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Client Alert: The Libyan Supreme Court Upholds Delay Interest in Commercial Transactions (Third Civil Chamber 467/Judicial Year 64 of 16 June 2019)

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In a landmark decision, the Libyan Supreme Court ruled on 16 June 2019 that Law No. 1/2013 “Prohibiting Usurious Transactions” does not prevent a claim of delay interest in commercial transactions. The court adopted a restrictive interpretation of the law, pursuant to which it limited the ban on interest to credit transactions.

Law No. 1/2013 “Prohibiting Usurious Transactions”

In 2013, Libya enacted Law No. 1/2013 (“the Law”), which prohibited interest in civil and commercial transactions. Article 1 (1) of the Law provides:

Interest on deposits and loans in all civil and commercial transactions between natural and legal persons shall be prohibited. All usurious interest, whether evident or concealed, earned from such transactions shall be invalidated on an absolute basis.

The Law was part of an effort by Libya’s transitional government to bring existing legislation in line with Islamic principles. The ban of interest (or usury) is a fundamental principle of Islamic contract law.¹

The broad wording of the Law’s provisions resulted in considerable uncertainty, particularly regarding its scope of application. Is the Law’s application limited to the financial sector, requiring banks to re-organize their business along Islamic principles, or does it also ban interest in commercial transactions in general?

On 21 March 2013, the Law entered into force, but Article 7 suspended application to transactions between juristic persons until 1 January 2015 to give the financial sector more time to convert to an Islamic, interest-free system.

In light of the difficulties faced by the Libyan banking sector caused by the country’s ongoing monetary crisis, the Libyan House of Representatives (“HoR”) enacted Law no. 7/2015, which extended the suspension period to 1 January 2020. The HoR’s legislative powers, however, are not unanimously recognized in Libya. The HoR is affiliated with the so-called Tobruk Government of Abdullah Al Thinni, which is in opposition to the UN-sponsored Government of National Accord (“GNA”) based in Tripoli.²

¹ The Islamic prohibition on *riba* (usury) is based on Sura II:275 of the Qur’an, which states: “God hath permitted sale but prohibited usury.” The majority of Islamic jurists understand this to prohibit interest paid in consideration for the lending of money.

² The House of Representatives became the Libyan legislative body on 4 August 2014, following elections on 25 June 2014. After its formation, the HoR moved from Tripoli, the capital, to Tobruk. It is affiliated with the Government of the Second Cabinet of Abdullah Al Thinni (also referred to as the “Tobruk Government”). Although never unanimously recognised in Libya, the Tobruk Government was widely recognized on the

The Libyan Supreme Court's 16 June 2019 Decision

In a recent decision, the Libyan Supreme Court provided important guidance regarding the Law's application.

In the case, a freight forwarder claimed payment for transporting trees on behalf of the Libyan Ministry of Agriculture. The lower courts had ordered the Ministry to pay the outstanding invoices in addition to statutory interest amounting to 5% as delay interest, pursuant to Article 229 of the Civil Code. The Ministry challenged the decision and, *inter alia*, submitted that statutory interest violated the Law's provisions.

In its decision, the Supreme Court upheld the Court of Appeal's decision and took a restrictive approach in interpreting the Law, effectively confining the prohibition of interest to credit transactions.

After citing Articles 1, 2, 3, 4, 5, and 7 of the Law, the Court explained:

The meaning of these provisions altogether is that it is only concerned with loans regardless of the types or denominations [...]. And therefore there is no way to apply it to the provision of Article 229 of the Civil Code [providing for delay interest].

Therefore, according to the Supreme Court, the prohibition of interest only applies to credit transactions and does not bar claims for interest for late payment in commercial transactions. In commercial transactions, a creditor continues to be entitled to interest at a rate of 5% from the date of raising the action in court.

Outlook

The Libyan Supreme Court's decision clarifies that the Law does not prevent claiming delay interest; however, this point is only one aspect of the recent legislation banning interest in Libya. In particular, the proposed conversion of the Libyan banking sector to an Islamic, interest-free system remains to be seen.

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international level as Libya's legitimate government until the Government of National Accord was established through the UN-sponsored Libyan Political Agreement of 17 December 2015. The GNA generally does not recognize the Tobruk Government's legislative powers, based on the Libyan Supreme Constitutional Court's 6 November 2014 decision that the elections for the HoR were flawed. In turn, the HoR does not recognize the Constitutional Court's jurisdiction. What makes the matter even more complex is that the Political Agreement never formally entered into force, as it lacks the required approval from the House of Representatives. The result is a legislative deadlock.

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