

**THE COUNCIL OF  
JUSTICES  
THE SUPREME PEOPLE'S  
COURT**  
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**SOCIALIST REPUBLIC OF VIETNAM**  
**Independence – Freedom – Happiness**  
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No.: 01/2019/NQ-HDTP

*Hanoi, January 11, 2019*

**RESOLUTION**

**ON APPLICATION OF REGULATIONS ON INTERESTS, INTEREST RATES AND  
PENALTIES**

**THE COUNCIL OF JUSTICES OF THE SUPREME PEOPLE'S COURT**

*Pursuant to the Law on Organization of People's Courts dated November 24, 2014;*

*For the purposes of consistent and proper application of law regulations on interests, interest rates and penalties;*

*After getting opinions from the Director of the People's Supreme Procuracy and the Minister of Justice;*

**HEREBY RESOLVES:**

**Article 1. Scope**

This Resolution provides guidance on application of certain regulations on interests, interest rates and penalties for breach of property loan agreements, average interest rates, and decisions on interests and interest rates in judgments and decisions of Courts.

Property loan agreements governed by this Resolution includes agreements for loan of property which is a sum of money made between credit institutions and borrowers (hereinafter referred to as "credit agreements") and agreements for loan of property which is a sum of money entered into between individuals and legal entities other than credit institutions (hereinafter referred to as "property loan agreements other than credit agreements").

**Article 2. Application of regulations on interests and interest rates in property loan agreements other than credit agreements**

1. Regulations on interests and interest rates shall be applied to property loan agreements which are not credit agreements and concluded before January 01, 2017 (the effective date of the 2015 Civil Code) as follows:

a) A finished agreement refers to an agreement of which the parties have exercised and fulfilled their rights and obligations as agreed and other rights and obligations arising from the agreement as regulated by laws.

Disputes over an agreement finished before January 01, 2017 shall be settled in accordance with the 2005 Civil Code, the Resolution No. 45/2005/QH11 dated June 14, 2005 of the National Assembly and legislative documents providing guidelines for implementation of 2005 Civil Code;

*Example 1: On December 20, 2015, Mr. A entered into a loan agreement to lend an amount of VND 10,000,000,000 to Mrs. B with the loan term of 01 year, agreed interest rate of 18%/year; this loan agreement is effective and Mrs. B has fully repaid principal and interest as agreed. On February 20, 2018, Mrs. B has taken legal proceedings against Mr. A for refund of interests because the employed interest rate exceeds 150% of the basic interest rate according to Decision No. 2868/QĐ-NHNN dated November 29, 2010 of the State Bank of Vietnam (the prescribed basic interest rate is 9%/year, so 150% of the basic interest rate is 13.5%/year). In this case, the Court must apply Article 476 of the 2005 Civil Code to determination of interest rate and exceeding interest rate.*

b) An unperformed agreement refers to an agreement of which the parties must not yet exercise and fulfill their rights and obligations as agreed and other rights and obligations arising from the agreement as regulated by laws.

Disputes over an unperformed agreement in which the interest and interest rate are conformable with the 2015 Civil Code shall be settled in accordance with the 2015 Civil Code and legislative documents providing guidelines for implementation of the 2015 Civil Code; disputes over an unperformed agreement in which the interest and interest rate are not conformable with the 2015 Civil Code shall be settled in accordance with the 2005 Civil Code, the Resolution No. 45/2005/QH11 dated June 14, 2005 and legislative documents providing guidelines for implementation of the 2005 Civil Code unless the parties reach an agreement on adjustment of the interest and interest rate in conformity with the 2015 Civil Code for application of this 2015 Civil Code.

c) An agreement in progress refers to an agreement of which the parties have not yet exercised and fulfilled their rights and obligations as agreed and other rights and obligations arising from the agreement as regulated by laws.

