Wednesday, July 4, 1990

Statutory Compound Interest on Debt Recommended

The Law Reform Commission has recommended the provision by law of compound interest on debts that are not paid on time so that creditors do not have to bear the financial burden caused by late payers.

The recommendation is contained in a report on the law on interest on debt and damages published by the Law Reform Commission today (Wednesday).

The report is the result of four years' work by the Commission, and a sub-committee chaired by Mr Graham Cheng, to examine this complex area of the law which directly affects many people.

Explaining the Commission's recommendation, a spokesman for the Commission said that it often happens that a debt is paid late, depriving the creditor of the use of the money until it is paid. The creditor then has to take the matter to court in order to get a judgment against the debtor for the money owed.

Under the present law unless there is a prior agreement that interest should be paid the creditor can recover interest on the debt only if he takes the debtor to court.

If the debtor pays the debt before he is taken to court, the creditor cannot recover any interest. The result is that the debtor who pays late, even as late as the day before he receives the court document telling him he is being sued, does not have to pay interest.

The Commission spokesman said that the present law therefore places the small creditor at a serious disadvantage.

The Law Reform Commission has concluded that it is unjust that creditors should have to bear the financial burden caused by late payers.

It proposes that the creditor who is not paid on time should be entitled, by law, to compound interest on the money he is owed until he is paid, unless there has been a prior agreement to the contrary.

The statutory interest rate should be the best lending rate plus three per cent per annum, and should be awarded at intervals of one month.

The Commission recommends that debts payable in foreign currencies but subject to Hong Kong law should also be included in the scheme. The statutory interest rate should be appropriate to the foreign currency in question.

The appropriate government department should determine the appropriate margin over the recognised base lending rates; and the statutory interest should be awarded at compound rates and at intervals of one month.

The Commission considers that certain exceptions to the statutory interest scheme would be desirable:

* overdue rents should be excluded since their recovery involves special policies peculiar to the law of landlord and tenant.

* the proposed right to statutory interest is difficult to apply to money recoverable independently of a contract, or where there is no contract at all. Quasi-contractual obligations should therefore be excluded because they are difficult to determine and are not strictly contract debts.

* a debt payable under an obligation to indemnify, and all kinds of indemnity insurance should also be excluded from the scheme. An indemnifier is not in the same position as the ordinary debtor since he is liable to pay when the claim has been presented and he needs time to investigate and verify the claim. It would not be fair to regard him as withholding payment.

Apart from interest on debt, the Commission's report also deals with interest on damages. The report concludes that there is no general need for reform, but proposes some minor changes to the law.

The Commission is of the view that there should be no general entitlement to interest on damages but that the award of interest on damages should be left to the court's discretion.

It proposes that the appropriate rate of interest to compensate the plaintiff in respect of special damages, including loss of earnings and out of pocket expenses to the date of trial, in personal injury cases should be half of the total of adding three per cent to the best lending rate at the time of the award.

It recommends that the rate of interest in respect of general damages to compensate the plaintiff for pain, suffering and loss of amenities, which are non-pecuniary loss, in personal injury cases should be awarded at the low rate of two per cent from the service of the writ to the date of trial as the award already takes into account 'inflation and the exact judgment sum is unknown at the date of service of the writ.

It also recommends that there should be no division of the award of pain, suffering and loss of amenities, and interest should be awarded on the whole award.