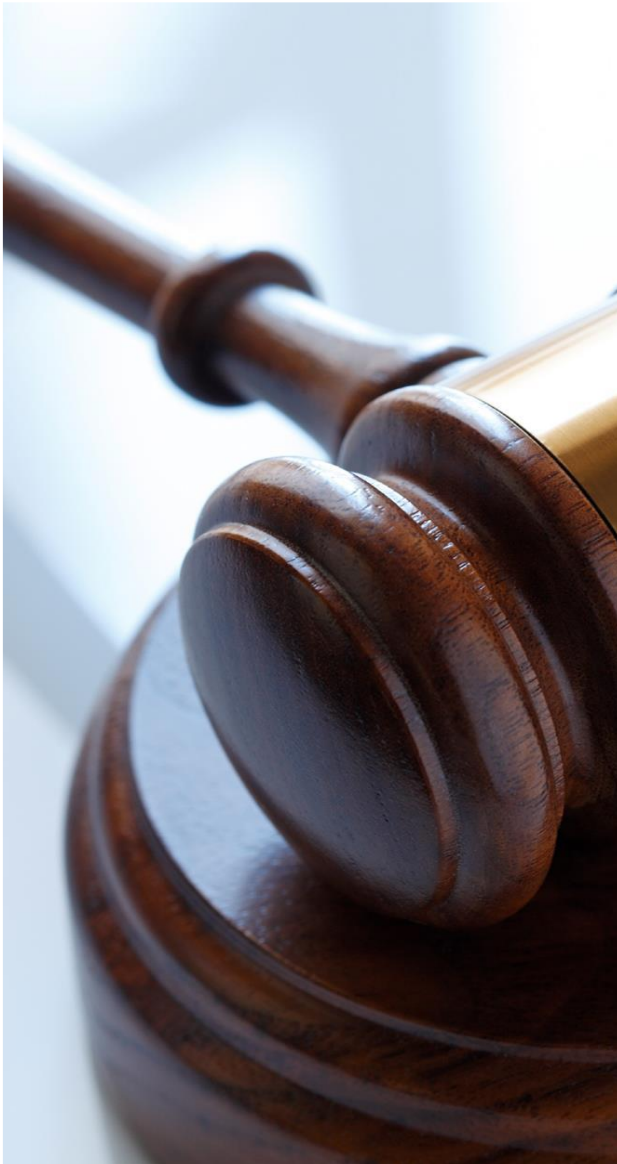


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# Supreme Court judgment 149/2020 on interest rate applicable to revolving credit cards

March 9, 2020



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On March 4, 2020, Spanish Supreme Court issued [\*judgment 149/2020 \(ES:TS:2020:600\)\*](#) dismissing Wizink Bank, S.A.'s appeal, confirming the revolving credit card agreement is null because the interest rate is too high and breaches the Spanish Law of Usury.<sup>1</sup>

Supreme Court concludes a revolving card credit agreement with an interest rate of 26.82% APR (TAE) is usurious under article 1 of the Spanish Usury Act, leading to the nullity of the whole agreement.

Supreme Court outlines possibility of assessing abusiveness of interest rate clauses through introducing inclusion and transparency controls when analyzing the general terms and conditions in agreements with consumers.

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<sup>1</sup> [\*Law of Usury of July 23, 1908, as amended on January 8, 2001.\*](#)



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## Precedent case

Wizink Bank, S.A. acquired from Citibank España, S.A. a credit known as “revolving card” (the “**Revolving Card Credit**”) with a consumer for an initial interest rate of 26.82% APR (*TAE*), which increased to 27.24% APR (*TAE*) on the date the debtor filed a claim with the first instance court.

Both the first instance court and the Santander Court of Appeals ruled in the debtor’s favor, considering the interest rate usurious, so the debtor only had to pay the bank the principal received, and not the interest (remunerative or penalty interest).

Wizink Bank, S.A. filed an appeal with the Supreme Court on the grounds that the objective requirements for usury were not fulfilled and were contrary to most doctrine and case law.

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## Supreme court judgment

In its judgment of March 4, 2020, the Supreme Court concluded the following, in line with the Santander Court of Appeals:

- The Revolving Card Credit infringes the Spanish Usury Act, because its interest rate is notably higher than the legal interest rate agreed for a transaction of a similar nature and clearly disproportionate for the debtor.
- The Spanish Supreme Court determines that a regular interest rate must be established considering agreements of this nature (i.e., revolving credit cards). For these purposes, the judgment takes the rate set by the Bank of Spain<sup>2</sup> for this kind of transaction as a benchmark and concludes that the average interest rate can be established at slightly over 20%.
- Any interest rate above the benchmark provided by the Supreme Court could potentially result in the usury of the clause and annulment of the Revolving Card Credit.

In this ruling, the Supreme Court outlines the possibility of assessing the abusiveness of interest rate clauses through introducing inclusion and transparency controls when analyzing the general terms and conditions in agreements with consumers. However, the debtor claimed only the annulment of the revolving credit agreement due to the usurious nature of its interest rate.

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<sup>2</sup> Statistical information regarding rates applied by credit institutions and credit financial intermediaries in credit cards and revolving card credit is available on the [website of Bank of Spain](#).



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## Immediate effects of Supreme Court judgment

### Impact of Supreme Court doctrine on other cases

The Supreme Court judgment does not mean that all agreements formalized as revolving credit cards are automatically null. Each credit needs to be assessed case-by-case, so the judgment leaves room for the courts to rule on whether an interest rate between 21% and 26% can be considered usurious.

### Nullity of entire agreement

According to the judgment, the Revolving Card Credit debtor must return all the outstanding principal, without having to pay related interest or fees. There could be other effects, depending on the following:

- If the creditor had already collected the principal plus the interest or fees linked to the credit, it must return to the debtor any amounts not considered principal, plus the legal interest over the excess amounts charged from the date the claim was filed.
- If the creditor had already collected part of the principal, plus part of interest or fees, it must return all the interest or fees collected, plus the excess legal interest on the amounts charged from the date the claim was filed, and the debtor must repay the outstanding principal free of any interest or fees.

### Effects on consumers v. entities

Contrary to the judicial doctrine on abusiveness of floor clauses and early termination clauses that only affect loan agreements entered into with consumers, this ruling affects both consumers and entities, because the Spanish Law of Usury is not a consumer regulation.

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