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Business Contracts in Russia - Part 3

*By Vladimir Orlov**

This article is the last part of the three articles work that handles business contracts in Russia. Its subjects are security means for performance of obligations, including forfeit, pledge, retention of the debtor's property, suretyship, independent guarantee, earnest money or advance, as well as security payment; change and termination of contract, including substitution of parties in obligation and termination of obligations, as well as change and rescission of contract; and liability for breach of contract obligations, including compensation for damages, forfeit as liability form and default interest as well as other coercion means, including implementations of injunction, astreinte, and indemnity.

Keywords: *Change and rescission of contract; Compensation for damages; Default interest; Forfeit; Security means; Substitution of parties; Termination of obligation*

Security means for Performance of Obligations

In general

Russian civil law contains provision on security means or specific means that provides (or secures) for the performance of obligations[1]. They mean additional obligations, the purpose of which is to secure performance of the principal obligation and consequently oblige the creditor to act in accordance with the contract. Thus, another obligation relation between the debtor and the creditor or the other person that secures the performance of the obligation is created. Such other obligation relation is, however, of a specific nature: in respect of the principal obligation, it is additional or accessory one that is noted in Article 329 of the Civil Code. Accordingly, the invalidity of an agreement on securing the execution of an obligation is not to entail the invalidity of the agreement from which the principal obligation has arisen[2], and in the event of invalidity of the agreement from which the principal obligation has originated, as secured is to be deemed the duties involved in the return of the property which are connected with the consequencess of such invalidity[3]. But the termination of the main obligation is to entail the termination of the obligation securing it, unless otherwise provided for by law or contract[4].

*Dr. of Legal Sciences; Professor, Helsinki, Finland.
Email: vladimir.orlov@saunalahti.fi

[1]For more on the subject *see*, for instance, Orlov (2011) at 205–206 and the material cited therein, as well as Karapetov (2017) at 214–548, Shabolova (2023) at 110–123, and Sitdikova, Svirin & Golyshev (2025) at 456–503.

[2]Article329.2.

[3]Article329.3.

[4]Article329.4.

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According to Article 329 of the Civil Code, the performance of obligations may be secured by forfeit, pledge, retention of the debtor's property, suretyship, independent guarantee, earnest money or advance, security payment and in other ways provided for by the law[5] or a contract.[6]

Forfeit

The forfeit (fine, penalty) is subject to the provisions of the Civil Code[7]. Accordingly, it is recognized in Russian law as the sum of money, defined by the law or by the agreement, which the debtor is obliged to pay to the creditor in case of his non-performance, or an improper performance, of the obligation in the case of delay of the performance.[8] It is peculiar to the claim for the payment of the forfeit, that the creditor is not obliged to prove that the losses have been inflicted upon him. In the event of obligation related to the business activities, the forfeit is realized in Russian law regardless the fault of the creditor (that has violated the obligation). The question is of a simple mean that the debtor may use against the creditor that has not performed or performed improperly his obligation for compensation of the damage caused by it. The only ground for the application of forfeit is the breach of a contract or a provision of law or a custom.

In general, the forfeit play's double role: on the other hand, it is a security mean and on the other hand, it is a form of a contractual liability. Accordingly, the forfeit is subject not only to the rules securing the performance of obligations but also to the rules of the Civil Code on losses and forfeit[9] that belong to the provisions on liability for violation of obligations that are presented further. As a security mean the forfeit acts until the obligation is performed, and in the event it is not performed, it turns into the form of liability.

Ordinarily, the contract grounded (or contractual) forfeit as a voluntary security mean for performance is used in Russia. It ought to be agreed by the contracting parties and it concerns the amount, method of calculation, application conditions etc. The only requirement for the forfeit agreement is that it ought to be made out in written form, irrespective of the form of the principal obligation. The form requirement for the forfeit agreement is exceptionally strict, and it means that even in the case that the contract is concluded orally, the agreement on the forfeit ought to be concluded in written form; non-observance of the written form for the agreement on the forfeit entails its invalidity.[10]

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[5]Provisions on the law established security means are contained in Article 824 on financing against assignment of monetary claim of the Civil Code, the Customs Code, the Budget Code, the Law on concession agreements 2005, and the Law on national payment system 2011.

[6]Russian civil law is familiar also with operative measures, as for instance, with withdrawal from performance. Such a measure a contractual party may use without recourse to public power in the event the other party does not perform his obligation. An ordinary example of such an operative measure is the case where a contractual party refrains from his performance because of the breach of the contract by the counterparty; it may mean also that a contract is dismissed in accordance with its conditions.

[7]Articles 330–333.

[8]Article 330.1.

[9]Article 394.

[10]Article 331 of the Civil Code.

Also, the law grounded, or legal (statutory) forfeit is recognized in Russian law. According to Article 332 of the Civil Code the creditor has the right to claim the payment of forfeit, defined by the law (legal forfeit), irrespective of whether the obligation for its payment has been stipulated by an agreement between the parties. The amount of the legal forfeit may be only increased by the parties, unless it is prohibited by the law[11]. Instead, the reduction of the contract grounded forfeit is in principle allowed[12].

Retention of Title

The rules on retention of title (property) are contained in Articles 359 and 360 of the Civil Code, Accordingly, the creditor, in whose custody is the thing that is subject to the transfer to the debtor or to the person, named by this, has the right, in case the debtor fails to perform in due time the obligation on the payment for this thing or on the compensation to the creditor of the expenses and other losses he has borne in connection with it, to retain it until the corresponding obligation is performed.

Pledge

The rules on pledge in Russian law are contained in Articles 334–358 of the Civil Code. The main part of the rules on pledge (relations) is contained in the general provisions on it[13]. They include the rules on its subjects and objects, emergence and termination, as well as on contract of pledge.

According to Article 334 of the Civil Code, by virtue of a pledge the creditor under an obligation secured with the pledge (pledgee) has the right, in the event of the debtor's default on or improper performance of his obligation, to receive satisfaction from the value of the pledged property (the object of pledge) preferentially before other creditors of the person to whom the pledged property belongs (pledgor): pledge arises under the law or a contract. Unless otherwise provided for by law or contract, a pledge secures a claim in the amount it has at the time of satisfaction, including interest, forfeit, compensation for losses due to late performance, and also compensation for the pledgee's necessary expenses required to maintain the subject of pledge and related to levy of execution on the subject of pledge and realisation of expenses incurred.[14] The object of a pledge may be any property, including things and property rights, except for property that is not subject to levy of execution, claims inseparably linked with the creditor's personality, including claims for alimony, compensation for harm caused to life or health and other rights the assignment of which is prohibited by law.[15] The pledged property is to be remained with the pledgor, unless otherwise provided for by the Civil Code, another law or a contract.[16]

[11]Article 332.3.
[12]Article 333. For more on the reduction of forfeit *see* the further presentation on forfeit as liability form. For more on the reduction of forfeit *see* the further presentation on forfeit as liability form.
[13]Articles 334–356.
[14]Article 337.
[15] Article 336.
[16]Article 338.

In addition to the general provisions on pledge, the Civil Code contains provisions on specific kinds of pledge, the subjects of which are goods in circulation, things in a pawn shop, rights under the law of obligations, including rights under a bank account contract and rights of shareholders of juristic persons as well as exclusive rights; the general provisions on pledge are applicable to these kinds of pledge unless otherwise provided by the rules of on them. In turn, the pledge of immovable property (mortgage) that is largely used in Russia is subject, before the application of general provisions on pledge, to the rules of the Civil Code on rights in rem, and the law on mortgage[17].

Surety

The rules on surety in Russian law are contained in the Civil Code[18]. Accordingly, under a contract of suretyship, the surety is obliged to the creditor or another person to be liable for the performance of his obligation in full or in part. In general, any pecuniary or non-pecuniary obligation may be secured by the surety, on the provision that it is legally valid, moreover the surety may cover not only any existing obligation, but the contract of suretyship may be also concluded to provide security for an obligation that will arise in the future. This ought to be important, for instance, to credit obligations.

