

caseBrief

**DIFC Courts awards rare 'additional damages' for the loss suffered due to the defendant's failure to pay**

By Mevan Bandara and Sulakshana Senanayake | 23 July 2025

The DIFC Court, in an immediate judgment issued on 11 July 2025 by Justice Sir Jeremy Cooke in *7Ci Technologies V Liberty Steel Group Holdings EMEA Ltd* [2025] DIFC CFI 003, granted the claimant 'additional damages' for non-payment, in addition to statutory interest on the basis that the foreseeability standard was met, and that the non-payment caused a greater loss. The general remedy for non-payment, as set out in Articles 17(1) and (2) of the DIFC Law of Damages¹, is for the aggrieved party to be awarded interest at the average bank short-term lending rate available to prime borrowers:

Article 17 Interest for failure to pay Money

- (1) *If a party does not pay a sum of Money when it due, the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment, whether or not the nonpayment is excused.*
- (2) *The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for of payment.*

However, Article 17(3) also allows the aggrieved party to be awarded "additional damages if the non-payment caused it a greater loss", subject to the foreseeability standard of Article 12 of the same law. Article 12 codifies the English law test of foreseeability, as set out in *Hadley v Baxendale* [1854] EWHC Exch J70:

Article 12:

The non-performing party is liable only for loss which it foresaw or could reasonably have foreseen at the time of its non-performance as being likely to result therefrom.

In a rare instance, the DIFC Courts awarded the claimant additional damages under Article 17(3) for losses arising purely from non-payment of money.

The Authors**Mevan Bandara**

Partner

mbandara@afриди-angell.com

Mevan practices in the firm's dispute resolution group. He advises and represents clients in arbitration, DIFC Court litigation and on-shore litigation. Mevan has represented clients in DIFC-LCIA, DIAC, ICC and ad hoc arbitrations seated in London, Dubai, Singapore and Sri Lanka. He specialises in cross-border disputes, tax, construction, banking, real estate, maritime and employment disputes. Mevan is a Legal 500 EMEA recognised practitioner.

**Sulakshana Senanayake**

Senior Associate

ssenanayake@afриди-angell.com

Sulakshana specialises in litigation before the DIFC Courts. He is a Part II Practitioner of the DIFC Courts with full rights of audience and has represented clients in a number of notable cases before the DIFC Courts. He has particular experience in the areas of commercial disputes, employment, construction, negligence and injunctions as well as regulatory disputes involving the DFSA and the Financial Markets Tribunal.

HE Justice Sir Jeremy Cooke held that the Claimant in this case demonstrated that the additional damages it suffered, in the form of legal costs incurred as a result of a claim brought by a third-party supplier, were reasonable and foreseeable, and therefore payable by the Defendant:

[17]. An examination of the evidence and the exchanges between the parties shows that the Defendant was well aware of the Claimant's liquidity difficulties and the need for it to pay the Sentinel providers with funds provided by the Defendant. The Claimant, as revealed by the WhatsApp messages, made its position clear and the fear that the absence of payment by the Defendant might cause the Claimant itself to go into insolvency. Its inability to borrow funds and to pay the supplier, and the risk of suit by the supplier, was clearly foreseeable by the Defendant. [...]. I conclude that the requirement of foreseeability is met in respect of the costs incurred in settling the supplier's claim and that, therefore, in addition to interest payable on the sums due, the sum of [legal costs] is recoverable as damages in respect of those legal costs.

This case demonstrates the DIFC Courts' willingness to uphold contractual terms between parties and to ensure that an aggrieved party is put in the same position as it would have been if not for a breach of those terms.

Afridi & Angell acted for the successful claimant and instructed Mark Rainsford KC for the hearing. ■

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¹ DIFC law 7 of 2005