Disputes over an agreement in progress in which the interest and interest rate are conformable with the 2015 Civil Code shall be settled in accordance with the 2005 Civil Code, the Resolution No. 45/2005/QH11 dated June 14, 2005 of the National Assembly and legislative documents providing guidelines for implementation of 2005 Civil Code.

With regard to an agreement in progress in which the interest and interest rate are conformable with the 2015 Civil Code, the interest and interest rate shall be determined as follows:

The interest and interest rate before January 01, 2006 shall be determined in accordance with the 1995 Civil Code, the Resolution dated October 28, 1995 of the National Assembly and legislative documents providing guidelines for implementation of 1995 Civil Code.

The interest and interest rate from January 01, 2006 to before January 01, 2017 shall be determined in accordance with the 2005 Civil Code, the Resolution No. 45/2005/QH11 dated June 14, 2005 of the National Assembly and legislative documents providing guidelines for implementation of 2005 Civil Code.

The interest and interest rate on January 01, 2017 afterwards shall be determined in accordance with the 2015 Civil Code and legislative documents providing guidelines for implementation of 2015 Civil Code.

*Example 2: On January 01, 2003, Mr. A lent an amount of VND 100,000,000 to Mrs. B (under an indefinite-term loan agreement) with the agreed interest rate of 18%/year. On January 01, 2018, Mr. A has taken legal proceedings against Mrs. B for payment of loan principal and interest according to the loan agreement. In this case, from January 01, 2003 to before January 01, 2006, the Court shall determine the interest and interest rate in accordance with Article 473 of the 1995 Civil Code and legislative documents providing guidelines for implementation of 1995 Civil Code; from January 01, 2006 to before January 01, 2017, the Court shall determine the interest and interest rate in accordance with Article 476 of the 2005 Civil Code; from January 01, 2017 to the date of the first-instance trial, the Court shall settle the case in accordance with Article 468 of the 2015 Civil Code.*

2. Disputes over property loan agreements which are not credit agreements and concluded on January 01, 2017 and afterwards shall be settled in accordance with regulations on interests and interest rates in the 2015 Civil Code and legislative documents providing guidelines for implementation of 2015 Civil Code.

3. A property loan agreement other than credit agreement is considered to have the interest and interest rate conformable with the 2015 Civil Code as prescribed in Clause 1 of this Article if it falls into one of the following circumstances:

a) The agreed interest rate does not exceed the limit on interest rate prescribed in Article 468 of the 2015 Civil Code.

*Example 3: On January 20, 2016, Mr. A concluded an agreement to lend an amount of VND 100,000,000 to Mrs. B with the agreed interest rate of 18%/year. Because the agreed interest rate of 18%/year does not exceed the limit on interest rate prescribed in Article 468 of the 2015 Civil Code, this loan agreement is considered to be conformable with the 2015 Civil Code.*

b) The agreed interest/ the interest rate is prescribed in the 2015 Civil Code but is not mentioned in laws applicable before the effective date of the 2015 Civil Code.

*Example 4: On January 20, 2016, Mr. A concluded an agreement to lend an amount of VND 100,000,000 to Mrs. B with the agreed interest rate of 18%/year and the interest on unpaid*

*interest amounts charged at the rate of 0.1%/year. The agreed interest charged on the unpaid interest amounts is not prescribed in the 1995 Civil Code, the 2005 Civil Code and legislative documents providing guidelines for implementation of the 1995 Civil Code and the 2005 Civil Code but is prescribed in the 2015 Civil Code, so the agreed interest charged on the unpaid interest amounts is considered to be conformable with the 2015 Civil Code.*

c) The interest/ interest rate is regulated in the 2015 Civil Code but such regulations on interest/ interest rate are contrary to those in laws applicable before the effective date of the 2015 Civil Code.

