

## THE NEW PUBLIC CONTRACTS CODE

The new Public Contracts Code (PCC) was (finally) published on January 31<sup>st</sup>, 2008, approved by Decree-Law nr. 18/2008, of January 29<sup>th</sup>, 2008.

The PCC, which has been expected for some time, introduces the turning of a page in Administrative Public Procurement Law both in respect of the types and rules of pre-contractual procedures (public tenders, direct settlement...) and in respect of the substantive regime of administrative contracts (building contracts of public works, contracts for the concession of public works or services...). In fact, the amendments introduced by the referred Code are many and significantly relevant considering the legal regime that has been in force for so many years.

It should be noted that the PCC (tardily) transposes to our legal order certain European Community Directives, revoking, among others, the already famous Decree-Law nr. 59/99 of March 2<sup>nd</sup>, 1999 (building contracts of public works), Decree-Law nr. 197/99, of June 8<sup>th</sup>, 1999 (acquisition of assets and services), or Decree-Law nr. 223/2001, of August 9<sup>th</sup>, 2001 (public works, supply and provision of services in the water, energy, transports and communications sectors).

The PCC enters into force six months after publication, therefore it will only be applicable to the formation procedures of public contracts initiated as from the date of entry into force and to the execution of contracts entered into in the follow up of the formation procedures initiated after that date.

The PCC has an objective application scope (contracts to which it is applicable), as well as subjective (entities covered by this Code) more ample than present, which naturally will increase the users of this new Code. In what respects the pre-contractual procedures, special emphasis on the reduction of the number

of procedures foreseen, the adaptation of the most well-known procedures (public tender and direct settlement, in this case, increasing the limit-values for its use), as well as the introduction of new procedures, such as the competitive dialogue, should be made. Regarding the several types of pre-contractual procedure, it should be pointed out the bureaucratic simplification of the procedures and the use of new technologies, of which the elimination of the figure of public act in public tenders and its replacement by a procedure that is developed through the internet is an example.

As concerns the substantive regime of public contracts, the ruling of certain contractual forms such as project finance, acquisition finance and asset finance should be emphasized, as well as the step in and step out rights, thus accompanying the present negotiating tendencies. There is also now a specific legal regime for the concession of public works and public services, which is duly understood and welcomed considering the importance that these contractual forms have been assuming.

Notwithstanding the diverse novelties and innovations contemplated in the PCC, the extreme complexity and difficult comprehension of its long and intricate 473 Articles should be noted, which will imply a profound study by all operators. In this respect, the PLMJ Public Law Area will organise a Conference on the new PCC to be held in April, 2008, and will be the object of adequate publication in due time.

Lisbon, January 30<sup>th</sup>, 2008

Tiago Duarte  
PLMJ Public Law Area

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### Lisboa

Avenida da Liberdade n.º 224  
1250-148 Lisboa

Tel: (351) 21.319 73 00  
Fax: (351) 21 319 74 00

email: plmjlawplmj.com

### Porto

Avenida da Boavista n.º 2121, 4.º- 407  
4100-137 Porto

Tel: (351) 22 607 47 00  
Fax: (351) 22 607 47 50

### Faro

Rua Pinheiro Chagas, 16, 2.º Dto. (à Pç. da Liberdade)  
8000 - 406 Faro  
Tel: (351) 289 80 41 37  
Fax: (351) 289 80 35 88

### Coimbra

Rua João Machado n.º 100  
Edifício Coimbra, 5º Andar, Salas 505, 506 e 507  
3000-226 Coimbra  
Tel: (351) 239 85 19 50  
Fax: (351) 239 82 53 66

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