

陈 军、刘 莹

<p class="p0" style="line-height: 28pt; margin-top: 0pt; margin-bottom: 0pt;"><span style="font-family: '楷体\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">法院判决发挥着对社会资源按争议、利益、人权等要素进行重新分配的作用，判决书是分配的依据，这就要求判决书主文的内容具有可执行性，但是由于表述方式的不同和汉语言文字的多义性，导致了判决书主文所明确的当事人权利义务具有不确定性，在执行过程中产生了不同的执行标准，不利于纠纷的解决以及裁判权的统一。本文以借款合同纠纷案件判决书主文关于利息应计算至何时的表述方式为视角，对不同表述方式存在的问题进行分析，并提出利息计算至何时的规范表述方式，以期引起同仁对判决书主文表述方式的思考。</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '黑体'; fnoway-size: 16pt; mso-spacerun: 'yes';">一、样本分析&mdash;&mdash;案件基本情况及不同表述方式的归类和解读</span><span style="font-family: '黑体'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';">（一）案件基本情况</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">从<span style="fnoway-family: Times New Roman;">2010</span><span style="fnoway-family: 仿宋\_GB2312;">年至</span><span style="fnoway-family: Times New Roman;">2012</span><span style="fnoway-family: 仿宋\_GB2312;">年，</span><span style="fnoway-family: Times New Roman;">P</span><span style="fnoway-family: 仿宋\_GB2312;">市法院共受理借款合同纠纷案件</span><span style="fnoway-family: Times New Roman;">668</span><span style="fnoway-family: 仿宋\_GB2312;">件，其中</span><span style="fnoway-family: Times New Roman;">2010</span><span style="fnoway-family: 仿宋\_GB2312;">年</span><span style="fnoway-family: Times New Roman;">131</span><span style="fnoway-family: 仿宋\_GB2312;">件，</span><span style="fnoway-family: Times New Roman;">2011</span><span style="fnoway-family: 仿宋\_GB2312;">年</span><span style="fnoway-family: Times New Roman;">198</span><span style="fnoway-family: 仿宋\_GB2312;">件，</span><span style="fnoway-family: Times New Roman;">2012</span><span style="fnoway-family: 仿宋\_GB2312;">年</span><span style="fnoway-family: Times New Roman;">339</span><span style="fnoway-family: 仿宋\_GB2312;">件。随着市场经济的深入发展，民间资金流动加快，借贷现象频发，由此引发的纠纷呈逐年增长趋势，涌入法院的借款合同纠纷案件也逐年增多，幅度越来越大（如表一）。</span></span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="text-align: center; line-height: 28pt; margin-top: 0pt; text-indent: 28pt; margin-bottom: 0pt;"><span style="font-family: '黑体'; fnoway-size: 14pt; mso-spacerun: 'yes';">表一：近三年借款合同纠纷案件受案情况表</span><span style="font-family: '黑体'; fnoway-size: 14pt; mso-spacerun: 'yes';"></span></p><table style="padding-bottom: 0pt; padding-left: 5.4pt; padding-right: 5.4pt; border-collapse: collapse; margin-left: 14.85pt; padding-top: 0pt; mso-table-layout-alt: fixed;"><tbody><tr style="height: 27.25pt;"><td style="padding-bottom: 0pt; padding-left: 5.4pt; width: 66.15pt; padding-right: 5.4pt; padding-top: 0pt; mso-border-bottom-alt: 0.5000pt solid #000000; mso-border-left-alt: 0.5000pt solid #000000; mso-border-right-alt: 0.5000pt solid #000000; mso-border-top-alt: 0.5000pt solid #000000; border: #000000 0.5pt solid;" width="88" valign="top"><p class="p0" style="text-align: center; line-height: 28pt; margin-top: 0pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">年份</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt;"></span></p></td><td style="border-bottom: #000000 0.5pt solid; border-left: medium none; padding-bottom: 0pt; padding-left: 5.4pt; width: 94.5pt; padding-right: 5.4pt; border-top: #000000 0.5pt solid; border-right: #000000 0.5pt solid; padding-top: 0pt; mso-border-bottom-alt: 0.5000pt solid #000000; mso-border-left-alt: nnoway; mso-border-right-alt: 