

# Cassation No: 66/2011 Commercial (Dubai Court)

Hussain Al Zarooni - Senior Associate - Litigation  
- Abu Dhabi

In litigation, one reoccurring topic litigators face before the UAE courts is how interest is claimed and calculated on outstanding payments in commercial debts. A recent Dubai Court of Cassation ruling (Judgment 66 of 2011) gives us insight to such method as outlined hereunder.

## **BACKGROUND**

This case involved two parties, where the Claimant filed a claim against the Defendant before the Court of First Instance for AED 730,000 as a result of the Defendant's breach of contract. In addition to the claim amount, the Claimant also claimed legal interest on the debt due.

Under the terms of said contract and in consideration of the Defendant's obligations, the Claimant paid the Defendant an amount of AED 730,000 as an advance payment. The Defendant however, failed to provide the Claimant with the agreed services and thus was in breach of its obligations as per the terms of the contract.

The Defendant filed a counterclaim to obligate the Claimant to pay the Defendant an amount of AED 245,100 in addition to legal interest as they had already began providing its services and they suffered a loss of AED 975,000 as a result of the Claimant's termination of the contract.

The Claimant challenged the judgment issued by the Court of First Instance which rejected its claim and accepted the counterclaim against the Claimant (effectively ordering it to pay an amount of AED 238,605.75 in addition to the legal interest of 9%). The Court of Appeal upheld the decision of the Court of First Instance. The Claimant further challenged said judgment before the Court of Cassation which overturned the appealed Judgment and referred the case to the Court of Appeal once again. This time, the Court of appeal issued a judgment to:

1. Cancel the challenged Judgment.
2. Terminate the disputed contract dated 06/02/2008 subject of the main claim and to obligate the Defendant to pay to the plaintiff an amount of AED 730,000 in addition to the 9% legal interest from the date of the judgment until full payment.
3. Reject the counterclaim filed by the Defendant.

## **THE COURT'S APPROACH AND FEDERAL LAW ON INTEREST**

The last judgment was challenged again by the Claimant before the Court of Cassation in respect of the legal interest which was calculated from the date of the judgment.

The Claimant requested that the legal interest was to be calculated as of the date of the contract, which was on 06/02/2008 or from the date of filing the claim as per article 90 of the Commercial Transactions Law [Fed. Law 18 of 1993].

The aforementioned article states that:

"Interests for delay of payment of commercial debts shall accrue from the maturity date of such debts,

unless it is otherwise provided for by Law or agreement”.

In this regard, legal interest calculated for delay on outstanding amounts will be calculated as of the date of the claim (i.e. the debt must be known at the date it falls due), even if the debtor is disputing the claimed amount or the due date. Same also applies in the event that a contract has specified the amount due and the court decided to terminate the contract, the legal interest will accrue as of the date of the claim.

However, if it is related to legal interest in connection with compensation for damages which was suffered by the creditor and the value of the damages needs to be calculated by the court, the legal interest will accrue as of the date of the final judgment.

For the above reasons, the Court of Cassation ruled the following:

The Court decided to accept the partial challenge relating to the commencement date of calculating the legal interest. It further decided to amend the judgment so that the interest commences as of the date of the claim on 16/02/2009 until full payment.

This ruling provides a useful guide for any concerned party when calculating the aforementioned legal interests in similar situations.