According to Article 361.3 of the Civil Code, the terms of suretyship pertaining to the principal obligation are to be deemed coordinated, if in a contract of suretyship there is a reference to the agreement from which the securing obligation has originated or will originate in the future. In the event of the contract of suretyship under which the surety is a person engaged in business activities, this may state that the surety secures all the debtor's existing and/or future obligations with respect to the creditor within the limits of a definite amount.

The contract of surety is subject to form requirements. According to Article 362 of the Civil Code, contract of surety ought to be legalized in written form, and non-observance of the written form entails its invalidity. There is no other requirement concerning the conclusion of surety contracts in the Civil Code, and it means the applicability of the general contract law rules. However, it is important to note that certain organisations, as for instance, the state-financed entities and the crown enterprises as well representative and branch offices that are not juristic persons may not act in Russia as sureties.

The volume of liability of the surety is determined, according to the Civil Code, by the surety contract. In default of such provisions in the contract, the surety is liable to the creditor in the same volume as the debtor, including the payment of interest, compensation of court expenses, involved in the exaction of the debt and other losses, borne by the creditor, which have been caused by the debtor's non-performance or improper performance of the obligation, unless otherwise stipulated by the contract of surety. [19]

[17]No. 102-FZ of 1998. Articles 357–358
[18]Articles 361–367.
[19]Article 363.2.

According to the Civil Code [20], the surety and the debtor are jointly liable to the creditor in the case of failure to perform, or of an improper performance by the debtor, of the obligation, secured by the surety; this is however a dispositive rule, since also subsidiary liability of the surety may be stipulated by the law or by the contract of surety. Also, the persons who have provided joint surety (co-sureties) are to be jointly liable to the creditor, unless otherwise stipulated by the contract of suretyship. Moreover, unless otherwise follows from the agreement made by co-sureties and the creditor, the co-sureties that have limited their liability with respect to the creditor are to be deemed as having secured the principal obligation, each of them in the part thereof. A co-surety that has executed an obligation is entitled to demand compensation of another person that has provided a security of the principal obligation jointly therewith for the amount paid in proportion to their participation in securing the principal obligation.[21] In the event of loss of security of the principal obligation, which existed at origination of suretyship, or deterioration of the conditions of its security due to circumstances dependent on the creditor, the surety is, according to the Civil Code, to be relieved of liability insofar as he can demand compensation on account of lost security[22], provided that he can prove that at conclusion of the contract of suretyship he was entitled to reasonably rely on such compensation. An agreement with the physical person as the surety that establishes other consequences of the security's loss is to be deemed null and void.[23]

The provisions of the Civil Code contain also other rules, which are directly purported to protect the surety, and it concerns Article 364 on right of surety to object to a creditor's claim. Accordingly, the surety has the right to put forward against the creditor's claim the objections, which could have been put forward by the debtor, unless otherwise follows from the contract of surety. The surety does not lose the right to these objections even in case the debtor has renounced them or has recognized his debt. Moreover, according to the Civil Code[24], it is not allowed, to restrict the surety's right to make objections that could be presented by the debtor, and an agreement otherwise is to be null and void. Furthermore, the surety protecting provisions of the Civil Code stipulate that he is entitled not to fulfil the obligation thereof until the creditor can satisfy the claim thereof by way of setting it off against the debtor's claim[25]. However, the surety that has acquired the right of a co-pledgee or a right in respect of other security of the principal debt is not entitled to exercise these rights to the detriment of the creditor, including that he is not entitled to have his claim thereof against the debtor satisfied from the cost of pledged property pending full satisfaction of the creditor's claims in respect of the principal obligation[26].

[20]Article 363.1.
[21]Article 363.3.
[22]Article 365.
[23]Article 363.4.
[24]Article 364.5,
[25]Article 364.2. However, in the event of the debtor's death, the surety under the obligation of this may not refer to the limited liability of the debtor's heirs with respect to the testator's debts in accordance with Article 1175.1 of the Civil Code. (Article 364.3).
[26]Article 364.4.

Also, the provisions of Article 365 of the Civil Code on rights of surety, who has fulfilled obligation, are purported to protect the surety as well as to determine the duties of the creditor and debtor of the principal obligation. Accordingly, the surety, who has performed the obligation, is entitled to the right of regress. To him are to pass the creditor's rights by the obligation and the rights that have belonged to the creditor as the pledgee, in the volume, in which the surety has satisfied the creditor's claim. Moreover, the surety is entitled to independent claim — he also has the right to claim that the debtor pays the interest on the amount of money, paid up to the creditor, and recompense other losses, which he has borne in connection with the liability for the debtor.[27] Furthermore, after the surety has performed the obligation, the creditor is obliged to pass to the surety the documents, certifying the claim against the debtor, and to transfer to him the rights securing this claim.[28] However, the rules that protect the surety, who has performed the obligation, are dispositive — they are to be applied, unless otherwise stipulated by the law, other legal acts or by the contract, concluded by the surety with the debtor, or unless otherwise follows from the relationships between them[29].

The surety is also protected under the rules of Article 366 of the Civil Code on notification related to suretyship. Accordingly, the debtor who is notified by the surety about the claim raised against him by the creditor or involved by the surety in participation in the case, is bound to notify the surety about all the objections that he has against this claim and to present the evidence that he has, to prove these claims. Otherwise, the debtor is deprived of the right to make the objections that could be raised against the debtor's claims or against the surety's claim, unless otherwise provided for by the agreement between the surety and the debtor.[30] In turn, the debtor who has executed the obligation secured by the surety must immediately notify the surety about this. Otherwise, the surety, who in his turn has executed the obligation, has the right to exact from the creditor what he has groundlessly obtained, or to file a claim of regress against the debtor, in which case the debtor has the right to only exact from the creditor what has been groundlessly obtained[31].

Also, the provisions of the Civil Code[32] on termination of suretyship are evidently purported to protect the surety. Accordingly, the suretyship is to be terminated simultaneously with termination of the obligation secured by it. But the termination of a secured obligation in connection with the debtor's liquidation after the creditor has raised with a court or in some other way established by law a claim against the surety does not terminate the suretyship. In the event the principal obligation is only secured by suretyship in part, the partial execution of the principal debt is to be accounted against the unsecured part thereof. However, where there are several obligations between the debtor and the creditor, solely one of them being secured

[27]Article 365.1.
[28]Article 365.2.
[29]Article 365.3.
[30]Article 366.1.
[31]Article 366.2.
[32]Article 367.

by suretyship, and the debtor has not specified which of them he is executing, it ought to be deemed that he has executed the non-secured obligation.[33]

The provisions of the Civil Code[34] on termination of suretyship also contain the rule that, if an obligation secured by suretyship has been changed without the surety's approbation, and this entails the enhancement of liability or other unfavourable consequences for the surety, the surety is to be held liable only under the previous terms. However, contract of surety may provide for the surety's approbation given in advance, should the circumstances be changed, to be liable with respect to creditors under the changed terms. Such approbation ought also to provide for the limits within which the surety agrees to be liable in respect of the debtor's obligations.[35]

According to the Civil Code , the surety is also to be terminated

- because of the transfer to another person of the debt under the obligation, secured by suretyship, unless the surety within a reasonable time after forwarding a notice thereto of the debt's transfer has given (explicitly expressed) consent to the creditor to being liable for the new debtor[36];
- if the creditor has refused to accept the proper execution, offered by the debtor or by the surety[37]; or
- after the expiry of the term, indicated in the contract of suretyship, for which it has been issued; and if such term has not been stipulated, the suretyship is to be terminated if the creditor does not file a claim against the surety in the course of a year from the date of maturity of the obligation secured by suretyship[38].

