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OF THE PLENARY SESSION
OF THE SUPREME COURT
OF THE RUSSIAN FEDERATION

No. 7

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On Court Application of Certain Provisions of the Civil Code of the Russian Federation regarding Liability for Breach of Obligations

(as amended by Plenary Ruling No. 18 of 22 June 2021)

In order to ensure the unity of practice of court application of provisions of the Civil Code of the Russian Federation on liability for breach of obligations, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of the Federal Constitutional Law as of 5 February, 2014 No. 3 "On the Supreme Court of the Russian Federation", hereby rules to provide the following explanations:

General Provisions on Liability and Indemnification

1. The debtor shall be obliged to compensate the creditor for all damages caused by non-fulfillment or improper fulfillment of an obligation (Item 1 of Article 393 of the Civil Code of the Russian Federation (hereinafter referred to as "the CC RF"). Unless otherwise stipulated in law or contract, all losses shall be subject to compensation in full: as a result of indemnification, the creditor should be placed in such a position, in which it would be were the obligation fulfilled properly (Article 15, Item 2 of Article 393 of the CC RF).

Unless otherwise stipulated in law, the use of different remedies by the creditor, stipulated in law or contract, shall not deprive the creditor of its right to claim indemnification from the debtor, if losses were caused by non-fulfillment or improper fulfillment of the obligation (Item 1 of Article 393 of the CC RF).

2. According to Articles 15, 393 of the CC RF, the losses shall include real damage and lost benefits.

“Real damage” shall mean costs which the creditor has incurred or will have to incur for restoration of the violated right, as well as loss or damage of its property.

“Lost benefits” shall mean income not received by the creditor, which it would receive (taking into account the reasonable costs for acquirement thereof) under usual conditions of civil transactions, if its right had not been violated.

If the person that violated the right received income as a result, the person whose right is violated may claim compensation, along with other lost benefits losses, in the amount no less than such income (Item 2 of Article 15 of the CC RF).

3. When determining the amount of lost benefits, the measures undertaken by the creditor to acquire them and the preparations made for these purposes shall be taken into consideration (Item 4 of Article 393 of the CC RF).

At the same time, the creditor shall have the right to present not only evidence of taking measures and preparations for acquirement thereof in substantiation of the amount of lost benefits, but also any other evidence that it was possible to obtain them.

For instance, if the customer files a suit to the contractor on indemnification of damages caused by improper fulfillment of a turn-key contract for the repair of a shop building, referring to the fact that as a result of performance of works with defects it could not carry out its usual goods retail activity, the lost benefits shall be calculated on the basis of data on profits of the claimant for the similar period of time before the moment of breach of obligation by the respondent and/or after the moment when such a breach ceased to exist.

The debtor shall not be deprived of the right to present evidence that the lost benefits would not have been received by the creditor.

4. According to Item 5 of Article 393 of the CC RF the court cannot refuse to satisfy a creditor’s claim for compensation of losses caused by non-fulfillment or improper fulfillment of an obligation only on the basis that the amount of losses cannot be determined with a reasonable degree of reliability. In this case, the amount subject to indemnification, including the lost benefits, shall be determined by the court taking into account all circumstances of the case, based on the basis of the principles of fairness and proportionality of liability to the committed breach of obligation.

5. By implication of Articles 15 and 393 of the CC RF, the creditor shall present evidence that confirms the losses, as well substantiates the sum thereof with a reasonable degree of reliability and confirms the causal relationship between the non-fulfillment or improper fulfillment of the obligation by the debtor and the specified losses. The debtor shall have the right to present objections regarding the amount of losses caused to the creditor and to present evidence that the creditor could reduce such losses, but failed to take reasonable measures for this purpose (Article 404 of the CC RF).

When establishing a causal relationship between the breach of obligation and losses, it shall be necessary to consider, in particular, what consequences could result from such breach in usual conditions of civil transactions. If the occurrence of losses, the compensation of which is claimed by the creditor, is a usual consequence of the breach of obligation committed by the debtor, then the presence of a causal relationship between the breach and the losses proven by the creditor shall be assumed.

The debtor, denying the arguments of the creditor concerning a causal relationship between the behavior and losses of the creditor, shall not be deprived of the possibility to present evidence that there is another reason for such losses.

The fault of the debtor in the breach of the obligation shall be presumed until proved otherwise. The absence of fault in non-fulfillment or improper fulfillment of the obligation shall be proved by the debtor (Item 2 of Article 401 of the CC RF).

If the debtor bears liability for breaching the obligation or for causing damages irrespectively of its fault, the debtor shall be burdened to prove the circumstances which constitute ground for relief from such liability, for instance, force majeure circumstances (Item 3 of Article 401 of the CC RF).

6. According to the general rule, the parties of an obligation shall have the right to limit the liability of the debtor, at their own discretion (Item 4 of Article 421 of the CC RF).

No conclusion of such agreement shall be allowed and it shall be void if it violates a legislative prohibition (Item 2 of Article 400 of the CC RF) or contradicts the nature of legislative regulation of the corresponding kind of obligations (for instance, provisions of a protection contract or a transportation contract regarding the restriction of liability of the professional security services contractor or of the carrier only to the cases of malicious non-fulfillment or improper fulfillment of obligations shall be void).

7. If within the limits established by Item 4 of Article 401 of the CC RF, an agreement concluded in advance stipulates any circumstances that eliminate or

limit the liability of the debtor for an unintentional breach of obligation, the debtor shall be burdened to prove that such circumstances took place.

An agreement concluded in advance regarding the elimination or limitation of liability shall not relieve from liability for malicious breach of obligation (Item 4 of Article 401 of the CC RF). Absence of intention shall be proved by the person that violated the obligation (Items 1 and 2 Articles 401 of the CC RF). For example, to substantiate the absence of intention, the debtor, whose liability is eliminated or limited by the agreement of the parties, can present evidence that shows at least the minimum degree of care and discretion during the performance of the obligation.

8. By virtue of Item 3 of Article 401 of the CC RF, in order for a circumstance to be recognized as force majeure, such a circumstance must be extreme and unpreventable under the given conditions.

"Extreme" shall mean the exclusiveness of the circumstance under consideration; that its occurrence is unusual in the given conditions.

Unless otherwise stipulated in law, the circumstance shall be deemed unpreventable if any participant of civil transactions, carrying out activities similar to the debtor's, would not be able to avoid this circumstance or its consequences.

The circumstances, the occurrence of which depended on the will or actions of a party of the obligation (for instance, the debtor's lack of necessary monetary funds, breach of obligations by its counterparties, illegal actions of its representatives) may not be deemed as force majeure circumstances.

9. The occurrence of force majeure circumstances itself shall not terminate the obligation of the debtor, if it is possible to fulfill it after such circumstances cease to exist.

The creditor shall not be deprived of the right to reject a contract, if as a result of a delay that appeared due to the occurrence of force majeure circumstances the creditor lost interest in its performance. Herewith, the debtor shall not be liable before the creditor for the losses caused by the delay of fulfillment of obligations due to the occurrence of force majeure circumstances (Item 3 of Article 401, Item 2 of Article 405 of the CC RF).

10. The debtor shall be obliged to take all reasonable measures to reduce the damage caused to the creditor by force majeure circumstances, in particular to notify the creditor of the occurrence of such circumstances, and in case of non-fulfillment of this duty – to compensate the creditor for all damages caused by that failure (Item 3of Article 307, Item 1 of Article 393 of the CC RF).

