

**LATE PAYMENT OF COMMERCIAL DEBTS
(INTEREST) ACT 2003**

Principal Act

Act. No. 2003-14	<i>Commencement</i>	1.10.2003
	<i>Assent</i>	31.7.2003

Transposing:
Directive 2000/35/EC

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SCHEDULE

AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 2000/35 ON COMBATING LATE PAYMENT IN COMMERCIAL TRANSACTIONS.

Title, commencement and interpretation.

1.(1) This Act may be cited as the Late Payment of Commercial Debts (Interest) Act 2003.

(2) This Act comes into operation on the day appointed by the Minister by notice in the Gazette; and different days may be appointed for different descriptions of contract or for other different purposes.

A notice under this subsection may specify a description of contract by reference to any feature of the contract (including the parties).

(3) In this Act—

“contract for the supply of goods and services or services alone” has the meaning given in section 3(2);

“contract price” means the price or the money consideration in any contract for the supply of goods and services or services alone;

“Minister” means the Minister with responsibility for trade and industry;

“purchaser” means (subject to section 13(2)) the buyer or the person who contracts with the supplier in any contract for the supply of goods and services or services alone;

“qualifying debt” means a debt falling within section 4(1);

“statutory interest” means interest carried by virtue of the term implied by section 2(1); and

“supplier” means (subject to section 13(2)) the seller or the person who does one or more of the things mentioned in section 3(2) in any contract for the supply of goods and services or services alone.

Statutory interest.

2.(1) It is an implied term in a contract to which this Act applies that any qualifying debt created by the contract carries simple interest subject to and in accordance with this Part.

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(2) Interest carried under that implied term (in this Act referred to as “statutory interest”) shall be treated, for the purposes of any rule of law or enactment (other than this Act) relating to interest on debts, in the same way as interest carried under an express contract term.

(3) This Part has effect subject to Part II (which in certain circumstances permits contract terms to oust or vary the right to statutory interest that would otherwise be conferred by virtue of the term implied by subsection (1)).

Contracts to which Act applies.

3.(1) This Act applies to a contract for the supply of goods and services or services alone where the purchaser and the supplier are each acting in the course of a business, other than an excepted contract.

(2) In this Act “contract for the supply of goods and services or services alone” means a contract (other than a contract of sale of goods) by which a person agrees to carry out a service or agrees to carry out a service part of which may involve the supply of goods.

(3) For the avoidance of doubt a contract of service or apprenticeship is not a contract for the supply of services.

(4) The following are excepted contracts—

- (a) a consumer credit agreement;
- (b) a contract intended to operate by way of mortgage, pledge, charge or other security.

(5) In this section—

“business” includes a profession and the activities of any government department or local or public authority;

“sale” and “goods” have the same meaning as in the Sale of Goods Act;

“property in goods” means the general property in them and not merely a special property.

Qualifying debts.

4.(1) A debt created by virtue of an obligation under a contract to which this Act applies to pay the whole or any part of the contract price is a “qualifying

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debt” for the purposes of this Act, unless (when created) the whole of the debt is prevented from carrying statutory interest by this section.

(2) A debt does not carry statutory interest if or to the extent that it consists of a sum to which a right to interest or to charge interest applies by virtue of any enactment (other than section 1 of this Act).

This subsection does not prevent a sum from carrying statutory interest by reason of the fact that a court, arbitrator or arbiter would, apart from this Act, have power to award interest on it.

(3) A debt does not carry (and shall be treated as never having carried) statutory interest if or to the extent that a right to demand interest on it, which exists by virtue of any rule of law, is exercised.

Compensation arising out of late payment.

5.(1) Once statutory interest begins to run in relation to a qualifying debt, the supplier shall be entitled in addition to statutory interest on the debt to a fixed sum.

(2) That sum shall be—

- (a) for a debt not exceeding £999.99, the sum of £40.00;
- (b) for a debt between £1000.00 and £9999.99, the sum of £70.00;
- (c) for a debt of £10,000.00 or more, the sum of £100.00.

Period for which statutory interest runs.