Independent Guarantee

Independent guarantee belongs in Russian law to new (introduced in 2015) security means for the performance of obligations and is subject to own specific provisions of the Civil Code[39]. Accordingly, under an independent guarantee the guarantor assumes at the request of another person (the principal) an obligation to pay a definite amount of money to a third party (the beneficiary) specified by the principal in compliance with the terms of the obligation assumed by the guarantor, irrespective of the validity of the obligation secured by such guarantee. A claim about a definite amount of money is to be deemed satisfied if the terms of an independent guarantee enable one to establish the amount of money to be paid as of

[33]Article 367.1.
[34]Article 367.
[35]Article 367.2.
[36]Article 367.3. Instead, the debtor's death or re-organisation of the juristic person does not terminate suretyship (Article 367.4).
[37]Article 367.5.
[38]But if the term of execution of the principal obligation has not been stipulated and cannot be defined, or if it has been defined at the time of demand, the suretyship is to be terminated in two years from the date when the contract of suretyship is concluded, unless the creditor files a claim against the surety. Article 367.6.
[39]Articles 368–379.

the time of execution of the obligation by the guarantor.[40] Independent guarantee has three parties: the guarantor, the principal and the beneficiary. The guarantor may be presented by banks or other credit organisations (banking guarantees), as well as by other profit-making organisations. Instead, the obligations of persons (not recently cited) that have issued an independent guarantee, are subject to the rules on the suretyship contract[41].

An independent guarantee ought to be issued in writing and enable to reliably define the terms of the guarantee, as well as to make sure that it is really issued by a definite person in the procedure that is established by the legislation, customs or by the agreement between the guarantor and the beneficiary[42]. An independent guarantee must indicate: date of issuance, principal; beneficiary; guarantor; principal obligation, the execution of which is secured by the guarantee; monetary sum to be paid or procedure for its calculation; guarantee's duration; circumstances upon the occurrence of which the guarantee's amount ought to be paid. An independent guarantee may contain a condition on the reduction or increase of the amount of the guarantee when a definite time comes, or a definite event occurs.[43] An independent guarantee enters into force from the moment when it is forwarded (transferred) by the guarantor, unless otherwise provided for by the guarantee[44].

It is peculiar for an independent guarantee that it is subject to the principle of independence of guarantee meaning that it is independent from the principal obligation. Contrary to other security means, the guarantor's obligation to the beneficiary provided for by an independent guarantee does not under Article 370 of the Civil Code depend in their relations on the principal obligation for securing the execution of which it has been issued, on the relations between the principal and the guarantor, as well as on any other circumstances, even if the independent guarantee contains a reference to them[45]. Thus, the guarantor is not entitled to make claims against the beneficiary arising from the principal obligation for securing the execution of which the independent guarantee has been issued, as well as from any other obligation, including an agreement on issuance of the independent guarantee, and in his objections against the beneficiary's claim to execute the independent guarantee the guarantor is not entitled to make reference to circumstances which are not indicated in the guarantee[46]. Also, the guarantor is not entitled to claim against the beneficiary for setting off the claim assigned by the principal to the guarantor, unless otherwise provided for by the independent guarantee or the agreement between the guarantor and the beneficiary[47].

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[40]Article 368.1.
[41]Article 368.3. The rules on independent guarantee also apply in the cases when the obligation of the person that has granted a guarantee lies in the transfer of stocks, bonds and other items defined by generic features, unless otherwise results from the essence of relations Article 368.5.
[42]Article 368.2 of the Civil Code.
[43]Article 368.4.
[44]Article 373.
[45]Article 370.1.
[46]Article 370.2.
[47]Article 370.3.

According to Article 371 of the Civil Code an independent guarantee may not be withdrawn or changed by the guarantor, unless otherwise provided for by it[48]. In the event the terms of an independent guarantee allow its withdrawal or change, it ought to be effected in the form in which the guarantee is issued, unless another form is provided for by the guarantee[49]. However, if under the terms of an independent guarantee it may be withdrawn or changed by the guarantor only by approbation of the beneficiary, the guarantor's obligation is to be deemed changed or terminated from the moment the approbation is received[50]. The modification of the guarantor's obligation after issuance of an independent guarantee to the principal may not concern the rights and duties of the principal, unless he afterwards gives consent to it[51].

According to the rules of Article 372 of the Civil Code on transfer of rights under independent guarantee, the beneficiary under an independent guarantee is not entitled to transfer the rights of claim against the guarantor to another person, unless otherwise provided for by the guarantee. In any case, the transfer by the beneficiary of the rights under an independent guarantee to another person is only allowed on condition of the simultaneous assignment of rights under the principal obligation to the same person.[52] However, if the terms of an independent guarantee allow, the transfer by the beneficiary of the right of claim against the guarantor, such transfer is only possible with the guarantor's approbation, unless otherwise provided for by the guarantee[53].

According to Article 374 of the Civil Code on presentation of claim under independent guarantee, the beneficiary's claim for payment of the sum of money under an independent guarantee ought to be presented to the guarantor in written form, with the documents required to be enclosed therewith. The beneficiary is to point out, either in the claim itself or in the enclosure with it, the circumstances the occurrence of which entails payment under the independent guarantee[54]. The beneficiary's claim ought to be presented to the guarantor before the expiry of the validity term of the independent guarantee.[55]

On receiving the beneficiary's claim, the guarantor must, according to Article 375.1 of the Civil Code, without delay notify about it the principal and pass to him the copy of the claim with all the related documents. The guarantor is obliged to examine the beneficiary's claim and the enclosed documents within five days from the date following the date when the claim with all the enclosed documents is received and, if the claim is recognized as justified, to make payment[56]. The terms of an independent guarantee may provide for a different term for the claim's examination, however, not exceeding 30 days.

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[48]Article 371.1.
[49]Article 371.2.
[50]Article 371.3.
[51]Article 371.4.
[52]Article 372.1
[53]Article 372.2.
[54]Article 374.1.
[55]Article 374.2.
[56]The beneficiary is bound according to Article 375[1] to compensate the guarantor or principal for the losses caused by the fact that the documents filed are unreliable or the claim raised is groundless.

The rules on guarantor's refusal to satisfy beneficiary's claim of Article 376 of the Civil Code imply the principle of independence of guarantee. Accordingly, the guarantor may refuse to satisfy the beneficiary's claim, only if this or document attached to it do not correspond to the terms of the independent guarantee or if they are presented to the guarantor after the expiry of the guarantee's validity; the guarantor is, however, obliged to notify the beneficiary about this at the time determined for the claim's examination with the reason for the refusal being specified.[57]

Furthermore, the guarantor has the right to suspend payment for a term up to seven days if he has reasonable grounds to consider that:

1) any of the presented documents is unreliable;
2) the circumstance in the occurrence of which the independent guarantee would secure the beneficiary's interests has not occurred;
3) the principal obligation of the principal secured by the independent guarantee is invalid; or
4) execution under the principal obligation of the principal has been accepted by the beneficiary without any objections.[58] But upon the expiry of the time provided for the payment's suspension and in the absence of grounds for the refusal to satisfy the beneficiary' claim, the guarantor is bound to make payment under the guarantee.[59]

According to the rules on limits of guarantor's obligation of Article 377 of the Civil Code the guarantor's obligation to the beneficiary, stipulated by the independent guarantee, is to be limited by the payment of the sum of money, for which the guarantee was issued, except for the liability for non-performance or improper performance of the obligation, unless otherwise stipulated in the guarantee.