*Example 5: On January 20, 2016, Mr. A concluded an agreement to lend an amount of VND 100,000,000 to Mrs. B without the interest charged and with the loan term of 03 years. In case the parties entered into no agreements on the interest charged on the overdue principal balance, the interest charged on the unpaid principal balance from the date after the payment due date (i.e. January 21, 2019) shall be determined in accordance with the 2015 Civil Code.*

### **Article 3. Determination of interests and interest rates in property loan agreements which are not credit agreements and are governed by the 1995 Civil Code**

If a property loan agreement which is not a credit agreement, concluded before January 01, 2006 and is governed by the 1995 Civil Code as prescribed in Article 2 of this Resolution, at the date of the first-instance trial, the interest and interest rate under that agreement shall be determined as follows:

1. If the loan principal under the signed agreement bears no interest and the borrower fails to make repayment or makes partial payment of debts on the due date, the borrower shall be obliged to pay an interest on the overdue principal at the interest rate applied to term savings deposit accounts announced by the State Bank of Vietnam at the repayment date for the late payment period provided that the parties have reached an agreement on payment of interest on overdue principal.

The interest on overdue principal = (the overdue principal) x (interest rate on term savings deposit announced by the State Bank of Vietnam at the repayment date) x (late payment period of principal).

2. If the loan principal under the signed agreement bears interest and the borrower fails to make repayment or makes partial payment of debts on the due date, the interest rate shall be determined as follows:

a) The interest on the outstanding principal not yet due shall be calculated at the agreed interest rate which must not exceed 50% of the interest rate cap applied to corresponding loans announced by the State Bank of Vietnam at the date of concluding the loan agreement for the loan period during which the interest has been not yet paid. If the interest rate agreed upon by the parties is not available, the interest rate on term savings deposit accounts announced by the State Bank of Vietnam at the debt repayment date shall apply.

The interest on the outstanding principal not yet due = (the outstanding principal) x (the agreed interest rate) or (the interest rate on term savings deposit accounts announced by the State Bank of Vietnam at the debt repayment date) x (the loan period during which the interest has been not yet paid);

b) The interest on overdue principal shall be calculated at the interest rate on term savings deposit accounts announced by the State Bank of Vietnam at the debt repayment date for the late payment period of principal.

The interest on overdue principal = (the overdue principal) x (interest rate on term savings deposit accounts announced by the State Bank of Vietnam at the debt repayment date) x (late payment period of principal);

3. When determining the interest/ Interest rate according to Clause 1 and Clause 2 of this Article, the Court shall not calculate the interest on the unpaid interest amounts.

#### **Article 4. Determination of interests and interest rates in property loan agreements which are not credit agreements and are governed by the 2005 Civil Code**

If a property loan agreement which is not a credit agreement, concluded before January 01, 2017 and is governed by the 2005 Civil Code as prescribed in Article 2 of this Resolution, at the date of the first-instance trial, the interest and interest rate under that agreement shall be determined as follows:

1. If the loan principal under the signed agreement bears no interest and the borrower fails to make repayment or makes partial payment of debts on the due date, the borrower shall be obliged to pay an interest on the overdue principal at the basic interest rate announced by the State Bank of Vietnam at the debt repayment date for the late payment period provided that the parties have reached an agreement on payment of interest on overdue principal.

The interest on overdue principal = (the overdue principal) x (the basic interest rate announced by the State Bank of Vietnam at the debt repayment date) x (late payment period of principal).

2. If the loan principal under the signed agreement bears interest and the borrower fails to make repayment or makes partial payment of debts on the due date, the interest rate shall be determined as follows:

a) The interest on the outstanding principal not yet due shall be calculated at the agreed interest rate which must not exceed 150% of the basic interest rate announced by the State Bank of Vietnam at the date of concluding the loan agreement for the loan period during which the interest has been not yet paid. If the interest rate agreed upon by the parties is not available, the basic interest rate announced by the State Bank of Vietnam at the debt repayment date shall apply.

The interest on the outstanding principal not yet due = (the outstanding principal) x (the agreed interest rate or the basic interest rate announced by the State Bank of Vietnam at the date of

concluding the loan agreement) x (the loan period during which the interest on the principal has been not yet paid);

b) The interest on overdue principal shall be calculated at the basic interest rate announced by the State Bank of Vietnam at the debt repayment date for the late payment period of principal.

