



BERMUDA

INTEREST AND CREDIT CHARGES (REGULATION) ACT 1975

1975 : 48

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[preamble and words of enactment omitted]

INTEREST AND CREDIT CHARGES (REGULATION) ACT 1975

PART I

Interpretation

1 In this Act, unless the context otherwise requires—

“the Authority” means the Bermuda Monetary Authority;

“Bermuda area currency” means Bermuda area currency within the meaning of the Exchange Control Act 1972 [*title 16 item 1*];

“contract” means any contract or agreement whatsoever and includes a contract under seal and a unilateral promise to pay;

“credit” includes a loan;

“credit charge” includes any sum, by whatsoever name called, in excess of the principal, paid or payable in consideration of or otherwise in respect of another sum of money and includes all amounts for or on account of costs, charges or expenses so paid or payable, but “credit charge” shall not include—

- (i) a charge made by way of interest;
- (ii) finders’ fees;
- (iii) stamp duties;
- (iv) legal fees, registration fees, and other necessary disbursements of the creditor in the completion and formalization of a contract creating or evidencing a debt;

“creditor” includes the person to whom the rights and duties of the creditor under a contract have passed by assignment or by operation of law;

“debtor” includes the person to whom the rights and duties of the debtor under a contract have passed by novation, assignment or operation of law;

“finders’ fee” means a charge by whatsoever name called made by a person other than the creditor for the finding or obtaining of credit;

“foreign currency” means a currency other than Bermuda area currency;

“interest” means a sum payable in respect of the use of another sum of money calculated at a rate proportionate to the amount of the principal and the time during which the non-payment continues;

“principal” in relation to a loan means the actual amount of the debt incurred exclusive of interest, credit charges and finders’ fees;

“prescribed” means prescribed by order under section 12;

“statutory rate” means 3.5% per annum or such other rate as may be prescribed.

[Section 1 definition “statutory rate” amended by 2017 : 27 s. 2 effective 2 June 2017]

PART II

No restriction except by statute

2 Except where otherwise provided by this or any other statutory provision any person may stipulate for, allow and exact on any contract, any rate of interest that is agreed upon.

Interest rate where none provided

3 Whenever any interest is payable—

- (a) by agreement of the parties under a contract governed by Bermuda law; or
- (b) by law,

and no rate is fixed by such contract or by law, the rate of interest shall be 2% per annum below the statutory rate.

Interest on accounts rendered etc

4 (1) Where an account has been rendered of moneys owing then in the absence of any agreement providing for the payment or non-payment of interest thereon the unpaid balance of such account shall bear interest at the statutory rate from the expiration of six months from the time of the first rendering of such account until the debt is satisfied.

(2) For the purposes of this section an account sent by post shall be deemed to have been rendered at the time when it would be delivered in the ordinary course of post until the contrary is proved.

Written acknowledgments of debt

5 A written acknowledgment of debt shall in the absence of any agreement providing for the payment or non-payment of interest thereon bear interest at the statutory rate—

- (a) from the date thereof, if unconditional;
- (b) if subject to a condition, from the date when the condition was accomplished.

PART III

Contracts to which this Part applies

6 (1) This Part applies to a contract which creates or evidences a debt—

- (a) dischargeable by the debtor in Bermuda area currency or which, by virtue of this section, is deemed to be so dischargeable; and
- (b) under which the debtor, or any debtor, is resident in Bermuda at the time of the entering into of such contract or, in the case of a debtor which is a body corporate, is a body corporate incorporated in Bermuda.

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(2) Notwithstanding subsection (1), this Part shall not apply to a contract creating or evidencing a debt where the debtor is—

- (a) an exempted company within the meaning of the Companies Act 1981 [*title 17 item 5*]; or
- (b) an exempted partnership within the meaning of the Exempted Partnerships Act 1992 [*title 17 item 26*],

unless there is some other debtor, not being such a company or partnership, of the nature described in subsection 1(b).

(3) For the purposes of subsection (1) a contract to repay moneys (including interest or credit charges thereon) shall, where the obligation is to repay moneys actually paid in a currency other than Bermuda area currency, not be deemed to create or evidence a debt dischargeable in Bermuda area currency unless it is so dischargeable by express term of the contract or by necessary implication thereof.

(4) Subject to subsection (3) a debt shall be deemed to be dischargeable in Bermuda area currency if—

- (a) it is so dischargeable by express provision of the contract or by necessary implication thereof;
- (b) if the court before which the creditor seeks to enforce the contract creating or evidencing such debt is of the opinion having regard to all the relevant circumstances including the provisions of the Exchange Control Act 1972 [*title 16 item 1*], the regulations thereunder, and the practice of the Controller of Foreign Exchange in the exercise of his discretion under such regulations, that the parties to the contract intended, notwithstanding any term of the contract to the contrary, that the contract would be performed by the payment of Bermuda area currency.

(5) A contract which creates or evidences a debt expressed in a currency other than Bermuda area currency which, by virtue of subsection (4), is deemed to be dischargeable in Bermuda area currency shall operate as a contract to pay the Bermuda area currency equivalent of such debt at the current middle market rate of exchange (that is to say the mid point between the buying and selling rates of Bermuda banks for foreign currencies) at the time of the discharge of the debt and this Part shall apply to such contract accordingly.