The guarantor's obligation to the beneficiary under an independent guarantee is to be terminated according to Article 378 of the Civil Code[60]:

1) by payment to the beneficiary of the sum of money for which the independent guarantee has been issued;
2) after expiry of the term, determined in the independent guarantee, for which it was issued;
3) because of the beneficiary's waiver of his rights under the guarantee; as well as
4) under the agreement between the guarantor and beneficiary on termination of the obligation.[61]

Since the termination of the guarantor's obligation on the grounds indicated in the law concerns only the relations between the guarantor and beneficiary, noteworthy is

[57]Article 376.1.
[58]Article 376.2.
[59]Article 376.5.
[60]Article 378.1.
[61]The agreement between the guarantor and the beneficiary may provide that the termination of the guarantor's obligation requires the return of the guarantee to the guarantor. Otherwise, the termination of the guarantor's obligation does not depend on if the guarantee has been returned or not. (Article 378.2)

the rule that a guarantor, who has got knowledge about the termination of an independent guarantee, is obliged to immediately notify the principal about it.[62]

The provisions of the Civil Code on independent guarantee contain also the rules on repayment to guarantor of sums of money paid under independent guarantee. According to Article 379 the principal is bound to compensate the guarantor for the sums of money paid in compliance with the terms of an independent guarantee, unless otherwise provided for by an agreement on the guarantee's issuance[63]. The guarantor is not, however, entitled to demand compensation from the principal for the sums of money paid to the beneficiary not in compliance with the terms of an independent guarantee or for failing to execute the guarantor's obligation with respect to the beneficiary, unless otherwise provided for by the agreement between the guarantor and the principal or if the principal has given consent to payment under the guarantee[64].

Advance

According to the concept of advance provided in Article 380 the Civil Code, it is recognized as the sum of money that issued by one of the contracting parties to offset the payments to the other party due from it[65], as a proof that the contract has been concluded and that its performance has been secured against[66]; the agreement on the advance is to be concluded in written form[67].

Securing Payment

The provisions of the Civil Code (Articles 381^1–381^2) on securing payment became[68] legislatively introduced in 2015 after being recognized as a security mean in practice related to immovable property in Russia. Accordingly[69], a pecuniary obligation, including the duty to compensate for losses or to pay a forfeit in the event of violation of a contract, and an obligation that arises in the future [70] may be secured as agreed by the parties by way of either party entering a definite sum of money (securing payment) for the benefit of the other party. The rules concerning the securing payment are also applicable to cases where stocks, bonds, other securities or articles defined by generic features are subject to transfer under the obligation to be secured[71].

In the event of occurrence of the circumstances provided for by a contract on securing payment, the sum of the securing payment is to be set off against execution

[62]Article 378.3.
[63]Article 379.1.
[64]Article 379.1.
[65]meaning ordinarily advance payment.
[66]meaning ordinarily the earnest money; by earnest money as agreed by the parties, unless otherwise established by law, may be secured, in accordance with Article 380.4, the execution of an obligation to conclude the principal agreement under the terms provided for by a preliminary agreement.
[67]otherwise, the paid sum of money is to be regarded only as advance payment.
[68]together with other reforms of Russian civil laws.
[69]Article 381^1.1.
[70]even non-contractually grounded. Se for instance. https://zakon.ru/blog/2019/06/28/obespechenie_ispolneniya_buduschego_vnedogovornogo_obyazatelstva
[71]Applicable are also laws on securities, if they are such subjects to transfer; Article 381^2.1.

of an appropriate obligation. But if such circumstances do not occur at the time provided for by a contract or in the event of termination of a secured obligation, the securing payment is subject to repayment, unless otherwise agreed by the parties.[72]

Change and Termination of Contract

The rules on change and termination of contract are contained in the provisions of the Civil Code on changes in obligations, including substitution of parties in obligation[73] and termination of obligations[74], as well as change and rescission of contract[75].

Substitution of Parties in Obligation[76]

Transfer of rights of creditor to another person

a) Transfer of rights under transaction

According to Article 382 of the Civil Code on grounds and procedure for transfer of creditor's rights to another person, a right that belong to a creditor on the grounds of an obligation may be transferred to another person under a transaction or may be transferred to another person under the of law. Exceptionally, the transfer to another person of the rights inseparable from the personality of the creditor, including claims for alimony and compensation for harm caused to life or health, is not allowed under the Civil Code[77].

In general, unless otherwise provided by the law or a contract, the creditor's right is transferred to the new creditor in the same scope and on the same terms that existed on the time of transfer of the right. However, the right of claim under a monetary obligation may be transferred to another person partially, unless otherwise provided by law. Also, the right to receive performance other than the payment of an amount of money may be transferred to another person partially on the condition that the relevant obligation is divisible and partial assignment for the debtor does not make his obligation significantly more burdensome.[78]

According to Article 382.2 of the Civil Code, no consent of the debtor is required for the transfer of the creditor's rights to another person, unless otherwise provided by law or the contract[79]. In the event of the ban of transfer of the creditor's rights, such a transaction may be recognised invalid on the claim of the debtor, if the

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[72]Article 381[1].2.
[73]Articles 382–393.
[74]Articles 407–418.
[75]Articles 450–453.
[76]For more on the subject *see*, for instance, Shabolova (2023) at 104–106 and Sitdikova, Svirin & Golyshev (2025) at 504–522 as well as Karapetov (2017) at 548–633.
[77]Article 383.
[78]Article 384 of the Civil Code.
[79]In the event the debtor is a physical person, and his rights are transferred without his consent, the initial creditor and the new creditor are solidarily obligated to compensate to the debtor for the necessary expenses caused by the transfer. however, the legislation on securities may provide other rules for compensating expenses. (Article 382.4)

counterparty knew or should have known about the ban. However, the ban is not to prevent the sale of such creditor's rights in the procedure established by the legislation on execution proceedings and the legislation on insolvency (bankruptcy).

Although the consent of the debtor for the transfer of rights is not generally required, the debtor ought to be notified in writing about it. In default of it, the new creditor is to bear the risk of the consequences that have been caused and are unfavourable for him. However, the debtor's liability is to be terminated by the performance of the obligation to the initial creditor effectuated before the receipt of the notice of transfer of the right to another person.[80]

According to rules of the Civil Codeon notifying debtor of transfer of right[81], notification of a debtor of the transfer of a right is effective for him, regardless of if it has been sent by the initial or a new creditor. However, the debtor has the right to abstain from performing the obligation to the new creditor until a proof of transfer of the right to him is provided thereto, except for cases when a notice of transfer of a right is received from the initial creditor[82]. In the event a debtor has received a notice concerning one or several subsequent transfers of a right, he is to be deemed to have performed the obligation to the proper creditor, if the obligation is performed in accordance with the notice concerning the last of these transfers,[83]

b) Transfer of rights under law

According to Article 387 of the Civil Code on transfer of creditor's rights to another person under law, it occurs in cases as follows:

1) because of universal succession of the rights of the creditor;
2) by a court decision on transfer of the creditor's rights to another person, if it is provided by law;
3) as a consequence of performance of the obligation by the debtor's surety or by a pledgor, who is not a debtor of that obligation;
4) in the event of subrogation to an insurer of the creditor's rights in respect of a debtor who is responsible for the occurrence of the insured accident;
5) in other cases, provided by law[84].[85]

c) Assignment of claim (cession)

According to Article 388.1 of the Civil Code the assignment of a claim by a creditor (assignor) to another person (assignee) is admissible, if it does not contradict the law. The assignment of a claim based on a transaction that has been concluded in simple written or notarial form requires the corresponding form in writing. The creditor has the right to assign a claim without the consent of a debtor, except for a claim in respect of an obligation where the creditor's personality is substantially

[80]Article 382.3 of the Civil Code.
[81]Article 385.
[82]Article 385.1.
[83]Article 385.2.
[84]Article 387.1.
[85]The cases of transfer of right under the law are also subject to the rules of the Civil Code on assignment of a claim (Articles 388 – 390), unless otherwise provided for by the law or follows from the essence of the relationships (Article 387.2).

important for the debtor, which is prohibited[86]. Furthermore, according to the Civil Code[87], an agreement between a debtor and a creditor on limitation or a ban on the assignment of a claim that concerns a monetary obligation does not invalidate such assignment, and is not to serve as grounds for rescission of the contract from which that claim has arisen; however, the creditor (assignor) is not to be relieved from liability to the debtor for the breach of the agreement. In turn, the right to receive performance in non-monetary form may be assigned without the consent of the debtor, unless the assignment makes the performance of the obligation significantly more burdensome. Moreover, an agreement between the debtor and the assignor may prohibit or restrict the assignment of the right to receive non-monetary performance[88].[89]

The provisions of the Civil Code on assignment of claim contain also the rule that concerns a solidary creditor; accordingly, he has the right of assigning a claim to a third party without the consent of other creditors, unless otherwise provided by an agreement between them[90].