Indemnification in the Event of Termination of Contract (Article 393.1 of the CC RF)

11. By implication of Article 393.1 of the CC RF, Items 1 and 2 of Article 405 of the CC RF, all risks of change of prices for comparable goods, works or services shall be assigned to such a party, whose non-performance or improper performance of the contract has entailed its early termination, for instance, as a result of cancellation of the contract in the judicial manner or unilateral refusal of another party to fulfill the obligation.

In the specified case, all losses in the form of difference between the price established in the terminated contract and the current price shall be compensated by the corresponding party, irrespective of whether a similar (replacement) transaction has been made by another party instead of the terminated contract. If there is a current price for the comparable goods, works or services in regard of performance stipulated by the terminated contract, the creditor shall have the right to claim from the debtor the compensation of such losses in the event when no replacement transaction has been made (Item 2 of Article 393.1 of the CC RF).
The current price shall be deemed as the price charged at the moment of termination of the contract for comparable goods, works or services in the place where the contract should be performed; when there is no current price – the price which was applied in another place and may be a regarded as the reasonable replacing price in the specified place, taking into account the transportation and other additional expenses.

12. If the creditor has concluded a replacement transaction instead of the terminated contract, it shall have the right to claim indemnification from the debtor in the form of a difference between the price specified in the terminated contract and the price for the comparable goods, works or services stipulated in the terms of the replacement transaction (Item 1 of Article 393.1 of the CC RF). The creditor may conclude a number of transactions which replace the terminated contract or may acquire similar goods or their substitutes in the same or another area, etc.
Good faith of the creditor and reasonable nature of its actions shall be presumed at the moment of conclusion of the replacement transaction (Article 10 Item 5, Article 307 Item 3, Article 393.1 of the CC RF).

The debtor shall have the right to present evidence that the creditor was acting in bad faith and/or unreasonably and that in concluding the replacement transaction it willfully or negligently contributed to the increase in the amount of losses caused by non-fulfillment or improper fulfillment, or did not take reasonable measures to reduce them (Item 1 of Article 404 of the CC RF). For instance, the debtor shall have the right to present evidence of excessive discrepancy between the price of the replacement transaction and the current price, defined at the moment of its conclusion in accordance with Item 2 of Article 393.1 of the CC RF.

13. The conclusion of the replacement transaction before the termination of the initial obligation does not affect the debtor's obligation related to specific performance and the creditor's obligation to accept such performance (Item 3 of Article 308 of the CC RF). The creditor shall have the right to claim indemnification from the debtor in the form of a difference between the prices in the initial contract and in the replacement transaction, provided that subsequently the initial contract has been ceased in connection with a breach of obligation that initiated the conclusion of the replacement transaction.

14. Satisfaction of claims of the creditor regarding recovery of losses from the debtor in the form of a difference between the price specified in the terminated contract and the current price or the price of the replacement transaction shall not relieve the debtor from its duty to compensate other losses incurred by the creditor (Item 3 of Article 393.1 of the CC RF).

Compensation of Losses on the Basis of Article 406.1 of the CC RF

15. By virtue of Item 1 and Item 5 of Article 406.1 of the CC RF, the agreement of the parties to the obligation can directly specify a duty of one of them to compensate the property losses incurred by the other party, which arise in case of occurrence of certain circumstances in any way connected with the fulfillment, change or termination of the obligation or its subject matter and not constituting a breach of obligation.

Unlike indemnification in accordance with Articles 15 and 393 of the CC RF, under the rules of Article 406.1 of the CC RF the losses shall be compensated independently from the existence of a breach (non-fulfillment or improper fulfillment) of obligations by the corresponding party and irrespective of the causal relationship between the behavior of this party and the losses subject to compensation, caused by the occurrence of circumstances stipulated by the parties.

By implication of Article 406.1 of the CC RF, losses are compensated if it is proved that they have already been incurred or will inevitably be incurred in the future. Herewith, the party claiming the corresponding compensation shall prove the presence of a causal relationship between its losses and the occurrence of the corresponding circumstance.

The parties shall have the right to establish, in particular, such a manner of determination of the amount of losses, in accordance with which one of the parties shall compensate another party all the losses caused by the corresponding circumstances and incurred by it, or any part thereof.

If the indemnified party, acting in bad faith, promoted the occurrence of circumstances, for which such compensation was stipulated, for the purposes of

Article 406.1 of the CC RF such circumstances shall not be deemed as having occurred (Article 1 Item 4, Item 2 Article 10 of the CC RF).

16. The loss compensation agreement may be only concluded by the parties engaged in entrepreneurial activity (Item 1 of Article 406.1 of the CC RF), as well as by the persons specified in Item 5 of Article 406.1 of the CC RF.

The rights and obligations connected with the compensation of losses based on the agreement signed by such parties shall be transferred to the person not engaged in entrepreneurial activity both in the event of universal and singular assignment, unless otherwise stipulated in law or contract (Articles 387, 388, 391, 3923 of the CC RF).

These rights and obligations shall stay in force if an individual loses the status of an individual entrepreneur after conclusion of the specified agreement, unless otherwise stipulated in law or contract.

17. When applying the provisions of Article 406.1 of the CC RF, it is necessary to take into account that the loss compensation agreement should be clear and unambiguous. Under Article 431 of the CC RF, in case of any ambiguity as to what the agreement of the parties stipulates – compensation of losses or conditions of liability for non-fulfillment of the obligation, the provisions of Article 406.1 of the CC RF are not subject to application.

According to the general rule, the existence and validity of the loss compensation agreement, stipulated in Article 406.1 of the CC RF, shall be subject to assessment by the court irrespectively of the existence and validity of the contract in connection with which it was concluded, even if the loss compensation agreement is contained in the contract as a condition (reservation). For instance, if the loss compensation agreement is contained in a purchase and sale contract as a condition, the invalidity or non-existence of this purchase and sale contract shall not entail the invalidity or non-existence of the loss compensation agreement.

A separate agreement or a condition regarding the compensation of losses contained in the text of a contract can be nullified independently, for instance, on the grounds stipulated in Articles 168 - 179 of the CC RF. In that case, the loss compensation agreement does not entail any consequences to which it was directed.

18. If any losses subject to compensation arise in connection with any wrongful acts of a third party, the right of claim to this third party shall be assigned from the indemnified party to the indemnifying party, within the limits of the amount of compensation (Item 4 of Article 406.1 of the CC RF).

The loss compensation agreement concluded in accordance with Article 406.1 of the CC RF shall not create any obligations for the persons, who are not participating in it as parties. That is why if the amount of indemnification paid exceeds the amount of losses which are subject to compensation by the third party in accordance with the rules of Article 15 of the CC RF, Articles 393 or 1064 of the CC RF, such a difference shall not be subject to recovery from the third party (Item 3 of Article 308 of the CC RF).

Liability for Unfair Negotiating (Article 434.1 of the CC RF)

19. Relations pertaining to damages caused by unfair behavior in the course of negotiations shall be governed by the provisions of Chapter 59 of the CC RF with the exceptions specified in Article 434.1 of the CC RF. For instance, any legal person or citizen shall compensate any harm caused by unfair behavior of its employee during negotiations (Article 1068 of the CC RF). In the event when any such harm during negotiations has been caused jointly by several counterparts, they shall bear joint liability (Article 1080 of the CC RF).

It is presumed that each party of negotiations acts in good faith, and the fact of termination of negotiations without any indication of reasons does not evidence the unfairness of the corresponding party. The claimant shall bear the burden of proving that when entering into negotiations the respondent acted unfairly for the purposes of causing harm to the claimant, for instance, tried to receive any commercial information from the claimant or to prevent the conclusion of a contract between the claimant and a third party (Article 10 Item 5, Item 1 of Article 421 and Item 1 of Article 434.1 of the CC RF). Herewith, the rule of Item 2 of Article 1064 of the CC RF shall not apply.

