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Changes to UK Late Payments Regime

On 16 March 2013, new late payment legislation came into force in the UK. The changes to the existing late payment regime are generally minor. One significant change of interest to businesses is the new requirement that purchasers pay their suppliers within 60 days. This note explains the background to the new legislation and summarises the changes it introduces, with a particular focus on the new 60 day payment term in business to business contracts.

The Old Regime

The UK's late payment regime is set out in The Late Payment of Commercial Debts (Interest) Act 1998 (1998 Act). The 1998 Act provides that if a purchaser in a business to business contract for goods or services pays all or part of the contract price late, then the supplier is entitled to interest on the debt. The 1998 Act implies a term into the contract to that effect. The applicable rate of interest is the Bank of England's base rate +8%. Parties may only contract out of this right to statutory interest if the contract otherwise gives the supplier a "substantial remedy" for late payment of the debt.

The New Regime

In February 2013 a new EU Directive on commercial late payments came into force (Directive 2011/7). The UK, like other EU territories, is obliged to implement the Directive into national law and this has resulted in some changes to the 1998 Act. In summary, the new measures are:

- **Business to business payment terms** – the period for payment of the price fixed in the contract must not exceed 60 calendar days. The parties may agree a different payment period provided this is not "grossly unfair" to the supplier (see below).
- **Public sector payment terms** – in commercial transactions where the purchaser is a public authority, the payment period must not exceed 30 calendar days following receipt by the purchaser of the invoice.
- **Verification periods** – the maximum duration of a procedure of acceptance or verification must not exceed, as a general rule, 30 calendar days.

In all other significant respects, the 1998 Act remains the same. Contracts concluded before 16 March 2013 will be unaffected by the changes.

60 Day Payment Term

The amended 1998 Act provides that, in business to business contracts, the payment period must not exceed 60 calendar days. The parties may agree a different payment period provided this is not grossly unfair to the supplier. In assessing whether a payment period is grossly unfair all the circumstances must be taken into account, in particular:

- whether the agreed payment term is a gross deviation from good commercial practice and contrary to good faith and fair dealing;
- the nature of the goods or services in question; and
- whether the purchaser has any objective reason to deviate from the 60 day payment period.

The amended 1998 Act does not specify what is to happen if an agreed payment term is found to be

grossly unfair to the supplier. Presumably, the term will be ineffective and the 60 day statutory payment period will be substituted instead.

Implications

Suppliers will continue to come under pressure to agree levels of interest which are lower than the statutory rate and payment terms which are longer than the statutory maximum. The new laws may allow greater scope for suppliers to:

- Exert the moral argument that the customer is acting unfairly. Customers making unreasonable requests should be checked against the Prompt Payment Code, promoted by the Department for Business, Innovation and Skills, to see if they are a signatory.
- Argue that extended payment terms are grossly unfair.
- Rely on the Regulations post-termination of a supply contract to challenge the payment terms and interest rates in the contract. It may be possible to do this retrospectively for the entire term of the contract where the customer has generally been a late payer, provided the supplier has not waived its rights.

Scope

The 1998 Act applies only to parties doing business in the UK. However, all EU territories will be required to implement the Directive into their national law. The deadline for doing so was the 16 March 2013.

Therefore, organisations doing business in Europe will be affected by the changes introduced by the Directive to a greater or lesser extent, depending on how each EU territory implements the Directive. Implementation is likely to differ between territories.

As the Directive is an EU initiative, in most circumstances organisations doing business outside Europe will be unaffected.

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