Assignment of future claims is recognised in the present Russian law. According to Article 388^1 of the Civil Code, a claim under an obligation that is going to arise in the future (a future claim), including a claim under an obligation resulting from a contract that is to be made in the future, ought to be defined in an agreement of assignment in a way, that enables its identifying at the time of its origination or transfer to the assignee. Unless otherwise provided for by the law, a future claim ought to be transferred to the assignee at its origination; the parties may, however, agree on the later date of transfer.[91]

The rights and duties of assignor and assignee are subject to the provisions of Article 389^1 of the Civil Code. Accordingly, the mutual rights and duties of the assignor and assignee are to be defined by the Civil Code and the contract between them that serves as grounds for the assignment[92]. A claim is to be transferred to the assignee at the conclusion of the contract under which assignment takes place, unless otherwise provided for by law and the contract. Furthermore, the assignor ought to, unless otherwise provided for by the contract, transfer to the assignee everything that has been received from the debtor to set off the assigned claim.[93]

According to Article 390 of the Civil Code on liability of assignor, the assignor is liable to the assignee for the invalidity of the claim that has been transferred, but not for the debtor's non-performance of the claim, except for the cases where he has undertaken the suretyship for the debtor in respect of the assignee. Unless otherwise provided for by law, the contract, on the ground of which the assignment occurs,

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[86]Article 388.2.
[87]Article 388.3.
[88]In the event a contract has provided for a ban on assignment of the right to receive non-monetary performance, the agreement on assignment of the right may only be declared invalid under the debtor's claim, if it is proved that the other party to the agreement knew or had to know about the ban.
[89]Article 388.4.
[90]Article 388.5.
[91]Article 388^1.2.
[92]Article 389^1.1.
[93]Article 389^1.2.

may provide that the assignor is not liable with respect to the assignee for invalidity of the claim transferred under the contract, the execution of which relates to the business activities of the parties, provided that such invalidity is caused by the circumstances about which the assignor did not know or could not know or about which he has warned the assignee, in particular, the circumstances related to additional claims, including the claims in respect of the rights securing the performance of obligations and the rights to interest.

In the event of assignment by the assignor, the following requirements are, according to the Civil Code[94], to be observed:

- the assigned claim, except for a future claim, ought to exist;
- the assignor has the right to effectuate the assignment;
- the assigned claim has not been earlier assigned by the assignor to another person;
- the assignor has not committed and will not commit any actions that can be grounds for the debtor's objections against the assigned claim.

Furthermore, also other requirements applicable to the assignment may be provided by the law or a contract.

Transfer of debt

Transfer of debt is subject to the provisions of the Civil Code[95]. Accordingly, the transfer of a debt from a debtor to another person may be effectuated by agreement between the initial debtor and the new debtor[96]. The transfer is admissible with the consent of the creditor, and in default of this, it ought to be deemed null and void[97]. In obligations relating to business activities a debt may be transferred by agreement between the creditor and a new debtor, under which the new debtor assumes the obligation of the initial debtor[98]. In such a case the initial debtor and the new debtor are to bear solidary liability to the creditor, unless the agreement on transfer of the debt provided the subsidiary liability of the initial debtor or if the initial debtor has been relieved of the duty to perform the obligation[99]. The new debtor that has performed the obligation relating to business activities acquires the right of creditor in respect of that obligation, unless otherwise provided for by an agreement between the initial debtor and the new debtor or follows from the essence of their relationships.[100] Furthermore, in accordance with Article 392 of the Civil Code, the new debtor has the right to put forward objections against the creditor's claims, based on the relationships between the creditor and the primary debtor, but

[94]Article 390.2.
[95]Articles 391-392[3].
[96]The form of transfer of the debt is subject to the rules on written form contained in Article 389 that concern assignment claim.
[97]Article 391.2.
[98]Article 391.1.
[99]The initial debtor has the right to refuse from that he would be relieved of the duty to perform the obligation.
[100]Article 391.3.

he is not entitled to exercise the right of setting off the counterclaim belonging to the initial debtor in respect of the creditor.

The provisions of the Civil Code on transfer of debt also contain in the 2015 amended rules on creditor's rights to new debtor[101], on transfer of debt by virtue of law [102], and on transfer of contract.[103]

Termination of Obligations[104]

According to Article 407 of the Civil Code on grounds for termination of obligations, the obligation is to be terminated in full or in part on the grounds, provided for by the Civil Code, other laws and other legal acts, or by a contract[105]. The termination of the obligation may occur also upon the claim of one of the parties but only in the cases, provided for by the law or by a contract[106]. Furthermore, the parties are entitled to terminate an obligation by their agreement and also to define the consequences of its termination, unless otherwise established by the law or follows from the essence of the obligation.[107]

The general provisions of the Civil Code on termination of obligations (Articles 407–419) enlist the legal facts that cause the termination of obligations. Accordingly, the obligation is terminated in the event of its

- performance[108],
- payment of compensation for release from obligation,
- offset,
- forgiving of debt,
- impossibility of performance,
- act of state body,
- death of physical person, and
- liquidation of juristic person[109].

[101]Article 392[1] - according to which, if due transfer of a debt, the initial debtor is relieved from the obligation, then the security for performance of the obligation provided by a third party is to be terminated, except for a case where he has agreed to be liable for the new debtor.
[102]Article 392[2] - where no consent is required from the creditor for transfer of the debt, unless otherwise established by the law or follows from the essence of the obligation.
[103]Article 392[3] - which means simultaneous transfer of all the rights and duties, that is to be subject to the rules for assignment of a claim and for transfer of a debt respectively.
[104]For more on the subject *see*, for instance, Shabolova (2023) at 108–110 and Sitdikova, Svirin, Golyshev (2025) at 450–455.
[105]Article 407.1.
[106]Article 407.2.
[107]Article 407.3.
[108]due to the performance the contract is terminated (not rescinded).
[109]consequently, it also means the termination of the contract.

Amendment and Rescission of Contract[110]

Agreed Amendment and Rescission

According to Article 450.1 of the Civil Code, a contract may be amended (changed) or rescinded (dissolved) by (another) agreement on the grounds related to the type of contract, the nature of the relations between the parties or the aims that the parties have imposed at contracting stage. The agreement on the amendment or on the rescission of the contract is subject to the same form requirements as the contract it concerns, unless otherwise follows from the law, other legal acts, a contract or from customs.[111] Furthermore, the Civil Code contains special rules that concern a multi-party agreement related to business activities of the parties.[112] It may be amended or terminated by decision of all, or a majority, of the parties thereto, unless otherwise established by the law; moreover, the agreement may also establish the procedure for defining such majority.

Substantial Breach of Contract

The change or rescission of a contract is, under the Civil Code[113] admissible upon demand of one of the parties in case of a substantial breach of the contract by the other party, and it is regarded in Russian law as a very important ground for changes in the contract relations[114]. A violation of a contract is to be considered substantial if it entails for another party such damage that he is to a significant degree deprived of that which he had the right to expect at the conclusion of the contract. In general, the burden of proof of these facts rests on the person who demands the rescission or change of the contract[115]. However, regarding the contract of supply, breach of it by the supplier is presumed substantial, for instance, in case of repeated violation of the periods for supply of goods[116].

