

## Application of maximum conventional interest rate for foreign currency transactions: new Supreme Court criterion



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On September 25, 2023, the Supreme Court made a decision to accept the appeal on the merits, which revoked the judgment of January 2019 that was published by the 25th Civil Court of Santiago. The court had earlier rejected the claim made by Sociedad Agrícola Austral Berries Limitada against Banco Santander-Chile in case C-13,704-2017.

The claim was based on the excessive interest charged by Banco Santander on a loan agreement with the company. The loan amount was payable in dollars, and the debtor had to pay above the conventional maximum established in article 6° of Law No. 18,010 on money credit operations. The company demanded the return of USD 535.161,26, equivalent to 334,106,526 Chilean pesos, for amounts paid over the current interest.

The defendant, on the other hand, argued that the maximum conventional interest did not apply to the contract. The exclusion of letter b) of Article 5 of Law 18.010 stated that "There is no interest limit in the following money credit operations: b) Those agreed or expressed in foreign currency for foreign trade operations." The defendant argued that the loan was not expressed in foreign currency but was a loan contract agreed in foreign currency. Therefore, it would constitute an international exchange transaction subject to the rules of the Compendium of International Exchange Regulations of the Central Bank. This compendium does not contemplate a legal limit on the fixing of maximum conventional interest. The Financial Market Commission (CMF) also does not report maximum conventional rates in this respect, and this contractual freedom is why

interest for operations agreed in foreign currency can be determined at will.

The Supreme Court established that, in this case, there was a limit to the interest that the parties could agree on because the loan was not granted for foreign trade operations. The promissory note also stated that it was a freely available loan. In this sense, it concluded that the interest limitation applies both to operations agreed and expressed in foreign currency and sanctioned the bank, in the application of Article 8 of Law No. 18,010, to reimburse the interest paid on the current draw for operations agreed in foreign currency, which the CMF shall determine.

**Conclusions:**

Although court rulings may only have implications for the parties involved in a specific case, it is important to consider the impact on the financial market. This includes loans in foreign currency that have already been agreed upon and whose interest rates exceed the conventional maximum, as well as future loans.

Additionally, it is yet to be determined how the CMF (Chilean Financial Market Commission) will react when determining the applicable interest rate for such cases. It is also unclear whether they will include the current and maximum conventional interest rates for operations payable in foreign currency in their monthly reports, as they have not done so in the past.



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