Interest under Articles 317.1 and 395 of RF Civil Code: New Amendments to Enter into Effect from August 1, 2016

Newsletter July 26, 2016

The legislator has once again modified the interest accrual procedure under articles 317.1 and 395 of RF Civil Code. The amendments were introduced by Federal Law No. 315-FZ dated July 3, 2016 and will come into effect on **August 1, 2016**.

Please see the Mosgo & Partners Newsletter for more details.

1. INTEREST ACCRUAL UNDER ARTICLE 317.1 OF RF CIVIL CODE

Article 317.1 of RF Civil Code (interest under obligations with deferral of payment) was introduced in 2015. Despite its short existence, it has already become a serious concern for businesses. Because of this rule, many companies have started amending their contracts in order to avoid accrual of the statutory interest, which was entirely unwanted for them or their partners.

The legislator has noted this demand of the business community and has corrected the respective article. Starting from August 1, 2016, the interest under article 317.1 of RF Civil Code shall accrue only where expressly provided by the contract or a (special) law.

Since August 1, 2016, the interest under article 317.1 of RF Civil Code shall accrue only where expressly provided by the contract or a (special) law.

In case the contract provides for the accrual of such interest, the default interest rate shall equal the key rate of the Central Bank of Russia in effect from time to time. This means, for instance, that if the key rate has been revised during the relevant period of interest accrual, the interest should be calculated for each period of applicability of the respective key rate in force at that time. However, the parties to the contract may agree on a different interest rate with respect to their monetary obligations.

Finally, the amended rules of article 317.1 of RF Civil Code shall now apply not only to businesses, but also to any participants of civil law transactions.

2. INTEREST UNDER ARTICLE 395 OF RF CIVIL CODE

Article 395 (liability for breach of monetary obligations) was also revised in 2015. In particular, it was decided that the default interest rate calculated under the aforesaid article shall equal the average bank rate applicable to deposits of individuals. This innovation has received both positive and negative feedback; its implementation turned out to be more cumbersome in practice as compared to that of the previous rules.

In view of this situation, the legislator has corrected article 395 of RF Civil Code as well. From now on, the rate of interest under article 395 of RF Civil Code shall equal the key rate of the Central Bank of Russia in force during the respective time periods.

Starting from August 1, 2016, the interest under article 395 of RF Civil Code shall accrue based on the key rate of the Central Bank of Russia.

The rules of article 395 of RF Civil Code shall apply by default, unless the law or the contract provide otherwise.

3. CONCLUSIONS

Accordingly, since August 1, 2016, the scope of the two articles on interest – article 317.1 and article 395 of RF Civil Code – has been distinctly specified:

	Article 317.1	**Article 395**
Applicability (by default)	**Does not apply** by default.	**Applies** by default.
Interest rate (by default)	**Key rate of the Central Bank of Russia** (in force during the respective periods), provided that the contract or the law does not provide for a different interest rate.	
Scope	**Applies to all participants** of civil law transactions.	

Please also be reminded that paragraph 2 of Resolution of the Plenum of the RF Supreme Commercial Court No. 13⁄14 dated October 8, 1998 that provided that for the purposes of calculation of the interest payable, the number of days in a year (or a month) shall be 360 and 30 days, respectively, **has lost its legal effect** due to the enactment of Resolution of the Plenum of the RF Supreme Court No. 7 dated March 24, 2016.

We have good reasons to believe that courts will now be likely to refer to **the actual number of days of delay**, rather than to the presumed 360 days per year or 30 days per month for the purposes of interest calculation.

MOSGO & PARTNERS LAW FIRM

Tel.: +7 (495) 228 48 78
info@mosgolaw.com
www.mosgolaw.com

All newsletters of Mosgo & Partners and subscription to updates are available at our LinkedIn page.

This newsletter shall not be viewed as legal advice. It is prepared for educational and informational purposes only. Mosgo & Partners is not responsible for any consequences of reliance on the information contained in this newsletter without specific professional advice.

© Mosgo & Partners. Moscow, 2016