Withdrawal from Contract

The rules on the right to withdraw (withhold) from the contract are contained in the provisions of the general and special parts of the Civil Code. The rules of the general part on refusal from contract (performance of contract) or execution of rights under contract refer to the cases where the contractual party is under the Civil Code, other law and other legal act, or by the contract entitled to withdraw (withhold) from the contract or refuse unilaterally to perform the contract obligation.[117] Such

[110]For more on the subject *see*, for instance, Sitdikova, Svirin & Golyshev (2025) at 562–565.
[111]Article 452.
[112]Article 450.1.
[113]Article 450.2-
[114]The contract may be amended or rescinded by the court decision not only: 1) in case of its essential violation but also .in other cases, provided by the Civil Code, other legal acts or a contract.
[115]The party who is entitled to unilaterally amend the contract is bound, while exercising his right, to act in good faith and reasonably within the limits provided for by the Civil Code, other laws and the contract (Article 450.4).
[116]Article 523.2.
[117]Article 310 and Orlov (2017) at 414.

opportunity is stipulated in the provisions of the special part of the Civil Code that regulate sale[118], supply[119], work[120] and construction work[121].

According to the provisions of the Civil Code that allow withdrawal from the contract, the party, who is entitled to withdraw from the contract, may realize his right by notifying the counterparty about it. In this case, the contract is to be terminated from the moment of receiving the notice, unless otherwise provided for by the Civil Code, other laws, other legal acts or a contract.[122] The valid withdrawal from the contract (or its performance) in full or in part means that the contract is deemed terminated or amended[123].[124] The party who is entitled to unilaterally amend the contract is bound, while executing his right, to act in good faith and reasonably within the limits provided for by the Civil Code, other laws and the contract[125]. Furthermore, in the event the party, who is justifiably entitled to the withdrawal from the contract (refusal to perform it), however, proves the validity of the contract, for instance, by accepting the offered performance, is not, unless otherwise provided for by the Civil Code, other laws, other legal acts or a contract, allowed afterwards to execute this right on the same grounds except for when similar circumstances occur again.

The provisions of the Civil Code on withdrawal from contract contain also the rule that concerns a party that is engaged in business activities, who, in the event of occurrence of the circumstances, provided for by the Civil Code, other laws, other legal acts or the contract, that serve as grounds for the exercise of a (withdrawal) right that is definite under the contract, declares his waiver of this right[126]; in such a case he is not, unless otherwise provided for by the Civil Code, other laws, other legal acts or the contract, allowed afterwards to execute this (withdrawal) right on the same grounds, except for when similar circumstances occur again[127].

Substantial change of Circumstances

A substantial change of circumstances[128], including economic difficulties for the performance, could also be, under the Civil Code,[129] grounds for the change or rescission of the contract. A change of circumstances is to be considered substantial, if they have changed to the extent that, if the parties could have reasonably foreseen this, the contract would not have been concluded by them at all, or it would have been concluded on significantly different conditions[130].

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[118]Article 475.
[119]Article 533.
[120]Article 717.
[121]Article 744.
[122]Article 450[1].1.
[123]Also, in the event a party has no license required for the performance of the contract, the counterparty is entitled to withdraw from the contract and claim for damages.
[124]Article 450[1].2.
[125]Article 450.4.
[126]or if the right at issue is not executed in due time (Article 450[1].7.
[127]Article 450[1].6.
[128]compared to those that the parties regarded as essential for the conclusion of the contract.
[129]Article 451.1.
[130]This corresponds with the *clausula rebus sic stantibus* doctrine. Article 451.1.

In the event the parties have not agreed on the change or rescission of the contract due to substantial changes of circumstances, the contract may be rescinded or amended by the court upon the claim of the interested party, if the following conditions are simultaneously present:

1) at the conclusion of the contract, the parties presumed that such a change of circumstances would not occur;
2) the change of circumstances has been called forth by the causes that the interested party could not overcome after they have arisen, while displaying the degree of care and circumspection that have been expected from him by the nature of the contract and turnover conditions;
3) the execution of the contract without amending its provisions would so much upset the balance of the property interests of the parties, corresponding to the contract, and would entail such a loss for the interested party that he would have been to a considerable extent deprived of what he could have counted upon at the conclusion of the contract;
4) neither from the customs nor the substance of the contract does it follow that the risk of a change in circumstances ought to be borne by the interested party.[131]

The burden of proof of the substantial change of circumstances rests on the person who demands rescission or change of the contract.[132]

According to the Civil Code, [133] the decision on the change or rescission of the contract based on a substantial change of circumstances may, if not agreed, be adopted by a court. In case of the rescission of the contract, the court may use discretion of justice. According to Article 451.2 of the Civil Code, the court is, upon the claim of any one of the parties, to define the consequences of the rescission of the contract, proceeding from the necessity to justly distribute between the parties the expenses borne by them in the execution of the contract. Contrary to rescission, the change (amendment) of the contract is regarded as an exceptional measure in Russian law and, consequently, it is possible only if the rescission of a contract would contradict the societal interests or cause harm to the parties significantly exceeding the expenditures necessary for performance of the contract on the conditions changed by the court.[134]

Court Procedure for change and Rescission of Contact

According to Article 452.2 of the Civil Code, a claim for the change or rescission of a contact may be filed by a party with the court only after he has received refusal from the counterparty in response to his proposal, or in case of the non-receipt of any response within the term, indicated in the proposal or fixed by the law or by the contract, and in the absence of it—within a thirty-day term.

[131]Article 451.2.
[132]Sergeev (2009) at 875.
[133]Article 451.2.
[134]Article 451.4.

Consequences of change and Rescission of Contact

According to the provisions of the Civil Code on consequences of change and rescission of contract[135], in case of the amendment of the contract, the parties' obligations are to be preserved in the amended form[136], whereas in case of the rescission of it, the parties' obligations will be terminated, unless otherwise provided for by the law, or a contract, or follows from the essence of the obligation[137].[138] According to Article 453.3 of the Civil Code, a contract obligations are to be regarded as changed or terminated from the moment the agreement on the change or termination of the contract is concluded, unless otherwise follows from the agreement. But in case of change or termination of the contract by the court, the obligations are to be regarded as changed or terminated from the moment the court decision enters into force, unless such decision provides for another date[139].

In accordance with Article 453.4 of the Civil Code, if a contract is changed or rescinded, the contracting parties have no right to claim the return of what has been performed by them up to the moment of the change or rescission, unless otherwise provided for by the law or a contract. However, the claim for damages may be presented in the event of an essential violation of the contract.[140] Furthermore, if before rescission or amendment of a contract a party has received from the other party the performance of the contract obligation, but has not performed his obligation or has performed it improperly, then the rules on unjust enrichment of Chapter 60 of the Civil Code are applicable to the parties' relations, unless otherwise provided for by the law or a contract, or follows from the essence of the obligation.

Liability for Breach of Contract Obligations[141]

In general

In Russian civil law, compensation for damages and forfeit are recognized as basic forms of liability. Regarding pecuniary obligations, Russian law is familiar with interest that is regarded as a substitute for forfeit. Now the Civil Code contains also provisions on other coercion means or negative sanctions that are purported to prevent the non-performance of obligations[142].

[135]Article 453.
[136]Article 453.1.
[137]Article 453.2.
[138]Also, the valid withdrawal from the contract (or its performance) in full or in part causes, as stated above, the termination or amendment of the contract (Article 450[1].2).
[139]Such date ought to be determined by the court based on the essence of the contract and (or) the nature of legal consequences of its change but cannot be earlier than the date of occurrence of the circumstances that served as the ground for changing or terminating the contract.
[140]According to Article 453.5 of the Civil Code, if an essential violation of the contract by the party has served as ground for the amendment or rescission of the contract, the counterparty has the right to claim compensation of the losses caused by it.
[141]For more on the subject *see*, for instance, Gongalo (2017) at 315–328 and Shabolova (2023) at 95–103 as well as Orlov (2021) at 9–32.
[142]*See,* for instance, Stepanov (2016) at 570.

