

Creation of the Fund for financing payments to suppliers: Royal Decree-Law 7/2012, of 9 March

On 10 March 2012, the Official State Gazette published Royal Decree-Law 7/2012, of 9 March, creating the Fund for financing payments to suppliers ("RDL 7/2012").

1. Aims of the new Royal Decree-Law

RDL 7/2012 seeks to create the instrument necessary for enforcing the plan for paying suppliers and to guarantee the success of the mechanism created in Royal Decree-Law 4/2012, of 24 February, which set out the necessary information and procedural obligations for establishing a mechanism for financing payments to the suppliers of local entities ("**RDL 4/2012**"). In this regard, the aim is to establish the conditions that make it possible to obtain sufficient financial resources for financing the debt operations that may be concluded in order to pay the outstanding obligations. It is estimated that around **35 billion euros** is needed, meaning that the largest possible number of financial institutions must participate, under market conditions that take into account the special characteristics of the planned transactions.

2. Creation of the Fund for Financing Payments to Suppliers

With the above aims in mind, RDL 7/2012 creates the Fund for Financing Payments to Suppliers and establishes its legal regime. This Fund will be a public entity with its own legal personality and full capacity to act.

3. Financing for the Fund

The fund is endowed with an allocation of an amount of up to 6 billion euros from the State Budget, of which 1.5 billion euros will be disbursed in 2012.

To that end, RDL 7/2012 grants an extraordinary facility to the budget in force worth 1.5 billion euros, which will be financed with Public Debt of the Spanish State.

The Fund incur debt and obtain funds acting in national and foreign capital markets by issuing securities, entering into loans and credit facilities, among other mechanisms, **as well as any other debt transactions**, performing swap, purchase and conversion transactions in the context of the above operations, within the limits set for each financial year in the Budget Act.

With the same aim, **the State may grant loans to the Fund** within the limit established in the Budget Act each year. The loans granted by the State will ensure funds sufficiently in advance in order to pay the obligations assumed by the Fund.

In addition, the Fund may perform operations to actively manage its treasury and, in order to minimise exposure to financial risk, it may enter into operations based on financial instruments. The debts and obligations that the Fund assumes in obtaining financing will, vis-à-vis third parties, be guaranteed by the State. This guarantee is explicit, irrevocable, unconditional and direct, according to the provisions of RDL 7/2012.

4. State Guarantee

The debts and obligations that the Fund incurs in obtaining financing will, vis-à-vis third parties, have the explicit, irrevocable, unconditional and direct guarantee from the Spanish State.

5. Credit operations with Local Entities and Autonomous Communities and direct disposal by payment to suppliers

The Fund will enter into credit operations granting credit to the Autonomous Communities who take advantage of the extraordinary financing mechanism for paying suppliers **and it will also enter into credit operations granting credit to with Local Entities**, for the payment of outstanding obligations of said Local Entities and Autonomous Communities.

In any event, **the withdrawal of the financing granted to the territorial Administrations will be by means of direct payments made by the Fund to the suppliers, with the Fund assuming any rights that said supplier** may have vis-à-vis said territorial Administrations for the amount actually paid, in accordance with RDL 4/2012.

Credit transactions entered into by Local Entities will be guaranteed by the corresponding withholdings under the payment orders issued to settle the participation of the Local Entities in state taxes. To that end, the State will transfer the participations in state taxes withheld from the Local Entities to the Fund for Financing Payments to Suppliers in order to meet the obligations derived from

Content

- 1.- Aims of the new Royal Decree-Law
- 2.- Creation of the Fund for Financing Payments to Suppliers
- 3.- Financing for the Fund
- 4.- State Guarantee
- 5.- Credit operations with Local Entities and Autonomous Communities and direct disposal by payment to suppliers
- 6.- Extension of the legal and tax regime applicable to Public Debt of the State
- 7.- Inclusion of more contractors: unpaid invoices for public service management contracts under a concession regime are included

the operation.

6. Extension of the legal and tax regime applicable to Public Debt of the State

The Public Debt of the Spanish State established in the RD 505/1987 dated 3 April is extended to fixed-income securities represented by book entries issued by the Fund established by virtue of RDL 7/2012. Likewise, the debts that the Fund assumes in obtaining funding will have **the same tax regime as Public Debt of the Spanish State** both for residents and non-residents.

7. Inclusion of more contractors: unpaid invoices for public service management contracts under a concession regime are included

RDL 4/2012 only applied to unpaid invoices that had been filed with the registry of the debtor entity prior to 1 January 2012 derived from works, supply and services agreements. RDL 7/2012 extends the scope and includes unpaid invoices for public service management contracts under a concession regime (*contratos de gestión de servicios públicos en régimen de concesión*), which are traditionally used at local level with regard to street cleaning, waste collection and water management services, among other sectors.

CONTACT

Madrid Office

Paseo de la Castellana 110-Planta 12 (28046 Madrid)

Tel.: +34 91 590 75 00

Alberto Manzanares

Partner Head of the Banking and Finance Area

alberto.manzanares@cliffordchance.com

José Guardo

Partner in the Banking and Finance Area

Jose.guardo@cliffordchance.com

Juan José Lavilla Rubira

Partner Head of the Administrative Law Area

José Luis Zamorro

Counsel of the Administrative Law Area

joseluis.zamarro@cliffordchance.com

Esta publicación no trata necesariamente cada tema importante ni cubre todos los aspectos de los temas sobre los que trata, no estando diseñada para prestar asesoramiento legal o de otro tipo.

www.cliffordchance.com

Clifford Chance, Paseo de la Castellana 110, 28046 Madrid, Spain
© Clifford Chance S.L. 2012
Clifford Chance S.L.

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance tiene un acuerdo de cooperación con Al-Jadaan & Partners Law Firm en Riad.