6.(1) Statutory interest runs in relation to a qualifying debt in accordance with this section (unless section 7 applies).

(2) Statutory interest starts to run on the day after the relevant day for the debt, at the rate prevailing under section 8 at the end of the relevant day.

(3) Where the supplier and the purchaser agree a date for payment of the debt (that is, the day on which the debt is to be created by the contract), that is the relevant day.

A date so agreed may be a fixed one or may depend on the happening of an event or the failure of an event to happen.

(4) In any other case, the relevant day is the last day of the period of 30 days beginning with—

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- (a) the day on which the obligation of the supplier to which the debt relates is performed; or
- (b) the day on which the purchaser has notice of the amount of the debt or (where that amount is unascertained) the sum which the supplier claims is the amount of the debt,

whichever is the later.

(5) Where the debt is created by virtue of an obligation to pay a sum due in respect of a period of hire of goods, subsection (4)(a) has effect as if it referred to the last day of that period.

(6) Statutory interest ceases to run when the interest would cease to run if it were carried under an express contract term.

Remission of statutory interest.

7.(1) This section applies where, by reason of any conduct of the supplier, the interests of justice require that statutory interest should be remitted in whole or part in respect of a period for which it would otherwise run in relation to a qualifying debt.

(2) If the interests of justice require that the supplier should receive no statutory interest for a period, statutory interest shall run at such rate as meets the justice of the case for that period.

(3) If the interests of justice require that the supplier should receive statutory interest at a reduced rate for a period, statutory interest shall run at such rate as meets the justice of the case for that period.

(4) Remission of statutory interest under this section may be required—

- (a) by reason of conduct at any time (whether before or after the time at which the debt is created); and
- (b) for the whole period for which statutory interest would otherwise run or for one or more parts of that period.

(5) In this section “conduct” includes any act or omission.

Rate of statutory interest.

8.(1) The rate of statutory interest shall be calculated as set out in the Schedule.

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(2) The Minister may by Order published in the Gazette vary the rate of statutory interest by prescribing—

- (a) a different formula for calculating the rate of statutory interest;
or
- (b) the rate of statutory interest.

(3) Before making such an order the Minister shall, among other things, consider the extent to which it may be desirable to set the rate so as to—

- (a) protect suppliers whose financial position makes them particularly vulnerable if their qualifying debts are paid late;
and
- (b) deter generally the late payment of qualifying debts.

PART II

CONTRACT TERMS RELATING TO LATE PAYMENT OF QUALIFYING DEBTS.

Purpose of Part II.

9.(1) This Part deals with the extent to which the parties to a contract to which this Act applies may by reference to contract terms oust or vary the right to statutory interest that would otherwise apply when a qualifying debt created by the contract (in this Part referred to as “the debt” is not paid.

(2) This Part applies to contract terms agreed before the debt is created; after that time the parties are free to agree terms dealing with the debt.

(3) This Part has effect without prejudice to any other ground which may alter the validity of a contract term.

Circumstances where statutory interest may be ousted or varied.

10.(1) Any contract terms are void to the extent that they purport to exclude the right to statutory interest in relation to the debt, unless there is a substantial contractual remedy for late payment of the debt.

(2) Where the parties agree a contractual remedy for late payment of the debt that is a substantial remedy, statutory interest is not carried by the debt (unless they agree otherwise).

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(3) The parties may not agree to vary the right to statutory interest in relation to the debt unless either the right to statutory interest as varied or the overall remedy for late payment of the debt is a substantial remedy.

(4) Any contract terms are void to the extent that they purport to—

- (a) confer a contractual right to interest that is not a substantial remedy for late payment of the debt, or
- (b) vary the right to statutory interest so as to provide for a right to statutory interest that is not a substantial remedy for late payment of the debt,

unless the overall remedy for late payment of the debt is a substantial remedy.

(5) Subject to this section, the parties are free to agree contract terms which deal with the consequences of late payment of the debt.

Meaning of “substantial remedy”.

