

NASCIMENTO CATARINO & ASSOCIADOS LAW FIRM



Order of payment procedures in Portugal

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Payment procedure

Like in the other EU countries there is in Portugal an optional procedure especially intended for claims or debts that will in all likelihood be uncontested.

The purpose is to enable creditors to collect pecuniary claims of a specific amount as swiftly and as simply as possible.

The following steps are related to this procedure:

- Application;
- If the request for an order for payment is accepted, the defendant has 15 days (from the date when notification is deemed valid) to oppose the claim.
- In case of debtor's defence (statement of opposition), the enforceable status is not granted — case is sent to court (following the terms of a declaration action legal procedure);

In case of debtor's silence (lack of valid statement of defence), the registrar shall attach the following words to the application for an order for payment: "*This document has enforceable effect*" - which means that it can be used as a basis for enforced judicial recovery of the claim.

Formal requirements

The claimant must in the application for an order for payment:

- Identify the registry of the court to which the application is addressed;
- Identify the parties;
- Indicate the place where notification must be served, stating whether it is the place of residence" agreed in a written contract;

- Set out succinctly the facts underlying the claim;
- Formulate the request, specifying the value of the principal, the interest due and other amounts payable;
- Confirm that the court fees have been paid;
- State, where appropriate, that the claim relates to a commercial transaction" covered by the legal instrument laying down special arrangements for late payment in commercial transactions (Decree-Law No 32/2003 of 17 February 2003);
- State his/her place of residence;
- State his/her e-mail address", if he/she wishes to receive messages or to be notified by that means;
- State whether he/she wishes the case to proceed as a declaratory action, should notification be thwarted;
- State whether he/she wishes notification to be served by an enforcement solicitor (*solicitador de execução*) or a legal representative and, if so, state that person's name and business address";
- Specify "the court with jurisdiction to assess the documents", if the case is to proceed as a declaratory action and the "registry responsible for receiving the application is a general registry;
- If the application is signed by a legal representative, confirm that a mandate exists and state the business address of the appointed representative.

Eligible claims

For the purposes of this procedure, a commercial transaction is deemed to be any business “between undertakings or between undertakings and public entities, irrespective of their nature, form or denomination, that gives rise to the supply of goods or the provision of services against remuneration” (Article 3(a) of Decree-Law No. 32/2003 of 17 February 2003).

Regarding commercial transactions, the procedure does not cover “contracts concluded with consumers”, “interest on other payments that were not made to remunerate commercial transactions” or “payments made for the purposes of compensation for civil liability, including payments by insurance companies” (Article 2(2) of Decree-Law No 32/2003).

Advantage

The order of payment is a simplified procedure and it excuses the necessity to intend a declarative when it is in cause the collection of a debt.

Beyond being simpler e fast, the procedure is cheaper than a declarative legal proceeding.

About 280.000 orders of payment per year are interposed , while the declarative legal proceeding ascend about 100.000.

Costs

The costs to consider are reduced in half if the application would be presented by electronic means.

When the application is presented electronically the prices are the following ones:

- 12€, when the procedure has inferior value 1.875€;
- 24€, when the procedure has equal or superior value 1.875€ and inferior 3.750€;
- 48€, when the procedure has equal or superior value 3.750€ and inferior 15.000€;
- 96€, when the procedure has equal or superior value 15.000€;
- When the procedure has superior value 30.000€, to the value related in d) increases, for each 15.000€ or fraction, and until the o it has limited maximum of 250.000€, 24€.

Statistical data

Enforceable title

Of the universe of applications placed yearly (between 250 to 300 000) in Portugal about 70% to 80% is conferred enforceable rights.

Oppositions

The oppositions represent less than 5% of the total.

Payment

The payment represents less than 10% of the total ■