At the same time, bad faith of the respondent shall be presumed if there are any circumstances stipulated in sub-items 1 and 2 of Item 2 of Article 434.1 of the CC RF. In these cases the defendant must prove the good faith nature of its actions.

20. The party which negotiates or interrupts negotiations on the conclusion of a contract in bad faith shall be obliged to compensate the other party for damages caused by this.

As a result of indemnification caused by bad faith behavior in the course of negotiations, the injured person should be put in the position in which it would be if it did not enter into negotiations with the unfair counterpart. For instance, the costs incurred in connection with negotiations, costs pertaining to preparations for the conclusion of the contract, as well as losses incurred in connection with the loss of possibility to conclude the contract with a third party may be compensated

(Article 15, Item 2 Article 393, Item 3 Article 434.1, the first paragraph Item 1 of Article 1064 of the CC RF).

21. If a negotiating party was provided with incomplete or unreliable information by its counterpart, or the counterpart has concealed any circumstances which that party must have been notified of, owing to the nature of the contract, and the parties have concluded the contract, that party shall have the right to claim to recognize the transaction invalid, to seek compensation of losses caused by such invalidity (Articles 178 or 179 of the CC RF) or to use the remedies specially stipulated for cases of breach of certain kinds of obligations, for instance, by Articles 495, 732, 804, 944 of the CC RF.

If the specified actions of the counterpart regarding the provision of incomplete or unreliable information form the basis for the party's refusal to conclude the contract, the latter shall have the right to claim indemnification in accordance with Item 3 of Article 434.1 of the CC RF.

Liability for Non-Fulfillment of the Obligation in Specie

22. In accordance with Item 1 of Article 308.3, Article 396 of the CC RF, in case of non-fulfillment of the obligation by the debtor, the creditor shall have the right to claim specific performance of the obligation in court, unless otherwise stipulated in the CC RF, other laws, contract or follows from the nature of the obligation. Herewith, it is necessary to take into account that in accordance with Articles 309 and 310 of the CC RF the debtor has no right to voluntarily refuse to duly fulfill the obligation.

If the creditor files a claim for specific performance of the obligation by the debtor, the court, based on the specific circumstances of the case, shall define whether such fulfillment is objectively possible.

When resolving the issue, whether it is admissible to compel the debtor to specific performance, the court shall take into account not only the provisions of the CC RF, of another law or of the contract, but also the nature of the corresponding obligation.

The court cannot refuse to satisfy the claim on specific performance of the obligation, if the appropriate protection of the violated civil right of the plaintiff is only possible by compulsion of the defendant to specific performance and will not be provided by recovery of losses from the respondent, caused by the non-fulfillment of the obligation, for instance, if there is an obligation to provide information which is available only to the defendant or to provide documentation that only the defendant is competent to draw.

23. By implication of Item 1 of Article 308.3 of the CC RF, the creditor shall have no right to claim specific performance of the obligation from the debtor in court, if such fulfillment is objectively impossible, in particular, if an individual specific thing which the debtor was obliged to transfer to the creditor is destroyed, or if a public authority or a local government body lawfully adopts an act, which such performance of the obligation will contradict.

Herewith, if the debtor does not have the necessary quantity of generic things, which it is obliged to give to the creditor in accordance with the contract, this shall not by itself release the debtor from specific performance, if such performance is possible by acquisition of the necessary quantity of goods from third parties (Items 1, 2 Articles 396, Item 2 of Article 455 of the CC RF).

The creditor also shall not have the right to claim in court the specific performance of an obligation, the fulfillment of which is connected with the personality of the debtor to such an extent that the compulsory fulfillment will violate the principle of respect of the person's honour and dignity. For instance, claims of compulsion of a real person to specific performance of an obligation to perform a musical piece at a concert are not subject to satisfaction.

When the creditor cannot claim specific performance of an obligation in court, the debtor is obliged to pay damages to the creditor, caused by non-fulfillment of the obligation, unless there are grounds for termination of the obligation, for instance, stipulated in Article 416 Item 1 and Item 1 of Article 417 of the CC RF (Article 15, Item 2 of Article 396 of the CC RF).

24. If specific performance of an obligation is possible, the creditor shall have the right, at its own discretion, either to claim such performance in court or to refuse to accept such performance (Item 2 of Article 405 of the CC RF) and, instead of specific performance of the obligation, to apply to court with the claim on indemnification caused by non-fulfillment of the obligation (Item 1 and 3 of Article 396 of the CC RF). The filing of claims for specific performance of the obligation shall not deprive the creditor of the right to claim indemnification, or a forfeit for delay of fulfillment of the obligation.

25. If there are circumstances specified in Article 397 of the CC RF, the creditor shall have the right, at own discretion, within a reasonable time, to task a third party to fulfill the obligation for a reasonable price or to fulfill it by own means and to claim reimbursement or other losses from the debtor. This provision shall not deprive the creditor of possibility to use another remedy at own choice, for instance, to claim specific performance of the obligation or to claim indemnification from the debtor, caused by non-fulfillment of obligation.

26. In case of non-fulfillment of the obligation to transfer an individual specific thing to the creditor, the latter shall have at its choice the right to claim withdrawal

of this thing from the debtor and transfer thereof on conditions stipulated in the obligation or to claim indemnification instead (Article 398 of the CC RF).

If the thing has not been transferred yet, the right of withdrawal of it from the debtor belongs to such a creditor, the obligation towards whom arose earlier, and if this cannot be established – to the one that filed claims for withdrawal of the thing from the debtor earlier.

By implication of Article 398 of the CC RF, if the debtor has no such individual specific thing that is subject to transfer to the creditor, the creditor shall not have the right to claim withdrawal of it from the debtor and its transfer in accordance with provisions of the contract; this shall not deprive the creditor of the right to claim from the debtor the compensation of damages caused by non-fulfillment of the contract.

At the same time, the transfer of an individual specific thing, in particular, as a lease, for gratuitous use, for storage, shall not preclude the satisfaction of the claim of the creditor (the purchaser of the thing) against the debtor (the assignor of the thing) on fulfillment of the obligation to transfer the thing into possession. In this case, the tenant, loan recipient, custodian, etc. shall be drawn to participation in the case.

If the right to claim an individual specific thing from the debtor, the transition of the right to which is not subject to state registration, belonged to different creditors, and the thing has been transferred into possession, economic keeping or operational administration of one of them, other creditors shall not have the right to claim the transfer of the thing from the debtor in accordance with the rules of Article 398 of the CC RF.

27. When satisfying the claim of the creditor on compulsion to specific performance of the obligation, the court is obliged to establish the period during which the adopted decision must be executed (Part 2 Article 206 of the Civil Procedure Code of the Russian Federation (hereinafter referred to as "the CPC RF"), Part 2 Article 174 of the Commercial Procedure Code of the Russian Federation (hereinafter referred to as "the ComPC RF"). When establishing the specified period, the court shall take into account the possibilities of the respondent to fulfill it, the difficulty of execution of the judicial act, as well as other noteworthy circumstances.

28. On the basis of Item 1 of Article 308.3 of the CC RF, in order to compel the debtor to specific performance of the obligation in due time (including performance in the form of abstention from certain actions) and to compel the debtor to execute the judicial act stipulating the remedy of violation of a property right not connected with deprivation of ownership (Article 304 of the CC RF), the court may award monetary funds in favour of the creditor-recoverer in case of non-

fulfillment of the corresponding judicial act (hereinafter referred to as “court forfeit”).