11.(1) A remedy for the late payment of the debt shall be regarded as a substantial remedy unless—

- (a) the remedy is insufficient either for the purpose of compensating the supplier for late payment or for deterring late payment; and
- (b) it would not be fair or reasonable to allow the remedy to be relied on to oust or (as the case may be) to vary the right to statutory interest that would otherwise apply in relation to the debt.

(2) In determining whether a remedy is not a substantial remedy, regard shall be had to all the relevant circumstances at the time the terms in question are agreed.

(3) In determining whether subsection (1)(b) applies, regard shall be had (without prejudice to the generality of subsection (2)) to the following matters—

- (a) the benefits of commercial certainty;
- (b) the strength of the bargaining positions of the parties relative to each other;

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- (c) whether the term was imposed by one party to the detriment of the other (whether by the use of standard terms or otherwise); and
- (d) whether the supplier received an inducement to agree to the term.

Interpretation of Part II.

12.(1) In this Part—

“contract term” means a term of the contract creating the debt or any other contract term binding the parties (or either of them);

“contractual remedy” means a contractual right to interest or any contractual remedy other than interest;

“contractual right to interest” includes a reference to a contractual right to charge interest;

“overall remedy”, in relation to the late payment of the debt, means any combination of a contractual right to interest, a varied right to statutory interest or a contractual remedy other than interest;

“substantial remedy” shall be construed in accordance with section 11.

(2) In this Part a reference (however worded) to contract terms which vary the right to statutory interest is a reference to terms altering in any way the effect of Part I in relation to the debt (for example by postponing the time at which interest starts to run or by imposing conditions on the right to interest).

(3) In this Part a reference to late payment of the debt is a reference to late payment of the sum due when the debt is created (excluding any part of that sum which is prevented from carrying statutory interest by section 4).

Assignments, etc.

13.(1) The operation of this Act in relation to a qualifying debt is not affected by—

- (a) any change in the identity of the parties to the contract creating the debt; or
- (b) the passing of the right to be paid the debt, or the duty to pay it (in whole or in part) to a person other than the person who is

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the original creditor or the original debtor when the debt is created.

(2) Any reference in this Act to the supplier or the purchaser is a reference to the person who is for the time being the supplier or the purchaser or, in relation to a time after the debt in question has been created, the person who is for the time being the creditor or the debtor, as the case may be.

(3) Where the right to be paid part of a debt passes to a person other than the person who is the original creditor when the debt is created, any reference in this Act to a debt shall be construed as (or, if the context so requires, as including) a reference to part of a debt.

(4) A reference in this section to the identity of the parties to a contract changing, or to a right or duty passing, is a reference to it changing or passing by assignment or assignation, by operation of law or otherwise.

Contract terms relating to the date for payment of the contract price.

14. A contract term which purports to have the effect of postponing the time at which a qualifying debt would otherwise be created by a contract to which this Act applies shall not have effect unless it is in accordance with sections 6 and 10.

Proceedings restraining use of grossly unfair terms.

15.(1) In this section—

- (a) “small and medium-sized enterprises” means those enterprises defined in Annex 1 to Commission Regulation (EC) No 70/2001 of 12th January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises;
- (b) “representative body” means an organisation established to represent the collective interests of small and medium-sized enterprises in general or in a particular sector or area.

(2) This section applies where a person acting in the course of a business has written standard terms on which he enters (or intends to enter) as purchaser into contracts to which this Act applies which include a term purporting to oust or vary the right to statutory interest in relation to qualifying debts created by those contracts.

(3) If it appears to the court that in all or any circumstances the purported use of such a term in relevant contract would be void under this Act, the

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court on the application of a representative body may grant an injunction against that person restraining him in those circumstances from using the offending term, on such terms as the court may think fit.

(4) A representative body or such person directly affected may apply to the Supreme Court under this section.

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SCHEDULE

Section 8

The rate of statutory interest shall be 7% above the base rate set by the Gibraltar Savings Bank for savings on the day the qualifying debt became due; if the base rate changes thereafter, the rate of statutory interest shall also change to remain at 7% above the base rate.