0.5000pt solid #000000; mso-border-top-alt: 0.5000pt solid #000000;" width="126" valign="top"><p class="p0" style="text-align: center; line-height: 28pt; margin-top: 0pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">受案数量（件）</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt;"></span></p></td></tr><tr><td style="border-bottom: #000000 0.5pt solid; border-left: medium none; padding-bottom: 0pt; padding-left: 5.4pt; width: 134.6pt; padding-right: 5.4pt; border-top: #000000 0.5pt solid; border-right: #000000 0.5pt solid; padding-top: 0pt; mso-border-bottom-alt: 0.5000pt solid #000000; mso-border-left-alt: nnoway; mso-border-right-alt: 0.5000pt solid #000000; mso-border-top-alt: 0.5000pt solid #000000;"></td></tr></tbody></table>

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style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">在<span style="fnoway-family: Times New Roman;">208</span><span style="fnoway-family: 仿宋\_GB2312;">份约定利息或者主张逾期利息案件的判决书中，通过统计归类发现，关于利息应计算至何时有以下几种表述方式：</span><span style="fnoway-family: Times New Roman;">1.</span><span style="fnoway-family: 仿宋\_GB2312;">“利息从&times;年&times;月&times;日起至还款之日止，参照&hellip;&hellip;利率计算&rdquo;；</span><span style="fnoway-family: Times New Roman;">2.</span><span style="fnoway-family: 仿宋\_GB2312;">“利息从&times;年&times;月&times;日起至付清之日止，参照&hellip;&hellip;利率计算&rdquo;；</span><span style="fnoway-family: Times New Roman;">3.</span><span style="fnoway-family: 仿宋\_GB2312;">“利息从&times;年&times;月&times;日起至判决确定的给付之日止，参照&hellip;&hellip;利率计算&rdquo;；</span><span style="fnoway-family: Times New Roman;">4.</span><span style="fnoway-family: 仿宋\_GB2312;">“利息从&times;年&times;月&times;日起至&times;年&times;月&times;日止，参照&hellip;&hellip;利率计算&rdquo;；</span><span style="fnoway-family: Times New Roman;">5.</span><span style="fnoway-family: 仿宋\_GB2312;">“利息从&times;年&times;月&times;日起至本判决生效之日止，参照&hellip;&hellip;利率计算&rdquo;；</span><span style="fnoway-family: Times New Roman;">6.</span><span style="fnoway-family: 仿宋\_GB2312;">“资金利息共&times;&times;&times;&times;元。&rdquo;；</span><span style="fnoway-family: Times New Roman;">7.</span><span style="fnoway-family: 仿宋\_GB2312;">“利息从&times;年&times;月&times;日起至判决确定的履行期限届满之日止，参照&hellip;&hellip;利率计算&rdquo;。</span></span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">上述<span style="fnoway-family: Times New Roman;">7</span><span style="fnoway-family: 仿宋\_GB2312;">种表述方式中采用第</span><span style="fnoway-family: Times New Roman;">1</span><span style="fnoway-family: 仿宋\_GB2312;">种、第</span><span style="fnoway-family: Times New Roman;">2</span><span style="fnoway-family: 仿宋\_GB2312;">种表述方式的共</span><span style="fnoway-family: Times New Roman;">140</span><span style="fnoway-family: 仿宋\_GB2312;">例，占总数的</span><span style="fnoway-family: Times New Roman;">67%</span><span style="fnoway-family: 仿宋\_GB2312;">；第</span><span style="fnoway-family: Times New Roman;">3</span><span style="fnoway-family: 仿宋\_GB2312;">种、第</span><span style="fnoway-family: Times New Roman;">4</span><span style="fnoway-family: 仿宋\_GB2312;">种表述方式的共</span><span style="fnoway-family: Times New Roman;">44</span><span style="fnoway-family: 仿宋\_GB2312;">例，占总数的</span><span style="fnoway-family: Times New Roman;">21%</span><span style="fnoway-family: 仿宋\_GB2312;">；其余</span><span style="fnoway-family: Times New Roman;">3</span><span style="fnoway-family: 仿宋\_GB2312;">种共</span><span style="fnoway-family: Times New Roman;">24</span><span style="fnoway-family: 仿宋\_GB2312;">例，仅占</span><span style="fnoway-family: Times New Roman;">12%</span><span style="fnoway-family: 仿宋\_GB2312;">（如图一）。