The interest on overdue principal = (the overdue principal) x (the basic interest rate announced by the State Bank of Vietnam at the debt repayment date) x (late payment period of principal);

3. When determining the interest/ interest rate according to Clause 1 and Clause 2 of this Article, the Court shall not calculate the interest on the unpaid interest amounts.

#### **Article 5. Determination of interests and interest rates in property loan agreements which are not credit agreements and are governed by the 2015 Civil Code**

If a property loan agreement which is not a credit agreement, concluded on January 01, 2017 or afterwards or concluded before January 01, 2017 but is governed by the 2015 Civil Code as prescribed in Article 2 of this Resolution, at the date of the first-instance trial, the interest and interest rate under that agreement shall be determined as follows:

1. If the loan principal under the signed agreement bears no interest and the borrower fails to make repayment or makes partial payment of debts on the due date, at the request of the lender, the Court shall determine the interest on the overdue principal payable by the borrower at the interest rate regulated in Clause 2 Article 468 of the 2015 Civil Code on the unpaid principal balance at the debt repayment date for the late payment period of the principal, unless otherwise agreed or stipulated by laws.

The interest on overdue principal = (the overdue principal) x (the interest rate regulated in Clause 2 Article 468 of the 2015 Civil Code applicable at the debt repayment date) x (the late payment period of the principal);

2. If the loan principal under the signed agreement bears interest and the borrower fails to make repayment or makes partial payment of debts on the due date, the interest rate shall be determined as follows:

a) The interest on the outstanding principal not yet due shall be calculated at the agreed interest rate which must not exceed the basic interest rate prescribed in Clause 1 Article 468 of the 2015 Civil Code at the date of concluding the loan agreement for the loan period during which the interest has been not yet paid. In case the parties have reached an agreement on interest payment without a specific interest rate and disputes arise, the interest rate shall be equal 50% of the limit on interest rate prescribed in Clause 1 Article 468 of the 2015 Civil Code applicable at the debt repayment date.

The interest on the outstanding principal not yet due = (the outstanding principal) x (the agreed interest rate or 50% of the limit on interest rate prescribed in Clause 1 Article 468 of the 2015

Civil Code applicable at the debt repayment date) x (the loan period during which the interest on the principal has been not yet paid).

b) In case of late payment of interest on the outstanding principal not yet due, the borrower shall also incur the interest charged on the unpaid interest amount which is calculated at the interest rate prescribed in Clause 2 Article 468 of the 2015 Civil Code applicable at the debt repayment date for the late payment period of the interest on outstanding principal, unless otherwise agreed.

The interest charged on unpaid interest = (the unpaid interest amount) x (the interest rate prescribed in Clause 2 Article 468 of the 2015 Civil Code applicable at the debt repayment date) x (the late payment period of the interest on outstanding principal);

c) The interest charged on the overdue principal shall be equal to 150% of the lending interest rate agreed upon by the parties and specified in the loan agreement for the late payment period of the overdue principal, unless otherwise agreed. The interest rate on the overdue principal agreed upon by the parties shall not exceed 150% of the interest rate prescribed in Clause 1 Article 468 of the 2015 Civil Code.

The interest on the overdue principal = (the overdue principal) x (the agreed interest rate or 150% of the lending interest rate agreed upon by the parties) x (the late payment period of overdue principal).

## **Article 6. Determining date of first-instance trial and late payment period**

1. “date of first-instance trial” prescribed in this Resolution refers to the date on which the Court issues the Decision on recognition of the agreements between the concerned parties or the date on which the Court pronounces the sentence at the first-instance trial or retries the first-instance case.

2. “debt repayment date” referred to in Article 3, Article 4 and Article 5 of this Resolution is the date of first-instance trial.

