

## Interest under the New Version of Art. 395 of the Russian Civil Code: The Supreme Court Has Clarified the Calculation Procedure

Newsletter

19 February 2016

On 25 November 2015, the Supreme Court of the Russian Federation approved “Supreme Court of the Russian Federation Practice Review No. 3 (2015)” (hereinafter, the “**Review**”). Among other things, the Review clarifies the details of calculating the amount of interest for the use of another’s funds under the new version of Art. 395 of the Russian Civil Code of 1 June 2015.

### 1. THE ESSENCE OF AMENDMENTS INTO THE RUSSIAN CIVIL CODE

The previous version of Art. 395 of the Russian Civil Code required that the interest for the use of another’s funds be calculated based on the official bank interest rate on the day of performance of a monetary obligation. Starting from 1 June 2015, Federal Law No. 42-FZ dated 8 March 2015 amending Art. 395 of the Russian Civil Code, has entered into effect.

According to the new rules, to calculate the interest, one shall use the average bank interest rates on individual deposits existing at the domicile of an individual creditor or at the location of a corporate creditor, as published by the Bank of Russia and applied during the respective periods. Interest accrues up to the date of actual repayment of the debt to the creditor, unless the law or the contract provide otherwise.

### 2. CLARIFICATIONS BY THE SUPREME COURT OF THE RUSSIAN FEDERATION

When clarifying the mode of application of the new provisions of Art. 395 of the Russian Civil Code, the Supreme Court has stated:

1. That the calculations should be based on the information on individual deposits published by the Bank of Russia at its official website. If the rate applicable during the period of unlawful use of another’s funds has not been published, the calculation is to be carried out based on the latest published rate. This information is published at [www.cbr.ru](http://www.cbr.ru) in the *Statistics – Banking Sector – Interest Rates and Structure of Loans and Deposits by Maturity* section.
2. When determining the applicable rate, one shall use the information for the federal district that includes the domicile or location of the creditor. If the creditor has no domicile or location in the Russian Federation, the information for the federal district at the location of the court examining the dispute is to be used.
3. The applicable bank interest rate on deposits shall be determined with respect to the

period of unlawful use of another's funds, rather than for the date of the claim or the judgment, as followed from the previous version of the Civil Code. If the rate has changed during such a period, it shall be further divided into several intervals, and the interest is calculated for each of the intervals separately. For instance, if the delay occurred on 1 December 2015, and the payment was effected on 31 January 2016, the interest at different rates, subject to the Bank of Russia's publications, will have to be calculated for the following intervals:

- ✓ from 1 December 2015 through 14 December 2015;
- ✓ from 15 December 2015 through 24 January 2016;
- ✓ from 25 January 2016 through 31 January 2016.

### 3. SUMMARY

Subject to the Supreme Court's clarifications, the new rules for calculating interest under Art. 395 of the Russian Civil Code have significantly altered the factual and legal situation of creditors and debtors.

First of all, the average bank interest rate on individual deposits is a value closely related to the market conditions for lending unlike the previously applicable refinancing rate; it is regularly updated in line with the changing market situation in the specific federal district. Thus, for instance, on 1 June 2015, the maximum rate equaled 14.18% *per annum*, having dropped to 8.32% *per annum* at present (according to the 25 January 2016 publication).

Second, interest calculation has become more complicated. Now, interest needs to be calculated for each period of effect of the specific rate.

Please note that the new interest calculation procedure under Art. 395 of the Russian Civil Code is not the only novelty as regards accrual of interest on monetary obligations. Starting from 1 June 2015, Art. 317.1 of the Russian Civil Code has also been in effect: pursuant to it, in business-to-business dealings accrual of interest on monetary debt is presumed. The issue of how these two articles correlate and apply (together or separately, and in which cases) is decided differently by both courts and scholars. The Supreme Court of the Russian Federation has not voiced its position on this issue yet.

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