WERKSMANS
ATTORNEYS

DISPUTES

Article of interest – a curious lacuna in our law on prescribed rates of interest

14 September 2022 *5 min read*

Until the introduction of the Judicial Matters Amendment Act 2015 ("the Amendment") which took effect on 8 January 2016, the prescribed rate of interest was gazetted in terms of the Prescribed Rate of Interest Act, 55 of 1975 ("the Act"). For the period 1993 to 31 July 2014 that rate was 15.5% per annum and changed to 9% from 1 August 2016 until the advent of the Amendment.

The Amendment to section 1 of the Act was as follows:

"3. The following section is hereby substituted for section 1 of the Prescribed Rate of Interest Act, 1975:

> *"[Interest on a debt to be calculated at the prescribed rate] Rates at which interest on debt is calculated in certain circumstances is not:*
>
> *1(1) if a debt bears interest and the rate at which the interest is to be calculated is not governed by any other law or by an agreement or a trade custom or any other manner, such interest shall be calculated at the rate [prescribed under] contemplated in sub-section (2)(a) as at the time when such interest begins to run unless a court of law, on the ground of special circumstances relating to that debt orders otherwise.*
>
> *2(a) for the purposes of subsection (1), the rate of interest is the repurchase rate as determined from time to time by the South African Reserve Bank, plus 3.5% p.a.*
>
> *(b) the Cabinet member responsible for the administration of Justice must, whenever the repurchase rate is adjusted by the South African Reserve Bank, publish the amended rate of interest contemplated in paragraph (a) by notice in the Gazette.*
>
> *(c) the interest rate contemplated in paragraph (b) is effective from the first day of the second month following the month in which the repurchase rate is determined by the South African Reserve Bank". (emphasis added)*

Accordingly and with effect from 8 January 2016, the prescribed rate of interest was linked to the repo rate. The wording of section 1(2)(c) is unequivocally peremptory.

In terms of the Interpretation Act 33 of 1957, the term "month" means "a calendar month" i.e. February, March, April etc. (not a 30 day cycle).

From a plain reading of the aforementioned amendment therefore, whilst the Act requires the applicable Minister to gazette any changes in rate, the change in the prescribed legal rate does not appear to be conditional upon the Minister's compliance with that requirement. The change is automatic in terms of section 1(2)(c) of the Act.

On 29 July 2022, and in Gazette No. 47133, notice 2376 ("the recent notice"), the Minister of Justice and Correctional Services published a rate of interest of 7.75% per annum with effect from 1 May 2022, and withdrew Government Notice R1067 of 2020, being the last such notice issued by the Minister's office ("the last notice") dated 9 October 2020 which indicated a revised rate of interest of 7.25% per annum with effect from 1 July 2020.

The recent notice is correct insofar as the rate of interest applicable from 1 May 2022 is concerned, however, no changes in the repo rate have been gazetted by the Minister since 9 October 2020, in the last notice. The repo rate has undergone no fewer than four further changes since July 2020. These have been overlooked.

Furthermore, based on our understanding of the facts, the rate indicated in the last notice by the Minister is in fact incorrect and does not correlate with the prevailing repo rate applicable at that point in time (which was 4.5% – the rate in the last notice should have been 8%). In addition, the Minister did not gazette the four intervening changes to the repo rate prior to the recent notice. The picture reflected therefore by the gazettes is both incorrect, and incomplete.

The prescribed rates of interest, which took effect on the first day of the second month after each announcement relating to changes to the repo rate since 8 January 2016 are as follows (adjusted up by 3.5% and calculated with effect from the first day of the second month following the relevant repo rate change):

PRESCRIBED / LEGAL RATES OF INTEREST % – UNDER THE PRESCRIBED RATE OF INTEREST ACT (AS AMENDED)			
APPLICABLE DATE	**PRESCRIBED RATE (3.5% above REPO)**	**REPO RATE**	**DATE OF REPO CHANGE**
08/02/1985	20	n/a	Judicial Matters Amendment Act 24 of 2015 took effect as of 8 Jan 2016
01/08/1986	15		
01/09/1987	12		
01/06/1989	18.5		
1/10/1993 – 31/07/2014	15.5		
01/08/2014 – 07/01/2016	9		
08/01/2016 – 01/03/2016	9.75		
01/03/2016 – 30/04/2016	10.25		
01/05/2016 – 31/08/2017	10.5		
01/09/2017 – 30/04/2018	10.25		
01/05/2018 – 31/12/2018	10		
01/01/2019 – 31/08/2019	10.25		
01/09/2019 – 29/02/2020	10		
01/03/2020 – 30/04/2020	9.75	6.25	16/01/2020
01/05/2020 – 31/05/2020	8.75	5.25	19/03/2020
01/06/2020 – 30/06/2020	8	4.5	14/04/2020
01/07/2020 – 31/08/2020	7.25	3.75	21/05/2020
01/09/2020 – 31/12/2020	7	3.5	23/07/2020
01/01/2021 – 28/02/2022	7.25	3.75	19/11/2021
01/03/2022-30/04/2022	7.5	4	27/01/2022
1/05/2022-30/06/2-22	7.75	4.25	24/03/2022
01/07/2022-31/08/2022	8.25	4.75	19/05/2022
01/09/2022 –	9	5.5	21/07/2022

The highlighted changes, have not been gazetted by the Minister.

Accordingly, and premised on a plain reading of the Act as amended and in relation to which no legal challenge has been raised, and in relation to which the ordinary principles of legal interpretation apply, the current prescribed rate of interest applicable as from 1 September 2022 is 9% per annum, and subject to change on the first day of the second month after each announcement of any change to the repo rate is made.

It would seem further, that the issuing of a gazette notice by the Minister concerning the change on the first day of the second month in the prescribed rate of interest is of passing interest only. What is of real interest is the repo rate. We will continue to watch that space.

Jennifer Smit

Head of Construction & Engineering

View Profile