Compensation for Damages

Compensation for damages is a general form of liability related to contract obligations. According to Article 393.1 of the Civil Code a debtor is obliged to compensate the creditor for the damages caused by non-performance or improper performance of the obligations. In Russian law, compensation for damages may be used in any case of breach of law[143], unless otherwise provided for by the law or a contract, and it is distinguished from the other forms of liability that these are applicable only in the cases expressly provided for by the law or a contract. Moreover, the right of the creditor for compensation for damages is established by as independent from other ways of protecting violated rights, provided by the law or a contract for the cases of non-performance or improper performance of obligation, unless otherwise established by the law.

The general rule is, under the rules of the Civil Code on general liability for damages, that the damages are to be compensated in full[144]. Exceptionally, the law or a contract may provide limited liability or limit the right to full compensation for damages[145]. The application of the principle of full compensation to contract obligations means that, because of compensation for damages, the creditor is to be in the position that he would have, if an obligation had been property performed[146].

The damages to be compensated mean, firstly, covering the real, actual damages or compensatory damages[147]. The expenses which the creditor must pay to restore the violated right is to be considered[148]. Secondly, loss or harm to property is to be compensated. Full compensation also includes covering the undeceived profits or the lost profit which the injured party would have received under the usual conditions of civil commerce, if his right had not been violated; in such a case also the measures taken by the creditor to receive the profit and the preparations made for this purpose are to be taken into account[149]. But if the violator has received income as a result of the violation, the injured party is entitled to demand compensation for lost profit in an amount not less than such income[150]. It is also possible that changes in prices will be considered. Accordingly, the prices are to be taken into account, which existed at the place where the obligation was to be performed on the date of voluntary satisfaction by the debtor of the claim of the creditor, and in default of this, on the day of filing the suit, and proceeding from the circumstances, a court may satisfy a claim taking into account the prices existing on the day of making decision.[151]

[143]According to the general rule of Article 15.1 of the Civil Code on compensation for damages, a person whose right has been violated may demand compensation for the damages caused to him.
[144]Articles 15.1 and 1064.1.
[145]The cases when civil liability is restricted concern, for instance, the carrier's and insurer's obligations. Russian civil law knows also cases of enlarged liability; it is purposed, for instance, to protect consumers.
[146]Article.393.2.
[147]they include only direct damages which are the direct and unavoidable consequence of the violation of the obligation, but not consequential damages.
[148]Article 15.2.
[149]Article.393.4.
[150]Article 15.2.
[151]Article.393.3.

The number of compensatory losses ought to be established with a reasonable degree of certainty. A court may not deny satisfaction of the creditor's claim to compensate for the losses caused by failure to perform or improper performance of an obligation solely on the grounds that the amount of losses cannot be estimated with a reasonable degree of certainty. In such a case, the amount of the compensatory losses ought to be estimated by a court taking into account all the facts related to a case and following the principles of equity and proportionality of liability to the occurred breach of obligation[152]. Also, abstract damages are compensable in Russian law.

Recovery of abstract damages is subject to the provisions of Article 393[1] of the Civil Code on compensation for losses in event of termination of contract. Accordingly, in the event the debtor fails to perform or performs improperly a contract and this has entailed its early termination and due to it the creditor has made a similar contract instead of it, the creditor is entitled to demand compensation from the debtor for losses in the form of the difference between the price fixed in the terminated contract and the price of comparable goods, works or services under the terms of the contract made instead of the terminated contract.[153]

However, if the creditor has not made a similar contract instead of the terminated one, but in respect of the execution provided for by the terminated contract there is the current price of comparable goods, works or services, the creditor is entitled to demand compensation from the debtor for losses in the form of the difference between the price fixed in the terminated contract and the current price.[154] The payment of the price difference does not, however, relieve the party that has not performed an obligation or has improperly performed it of compensation for other losses caused to the counterparty.[155]

Furthermore, an exception from the general obligation law rule on liability is provided for by the Civil Code obligations connected with entrepreneurship. The specific feature of the liability for violation of contractual obligations connected with the entrepreneurial activities is that its task in cases of the disturbance in performance of the entrepreneur's obligations is to transfer the risks to the party violating the contract, which is reflected in the strict liability for this. Unless otherwise provided by the law or a contract[156], a person violating the obligation of performance connected with entrepreneurship is to bear liability, according to the special (exculpation) rule of the Civil Code on the grounds of obligation law liability[157], unless he proves that proper performance has been impossible because of force majeure, meaning extraordinary and unavoidable circumstances. To such circumstances shall not, however, be referred, for instance, violations of obligations on the part of the debtor's counteragents, the absence on the market of goods indispensable for the performance or the absence of the necessary means at the

[152]Modern Russian civil law is also acquainted with the concept of foreseeability of damages in contract, in accordance to which the unforeseen damages are not subject to compensation.
[153]Article 393[1].1.
[154]Article 393[1].2.
[155]Article 393[1].3.
[156]For instance, the liability of an agricultural producer for the breach of contract presupposes under the Article 53 of the Civil Code his fault. The similar liability is provided in the rules of the Article 547.2 of the Civil Code on supply of energy.
[157]Article 401.3.

debtor's disposal.[158] Thus, a contract violator must prove the absolute impossibility of contractual performance. It means also that he ought to prove that he had not contributed to the emergence of force majeure, that he had, with the degree of care and caution required by the nature of the obligation and commercial practice, taken all measures for the proper performance: otherwise, he will not be released from liability[159]. In the event the impossibility of performance is caused faulty by the creditor or debtor, the rules on fault liability are to be applied. Moreover, an agreement on eliminating or limiting the liability for an intentional violation of the obligation, concluded at an earlier date, is to be insignificant[160].

Forfeit as Liability Form

Liability for breach of contract in Russian law comprehends not only compensation for damages but also forfeit that a contract violator is to pay his counterparty in accordance with the law or a contract. Forfeit plays a double role in Russian law: on the one hand, it is a security measure for performance of a obligation[161], and on the other hand, a form of contract liability that is to be realized in the case of breach of contract[162]. As a form of contract liability forfeit is subject to the provisions of the Civil Code on damages and forfeit.[163]

As forfeit (penalty, fine) is recognized in the Civil Code as the sum of money, defined by the law or contract, which the debtor is obliged to pay to the creditor in the case of non-fulfilment of his obligation in accordance with the contract[164], including non-performance, improper performance and a delay in performance. Forfeit could be defined as a destined sum (single payment) or an interest that will be counted according to the duration of the violation of the contract (for instance, daily) or its value. By the claim for the forfeit, the creditor is not to be obliged to prove that the damage has been inflicted upon him; the fact of violation is a sufficient ground for compensation. And in respect of obligations connected with entrepreneurship, it is unnecessary to prove the fault of the debtor, since the liability in the form of forfeit is independent from the fault of the contract violator. Thus, in the use of the creditor, forfeit is simple measure to get compensation from the debtor for the damages caused by his failure to perform or improper performance of an obligation. The only grounds for the application of forfeit is the breach of rules concerning the obligations, provided by the law or a contract, or following from a custom. In general, the payment of the forfeit (as well as the compensation of the damages) will absolve the debtor from the performance of the obligation in kind in the case of non-performance, but in the case of improper performance the payment of the forfeit will

[158] *Id*.
[159] *Id.*
[160] Article 401.4.
[161] *See* Articles 330–333.
[162] *See* Articles 394 and 396.
[163] Article 394.
[164] Article 330

not absolve the debtor from the performance obligation, unless otherwise stipulated by the law or a contract[165].[166]

Forfeit is clearly a form of civil liability. But, although forfeit as a form of contract law liability is related to the concept of compensation for damages, they are, however, significantly different. The compensation for damages is distinguished from the forfeit above all in that in the case of compensation for damages: damages are to be compensated only if they have really incurred,

1) the plaintiff must prove not only the amount of compensatory damages but also that he has taken all possible measures to avoid damages, and that
2) it is impossible to uncover all damages at the moment of the contract breach, and the amount of compensatory damages is usually clarified in the court proceedings.