通过对采用第</span><span style="fnoway-family: Times New Roman;">1</span><span style="fnoway-family: 仿宋\_GB2312;">种、第</span><span style="fnoway-family: Times New Roman;">2</span><span style="fnoway-family: 仿宋\_GB2312;">种表述方式的案件分析发现，这些案件中，当事人签订的借款合同中约定利息的表述为&ldquo;利息按&hellip;&hellip;计算至还款之日止&rdquo;或&ldquo;利息按&hellip;&hellip;计算至付清之日止&rdquo;，案件承办人习惯性地按照当事人约定的方式表述了判决书主文利息的计算期限。</span></span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 119pt; margin-bottom: 0pt;"><span style="font-family: '黑体'; fnoway-size: 14pt; mso-spacerun: 'yes';">图一：7种表述方式统计图</span><span style="font-family: '黑体'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="text-align: center; margin-top: 0pt; margin-bottom: 0pt;"><span></span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '黑体'; fnoway-size: 16pt; mso-spacerun: 'yes';">（三）不同表述方式的解读</span><span style="font-family: '黑体'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">判决主文中出现了<span style="fnoway-family: Times New Roman;">7</span><span style="fnoway-family: 仿宋\_GB2312;">种不同的表述方式，并非每一种表述方式都准确、可执行，现对不同的表述进行分析，进一步探讨其利弊：</span></span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">第<span style="fnoway-family: Times New Roman;">1</span><span style="fnoway-family: 仿宋\_GB2312;">种表述&ldquo;利息从&times;年&times;月&times;日起至还款之日止&rdquo;具有歧义，&ldquo;还款之日&rdquo;可以理解为部分还款之日或者完全还清之日。当借款人采取分期还款方式的，可产生三个问题：第一，利息计算至&ldquo;部分还款之日&rdquo;抑或&ldquo;完全还清之日&rdquo;不能确定；第二，若利息计算至部分还款之日，未还

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fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">第<span style="fnoway-family: Times New Roman; ">7</span><span style="fnoway-family: 仿宋\_GB2312;">种表述&ldquo;利息从&times;年&times;月&times;日起至判决确定的履行期限届满之日止&rdquo;与判决书主文本金归还的期限相一致。利息属于本金的孳息，计算利息的期限应与占用本金的期限一致，该种表述较妥。</span></span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '黑体'; fnoway-size: 16pt; mso-spacerun: 'yes';">二、现实困境&mdash;&mdash;不同表述方式引发的法律适用及司法实践问题</span><span style="font-family: '黑体'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">判决书具有特定的制作要求，结合上文对不同表述方式的分析，在借款合同纠纷案件的判决书中表述的不规范将会导致以下适用问题：</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';">（一）利息计算至何时的不确定导致《民事诉讼法》第</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';">二百</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';">五</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';">十</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';">三</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';">条</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';">不能适用</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"><span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">二百</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">五</span><span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">十</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">三</span><span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">条</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">规定：&ldquo;</span><span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">被执行人未按判决、裁定和其他法律文书指定的期间履行给付金钱义务的，应当加倍支付迟延履行期间的债务利息</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">&rdquo;</span><span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">。