the object of the obligation,<sup>2</sup> when the debtor has received an invoice or payment request prior to expiration of such a term.

➔ *Whereas the legislator determines the date of receipt of the invoice by the debtor as the date from which the payment term should start, when delivering or sending invoices it is recommended to obtain a written proof of receipt (authorized signature and stamp of the debtor, provided it uses a stamp in legal transactions, postal certificate of receipt, etc.). It is useful to remind that, pursuant to the provisions of the Law on Enforcement and Security, possession of evidence that the debtor has been informed of its obligation is a prerequisite for initiating enforcement proceedings on the basis of a credible commercial document.*

➔ *Although the Law has failed to regulate the situation of agreed advance payment i.e. when the debtor is obliged to pay the price before the other party has executed its obligation, in our opinion such agreements (which to date has proved to be effective, and perhaps the best, collateral) are in accordance with the purpose for which the Law was passed.*

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<sup>1</sup> The Law determines an exception in transactions in which the debtor is the Republican Health Insurance Fund or the beneficiary of the fund, in which case the payment term cannot be longer than 90 days.

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<sup>2</sup> Pursuant to the provisions of the Law on Obligations, the examination of the object of the agreement should be carried out as soon as possible, while the Law limits this term for up to 30 days as of the acceptance of goods or services, except when in duly justified cases longer term has been determined.

## V. The consequences of breach of the payment term

If the debtor fails to meet its monetary obligation within the stipulated terms, the following sanctions apply:

### Compensation for delay

The creditor has the right to demand compensation from the debtor for the delay in payment, in fixed amount of 20,000.00 RSD. The Law specifically determines that the creditor may request this compensation within the motion for enforcement of monetary claim.

Compensation for delay does not include nor exclude other claims of the creditor against the debtor (contractual or statutory costs compensation, enforcement costs).

The creditor's right to claim compensation for the delay expires within 3 years as of the due date of the principal obligation.

### Statutory interest

In the event of non-payment within stipulated terms, the debtor is obliged to pay interest on the outstanding debt in a percentage determined by the Law on default interest, provided that the creditor has previously fulfilled all of its contractual obligations.

### Misdemeanor

Pursuant to the Law, the event when the debtor has not carried out its monetary obligation on time qualifies as a misdemeanor, which is sanctioned by a fine, in the following amounts:

Legal entity Business entity Public Sector Entity	<b>100.000 – 2.000.000 RSD</b>
Entrepreneur	<b>10.000 – 500.000 RSD</b>
Owner of an agricultural household	<b>10.000 – 150.000 RSD</b>
Representative of a company, cooperative and other legal entities	<b>5.000 – 150.000 RSD</b>
Responsible person in the public sector	<b>5.000 – 150.000 RSD</b>

It should be noted that in the event when claim collection is executed via court enforcement, the court is obliged to submit all of the enforceable court orders for execution to the authority which oversees the implementation of the Law, in order to commence the misdemeanor proceedings.

## VI. Agreements that are contrary to the Law

According to the Law, all provisions of the agreements that are inconsistent with the Law are null and void and unenforceable.

## VII. Commencement of implementation of the Law

The provisions of the Law apply to commercial transactions agreed upon:

- as of March 31<sup>st</sup>, 2013;
- before March 31<sup>st</sup>, 2013, provided that the delivery of goods i.e. performance of services was not initiated or executed

until March 31<sup>st</sup>, 2013 (outstanding transactions).

In case of outstanding transactions, the Law determines the obligation of the parties to harmonize their mutual rights and obligations with the Law until March 31<sup>st</sup>, 2013.

Implementation of the Law is postponed in relation to commercial transactions in which business entities undergoing restructuring, Republican Health Insurance Fund and the beneficiaries of the fund appear as debtors, until January 1<sup>st</sup>, 2014 and January 1<sup>st</sup>, 2015, respectively.

*Disclaimer: The text above is provided for general guidance and does not represent legal advice.*

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