

Interest rates have a significant effect on legal claims

IN SOUTH Africa, the price of electricity, water, fuel and money is regulated.

In recent times, the price of money, in the form of interest rates, has been set relatively low by the SA Reserve Bank.

This, in turn, has resulted in lower lending rates from commercial banks.

While the recent increase of the prime rate to 9.75 percent surprised many, it is worth noting that between 1985 and 2005 the rate varied between 11 percent and 25 percent.

Businesses that have expanded on the back of low interest rates, either directly through access to credit for expansion or indirectly through a credit-reliant customer base, now face the prospect of a period of increased interest rates.

The consequences have already been felt by many who have experienced a “tougher market” in 2015.

For some, it has already been too much and there has been a



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Simon Watson
sets out how
interest rates affect
legal claims

noticeable increase in the number of business rescue cases and liquidations.

If this is the case, many businesses might need to adopt a

more cautious approach to the granting of credit and a more assertive approach to the collection of debts in 2016.

Matters that should be given attention include the proper identification of customers with reference to the National Credit Act and the Consumer Protection Act, the review of sureties, guarantees and other forms of security, checking the terms of credit insurance, streamlining letters of demand for late payments and ensuring that, where necessary, legal proceedings are attended to timeously and effectively.

Interest rates are often an important consideration in legal proceedings. The importance is amplified when taking into account the time it can take to finalise actions through the legal system.

It is not rare for litigation to take more than five years. In this time frame, for example, a R1 million claim with a simple interest rate of 9 percent a year

would include an additional R450 000 claim in interest.

Claims can be materially compromised if the maximum permissible interest is not properly sought.

The Prescribed Rate of Interest Act applies to outstanding debts for which there is no agreement on the rate of interest to be paid and where no other legislation restricts the interest rates that are applicable to the underlying transaction.

The interest begins to run on the debt from the date fixed in the applicable contract or upon formal demand for payment.

With effect from July last year the prescribed rate of interest was reduced from 15.5 percent to 9 percent a year.

The previous prescribed rate of 15.5 percent had been in place for over 20 years. The current prescribed rate is now below the prime rate. This means there is not as much incentive to pay debts for which no interest rates

have been agreed. It adds to the importance of ensuring agreements are drafted properly and legal affairs are in order.

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