

LEGAL MADE SIMPLE

THE FREE MARKET APPROACH INTEREST RATES IN COMMERCIAL TRANSACTIONS



Ali Al Jabal, managing partner at Al Jabal Consultancy

The legislator in Bahrain has adopted a dual attitude regarding the principle of interest; in its recent judgment, the Constitutional Court has justified this dual attitude by saying that Sharia is a source among other sources for the legislation in Bahrain and not the main one.

According to the Sharia principles, charging interest is prohibited, and any agreement in this regard is considered

null and invalid. On the other hand, the legislator has allowed parties' agreement on interest in the commercial transactions almost without any restriction, and it goes further than this by assuming the parties' agreement on interest in commercial loans unless they

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prove otherwise.

Through an in-depth examination of the interest provisions in commercial loans in Bahrain, one can notice that the law does not determine a maximum or minimum rate of the interest. At the same time, the commercial law states

that the parties are allowed to agree on the interest percentage, provided that they don't exceed the maximum limit, which must be decided by the Central Bank of Bahrain (CBB). But, in practice, the CBB has not determined any limit to the interest, leaving it to the free market. It has issued, however, some guidelines for the consumers advising them on choosing the bank products – either loans or credit cards, whichever suits their budget – but without any obligation on the parties to follow these guides.

Recommendations

Deciding on the interest percentage and determining a maximum limit is something that must be reconsidered by the CBB, in order to protect both the commercial banks and the consumers, where neither of them can change or challenge the initial agreements. Moreover, determining the interest rate will be helpful to the courts, because no judge's discretion to be involved will be required, which will undoubtedly minimise judgment conflicts.

Until this hope becomes a fact, the CBB's advice to the consumer is to thoroughly research all the available variants of interest rates and loan costs offered by the commercial banks, before selecting the most suitable option.

BEFORE YOU SIGN NEW LEASE ACT AND OLD LEASE AGREEMENTS



Hasan Al Ajooz, associate at Al Jabal Consultancy

Generally speaking, a lease agreement in Bahrain shall end according to the expiry date specified in it, without the necessity to serve a notice of evacuation. However, in case when the lease contract has expired, and the tenant continues to enjoy the premises with the landlord's consent – the lease is deemed to have been renewed on the same conditions, but for an unspecified period.

According to the new Lease Act, which came into force in February 2015, two types of lease agreements must be recognised:

1. The lease agreements concluded after the implementation of the new act

As per the new act, a landlord does not have the right to request the tenant to vacate the leased property for commercial purposes before the lapse of seven years from the date of handing over the premises, unless the parties

agreed in writing otherwise. If the duration of the agreement is less than seven years, the tenant has the right to renew the agreement for up to seven years by sending a registered letter with a delivery note to the landlord, but no later than three months before the expiration of the original agreement. One must notice that the above provision is applied where there is no written agreement between the parties.

2. The lease agreements subject to Act No. 9 for the year 1970

According to the new Lease Act, a landlord has the right to increase the rent only after two years.

The Act No. 9/1970 came with a unique principle, which is known as 'the Legal Extension'. It states that a lessee has the right to stay in the premises for any period of time as long as he continues to pay the agreed rent. The landlord cannot enforce the

lessee to vacate the premises, except under very limited circumstances. This act was initially applied only to rented premises located in Manama and Muharraq governorates until the recent judgments of the Constitutional Court, which decided that it would apply to all governorates in Bahrain. The new Lease Act came with a new regulation for such lease agreements by making them valid just for three years from the date of implementation of the act – therefore, after three years, the Legal Extension principle will be abolished.

More Changes

According to Article 27 of the new Lease Act, a landlord has the right to increase the agreed rent only after two years from the date of the contract or from the last increase, whichever is sooner. The rate of increase should be up to seven per cent for the properties rented for commercial purposes and five per cent for the civil purposes, unless agreed in writing otherwise. On the other hand, the act states that the above article applies to the agreements subject to the act No. 9/1970 only after the elapse of the three year period. In our view, this provision applies to all lease agreements in Bahrain, not just those located in Manama and Muharraq. However, the judicial interpretation of the new Lease Act is yet to be determined through court rulings in related cases.

About Al Jabal Consultancy

Founded in 1995, Al Jabal Consultancy is a full service law firm for Bahrain, Oman, and DIFC Courts. With a focus on major expansion, both for their Bahrain and Oman offices, Al Jabal Consultancy's medium-sized team focuses on complex transactions for major clients both locally and internationally.

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