</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">迟延履行利息是法律规定通过对被执行人施以经济处罚，给申请执行人一定经济补偿的制度，起到了促进债务人自动履行生效判决、减少执行案件数量、解决执行难问题的作用，有效避免了胜诉当事人因债务人迟延履行债务而蒙受损失</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">。在实践中，严格执行迟延履行利息制度，有利于维护人民法院法律文书的权威性、提高人民法院强制执行的威慑力。为此，最高人民法院<span style="fnoway-family: Times New Roman;">2007</span><span style="fnoway-family: 仿宋\_GB2312;">年</span><span style="fnoway-family: Times New Roman;">2</span><span style="fnoway-family: 仿宋\_GB2312;">月</span><span style="fnoway-family: Times New Roman;">7</span><span style="fnoway-family: 仿宋\_GB2312;">日下发通知，要求将加倍支付迟延履行期间债务利息的规定在所有判项之后另起一行写明，明确告知当事人迟延履行金钱债务的责任，以</span></span><span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">促使败诉的当事人及时履行义务</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">。</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">如何计算迟延履行期间的债务利息，是适用《民事诉讼法》第</span><span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">二百</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">五</span><span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">十</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">三</span><span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">条</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">规定最主要的问题。最高人民法院<span style="fnoway-family: Times New Roman;">2009</span><span style="fnoway-family: 仿宋\_GB2312;">年</span><span style="fnoway-family: Times New Roman;">5</span><span style="fnoway-family: 仿宋\_GB2312;">月</span><span style="fnoway-family: Times New Roman;">11</span><span style="fnoway-family: 仿宋\_GB2312;">日公布的《最高人民法院关于在执行工作中如何计算迟延履行期间的债务利息等问题的批复》（以下简称《批复》）答，迟延履行期间的债务利息

利息</span><span style="font-family: Times New Roman;">=</span><span style="font-family: 仿宋\_GB2312;">法律文书确定的金钱债务&times;利率&times;两倍&times;迟延履行期间</span></span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">"; 因此, 迟延履行期间债务利息的计算需要明确以下三个问题: 一是法律文书所确定的金钱债务; 二是迟延履行期间的利率; 三是迟延履行期间。</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";</span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">法律文书所确定的金钱债务通常包括本金和利息。一般情况下本金较易确定, 利息是在本金的基础上根据占用期限、利率计算而出, 利率依据当事人的约定或者法律规定确定, 需要明确的是计算利息的期限。但是借款合同纠纷判决书主文利息应计算至何时的不同表述方式, 产生了多种计算利息期限的标准, 甚至无法计算出利息的期限, 导致了利息的金额不能计算得出, 使得迟延履行期间债务利息的计算基数&mdash;&mdash;法律文书确定的金钱债务不能确定。</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";</span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">依据《批复》关于&ldquo;迟延履行期间的债务利息应当按照中国人民银行规定的同期贷款基准利率计算&rdquo;的规定, 法律文书确定的履行期限届满后就应该按照中国人民银行规定的同期贷款基准利率的双倍计算利息, 但是在第<span style="font-family: Times New Roman;">1</span><span style="font-family: 仿宋\_GB2312;">种、第</span><span style="font-family: Times New Roman;">2</span><span style="font-family: 仿宋\_GB2312;">种表述方式中, 需按照判决书主文中所确定的利率计算利息, 直至&ldquo;付清之日&rdquo;、&ldquo;还款之日&rdquo;, 排除了《批复》中迟延履行期间双倍利息利率标准的适用。