

# NASCIMENTO CATARINO & ASSOCIADOS LAW FIRM



## Late payments in commercial transactions

By Sergio Catarino

### **Interest and compensation for debt recovery costs**

#### **The final notice to the debtor**

According to recent European Payment Index, suppliers in Portugal, France and Belgium send the highest number of reminders before commencing legal action.

The first stage in any collection process is to issue a final notice to the debtor whereby debtor is requested to pay the principal amount together with any statutory or agreed (a supplier and purchaser can make their own arrangements) penalty interest or compensation for debt recovery costs.

The final notice (notification) can be oral but it is better to put it in writing as it makes it easier to prove that notice has been given.

#### **Statutory rights to interest**

According to Decree-Law no. 32/2003, of 17 February (under the European Directive 2000/35/EC combating late payments in commercial transactions), creditors have the statutory right to claim interest for late payment at the European Central Bank base rate plus 7%.

If no credit period has been agreed, the Decree-Law sets a period of 30 days after which interest can run. This default period does not constitute a statutory credit period.

Where no credit period is agreed in a contract, the principal debt will still become due from the moment the goods are delivered or the invoice is performed.

#### **Compensation for debt recovery costs**

The Portuguese legislation doesn't give to supplier the automatic right to claim debt recovery costs, although it gives the right to recover foreseeable losses flowing from the late payment.

So, whenever possible, the contract should predict the

right to reasonable recovery costs to cover event of late payment or to recover from court some of the reasonable foreseeable losses flowing from the late payment.

#### **Evidence**

The court determines a case according to the law and to the evidence that the parties submit.

The burden of proof concerns the question of who must prove any particular point of the action and generally the plaintiff must prove his whole case.

So when we initiate legal proceedings our claim against the counterpart must be well-founded. But often that will not be sufficient for actually winning the case because the other party may contest the facts on which we have based our claim.

Therefore it is usually crucial to present evidence to the court in order to prove our claim.

There are different ways in which evidence can be taken.

In certain cases proof by a document may be possible (documentary evidence), e.g. when it is questionable whether order has been made, or if parties have set the terms and conditions, if delivery has been made, or if debt has been paid or not. In cases where no such proof exists, it may be appropriate to hear witnesses (oral evidence) who can testify their observations.

Sometimes it will be necessary to make use of experts in a specific subject matter, e.g. when the exact amount of the damage is to be ascertained. If necessary, the court will not only examine the evidence presented to it, but also visit the scene of occurrence (e.g. of an accident) ■