

## Malaysian apex court disallowed pre-judgment interest



MALAYSIA

By Abdullah Abdul Rahman

The Federal Court in *CIMB Bank Bhd v Maybank Trustees Bhd* and other appeals [2014] 3 CLJ 1 disallowed pre-judgment interest in respect of a claim under a trust deed in relation to a Al-Bai' Bithaman Ajil bonds. The Federal Court upheld the agreement between the parties that no interest would be payable on any amount due or payable to the other parties to the deed.

The trust deed provided that: "Nothing in this Deed shall oblige the Issuer, the Trustee or any ABBA Bondholder to pay interest (by whatever name called) on any amount due or payable to other parties to this Deed or to receive any interest on any amount due or payable to the Issuer, the Trustee or any ABBA Bondholder or to do anything that is contrary to the teachings of Islam".

A party to the trust deed was found liable to pay one of the other parties and the latter claimed interest on the sum payable from the date of the default to the date of the judgment. This is called pre-judgment interest.

The claim for pre-judgment interest was based on s. 11 of the Civil Law Act 1956. It provides: "In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment."

Initially, the Court of Appeal had allowed the claim for the pre-judgment interest

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at the rate of 3% on the judgment sum. The Court of Appeal based its decision on, among others, s. 56(1)(a) of the Central Bank of Malaysia Act 2009 which required the court, where there was a question concerning a Shariah matter in a court proceeding concerning Islamic financial business, to take into consideration any published rulings of the Shariah Advisory Council of the Central Bank of Malaysia (SAC). In this respect, the Court of Appeal held that on the 26<sup>th</sup> May 2005, the SAC had



resolved that the court may impose late payment charge on judgment debts in accordance with the court's rules and that the judgment creditor may be paid compensation for the actual loss, which rate was to be determined from the 'annual average for overnight weighted rate' of the Islamic money market 'as a reference point.'

Against the claim for pre-judgment interest, it was submitted on appeal to the Federal Court that the parties to the trust deed had agreed that no interest would be payable and the pre-judgment interest was Riba which the Shariah did not permit.

The Federal Court overturned the Court of Appeal's decision on pre-judgment interest by holding the parties to their bargain on interest in the trust deed and on the basis that there was no evidence of the applicable compensation rate. Perhaps, the departure from the SAC's ruling may also be explained by the interpretation that the compensation under the ruling is intended as the replacement for post judgment interest rather than pre-judgment interest. ☺

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