

Financing mechanism for paying suppliers of local entities: Royal Decree-Law 4/2012, of 24 February

On 25 February 2012, the Official State Gazette published Royal Decree-Law 4/2012, of 24 February, which determines the information obligations and procedures necessary for establishing a financing mechanism for the payment of local entities ("RDL 4/2012").

1. Scope: agreements for works, services and supplies to local entities

The Royal Decree-Law applies only to local entities and not to Autonomous Communities or any of their dependent bodies or entities. It does apply, on the other hand, to autonomous bodies (*organismos autónomos*) and other dependent entities that belong in their entirety to local entities.

In order to qualify for the mechanisms established in RDL 4/2012, the local entities' outstanding payment obligations must meet the following requirements:

- a) They must be liquid, due and enforceable.
- b) The corresponding invoice, corrective invoice, if applicable, or equivalent request for payment must have been received by the administrative registry of the local entity before 1 January 2012.
- c) They must relate to agreements for works, services or supplies included with the scope of the Revised Text of the Public Sector Procurement Act, approved by Legislative Royal Decree 3/2011, of 14 November.

Therefore, public works concession contracts, public service management agreements, public-private sector collaboration agreements and other agreements not included in the above categories are excluded.

2. Identification of the payment obligations included prior to 15 March 2012

Before 15 March 2012 the local entities will send the Ministry of the Treasury and Public Administration a certified list of all outstanding payment obligations that meet the above requirements.

Contractors and assignees to which the right of collection has been transferred may check whether they are included in the certified list sent. In the event they do not appear on the certified list sent, they may ask the debtor local entity to issue an individual certificate. Unless this request is expressly rejected within 15 calendar days it will be considered accepted (the right of collection will be considered recognised in the terms envisaged in the request). Therefore, the request for an individual certificate must identify exactly what invoices and payment obligations are outstanding.

3. Option for the local entity: pay or take recourse to the financing mechanism with an adjustment plan

Once the certified list is sent, if the recognised obligations have not been paid, the controller of the local entity (*interventor*) will present an adjustment plan to the plenary session of the local administration for approval before 31 March 2012. The adjustment plan is subject to the approval of the Ministry of the Treasury and Public Administration within a term of 30 calendar days. This approval entails authorisation of the debt transaction.

RDL 4/2012 does not in itself establish a financing mechanism. This mechanism is to be set up as a matter of urgency by a Resolution of the Delegate Committee of the Government for Economic Affairs and may be developed in progressive stages that will not go beyond 2012.

Said mechanism may establish the following criteria, among others, in order to recognise priority of payments:

- a) Discount offered over the amount of the principal of the outstanding payment obligation.
- b) If an application has been made to the Courts for the enforcement of the outstanding payment obligation prior to 1 January 2012.
- c) How long the payment obligation has been outstanding.

In each stage, a minimum discount to be offered by the contractor over the principal of the outstanding payment obligation may be established. Likewise, an overall maximum amount of financing may be set for each stage.

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As a result, it will be the financing mechanism itself that establishes both the temporal conditions and stages and the criteria for the priority of payment of recognised obligations as well as the minimum discounts to be offered, meaning that it is not possible at this time to determine under what conditions payment of the outstanding obligations will be made.

4. Effects of the financing mechanism: collection by the suppliers by presentation for collection in credit institutions, at a discount, and without interest, costs or expenses

The contractors appearing on the list sent to the Ministry of the Treasury and Public Administration and those who are entitled to receive payment due to the issue of an individual certificate or because their request for an individual certificate was not expressly rejected, may voluntarily enforce said right by presentation for collection in the credit institutions participating in the financing mechanism.

Payment to the contractor will entail the cancellation of the debt incurred by the local entity with the contractor, covering principal, interest, court costs and any other ancillary expenses.

Payment will also mean the termination of court proceedings, if there are any, due to out-of-court settlement.

5. Financing mechanism: system of guarantees for financing entities

The long-term debt transaction that the local entity enters into with the financing entities participating in the mechanism may entail the assignment of the local entity's participation in state taxes to the state, for the amount necessary for the state to cover repayment of said debt operation.

In the event that the local entities do not enter into a debt transaction, or in the event they have done so and breach it, the Ministry will withhold the amounts corresponding to the local entity's participation in state taxes.

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