3. “late payment period” referred to in Article 3, Article 4 and Article 5 of this Resolution is determined as follows:

a) With regard to an indefinite-term loan agreement, the late payment period of the principal begins from the date following the end of the “reasonable time” and ends on the date of first-instance trial. “reasonable time” is prescribed in Article 474 of the 1995 Civil Code, Article 477 of the 2005 Civil Code and Article 469 of the 2015 Civil Code and decided by the Court in each specific case provided that such reasonable time shall not be longer than 03 months from the notification date;

b) With regard to a fixed-term loan agreement, the late payment period of the principal begins from the date following the end of the loan term and ends on the date of first-instance trial, unless otherwise agreed.

c) The late payment period of the interest charged on the outstanding principal begins from the date following the date on which the interest on the outstanding principal must be paid and ends on the date of first-instance trial, unless otherwise agreed upon by the concerned parties.

#### **Article 7. Application of regulations on interests and interest rates in credit agreements**

1. The interests and interest rates in credit agreements shall be agreed upon by the parties in accordance with the Law on credit institutions and legislative documents providing guidelines for implementation of the Law on credit institutions applicable at the date of concluding the credit agreement and the interest calculation date.

2. The Court shall apply the Law on credit institutions and legislative documents providing guidelines for implementation of the Law on credit institutions to settlement of disputes over credit agreements, and shall not apply regulations on interest rate limits laid down in the 2005 Civil Code and the 2015 Civil Code to calculation of interests and interest rates.

#### **Article 8. Determining interests and interest rates in credit agreements at date of first-instance trial**

1. At the date of first-instance trial, the interest/ interest rate in a credit agreement concluded before January 01, 2017 shall be determined as follows:

a) The interest on the outstanding principal not yet due shall be calculated at the agreed interest rate which must be conformable with the Law on credit institutions and legislative documents providing regulations on interest rates on credit agreements at the date of concluding the credit agreement and the interest calculation date for the loan period during which the interest has been not yet paid.

b) The interest on the overdue principal shall be calculated at the agreed interest rate which must be conformable with the Law on credit institutions and legislative documents providing regulations on interest rates on credit agreements at the date of concluding the credit agreement.

2. At the date of first-instance trial, the interest/ interest rate in a credit agreement concluded on January 01, 2017 or afterwards shall be determined as follows:

a) The interest on the outstanding principal and the interest on the overdue principal shall be determined according to Clause 1 of this Article.

b) If a borrower fails to make payment of the interest on the outstanding principal on the due date as agreed upon in the credit agreement, the borrower shall pay interest on late payments calculated at the interest rate which is agreed upon by the credit institution and the borrower but shall not exceed the interest rate limit regulated by laws for the late payment period of interest on the outstanding principal not yet due.

3. The late payment period of the outstanding principal begins from the delinquency date and ends on the date of first-instance trial, unless otherwise agreed upon by the concerned parties.



4. The late payment period of the interest charged on the outstanding principal begins from the date following the date on which the interest on the outstanding principal must be paid and ends on the date of first-instance trial, unless otherwise agreed upon by the concerned parties.

#### **Article 9. Settling agreements on interest and interest rate which are higher than the ones regulated by laws**

If a property loan agreement stipulates an interest/ interest rate on the overdue principal, and the interest on unpaid interest amount higher than the ones regulated by laws, the exceeding interest/interest rate on the overdue principal, and the interest on unpaid interest amount shall be not effective; the overpaid interests shall be deducted from the outstanding principal at the interest payment date; the overpaid interests that remain after deduction of the outstanding principal shall be refunded to the borrower.

#### **Article 10. Adjustment of interests and interest rates**

In case the parties reaches an agreement on adjustment of the interest/ lending interest rate, the interest/ lending interest rate shall be determined according to the parties' agreement and legislative documents providing regulations on interests and interest rates effective at the date of adjustment of the interest/ interest rate.