Payment of the court forfeit shall not entail termination of the principal obligation, shall not release the debtor from specific performance, as well as from application of liability measures for non-fulfillment or improper fulfillment (Item 2 of Article 308.3 of the CC RF).

The sum of the court forfeit shall not be taken into account in determination of the amount of losses caused by non-fulfillment of the obligation in specie: such losses shall be subject to compensation in addition to the sum of the court forfeit (Article 330 Item 1, Article 394 of the CC RF).

Interest stipulated in Article 395 of the CC RF is not charged on the sum of the court forfeit.

29. Any agreement concluded in advance regarding the waiver of the creditor’s right to claim any award of the court forfeit shall be invalid, if in accordance with the law or contract or by nature of the obligation the creditor is not deprived of the right to claim specific performance of the obligation (Item 1 of Article 308.3 of the CC RF). However, the parties shall have the right, at the stage of enforcement proceedings after breach of the period specified by the court for specific performance of the obligation, to conclude a conciliation agreement on termination of the obligation to pay the court forfeit through compensation (Article 409 of the CC RF), novation (Article 414 of the CC RF) or debt release (Article 415 of the CC RF).

30. Rules of Item 1 of Article 308.3 of the CC RF shall not cover the cases of non-fulfillment of monetary obligations.

Since by implication of Item 1 of Article 308.3 of the CC RF the court forfeit may only be awarded in case of non-fulfillment of civil-law obligations, it cannot be awarded in administrative disputes which are considered in the manner of administrative judicial procedure and of Chapter 24 of the ComPC RF, during the settlement of labour, pension and family disputes arising from personal non-property relations between members of a family, as well as disputes regarding social support.

31. The court has no right to refuse to award the court forfeit if the claim on compulsion to specific performance of an obligation is satisfied.

The court forfeit may only be awarded upon the plaintiff's (recoverer’s) application, both simultaneously with the adoption of the court decision on compulsion to specific performance of an obligation and during its further

execution in enforcement proceedings (Part 4 Article 1 of the CPC RF, Parts 1 and 2.1 Article 324 of the ComPC RF).

32. When satisfying the claims of the plaintiff regarding the court forfeit, the court shall specify the amount thereof and/or the manner of its determination.

The amount of the court forfeit shall be determined by the court on the basis of principles of fairness, proportionality and inadmissibility of acquisition of profit by the debtor's illegal or unfair behavior (Article 1 Item 4 of the CC RF). As a result of award of the court forfeit, the execution of the judicial act should become obviously more favorable for the respondent than its non-execution.

33. Separate writs of execution are issued on the basis of the judicial act on compulsion to specific performance of obligation and on award of the court forfeit, in regard of each of these claims. The judicial act regarding recovery of the court forfeit shall only be subject to enforcement after the expiration of period for specific performance of the obligation, stipulated by the court.

The fact of non-fulfillment or improper fulfillment of the court decision shall be established by the bailiff-executor. Such a fact cannot be established by a bank or another credit organization.

34. If there are any circumstances objectively impeding the fulfillment of the judicial act on compulsion to specific performance of an obligation within the period specified by the court (Item 3 of Article 401 of the CC RF), the respondent shall have the right to file a statement for postponement or execution of the judicial act in installments (Article 203, 434 of the CPC RF, Article 324 of the ComPC RF).

In case of satisfaction of the claim for postponement of execution of the judicial act (execution in installments), the court shall stipulate a period during which the court forfeit shall not be subject to charge. The specified period shall be estimated from the moment of occurrence of circumstances that serve as grounds for the postponement (execution in installments) and shall be specified for the period necessary for the execution of the judicial act.

The debtor shall also not be obliged to pay the court forfeit from the moment of unlawful refusal of the creditor to accept appropriate fulfillment offered by the debtor (Article 406 of the CC RF).

35. If the objective impossibility of specific performance of the obligation arises after the court forfeit is awarded, the forfeit shall not be subject to recovery from the moment of occurrence of such circumstances. Herewith, that objective impossibility of specific performance of the obligation (for instance the destruction of the individual specific thing which was subject to transfer to the creditor) does

not preclude the recovery of the awarded sums of the court forfeit for the period preceding the occurrence of the given circumstance.

The occurrence of the specified circumstances shall constitute grounds for termination of enforcement proceedings both on the basis of the claim for compulsion to specific performance and of the claim for recovery of the court forfeit (Item 2 part 1 Article 43 of Federal Law as of 2 October, 2007 No. 229-FZ "On Enforcement Procedure" (hereinafter referred to as "the Law on Enforcement Procedure").

36. In the event of universal assignment, the debtor's obligation to pay the court forfeit shall pass to the debtor's assignee in full.

Liability for Non-Fulfillment of Monetary Obligation (Article 395 of the CC RF)

37. The interest stipulated in Item 1 of Article 395 of the CC RF shall be paid irrespectively from the basis of occurrence of the obligation (a contract, other transactions, causing of harm, unjust enrichment or other grounds specified in the CC RF).

As Article 395 of the CC RF provides for the consequences of non-fulfillment or delay of fulfillment of namely a monetary obligation, the provisions of the specified norm shall not apply to the relations of the parties, not connected with the use of money as an instrument of payment (means of repayment of a monetary debt). For instance, duties on delivery of cash into a bank under the cash service contract, transportation of bank notes contract etc. shall not be deemed as monetary.

38. In cases where any dispute settled by the court arises from tax or other financial and administrative legal relations, civil legislation may be applied to the specified legal relations where so stipulated in law (Item 3 Article 2 of the CC RF).

In this regard, the interest specified in Article 395 of the CC RF shall not be charged on sums of economic (financial) sanctions, unreasonably levied from legal and natural persons by tax, customs bodies, pricing bodies or other state bodies and subject to repayment from the corresponding budget.

In these cases, claims may be submitted by citizens and legal persons on the basis of Articles 15, 16 and 1069 of the CC RF regarding indemnification of damages caused, in particular, by unreasonable levy of sums of economic (financial) sanctions, unless otherwise stipulated in law.

39. In accordance with Item 1 of Article 395 of the CC RF (as effective until 1st August 2016), the amount of interest for using another person's monetary funds, charged for the periods of delay in fulfillment of a monetary obligation (if they took place from 1st June 2015 to 31st July 2016, inclusively), unless another interest rate is stipulated in law or contract, is established in accordance with the average bank deposit rates for natural persons, existing at the place of residence of the creditor-natural person or at the location of the creditor-legal person, published by the Bank of Russia and existing during the corresponding periods.

Unless another interest rate is stipulated in law or contract, the amount of interest for using another person's money, charged for the periods of delay in fulfillment of a monetary obligation that occurred after 31st July 2016 is established on the basis of the key rate of the Bank of Russia, existing during the corresponding periods (Item 1 of Article 395 of the CC RF as amended by Federal Law of 3 July 2016 No. 315 "On Amendments to Part I of the Civil Code of the Russian Federation and to Certain Legislative Acts of the Russian Federation").

The sources of information regarding average bank deposit rates for natural persons shall be the official website of the Bank of Russia and the official publication of the Bank of Russia – "Bulletin of the Bank of Russia".