Contrary to that, it is characteristic for forfeit that:

a) the amount of compensation for damages for the contract breach is defined in advance, wherefore the contracting parties know it since the conclusion of their contract,
b) forfeit is compensable simply on the grounds that the obligation breach has occurred, when it is not necessary for the debtor to prove that damages have been caused to him, nor even indicate the amount of damages[167], and
c) the contracting parties may formulate freely the condition on forfeit (except for the statutory forfeit), which concerns the amount of the forfeit and the method of their calculating, as well as the proportion of the forfeit to the caused damage.

The forfeit and compensation for damages may be presented concurrently. According to the general rules, the forfeit covers the compensation for damages. In the provisions of that regulate the relation between the compensation for damages and the forfeit[168], it is expressly provided that if forfeit is provided for non-performance or improper performance of an obligation, damages are to be compensated in the part not covered by the forfeit; this is so-called compensatory forfeit[169]. This rule is, however, dispositive, and the law or a contract may provide otherwise. Firstly, the law or a contract may provide, according to the Civil Code, that only the forfeit but not the compensatory damages are to be recovered; the question is of so-called exclusive forfeit. Secondly, law or contract may provide penal forfeit, in which case the compensation for damages is covered in full above the forfeit. Thirdly, the law

[165]Article 396.
[166]In any case, the creditor is not entitled to claim the payment of the damages if the debtor is not liable for the non-performance or improper performance of the obligation.
[167]On the contrary, it is within the interest of the creditor to prove the small amount of damages or even their absence for the court could reduce the amount of forfeit in accordance with the Article 333 of the Civil Code.
[168]Article 394.1.
[169]Article 394.1.

or a contract may contain the provision that either forfeit or compensation for damages are, at the choice of the debtor, recoverable.

The duty to pay forfeit is based in Russian law on the same grounds as in the case of compensation for damages liability, and this means that the debtor is not entitled to demand forfeit, if the creditor is not liable for the obligation breach. But in the event of a breach of contract obligations connected with enterprise activities, the person who has left his obligation unperformed or improperly performed it, is, according to Article 401 of the Civil Code, liable, unless he proves that the proper performance became impossible due to force majeure, that is, extraordinary circumstances unavoidable in the given situation—unless the law or a contract provides otherwise.

According to Article 333 of the Civil Code, the reduction of forfeit is possible in Russia, and the rules on it concern not only statutory but also contractual forfeit. Accordingly, only a court has power to reduce forfeit, and only in the event, that forfeit subjected to payment is clearly disproportional to the consequences of the obligation breach. But if the obligation violator is the person who is practicing enterprise activities, a court has the right to reduce forfeit only on the demand of the creditor[170].

Furthermore, if in that case the forfeit is determined by the contract, its reduction is possible only if it is proven that a payment may result in the debtor's unjust enrichment. However, it is important to note that the rules on reduction of forfeit do not concern the cases where the creditor has the right to reduce the amount of his liability under the rules on joint liability[171], and where the debtor has the right to demand compensation for damages in accordance with the rules of the Civil Code on compensatory damages and forfeit[172].

Default Interest

The obligation to pay the interest[173] is often presented as a liability form. It is subject to provisions of the Civil Code regulating liability for non-performance of pecuniary obligation[174]. Accordingly, in the event of unlawful deduction of monetary assets, avoidance of their repayment or other delay in their payment, default interest on the amount of debt ought to be paid[175]. However, where the parties have agreed on the forfeit for failure to perform or for improper performance of a pecuniary obligation, the interest is not subject to recovery, unless otherwise provided for by the law or a contract. Moreover, according to Article 395.5 of the Civil Code, it is not allowed to charge interest on interest (compound interest), unless otherwise provided for by the law, except for the case of obligations connected with business activities, where also a contract may provide for the application of a compound interest.

[170]Article 333.1.
[171]Article 404.
[172]Article 394.
[173]In Russian civil law, it is the general obligation to pay the (legal) interest for the use of the other person's money, if it is provided for by the law or a contract. The rules that concern it are contained in provisions of the Civil Code regulating interest on pecuniary obligations. Article 317[1].
[174]Article 395.
[175]Article 395.1.

The rate of (default) interest is to be determined, according to Article 395.1 of the Civil Code, by the key rate of the Bank of Russia that was in effect in corresponding periods, unless other rate of interest is established by the law or a contract. In the event the damage exceeds the amount of the default interest, the creditor has the right to claim that the debtor recompense him the damages in the part exceeding the amount of the default interest. On the other hand, if the sum of interest to be paid is clearly disproportionate to the consequences of violation of an obligation, the court, on the request of the debtor, is entitled to reduce the amount of interest provided for by a contract but not less than to the amount that is determined on the default interest rate. The interest for the use of another person's monetary means is to be exacted by the date of payment of the amount of these means to the creditor, unless the law, other legal acts or the contract provides a shorter term for the calculation of interest.[176]

Other Coercion means

The provision on other coercion means that are purported to prevent the non-performance of obligations include firstly the rules of Article 393.6 that concern negative obligations. Accordingly, in the event the debtor violates his obligation to refrain from a certain act (negative obligation), the creditor, regardless of the compensation for damages, is entitled to demand restraint of the action in question, unless it contradicts the essence of the obligation. This claim may be brought by the creditor even in the case of a real threat of violation of such an obligation.[177]

The provision on other coercion means purported to prevent the non-performance of obligations include also the rules of Article 308^3 of the Civil Code on protection of creditor's rights under obligation. Accordingly, in the event the debtor fails to perform his obligation, the creditor is entitled to demand in the court the performance of the obligation in kind, unless otherwise provided for by the Civil Code, other laws or a contract or follows from the essence of the obligation. Moreover, the court is entitled, in the event of non-execution of its decision, to award the creditor at his request a monetary sum, the amount of which the court determines on the ground of principles of fairness, proportionality and inadmissibility of profit from illegal or unfair behaviour[178].

Furthermore, the Civil Code contains also Article 406^1 on compensation for losses caused by occurrence of contract defined circumstances. Accordingly, the obligation parties, who are practicing business activities, may provide in their agreement the duty of either party to compensate for the property losses of the other party resulting from the occurrence of the circumstances determined in such agreement which are not connected with the obligation violation by this party, including the losses caused by the impossibility to perform the obligation, the claims

[176]Article 395.
[177]It is an implementation of *injunction* adopted from *common law.* For more on the issue *see*, for instance,
Volfson (2023) at 195–204.
[178]It is an implementation of *astreinte* adopted from French law. For more on the issue *see*, for instance, Kornilova (2014).

raised by third persons or public authorities against the party or a third person indicated in the agreement. The agreement may define the amount of compensation, which may not be reduced by a court, except if it is proved that a party has contributed intentionally to the losses. The indemnity losses are recoverable even if the contract is recognized as not concluded or invalid, unless otherwise provided for by the agreement. In turn, if the losses have arisen due to the illegal acts of a third person, the creditor's claims against this third person are to be transferred to the party that has compensated for the losses.

Endnote

With regards to business contracts, the present Russian civil law regulation ought to be characterised as follows: at last, without introducing any amendments to the Russian Civil Code after 2015, Russia has succeeded in forming of stabile legislative ground for business contract law regulation, that the transnational business has expected. Its expectations have been followed particularly in the content of the introduced in 2015 novelties. However, the business regulation in Russia until now has been occurred at the expense of the domestic small and middle-sized enterprises still continue to be suffering from overjuridisation of business activities. Unfortunately, until now Russian law mostly has been *façade* law, the main purport of which has been to attract foreign enterprises (investors), but now Russia faces the necessity of active economic policy for providing real economic development that Russian law ought to reflect.

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