

May, 2019

➤ LAW NO. 21,131 SETS FORTH A THIRTY-DAY TERM FOR PAYMENT OF INVOICES

On May 16th, 2019 the law commonly known as the “Thirty-day payment law” (herein, the “Law”) will enter into force. This Law stipulates, among other matters, that invoices –issued by any type of entity– must be paid, as a general rule, within a maximum term of 30 days after being received.

Although the original bill was intended only to amend the “Small Businesses Statute”, the law ended up as a rule of general application, affecting all entities that issue and/or receive invoices in Chile, regardless of their size.

Below, you will find a brief summary of the main aspects of Law No. 21,131:

I. *Legal term for payment of invoices*

The Law sets forth a maximum payment term of **30 days** from when the invoice is received. Nevertheless, **the parties may agree on a longer term**, insofar as they comply with the following requirements and formalities:

1. The agreement that sets a longer term must be in writing;
2. The agreement must be executed by all parties;
3. The agreement will not constitute abuse against the creditor; and
4. The agreement must be registered before the Ministry of Economy within five business days, from its date of execution.

Regarding this last requirement, **the regulation that rules this registry was enacted on May 2, 2019**. This regulation provides that the registration will have to be made through an online form, which will state the main aspects of the agreement. The one obligated to perform the registration is the corresponding buyer or beneficiary of the services who, in addition to completing the form, must sign certain affidavits, including one in which the buyer or beneficiary declares that the agreement does not contain “abusive clauses” as defined by the Law (detailed below).

Those agreements that do not comply with one or more of the aforementioned requirements will be deemed as unwritten, and the general legal payment term will apply (30 or 60 days, depending on the stage of entry into force of the Law).

As to the application of the legal payment term, in cases in which the parties have not agreed on a longer term, the maximum payment term will be **60 days**, for the first 24 months from the publication of the Law, i.e. **until May 17, 2021**, on which date the term will be reduced to **30 days**.



If you have any questions regarding the matters discussed in this news alert, please contact the following attorneys or call your regular Carey contact.

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II. *Forbidden clauses*

The Law provides that clauses in agreements that unnecessarily delay the payment of invoices will have no effect. Moreover, the Law states that, regarding this type of clause, the following will be considered:

1. Provisions that grant the buyer or beneficiary of the service the ability to terminate or modify the agreement, at his sole discretion, without requiring the prior and express consent of the seller or provider of the service, notwithstanding exceptions that might be established by law;
2. Clauses that contain absolute liability limitations that could deprive the seller or provider of the service of his right of reparation before contractual breaches;
3. Those that set forth interest rates that are lower than the ones established by the Law; and
4. Those that provide that the payment term will be counted from a date different from the reception of the invoice.

III. *Interest rates established by law*

The Law provides a legal interest rate for cases in which the debtor of an invoice does not comply with the legal payment terms. This interest rate will be the current interest rate set forth for **non index-linked operations over 90 days in Chilean pesos**, for amounts that exceed the equivalent of 200 Unidades de Fomento¹ and are lower than or equivalent to 5,000 Unidades de Fomento^{2,3}. The interest will be accrued as of the first day of delay of the payment (day 31 or 61 depending on the stage of entry into force of the Law) until the invoice is paid in full.

Additionally, the Law sets forth the payment of a fixed recovery commission of 1% of the amount due in case of non-compliance with the legal terms of payment.

¹Approximately USD 8,000.

²Approximately USD 200,000.

³ These interest rates are set forth by the Superintendencia de Banks and Financial Institutions, and are available here.

IV. *Special regulation for the Government*

The Law establishes an exception in the payment term of invoices for public agencies subject to Law No. 19,886 –Public Acquisitions Law–. These agencies may set a term of up to sixty days for payment on the corresponding bidding bases or contracts –in cases of direct contracting–, which will be duly grounded.

Further, the Law provides that, for said public agencies to make payments under supply or service agreements, it will be necessary for the corresponding entity to previously certify the due reception of the goods or services (within the eight days established for the rejection of invoices).

The Law also sets forth that, in procurements for amounts under a certain limit, that are conducted through electronic means, the corresponding public agency may make the payment before the reception of the product, retaining its right of withdrawal, and other rights and duties as a consumer.

On the other hand, the Health Services, the Procurement Central – CENABAST and the Municipalities, will be subject to the maximum payment term stated in the Law, according to the following schedule:

1. 29 months after the publication of the Law, this is as of May 2021, regarding small businesses⁴; and
2. 41 months after the publication of the Law for any other company, this is, as of May 2022.

V. *Unfair competition*

Finally, the Law amends Law No. 20,169 on unfair competition, qualifying non-compliance with the legal payment term for invoices as an unfair competition conduct.

Hence, the entry into force of the Law entails a series of challenges and will require certain adjustments in the contractual strategy of companies, particularly in connection with service agreements.

⁴ Companies with annual incomes of 100,000 Unidades de Fomento (approx. USD 4,000,000) or less.