WERKSMANS ATTORNEYS

DISPUTES

# Interest factor

20 September 2023 *3 min read*

*and Lwazi-Lwandile Simelane, Candidate Attorney*

In circumstances where a debt arises and the interest rate is not specified, either by contract or by operation of law, the debt in question will attract interest at the prescribed rate of interest in terms of the Prescribed Rate of Interest Act 55 of 1975 ("**the Act**").

Section 3 of the Judicial Matters Amendment Act 2015 ("the Amendment") which amends section 1 of the Act, and which took effect on 8 January 2016, is that the prescribed rate of interest is linked to the repo rate. On our interpretation of the Amendment is that the gazetting of any change to the repo rate by the minister is not required, despite the direction that same is undertaken.

Section 2(1) of the Amendment states that:

> *for the purposes of subsection (1)**[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.*

The change in the prescribed legal rate does not appear at all to be conditional upon the Minister's compliance with the instruction to Gazette the change in rate, that change is automatic in terms of section 1(2)(c) of the Act which states:

> *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".*

Regardless, the Minister does not appear in any event to have consistently and rigorously adhered to the business of Gazetting every change to the repo rate such that this formal requirement is met.

It matters not. What matters is that practitioners consistently pay close attention to those changes so that the correct rates are applicable to the debts of clients as and when they fall due. The date a debt falls due, is the date when the applicable legal rate of interest attaches to the debt[2], and that rate is then fixed forever, until the debt is paid or *in duplum* is reached.

To that end, the following handy table provides a snapshot of the rate:

| **PRESCRIBED / LEGAL RATES OF INTEREST % – UNDER THE PRESCRIBED RATE OF INTEREST ACT (AS AMENDED)** | | | |
|---|---|---|---|
| **DATE OF REPO CHANGE** | **REPO RATE** | **PRESCRIBED RATE (3.5% above REPO after 2016)** | **APPLICABLE DATE** |
| n/a | n/a | 20 | 08/02/1985 |
| n/a | | 15 | 01/08/1986 |
| n/a | | 12 | 01/09/1987 |
| n/a | | 18.5 | 01/06/1989 |

| | | | |
|---|---|---|---|
| n/a | | 15.5 | 1/10/1993 – 31/07/2014 |
| n/a | n/a | 9 | 01/08/2014 – 07/01/2016 |
| **Judicial Matters Amendment Act 24 of 2015 took effect as of 8 Jan 2016** | | | |
| In place at | | 9.75 | 08/01/2016 – 20/02/2016 |
| 28/01/2016 | 6.75 | 10.25 | 01/03/2016 – 30/04/2016 |
| 17/03/2016 | 7 | 10.5 | 01/05/2016 – 31/08/2017 |
| 20/07/2017 | 6.75 | 10.25 | 01/09/2017 – 30/04/2018 |
| 28/03/2018 | 6.5 | 10 | 01/05/2018 – 31/12/2018 |
| 22/11/2018 | 6.75 | 10.25 | 01/01/2019 – 31/08/2019 |
| 18/07/2019 | 6.5 | 10 | 01/09/2019 – 29/02/2020 |
| 16/01/2020 | 6.25 | 9.75 | 01/03/2020 – 30/04/2020 |
| 19/03/2020 | 5.25 | 8.75 | 01/05/2020 – 31/05/2020 |
| 14/04/2020 | 4.25 | 7.75 | 01/06/2020 – 30/06/2020 |
| 21/05/2020 | 3.75 | 7.25 | 01/07/2020 – 31/08/2020 |
| 23/07/2020 | 3.5 | 7 | 01/09/2020 – 31/12/2021 |
| 18/11/2021 | 3.75 | 7.25 | 01/01/2022 – 28/02/2022 |
| 27/01/2022 | 4 | 7.5 | 01/03/2022 – 30/04/2022 |
| 24/03/2022 | 4.25 | 7.75 | 01/05/2022 – 30/06/2022 |
| 19/05/2022 | 4.75 | 8.25 | 01/07/2022 – 31/08/2022 |
| 21/07/2022 | 5.5 | 9 | 01/09/2022 – 31/10/2022 |
| 22/09/2022 | 6.25 | 9.75 | 01/09/2022 –31/12/2022 |
| 24/11/2022 | 7 | 10.5 | 01/01/2023 – 28/02/2023 |
| 26/01/2023 | 7.25 | 10.75 | 01/03/2023 – 30/04/2023 |
| 30/03/2023 | 7.75 | 11.25 | 01/05/2023- 30/06/2023 |
| 26/05/2023 | 8.25 | 11.75 | 01/07/2023 (current) |

---

[1] *Being the provision addressing the circumstances in which the legal rate of interest applies*

[2] *Davehill (Pty) Ltd and Others v Community Development Board 1988 (1) SA 290 (A) & Crookes Brothers Ltd v Regional Land Claims Commission for the Province of Mpumalanga and Others [2013] 2 All SA 1 (SCA)*

## Jennifer Smit

Head of Construction & Engineering

[View Profile]