When a monetary obligation is subject to payment in rubles in the sum equivalent to a certain sum in a foreign currency or in conditional monetary units, as well as when according to the laws on currency regulation and currency control it is allowed to use a foreign currency in calculations regarding obligations, and the monetary obligation is expressed in it (Items 2, 3 Articles 317 of the CC RF), calculation of interest charged for the periods of delay in fulfillment (if they took place from 1st June 2015 to 31st July 2016, inclusively) is performed based on the average short-term bank deposit rates for natural persons in the corresponding currency, published on the website of the Bank of Russia or in the "Bulletin of the Bank of Russia".

If the average rate in rubles or a foreign currency for a certain period is not published, the amount of interest subject to recovery shall be established on the basis of the latest of the published rates for each period of the delay.

When there are no such publications, the sum of the interest subject to recovery shall be determined on the basis of a certificate of one of the leading banks at the location of the creditor, confirming the average rate, applied by it to short-term deposits of natural persons.

40. The interest stipulated in Article 395 of the CC RF and charged for the periods of delay of fulfilment (if they took place from 1st June 2015 to 31st July 2016, inclusively) shall be calculated in accordance with the rates published for such a federal district, on the territory of which the creditor resided at the time of

conclusion of the contract, fulfilment of a unilateral transaction or occurrence of the obligation from noncontractual relations, and if the creditor is a legal person – at the place of its location (Article 307 Item 2, Item 2 of Article 316 of the CC RF).

If the creditor is an organisation that has branches, the interest for non-fulfilment of the monetary obligation, contained in the contract arising from the activity of the branch and concluded by the employee of the branch on behalf of the organisation-creditor shall be calculated on the basis of rates for the federal district at the location of the branch at the moment of conclusion of the contract (Article 54 Item 2, Item 2, third paragraph of Item 3 of Article 55 of the CC RF).

If the creditor is a person whose residence (location) is outside of the Russian Federation, the interest shall be calculated in accordance with the rates published by the Bank of Russia for the federal district at the place of location of the Russian court considering the dispute.

41. The sum of the interest specified in Article 395 of the CC RF is included into the sum of losses caused by non-fulfillment or improper fulfillment of the monetary obligation (Item 1 of Article 394 and Item 2 of Article 395 of the CC RF).

42. If the law or agreement of the parties stipulates a penalty for breach of the monetary obligation, covered by the rule stipulated in the first paragraph of Item 1 of Article 394 of the CC RF, the provisions of Item 1 of Article 395 of the CC RF shall not be applied. In this case, the penalty stipulated in the law or the agreement of the parties shall be subject to recovery instead of the interest stipulated in Article 395 of the CC RF (Item 4 of Article 395 of the CC RF).

43. *Abrogated*

44. If the debtor, using the right provided by Article 327 of the CC RF, has within the period stipulated in the obligation deposited the due money into the deposit of the notary, and where stipulated in law - into the deposit of the court, the obligation shall be considered as executed timely (Item 2 of Article 327 of the CC RF); no interest, including that stipulated in Article 395 of the CC RF, shall be charged on the debt.

Transfer of monetary funds into the depositary account of the bailiffs' unit in the manner specified in Article 70 of the Law on Enforcement Procedure is evidence of due fulfillment of the monetary obligation by the debtor before the creditor, confirmed by the court; due to this fact no interest stipulated in Article 395 of the CC RF shall be charged on the sum of the transferred monetary funds from the date of such transfer.

If the monetary funds transferred into the deposit are returned to the debtor, the obligation shall not be deemed fulfilled (Item 3 of Article 327 of the CC RF) and the interest stipulated in Article 395 of the CC RF shall be charged on the sum of the debt from the date of occurrence of the delay, including the period of deposit of the monetary funds.

45. If the debtor lacks monetary funds, this does not constitute grounds for relief from liability for non-fulfillment of the monetary obligation and from the charge of the interest stipulated in Article 395 of the CC RF (Item 1 of Article 401 of the CC RF).

46. The courts must take into account that in accordance with Article 403 of the CC RF, in the event of violation of a monetary obligation, the fulfillment of which has been assigned onto third parties, the interest stipulated in Article 395 of the CC RF shall be recovered not from those persons, but from the debtor on the same grounds as for its own breach, unless the law stipulates that such liability shall be borne by the third party which is the direct performer.

47. The debtor shall be released from payment of the interest stipulated in Article 395 of the CC RF, if the creditor refused to accept due fulfillment offered by the debtor or failed to take actions stipulated by a law, other legal acts, the contract or arising out of custom or the nature of obligation, until the fulfillment of which the debtor could not fulfill the obligation, for instance, has not informed the debtor of the details of the account, to which the funds were to be transferred, etc. (Article 405 Item 3, Item 3 of Article 406 of the CC RF).

48. The sum of the interest that is subject to recovery on the basis of the rules of Article 395 of the CC RF shall be determined for the day of adoption of the court decision, based on the periods that took place before the specified day. Interest for using another person's monetary funds, upon request of the plaintiff, shall be charged until the day of payment of these funds to the creditor. Simultaneously with determination of the sum of the interest subject to recovery, the court, if there is a claim from the plaintiff, shall specify in the operative part of the decision that the interest shall be recovered until the moment of actual fulfillment of the obligation (Item 3 of Article 395 of the CC RF). Herewith, the day of actual fulfillment of the obligation, in particular of payment of debts to the creditor, shall be included into the period of calculation of interest.

The calculation of interest charged after the court decision is adopted is performed in the course of enforcement of the decision by the bailiff-executor, and where stipulated in law – by other bodies, organizations, including treasury bodies, banks and other credit organizations, officials and citizens (Part 1 Article 7, Article 8, Item 16 Part 1 Article 64 and Part 2 Article 70 of the Law on Enforcement Procedure). The amount of the interest charged for the periods of delay of fulfillment (if they took place from 1st June 2015 to 31st July 2016, inclusively), is

determined based on the average rates of bank interest on deposits of natural persons, and for the periods that took place after 31st July 2016 – based on the key rate of the Bank of Russia, existing in the corresponding periods after the adoption of the decision.

In case of any ambiguity, the bailiff-executor, other persons executing the judicial act, shall have the right to apply to court for explanations regarding the execution, in particular as to what sum is subject to recovery from the debtor (Article 202 of the CPC RF, Article 179 of the ComPC RF).

By general rule, provisions of Article 333 of the CC RF shall not apply to the amount of interest recovered under Item 1 of Article 395 of the CC RF (Item 6 of Article 395 of the CC RF).

49. Based on provisions of Article 319 of the CC RF on the sequence of discharge of claims regarding a monetary obligation, in the event of insufficiency of the sum of the performed payment, the courts should take into account that the interest discharged before the principal amount shall be deemed to be the interest for using the monetary funds subject to payment under the monetary obligation, in particular, the interest for using the sum of the loan, credit, advance payment, etc. (Articles 317.1, 809, 823 of the CC RF).

The interest stipulated in Article 395 of the CC RF for non-fulfillment or for delay of fulfillment of the monetary obligation is not part of the interest specified in Article 319 of the CC RF and shall be discharged after repayment of the principal.

Provisions of Article 319 the CC RF shall not deprive the creditor of the right to file a claim for recovery of the penalty or interest from the debtor, recoverable on the basis of Article 395 of the CC RF before discharge of the principal.

50. The interest specified in Article 395 of the CC RF shall be charged from the date of delay of fulfillment of the monetary obligations which have arisen from contracts, except where the forfeit for breach of this obligation is stipulated in the agreement of the parties or the law, for instance, in Part 5 of Article 34 of the Federal Law of 5 April, 2013 No. 44 “On the Contract System in the Sphere of Purchase of Goods, Works, Services for State and Municipal Needs” (Items 1 and 4 of Article 395 of the CC RF).

