

## Stricter Payment Periods for Commercial Transactions with SMEs

### VAN BAEL & BELLIS

On 25 April 2019, the Chamber of Representatives adopted a Law modifying the Law of 2 August 2002 on combating late payment in commercial transactions in an attempt to provide greater financial security to small and medium-sized enterprises (“SMEs”) (Wet tot wijziging van de Wet van 2 augustus 2002 betreffende de bestrijding van de betalingsachterstand bij handelstransacties/Loi modifiant la Loi du 2 août 2002 concernant la lutte contre le retard de paiement dans les transactions commerciales – the “Law”).

Under the current regime, the legal payment period for a commercial transaction between enterprises is, as a rule, 30 calendar days. However, parties to a commercial transaction may agree on a payment period that is longer. This conventional payment period may even exceed 60 calendar days, except if this were to amount to a manifest abuse of the creditor’s rights. Additionally, the maximum duration for a procedure of acceptance and verification of goods or services purchased must not exceed 30 days, unless expressly provided for otherwise by contract.

Yet, since the implementation into Belgian law of Directive 2011/7/EU of 16 February 2011 on combating late payment in commercial transactions (the “Directive”), which sought to harmonise payment periods in business-to-business relationships throughout the European Union, research has shown that two-thirds of Belgian companies are faced with late payments. These late payments result in a lack of cash flow for SMEs, which in turn delay their own payments and generate a chain of delays affecting the economy as a whole.

Therefore, the Law takes advantage of the option in the Directive to have provisions that are more favourable to the creditor than the provisions necessary to comply with the Directive. The Law thus limits the conventional payment period applicable to transactions between an SME creditor and a debtor company that does not qualify as an SME to a maximum of 60 calendar days. Any contractual provision to the contrary will be considered invalid. The payment period is counted as of: (i) the receipt of an invoice by the debtor; (ii) the receipt of the goods or services, if the invoice is received before the goods or services; or (iii) the acceptance and verification procedure, if the invoice is received before such a procedure takes place.

Further, and again for transactions between SME creditors and debtor companies that do not qualify as SMEs, the Law limits the maximum duration of the acceptance and verification procedure to 30 calendar days.

For purposes of the Law, SMEs are defined by reference to Article 1:24, §1 of the new Belgian

Companies and Associations Code. Accordingly, an SME is a company which, at the closure of the last financial period, does not exceed any of the following thresholds: (i) 50 full-time workers per year on average; (ii) a turnover of EUR 9 million per year; or (iii) a balance-sheet total of EUR 4.5 million. These criteria must be assessed at the time of conclusion of the contract.

The Law will apply to contracts concluded as of the day of its entry into force, which is scheduled six months after its publication in the Belgian Official Journal.

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