</span></span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";</span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">《</span><span><a href="http://www.baidu.com/link?url=8i6MGJqjJ4zBBpC8yDF8xDh8vibiRlc6SmUAbEk0M2y7KU1xSHY5hBpv2WqopjrKAoa0Rp4maa"><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">最高人民法院关于适用</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";&lt;</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">中华人民共和国民事诉讼法</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";&gt;</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">若干问题的意见</span></a></span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">》</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";第<span style="font-family: Times New Roman;">293</span><span style="font-family: 仿宋\_GB2312;">条规定: &ldquo;迟延履行期间的债务利息自判决、裁定和其他法律文书指定的履行期间届满的次日起计算&rdquo;, 要计算迟延履行期间的债务利息须在判决书主文中明确金钱债务的履行期限。履行期限包括本金的履行期限和利息的履行期限, 本金的履行期限通常是明确的。利息的履行期限在上述</span><span style="font-family: Times New Roman;">7</span><span style="font-family: 仿宋\_GB2312;">种表述方式中, 第</span><span style="font-family: Times New Roman;">3</span><span style="font-family: 仿宋\_GB2312;">种、第</span><span style="font-family: Times New Roman;">4</span><span style="font-family: 仿宋\_GB2312;">种、第</span><span style="font-family: Times New Roman;">5</span><span style="font-family: 仿宋\_GB2312;">种表述方式都会导致其与本金的履行期限不一致的问题, 将产生迟延履行期间是从本金的履行期限届满次日还是从利息履行期限届满次日计算的纷争。第</span><span style="font-family: Times New Roman;">1</span><span style="font-family: 仿宋\_GB2312;">种、第</span><span style="font-family: Times New Roman;">2</span><span style="font-family: 仿宋\_GB2312;">种利息计算的截止日期表述为&ldquo;付清之日&rdquo;、&ldquo;还款之日&rdquo;等不确定的时间, 使得普遍存在的迟延履行情况在判决书主文中不可能存在, 排除了迟延履行期间开始计算的可能。</span></span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";</span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";>综上, 利息计算至何时不规范的表述方式, 可能使迟延履行期间双倍利息的利率标准不能适用, 还会导致迟延履行期间起算时间和判决书主文确定金钱债务的不确定, 使《民事诉讼法》第</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">二百</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";>五</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">";>十</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";>三</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">";>条</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";>无法适用, 违背了该制度督促债务人积极履行债务、维护债权人利益的立法初衷。</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">";</span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; font-weight: bold; mso-spacerun: 'yes';">";>(二) 不同表述方式引发了执行过程中不同计算标准的争议</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; font-weight: bold;"></span></p></div>

mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">起到定纷止争、维护当事人合法权益的判决书内容应明确、规范，避免出现不确定、有歧义的用语。如上文所分析，利息应计算至何时时的不同表述方式导致了执行中利息的计算标准不统一：判决采用第<span style="fnoway-family: Times New Roman;">1</span><span style="fnoway-family: 仿宋\_GB2312;">种表述方式&ldquo;利息计算至还款之日&rdquo;，执行中还款之日不能确定，若将还款之日定为采取强制措施之日，导致无法适用迟延履行利息制度；采用第</span><span style="fnoway-family: Times New Roman;">2</span><span style="fnoway-family: 仿宋\_GB2312;">种表述方式&ldquo;利息计算至付清之日&rdquo;，在执行完毕前将无法计算出利息；采用第</span><span style="fnoway-family: Times New Roman;">6</span><span style="fnoway-family: 仿宋\_GB2312;">种表述方式，利率发生变动的，判决中的利息与实际利息不一致。不规范的表述方式不仅没有对借款当事人的具体权利义务进行确定、合理解决争议，还在此基础上增加了如何计算利息新矛盾，无法起到法院裁判权&ldquo;终局性&rdquo;解决纠纷的作用，影响了司法公正。</span></span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';">（三）不同表述方式影响了法院的司法公信力</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">当事人对纠纷不能达成一致时，一方当事人向人民法院起诉，法院通过调解或判决的方式使纠纷获得&ldquo;终局性&rdquo;的解决。直观体现法律解决争端全过程媒介的判决书&mdash;&mdash;既是人民法院行使审判权、适用法律、保护当事人合法权益的有力武器，又是宣传法制、教育公民遵守法律的生动教材。