51. Upon request of one party of the monetary obligation to return what was duly performed in accordance with the obligation, for instance, in the event of excessive payment for any goods, works, services, the interest stipulated in Article 395 of the CC RF shall be charged on any such unduly paid sum from the date when the party which received the specified monetary funds learned or should have learned about these circumstances (Item 3 Article 307, Item 1 Article 424, sub Item 3 Article 1103, Article 1107 of the CC RF).

52. Non-fulfillment by the debtor of the monetary obligation stipulated in the conciliation agreement approved by the court constitutes grounds for liability in accordance with Article 395 of the CC RF, from the date which follows the last day of the period specified in the agreement for voluntary fulfillment, unless the conciliation agreement stipulates another forfeit for its breach or another moment on which the interest starts to be charged (Part 1 of Article 39, Part 3 of Article 173 of the CPC RF, Part 1 of Article 142 of the ComPC RF, Item 1 Article 405 of the CC RF).

If a provision on forfeit for non-fulfillment of monetary obligations under the given contract is preserved in the conciliation agreement, the interest specified in Article 395 of the CC RF shall not be charged (Item 5 of Article 395 of the CC RF).

53. Unlike the interest stipulated in Item 1 of Article 395 of the CC RF, the interest referred to in Article 317.1 of the CC RF is not a liability measure; this interest represents a payment for the use of monetary funds. In this regard, when settling disputes on recovery of interest, the court needs to establish, whether the plaintiff's claim for the payment of interest is a claim for payment for the use of monetary funds (Article 317.1 of the CC RF) or a claim for liability measures for non-fulfillment or delay of fulfillment of a monetary obligation (Article 395 of the CC RF). The charge of interest from the beginning of delay in accordance with Article 395 of the CC RF does not affect the charge of interest under Article 317.1 of the CC RF.

54. If the buyer fails to timely pay for the goods delivered under a contract of purchase and sale, in particular for electric and thermal energy, gas, oil, oil products, water and other goods delivered through an attached network (for the actually accepted quantity of goods in accordance with the records), the liability measure stipulated in Article 395 of the CC RF is applied to the buyer in accordance with Item 3 of Article 486, the first paragraph of Item 4 of Article of the CC RF: the buyer is obliged to pay (in regard of the sum, the payment of which is delayed) interest from the date when the goods were to be paid for until the date of payment for the goods by the buyer, unless otherwise stipulated in the CC RF or the purchase and sale contract.

55. If any invalid transaction is performed by both parties, it is necessary to take into account during consideration of the claim on application of consequences of its invalidity that, by implication of Item 2 of Article 167 of the CC RF, mutual provisions made by the parties shall be considered equal, until proven otherwise, and their return should be made simultaneously; in this regard, no interest specified in Article 395 of the CC RF shall be charged on returned monetary funds.

At the same time, when there is evidence confirming that one of the parties received a monetary sum that obviously exceeds the cost of what was transferred to the other party, the norms regarding unjust enrichment can be applied to the relations of the parties (sub-item 1 of Article 1103, Article 1107 of the CC RF). In this case the interest stipulated in Article 395 of the CC RF shall be charged on the difference between the specified sum and the sum equivalent to the cost of what was transferred to the other party from the moment when the purchaser learned or should have learned about the absence of grounds for receipt or saving of those monetary funds.

56. When in the course of any bilateral restitution one party returns, for instance, the individual specific thing it previously received to the other party, and the other party does not return the monetary funds transferred to it, interest shall be charged on the sum of the non-returned funds from this moment on the basis of Article 395 of the CC RF (Article 1103, Item 2 of Article 1107 of the CC RF).

57. The obligation of the harm-doer to pay interest stipulated in Article 395 of the CC RF appears from the day on which the court decision, satisfying the indemnification claim of the injured party comes into force, unless a different moment is stipulated in law, if the debtor delays the payment.

If the injured party and the harm-doer conclude an agreement on compensation of caused losses, the interest specified in Article 395 of the CC RF shall be charged from the first day of delay of fulfillment of conditions of this agreement, unless otherwise stipulated in such an agreement.

58. In accordance with Item 2 of Article 1107 of the CC RF, interest specified in Item 1 of Article 395 of the CC RF is charged on the sum of unjust enrichment since the moment when the purchaser learned or must have learned about the absence of grounds for receipt or saving of monetary funds. In particular, such a moment shall be regarded as the moment when the purchaser received a bank extract regarding the operations made on the account or information about the movement of funds on the account in the manner stipulated by the bank rules and the contract of bank account.

In itself, the information on receipt of monetary funds in non-cash form (by transfer of funds to the bank account) without indication of the payer or of the payment purpose shall not mean that the addressee has learned or must have learned about the absence of grounds for their receipt.

59. If the respondent transfers monetary funds to the creditor in execution of a judicial act, and subsequently the given judicial act is reversed or altered in the part of recovery of the specified monetary funds, and monetary funds received by the claimant are not returned to the debtor, then, by general rule, interest shall be charged on the specified monetary sum, as specified in Article 395 of the CC RF

from the moment the final judicial act comes into force (Item 2 of Article 1107 of the CC RF).

At the same time, with regard to the circumstances of the specific case, for instance, if falsification of evidence took place, which led to the adoption of the decision which constituted grounds for transfer of the monetary funds to the creditor, the interest stipulated in Article 395 of the CC RF shall be charged from an earlier moment, for instance, from the moment of transfer of monetary funds to the settlement account of the unfair recoverer (sub-items 3, 4 of Article 1, Item 2 of Article 1107 of the CC RF).

Forfeit

60. In case of non-fulfillment or improper fulfillment of an obligation, in particular in case of any delay in fulfillment, the law or the contract may specify a duty of the debtor to pay a certain sum of money (forfeit) to the creditor, the amount of which can be specified as a fixed sum – a fine – or in the form of a periodically charged payment – fee (Item 1 of Article 330 of the CC RF).

In accordance with Item 1 of Article 394 of the CC RF, if a forfeit is stipulated for non-fulfillment or improper fulfillment of an obligation, the losses shall be compensated to the extent not covered by the penalty (the offset penalty). The law or the contract may stipulate cases in which only the recovery of the forfeit, but not of the losses, is allowed (exclusive forfeit), or when the losses may be claimed in full, in addition to the forfeit (penal forfeit), or when the creditor may at own discretion claim either the forfeit or the losses (alternative forfeit).

If forfeit is stipulated in the agreement of the parties in the form of another property, identified by generic features, then taking into account that by virtue of Article 329 the list of ways to secure the fulfillment of an obligation is not exhaustive, the rules of Articles 329 - 333 of the CC RF (Item 1 of Article 6 of the CC RF) shall apply to this way of securing an obligation.

61. If the amount of forfeit is stipulated by law, it cannot be reduced by any agreement of the parties concluded in advance, owing to Item 2 of Article 332 of the CC RF, but it can be increased, unless that increase is forbidden by law. For instance, no increase of forfeit specified in Part 14 of Article 155 of the Housing Code of the Russian Federation is allowed (for untimely and/or incomplete payment of housing and communal services payments).

62. In case of breach of the principal obligation, the obligation on payment of the forfeit may be terminated by granting of compensation for termination (Article 409 of the CC RF), novation (Article 414 of the CC RF) or debt release (Article 415 of the CC RF), stipulated, in particular, in the conciliation agreement.

63. The agreement on the forfeit must be concluded in written form in accordance with the rules specified in Items 2, 3 of Article 434 of the CC RF, irrespectively of the form of the principal obligation (Article 331 of the CC RF).