[section 6 amended by 1992 : 66 effective 8 August 1992]

Contracts with illegal provisions to be unenforceable to extent of illegality

7 (1) Subject to subsection (4), where a contract to which this Part applies is made after 1 September 1975 and when such contract contains any term or provision for the payment of—

- (a) interest in excess of the maximum rate of interest prescribed at the time of such making;
- (b) a credit charge or finders' fee which is at the time of such making prescribed as a prohibited charge or fee;

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- (c) a finders' fee or any credit charge in excess of the maximum amount prescribed at the time of such making or which is otherwise illegal by virtue of an order under section 12,

then that term or provision shall be unenforceable; but subject thereto the contract shall take effect according to the tenor thereof:

Provided that nothing in this subsection shall render unenforceable a term or provision in a contract which provides for an increase in the rate of interest payable thereunder—

- (a) to a rate not exceeding the prescribed maximum rate of interest at the time of the increase in the event of such prescribed maximum rate being increased;
- (b) in the event that the maximum rate of interest shall no longer be prescribed.

(2) Where a person has paid any money in accordance with any term or provision of a contract which is unenforceable under subsection (1), he may by action commenced within three years of such payment, recover such money from the person on whose account it was paid as money paid under a mistake of fact.

(3) Notwithstanding subsection (1) where any party to a contract containing a term or provision which is unenforceable by virtue of subsection (1) alleges that the effect of such unenforceability is to defeat the purpose or business effect of the contract, he may apply to the court for the rescission of the contract; and the court may, upon an application under this section permit such rescission on such terms as it may think fit.

(4) Notwithstanding subsection (1), where a court is satisfied that interest owing in terms of a contract to which this Part applies has been charged at a rate not exceeding one quarter per centum per annum above the prescribed maximum rate by reason of a bona fide error of calculation such court shall permit the creditor to recover interest at a rate not exceeding the prescribed maximum rate.

Act not to be evaded by use of security

8 Where any security is provided in relation to a contract to which this Part applies the security shall not be enforced so as to benefit the creditor, directly or indirectly, to an extent greater than would have been the case if the security had not been provided and any obligations of the debtor under or in relation to the contract were carried out to the extent to which they would have been enforced under this Act.

PART IV

Judgment debts

9 All sums of money due or payable under or by virtue of any judgment, order or decree of any court shall, unless that court orders otherwise, carry interest at the statutory rate from the time the judgment is given, or as the case may be, the order or decree is made, until the judgment, order or decree is satisfied, and such interest may be levied under a

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writ of execution, or otherwise recovered in the same manner and by the same process as the principal may be recovered.

Courts may award interest on debts and damages

10 In any proceedings tried in any court for the recovery of any debt or damages, including proceedings in respect of personal injuries to the plaintiff or any other person, or in respect of a person's death, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at the statutory rate on the whole or any part of the debtor damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment:

Provided that nothing in this section—

- (a) shall authorize the giving of interest on interest; or
- (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any enactment or otherwise; or
- (c) shall affect the damages recoverable for the dishonour of a bill of exchange.

Calculation of interest payable

11 When interest is payable at the statutory rate under this Part it shall be calculated at the current rate from time to time prevailing from the date on which interest is first payable until the judgment, decree or order is satisfied.

PART V

Bermuda Monetary Authority may make orders

12 (1) The Authority may by order—

- (a) prescribe the statutory rate of interest;
- (b) in relation to contracts to which Part III applies or to any category or class thereof—
 - (i) prescribe the maximum rate of interest;
 - (ii) prohibit the imposition of credit charges of the nature specified in the order;
 - (iii) prohibit the charging of finders' fees;
 - (iv) prescribe maximum credit charges;
 - (v) prescribe maximum finders' fees;
- (c) prescribe any matters ancillary to paragraphs (a) and (b);
- (d) declare that Part III shall not apply to any transaction specified in the order.

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(2) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to orders made under subsection (1) other than orders made under paragraph (a) and sub-paragraph (i) of paragraph (b) when the negative resolution procedure shall apply.

(3) The Authority shall before exercising their powers under paragraph (a) of subsection (1) or under sub-paragraph (i) of paragraph (b) of that subsection obtain the approval of the Minister of Finance thereto, and in the case of the exercise by the Authority of their other powers under that subsection, they shall first consult with the Minister of Finance.

Non-application to the Crown

13 Nothing in Part III shall apply in the case of a contract to which the Crown or an agency thereof is a party.

Transitional

14 (1) Until such time as an order is made under section 12 prescribing a maximum rate of interest in relation to contracts to which Part III applies, or in relation to any class or category of such contracts, nothing in this Act shall have effect to apply a maximum rate of interest in relation to any such contract, class or category.

(2) Nothing in this Act shall have effect in relation to credit charges or finders' fees until such time as an order is made under section 12 which has the effect of regulating or controlling such charges or fees.

[Section 14 amended by 1994:9 effective 1 April 1994]

Repeal

15 *[omitted]*

Commencement

16 *[omitted]*

[Assent Date: 14 July 1975]

[this Act was brought into operation on 1 September 1975]

[Amended by:

1977 : 35

1978 : 9

1992 : 66

1994 : 9

2017 : 27]