#### **Article 11. Determining average interest rate prescribed in Article 306 of the 2005 Commercial Law**

In case an agreement is subject to the scope of Article 306 of the 2005 Commercial Law, when determining the interest on late payments, the Court shall determine the interest rate on late payments on the basis of average interest rates on overdue debts announced by at least 03 (three) commercial banks (such as Vietcombank, VietinBank, Agribank, etc.) whose headquarters, branch or transaction office is located in the same province or central-affiliated city where the headquarters of the Court in charge of the case is located at the payment date (the date of first-instance trial), except otherwise agreed upon by the parties or regulated by laws.

#### **Article 12. Failure to make payments on scheduled dates specified in property loan agreements**

1. If a property loan agreement includes provisions on the borrower's failure to make scheduled debt payments, the Court shall consider and make decision on the borrower's failure to make debt payments on the due date by adopting the double jeopardy principle.

2. If a property loan agreement includes both the provision on penalties for defaults and the provision on interest on overdue principal or other actions against the borrower's failure to make debt payments on the due date, the Court shall consider and make decision on the case by applying relevant regulations in the Civil Code, the Law on credit institutions and legislative documents providing guidelines for implementation of the Civil Code and the Law on credit institutions applicable at the date of concluding the loan agreement and at the interest calculation date and following the principle mentioned in Clause 1 of this Article.

### **Article 13. Interest and interest rate specified in the Court's judgment or decision**

1. When settling criminal cases, administrative cases, civil, marriage and family, business, commercial or labour cases and matters together with deciding the amounts which persons having asset-related obligations or liabilities must pay to the judgment creditors, the Court must make such decisions on the Court's judgments or decisions (decision part) as follows:

a) In case of late performance of liabilities defined in a contract which includes the parties' agreement on interest payment, the Court shall decide that from the date following the date of first-instance trial to the end of the judgment enforcement, the judgment debtor is liable to pay interest on the outstanding judgment debt at the agreed interest rate which must be conformable with applicable laws; if the agreed interest rate is not available, the Court shall decide application of the interest rate prescribed in Clause 2 Article 468 of the 2015 Civil Code.

b) In case interests are charged on amounts payable to the state budget as regulated by laws or non-contractual damage compensations or the late performance of asset-related liabilities arising in or out of the contract on which the interest is not agreed upon by the parties, the Court shall decide that from the effective date of the judgment or decision (in case the judgment-enforcing authorities are entitled to proactively decide the judgment enforcement) or from the date of submission of request for judgment enforcement by the judgment creditor (with respect to amounts payable to the judgment creditor) to the end of the judgment enforcement, the judgment debtor is liable to pay an interest on the judgment debt arrears calculated at the interest rate prescribed in Article 357 or Article 468 of the 2015 Civil Code, unless otherwise prescribed by laws.

2. "the agreed interest rate" referred to in Clause 1 of this Article is the interest rate on overdue debts agreed upon by the parties in the signed contract or at the trial. In case the agreed interest rate is not available, the interest rate on an overdue debt shall be as much as 150% of the interest rate on an undue debt.

### **Article 14. Effect**

1. This Resolution has been ratified by the Council of Justices of the Supreme People's Court on January 11, 2019 and comes into force from March 15, 2019.

2. Criminal cases, administrative cases, civil, marriage and family, business, commercial or labour cases and matters which have been handled by Courts before the effective date of this Resolution but are going to be heard at first-instance trials or appellate trials, or according to cassation procedure or reopening procedure on or after the effective date of this Resolution shall be considered and settled in accordance with this Resolution.

3. With regard to a criminal, administrative, civil, marriage and family, business, commercial or labour case which has been handled by the Court and on which the Court's judgment or decision becomes effective before the effective date of this Resolution, the Court's judgment or decision cannot be appealed according to the cassation or reopening procedure on the basis of this Resolution, unless the Court's judgment or decision is appealed on other grounds.

**ON BEHALF OF THE COUNCIL OF  
JUSTICES  
CHIEF JUSTICE**

**Nguyen Hoa Binh**

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