

General Assembly of the Dubai Court of Cassation - Applicable interest rate awarded by the Dubai Courts

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Introduction

On 9 June 2021, the General Assembly of the Dubai Court of Cassation (Challenge No. 586/2021/1 Decision No. 1-2021 dated 09.06.21) (the "Decision") decided unanimously that the rate of interest for judgment debts, in the absence of party agreement on the applicable rate must be calculated at 5% per annum until settlement is made in full.

This article places the Decision in context by reviewing UAE law on interest, considers the applicable interest rate that the Dubai Courts will be required to award in respect of judgment debts arising out of civil or commercial transactions and discuss the likely future approach by courts in other Emirates.

UAE Law on interest

The application of interest on unpaid debts and judgment debts are regulation by federal and emirate levels.

The creditor's right to interest on commercial debts where the debtor is in default interest and the applicable interest rates are set out in Articles 88 and 76 of the UAE Commercial Code.

Article 88 of the Commercial Code provides: "*Where the commercial obligation is a sum of money which was known when the obligation arose and the debtor delays payment thereof, he shall be bound to pay to the creditors as compensation for the delay, the interest fixed in Articles (76) and (77), unless otherwise agreed.*"

Article 76 of the Commercial Code provides: "*A creditor is entitled to receive interest on a commercial loan as per the rate of interest stipulated in the contract. If such rate is not stated in the contract, it shall be calculated according to the rate of interest current in the market at the time of dealing, provided that it shall not exceed 12% until full settlement.*"

Article 77 of the Commercial Code provides: "*Where the contract stipulates the rate of interest and the debtor delays payment, the delay interest shall be calculated on the basis of the agreed rate until full settlement.*"

As may be seen, Articles 88 and 76 provide that in a commercial context interest is payable, where the obligation involves the payment of money, the amount of which is known when the obligation arose, at the agreed rate (if any) or the market rate, up to a maximum of 12%.

In Abu Dhabi, Articles 61 and 62 of the Abu Dhabi Civil Courts Procedures Law 3 of 1970 (as amended), provides the courts with the right to determine the interest rate on unpaid debts (provided that they do

not increase the interest rate that was agreed by the parties). The Abu Dhabi courts may calculate interest in respect of a judgment debt from the date on which it falls due or any subsequent date until full payment, but shall not exceed the original debt. Historically, and in the absence of an agreement, the rate may be determined at the court's discretion on condition that the rate shall not exceed 12 percent per annum in respect of commercial transactions and 9 percent in respect of non-commercial ones.

General Assembly Decision No. 1-2021 dated 09.06.21

Pursuant to Article 20 of Law No. 13 of 2016 regarding the Judicial Authority in the Emirate of Dubai, the General Assembly held that interest rate levels are a factor of economic and social conditions in the UAE. The practice of the Court of Cassation of awarding interest, for judgment debts, in the absence of an agreement, at the rate of 9% per annum was no longer relevant to present-day circumstances in the UAE, in the view of the General Assembly. In addition, it determined that the prevailing interest rates of banks operating in the country "make it necessary to reconsider the rate of interest in order to adapt to the changing circumstances, provide market stimulation, and promote fair dealing at the individual and institutional levels."

On reviewing the changes and their impact on the rate of interest, the General Assembly of the Court of Cassation agreed unanimously to reduce the rate of interest, both legal and delay, in the absence of an agreement, to 5% per annum until full settlement of a debt is made.

Hence, the percentage of interest awarded by a Dubai court for late payments in civil and commercial transactions will now be calculated as follows:

1. The percentage agreed by the parties provided it is not excessive or punitive, or;
2. The percentage prevailing market rate, or;
3. The 5% as established by the Dubai Court of Cassation.

Developments in other UAE Emirates

The courts in Ras Al Khaimah have also recently adopted the same position as Dubai. In RAK Court of First Instance, Action No. 206-2021, the Claimant claimed, from its debtor 9% interest per annum in the absence of an agreement on the rate of interest and in the absence of evidence of the rate of interest prevailing in the market at the time of the transaction. The court held that the assessment of the rate of interest is a matter for the discretion of the court, with its powers as a trial court in these proceedings. The court assessed it at 5% from the date the claim was made in court (i.e., the date the action was filed) until settlement is made in full. Other jurisdictions are also expected to follow Dubai and Ras Al Khaimah. Indeed, it is notable that the Abu Dhabi courts have been awarding interest of between 1% to 3% for the past 12 months.

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