

DEFAULT INTERESTS SHOULD COMPLY WITH USURY LIMITS, THE ITALIAN SUPREME COURT RULES

Usury - an unusually high interest rate - is prohibited pursuant to Italian law. Every quarter the Italian Economic Ministry sets the maximum amount of interest rates that can be applied in different types of financing transactions. If such interest rates are exceeded, the relevant contractual provision that imposes to pay usury interests is void and the amount of interests actually due cannot exceed the maximum allowed by the relevant decree.

It has been debated for a long time whether default interests should be considered in assessing the actual amount of interests due and whether the maximum lawful interest rate has been exceeded or not. Court rulings upholding opposite conclusions have been issued. Now, with ruling No. 19597 dated 18 September 2020, the Joined Chambers (*Sezioni Unite*) of the Italian Supreme Court provides a (hopefully) final answer to such debate. Its ruling confirms that usury regulation applies also to default interests, in light of Italian general principles of law such as the need to protect the borrower, the aim of preventing economic crimes and the need to safeguard the banking system's stability.

Given the above, the Italian Supreme Court clarifies how Article 1815 of the Italian Civil Code shall practically apply to default interests. Once it has been assessed that the applicable default interests exceed the maximum threshold, Article 1815, second paragraph, of the Italian Civil Code does not prevent the lender from receiving any interest: only the default interest excessive rate shall be deemed void and therefore, in such case, default interests would be due in the same amount of the agreed fees interests, if their amount does not exceed the maximum threshold.

As a practical guidance for writing contractual provisions on default interests, the Supreme Court had already upheld the validity of a provision imposing a reduction of the applicable interest rate to the maximum rate allowed should the contractual interest result in an amount that exceeds the maximum usury threshold. In such a case, the provision is deemed valid and the relevant lender(s) would be allowed to receive the reduced amount of default interests.