Non-observance of the written form of such an agreement entails its nullity (Item 2 of Article 162, Article 331 and Item 2 of Article 168 of the CC RF).

64. By general rule, invalidity of the agreement from which the basic obligation arises, entails the invalidity of agreements on civil-law liability measures for the breach of this obligation, including the agreement on the forfeit.

The parties may agree on a forfeit in the event of non-fulfillment of duty to return the property received under an invalid transaction. Invalidity or non-existence of a contract, in connection with which the agreement on such forfeit is entered into, in particular when it is contained in the contract in the form of a condition (reservation), shall not by itself entail any invalidity or non-existence of the forfeit condition by implication of Item 3 of Article 329 of the CC RF.

Herewith, a separate agreement or a condition regarding the forfeit contained in the text of the contract for the case of non-fulfillment of duty to return the property received under an invalid transaction may be nullified on independent grounds (Articles 168 - 179 of the CC RF). In that case the aforementioned agreement shall not entail the consequences at which it was directed.

65. By implication of Article 330 of the CC RF, the claimant has the right to claim the award of forfeit calculated up to the day of actual fulfillment of the obligation (in particular, actual payment of monetary funds to the creditor, transfer of goods, end of works). The law or contract may specify a shorter term for charge of forfeit, or its sum may be limited (for instance, Item 6 of Article 16.1 of Federal Law of 25 April, 2002 No. 40 “On Obligatory Insurance of Civil Liability of Owners of Vehicles” (hereinafter referred to as “Compulsory Third Party Car Insurance Law”).

When awarding the penalty, the court, upon request of the claimant, shall specify the sum of the penalty in the operative part of the decision, calculated for the date of adoption of the decision and subject to recovery, and that such recovery shall continue until the moment of actual fulfillment of the obligation.

The sum of the forfeit charged after the adoption of decision shall be calculated in the course of enforcement of the judicial act by the bailiff-executor, and where stipulated in law – by other bodies, organizations, including treasury bodies, banks and other credit organizations, officials and citizens (Part 1 of Article 7, Article 8, Item 16 of Part 1 of Article 64 and Part 2 of Article 70 of the Law on Enforcement Procedure). In case of any ambiguity, the bailiff-executor, other persons executing

the judicial act shall have the right to apply to court for clarifications regarding the execution, in particular as to what sum shall be subject to recovery from the debtor (Article 202 of the CPC RF, Article 179 of the ComPC RF).

Herewith, the day of actual fulfillment of the violated obligation, in particular, the day of payment of debts to the creditor, shall be included into the period of calculation of the forfeit.

66. By general rule, if the principal obligation lapses in the event of termination of the contract, the forfeit shall be charged until the moment of termination of this obligation (Item 4 of Article 329 of the CC RF). For instance, the rejection by the seller of a contract of purchase and sale of a vehicle sold for installments payments shall terminate the obligation of the buyer to pay for the goods and, accordingly, release him from the further charge of forfeit for delay of payment (Item 2 Article 489 of the CC RF).

If in the event of termination of the contract the principal obligation is not terminated, for instance, in the event of transfer of any property into rent, loan, loan and credit, and the duty of the debtor on return of the received property to the creditor is preserved as well as the duty to perform the corresponding payment for using the property, not only the payments for using the property specified in the contract shall be subject to recovery, but also the forfeit for delay of payment thereof (Article 622, Article 689, Item 1 Article 811 of the CC RF).

Similarly, when a consumer refuses to perform a contract of purchase and sale after detecting defects in the goods transferred under the contract, the obligation of the seller to pay the forfeit is preserved until the moment of return of the sum paid for the goods by the buyer (Article 22, Item 1 Article 23 of the Law of the Russian Federation of 7 February, 1992 “On Protection of Consumers’ Rights”.

67. If the contract specifies a forfeit for non-fulfillment of obligations related to consequences of termination of the principal obligation, the forfeit condition shall be valid after termination of the principal obligation arising from this contract (Item 3 Article 329 of the CC RF).

68. The termination of period of validity of a contract does not entail termination of all obligations under the contract, in particular, of the obligations of the parties to pay the forfeit for breach of obligations, unless otherwise stipulated in law or contract (Items 3, 4 of Article 425 of the CC RF).

Reduction of Forfeit by the Court (Article 333 of the CC RF)

69. The payable forfeit, stipulated by law or contract, may be reduced in the judicial manner in case of its obvious disproportion with the consequences of breach of obligation (Item 1 Article 333 of the CC RF).

Provisions of the contract, stipulated in advance and regarding the non-application or restriction of application of Article 333 of the CC RF are void (Items 1 and 4 Article 1, Item 1 of Article 15 and Item 2 of Article 168 of the CC RF).

70. In accordance with Articles 332, 333 of the CC RF, specification in the contract of the maximum or minimum amount (the top or bottom limit) of the forfeit shall not be an obstacle for its decrease by the court.

71. If the debtor is a commercial organization, an individual entrepreneur and also a noncommercial organization engaged in income-generating activities, the reduction of the forfeit by the court shall only be allowed on the basis of a reasoned application of such a debtor, which can be made in any form (Item 1of Article 2, Item 1 of Article 6, Item 1 of Article 333 of the CC RF).

When forfeit is recovered from other persons, the rules of Article 333 of the CC RF may be applied not only upon the application of the debtor but also at the initiative of the court, if obvious disproportion of the penalty to the consequences of breach of obligation is observed (Item 1 of Article 333 of the CC RF). In such circumstances, when considering the case, the court suggests the circumstances confirming such disproportion for discussion (Article 56 of the CPC RF, Article 65 of the ComPC RF). If there is evidence in the case that confirms the obvious disproportion of the penalty to consequences of the breach of obligation, the court shall reduce the penalty in accordance with Article 333 of the CC RF.

The application of the defendant regarding the obvious disproportion of the penalty to the consequences of breach of obligation does not in itself constitute the acknowledgement of debt or of the fact of breach of obligation.

72. The application of the respondent to apply provisions of Article 333 of the CC RF may be made exclusively in the course of consideration of the case by a court of first instance or by a court of appeal, if that court began to consider the case in accordance with the rules of procedure in the court of first instance (Part 5 of Article 330, Article 387 of the CPC RF, Part 6.1 of Article 268, Part 1 of Article 286 of the ComPC RF).

If reduction of forfeit is allowed at the initiative of the court, the issue of such reduction may be presented for discussion of the parties by the court of appeal irrespectively of whether the court began to consider the case in accordance with the rules of procedure in the court of first instance (Parts 1 and 2 of Article 330 of the CPC RF, Parts 1 and 2 of Article 270 of the ComPC RF).

The grounds for reversal of a judicial act in cassation in the part regarding the reduction of forfeit in accordance with Article 333 of the CC RF may be the violation or wrongful application of norms of substantive law which, in particular, include breach of requirements set out in Item 6 of Article 395 of the CC RF, when the forfeit for delay of fulfillment of a monetary obligation is reduced below the limit specified in Item 1 of Article 395 of the CC RF or the forfeit is reduced in the absence of an application in cases specified in Item 1 of Article 333 of the CC RF (Article 387 of the CPC RF, Item 2 of Part 1 of Article 287 of the ComPC RF).

