JBCC ADVISORY NOTE: EDITION 6.2

DOCUMENT/S
Principal Building Agreement
Nominated/Selected Subcontract Agreement
Minor Works Agreement

DISCLAIMER *The purpose of this publication is to give advice on the most effective use of the JBCC documents. Advice is given in good faith and JBCC disclaims all liability for any loss, damage or expense that may be incurred through acting on such advice*

1.0 DEFINITIONS and INTERPRETATION – "Interest"

In the latest edition of May 2018, the definition of 'mora interest' (in Edition 6.1) was removed and definitions have been added for 'compensatory' and 'default' interest in addition to the definition for 'interest' in previous editions. These definitions read as follows:

COMPENSATORY INTEREST: Interest due to the **contractor** at the ruling rate of **interest** on amounts certified after thirty-one (31) **calendar days** of the date of **practical completion**, compounded monthly until the date of payment

DEFAULT INTEREST: Interest at six (6) percentage points per annum above the ruling rate of **interest** where payment has not been received within the stipulated period, compounded monthly from the due date for payment until the date of payment

INTEREST: The bank rate applicable from time to time to registered banks borrowing money from the Central or Reserve Bank of the country [CD]. The ruling bank rate on the first **calendar day** of each month shall be used in calculating the interest due for such month

INTERPRETATION

The bank rate referred to in the definition of interest is determined by the Reserve Bank's Monetary Policy Committee (MPC) every two months (six times a year) and it is the rate at which commercial banks would borrow money from the Reserve Bank. During their meetings they analyse a considerable amount of economic information and then decide whether the rate (known as the repo rate) should go up, go down or stay constant

Uncertainty in the past has often existed between consultants and (sub)contractors on whether the repo rate or prime lending (overdraft) bank rate should be used. The overdraft rate is not 'fixed', banks generally add three-and-a-half percent (3.5%) on top of the repo rate, but will adjust this rate depending on the financial status of the client or type of transaction in question. This is then typically expressed as an 'overdraft rate plus (or minus) a certain percentage'. The overdraft rate is therefore not suitable to be used

In order to make the repo rate a 'punishable' rate six (6) percentage points on top of the repo rate is added in the case of default interest (see definition) to make it a truly 'punishable' rate when employers/contractors <u>fail to make payments by the due date</u> to contractors/ subcontractors

After remaining at 15.5% for 21 years (since 1993) the Prescribed Rate of Interest ('mora interest') was changed to 9% as of August 2014. At the time of drafting and final date of publishing Edition 6.1 (March 2014) the 15.5% rate applied and was found to be a sufficiently 'punishable' rate when employers/ contractors make an unjustified call on a security. However, because of the drastic lowering of the rate to 9% this was no longer the case and it was, therefore, decided to remove the application of the mora interest rate in Edition 6.2 and to apply default interest as with late payments (see clause 11.9)

In the case of compensatory interest**,** the repo (bank) rate is applied without any percentage points added. Contractors/ subcontractors are often deprived of the use of money already earned when certified 31 calendar days or later after practical completion, whilst the owner is using the facility still owing money to his contractor/ subcontractors. Clause 25.7.5, therefore, 'compensates' contractors/ subcontractors by making provision for the payment of compensatory interest on all amounts certified later than 31 calendar days after practical completion

JBCC trusts that in providing the additional definitions for 'compensatory interest' and 'default interest' in Edition 6.2 those that have to apply or deal with claims for interest will have a better understanding of how it is to be calculated and/or dealt with

ORGANS OF STATE

The State deals differently with interest in respect of debts owing to the State, or in respect of debts owing by the State as is stipulated in the definition of interest below that is to be found in the Organs of State's Contract Data:

INTEREST: The interest rates applicable on this contract, whether specifically indicated in the relevant clauses or not, will be the rate as determined by the Minister of Finance from time to time, in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No 1 of 1999), calculated as simple interest, in respect of debts owing to the State, and will be the rate as determined by the Minister of Justice and Constitutional Development from time to time, in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No 55 of 1975), calculated as simple interest, in respect of debts owing by the State

WARNING

*The **parties** should not substitute the "Repo Rate" with a bank's overdraft rate as this will significantly alter the relationships of the different interest amounts payable*