73. The burden of proving the disproportion of the forfeit and absence of grounds for enrichment of the creditor lies on the defendant. Disproportion and absence of grounds for enrichment may be expressed, in particular, in the following: possible amount of losses that the creditor could incur due to the breach of obligation is considerably lower than the charged forfeit (Part 1 of Article 56 of the CPC RF, Part 1 of Article 65 of the ComPC RF). Arguments of the defendant that it is impossible to fulfill the obligation due to financial hardship, debts before other creditors, arrest imposed on monetary funds or other property of the defendant, absence of budgetary financing, non-fulfillment of obligations by counterparts, complete or partial voluntary repayment of debt upon the date of resolution of the dispute, performance of socially significant functions by the defendant, obligation of the debtor to pay interest for using of monetary funds (for instance, on the basis of Articles 317.1, 809, 823 of the CC RF) do not by themselves constitute grounds for reduction of forfeit.

74. When objecting against the application for reduction of the forfeit, the creditor is not obliged to prove losses (Item 1 of Article 330 of the CC RF), but may present evidence of what consequences a similar breach of obligation may entail for a creditor acting in comparable circumstances reasonably and with due diligence; for instance, the creditor may refer to the change of average market indices (loan interest rates, market prices for certain kinds of goods during the corresponding period, currency exchange rates, etc.).

75. When assessing the proportionality of the forfeit and the consequences of breach of obligation, it is necessary to keep in mind that nobody has the right to take advantage of one's illegal behavior, as well as that wrongful use of another person's monetary funds should not be more favorable for the debtor than the conditions of lawful use (Items 3, 4 Article 1 of the CC RF).

The evidence of validity of the amount of forfeit may include data regarding the average amount of payment for short-term credits for replenishment of circulating assets, issued by credit organizations to persons engaged in entrepreneurial activities, or payments under short-term credits issued to natural persons at the location of the creditor within the period of breach of obligation, as well as inflation indicators for the corresponding period.

After establishing the grounds for reducing the forfeit, the court shall reduce the amount of the forfeit.

76. Rules of Article 333 of the CC RF and of Item 6 of Article 395 of the CC RF shall not apply during recovery of interest charged under Article 317.1 of the CC RF.

Rules of Item 6 of Article 395 of the CC RF shall not apply in reduction of the forfeit specified for the breach of a non-monetary obligation, unless otherwise stipulated in law.

77. Reduction of the amount of a contractual forfeit, which is subject to payment by a commercial organization, an individual entrepreneur, a non-commercial organization that violated its obligation when engaged in income-generating activities is allowed in exceptional cases, where it is obviously disproportionate to the consequences of breach of obligation and may result in unjust enrichment by the creditor (Items 1 and 2 Article 333 of the CC RF).

78. Rules on reduction of forfeit on the basis of Article 333 of the CC RF shall also apply where the forfeit is determined by law, for instance, by Articles 23, 23.1, Item 5 of Article 28, Articles 30 and 31 of the Law on Protection of Consumers' Rights, Item 21 of Article 12 of the Law on Compulsory Third Party Car Insurance, provisions of Federal Law of 10 January, 2003 No. 18 "Charter of the Railway Transport of the Russian Federation", Article 16 of Federal Law of 29 December, 1994 No. 79 "On State Material Reserve", Item 5 of Article 34 of Federal Law of 5 April, 2013 No. 44 "On Contract System in the Sphere of Purchase of Goods, Works, Services for State and Municipal Needs".

79. If the forfeit is written off the account of the debtor (Item 2 of Article 847 of the CC RF) upon request of the creditor, and equally in case of offset of the sum of the forfeit against the sum of the principal debt and/or interest, the debtor shall have the right to bring up the issue of application of provisions of Article 333 of the CC RF to the written-off forfeit, for instance, by filing an independent claim for return of excessively paid sums (Article 1102 of the CC RF).

At the same time, if the payable forfeit was transferred by the debtor itself, it shall not have the right to claim reduction of the sum of such forfeit on the basis of Article 333 of the CC RF (sub-item 4 of Article 1109 of the CC RF), except where it proves that the transfer was not voluntary, in particular due to abuse of dominating position by the creditor.

80. If claims are filed for recovery of forfeit, specified in the contract in the form of a combination of a fine and a fee for a single breach, and the debtor asks to reduce the amount of the forfeit on the basis of Article 333 of the CC RF, the court

shall consider the issue of proportionality of the forfeit to the consequences of breach of obligation based on the total sum of the fine and fee.

81. If non-fulfillment or improper fulfillment of the obligation occurred through the fault of both parties, or the creditor maliciously or accidentally promoted the increase in the amount of the forfeit or acted in bad faith, the amount of liability of the debtor may be reduced by the court on these grounds in accordance with provisions of Article 404 of the CC RF. This does not further exclude the application of Article 333 of the CC RF.

If the creditor fails to file a claim for recovery of the principal debt within a long period of time after the due date for the performance of obligation, this shall not be treated as promotion of increase in the amount of the penalty.

Closing Provisions

82. Provisions of the Civil Code of the Russian Federation as amended by Federal Law of 8 March, 2015 No. 42 "On Amendment of Part I of the Civil Code of the Russian Federation" (hereinafter referred to as "Federal Law No. 42") shall be applied to legal relations arising after the day on which that law comes into force, unless otherwise stipulated in Article 2 of Federal Law No. 42. As for legal relations that arose before the day on which Federal Law No. 42 comes into force, provisions of the amended Civil Code of the Russian Federation shall apply to those rights and obligations that will arise after the day Federal Law No. 42 comes into force (from 1 June, 2015).

83. Provisions of the Civil Code of the Russian Federation as amended by Federal Law No. 42, for instance, Article 317.1 of the CC RF, shall not apply to the rights and duties that arise from contracts concluded before the day on which that law came into force (before 1 June, 2015). When considering disputes arising from the abovementioned contracts, the courts should be guided by the prior version of the Civil Code of the Russian Federation, taking into account the developed practice of its application (Item 2 of Article 4, the second paragraph of Item 4 of Article 421, Item 2 of Article 422 of the CC RF).

At the same time, when resolving the issue of charging interest for non-fulfillment of the monetary obligations arising from contracts concluded before 1 June, 2015 as regards the periods of delay which took place from 1 June, 2015, the amount of interest shall be determined in accordance with Item 1 of Article 395 of the CC RF as amended by Federal Law No. 42.

84. Due to the adoption of this ruling, the following provisions are hereby recognized as not subject to application:

- Items 2, 42, 50-52, the second paragraph of Item 56 of Ruling of the Plenary Session of the Supreme Court of the Russian Federation and of the Plenary Session of the Supreme Commercial Court of the Russian Federation of 1 July, 1996 No. 6/8 “On Certain Issues Regarding the Application of Part I of the Civil Code of the Russian Federation”;
- Items 1-3, 5-11, the sixth paragraph of Item 15, Items 23-29 of Ruling of the Plenary Session of the Supreme Court of the Russian Federation and of the Plenary Session of the Supreme Commercial Court of the Russian Federation of 8 October, 1998 No. 13/14 “On the Practice of Application of Provisions of the Civil Code of the Russian Federation Regarding Interest for Use of Another Person’s Monetary Funds”;
- Items 1, 3-7, 10 of Ruling of the Plenary Session of the Supreme Commercial Court of the Russian Federation of 22 December, 2011 No. 81 “On Certain Issues of Application of Article 333 of the Civil Code of the Russian Federation”;
- Ruling of the Plenary Session of the Supreme Commercial Court of the Russian Federation of 4 April, 2014 No. 22 “On Certain Issues of Award of Monetary Funds to a Plaintiff for Non-Execution of a Judicial Act”.

Chief Justice of the Supreme Court of
the Russian Federation V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation V.V. Momotov