判决书中若出现了本金归还期限与利息计算期限不一致的情形，如前所述的第<span style="fnoway-family: Times New Roman;">3</span><span style="fnoway-family: 仿宋\_GB2312;">种、第</span><span style="fnoway-family: Times New Roman;">4</span><span style="fnoway-family: 仿宋\_GB2312;">种、第</span><span style="fnoway-family: Times New Roman;">5</span><span style="fnoway-family: 仿宋\_GB2312;">种表述方式，将导致判决书主文前后产生矛盾，影响法院裁判文书的公信力，不利于判决书法制宣传、说服教育功能的发挥。另一方面，判决书还承担着说服当事人自动履行义务的责任，而当事人是否愿意履行在很大程度上取决于判决是否公平、公正。公平正义不仅体现在对争议的合理解决，还体现在同案同判，当同样的案件经过法院的裁判得出不一样的结果，将导致当事人对司法公正产生怀疑。判决书用语的规范、准确，是保证判决结果的统一和体现公平正义的要求。</span></span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '黑体'; fnoway-size: 16pt; mso-spacerun: 'yes';">三、反思重构&mdash;&mdash;寻求规范的表述方式</span><span style="font-family: '黑体'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';">（一）&ldquo;利息计算至何时&rdquo;的规范表述方式的建立</span><span style="font-family: '仿宋'; font-size: 16pt; fnoway-weight: bold; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">通过上文的分析可知，判决书主文的规范表述对纠纷的解决、判决的执行、司法公信力的建立起到至关重要的作用。但由于诉求千差万别、汉语言文字多义性以及案件承办人用语习惯的不同，要建立规范的表述方式需要结合实际情况进行考量。</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">借款合同纠纷的产生是由于债务人到期不履行债务，债权人向法院起诉要求债务人履行债务。法院裁判过程中除了应确认借款是否存在、借款期限是否到期、债务人是否履行债务等事实之外，还需要确定借款本金和利息的具体金额。本金根据当事人提供的借款金额凭证、已还金额凭证等证据进行确定。利息属于法定孳息的一种，是由本金所产生的额外收益，取得应建立在本金的基础之上，根据本金的金额和占用期间计算得出。因此，在计算利息时除了确定本金的金额、利息的利率还需要明确利息的计算期限。根据利息属于本金孳息的法律属性，利息的计算期限应与本金的履行期限相一致，同时，对利息计算至何时时的表述选取含义确定词汇，避免出现&ldquo;还清之日&rdquo;、&ldquo;付清之日&rdquo;等以债务人的事实行为作为期限的表述方式，让判决书主文在执行过程具有可操作性。</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;"><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">综上，避免利息计算期限的不确定，使《民事诉讼法》第<span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">二百</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">五</span><span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">十</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">三</span><span style="font-family: 'Times New Roman'; fnoway-size: 16pt; mso-spacerun: 'yes';">条</span><span style="font-family: '仿宋\_GB2312'; fnoway-size: 16pt; mso-spacerun: 'yes';">规定能够适用，利息计算至何时时的准确表述应为&ldquo;利息从&times;年&times;月&times;日起至判决确定的履行期限届满之日

止，参照&hellip;&hellip;利率计算

“yes”>&rdquo;。

><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; font-weight: bold; mso-spacerun: 'yes';">（二）相关异议的评析</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; font-weight: bold; mso-spacerun: 'yes';"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;">><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">但是对于该种表述，有观点认为，一是当事人约定的利息高于迟延履行期间的加倍利息时，债权人向法院起诉后，债务人在判决确定履行期限届满后仍不履行债务的，在迟延履行期间债权人只能请求按照中国人民银行同期贷款基准利率加倍给付利息，低于当事人约定的利息。此种情况下，债权人可能基于更高利息的追求而怠于行使诉权。二是当事人未约定利息或者约定的利息低于迟延履行期间的加倍利息时，债权人为了延长迟延履行期间，怠于申请执行。对此，笔者认为上文提出的正确表述并不违反《民事诉讼法》第</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">二百</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">五</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">十</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">三</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">条</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">规定的立法初衷以及利息计算的原则。</span><span style="font-family: '仿宋\_GB2312'; background: #7f7f7f; font-size: 16pt; mso-spacerun: 'yes'; mso-shading: #7f7f7f;"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;">><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">首先，法院裁判的职能在于定纷止争，在判决生效之时，当事人之间的权利义务根据判决的内容得以明确，争议的问题得以解决，原先法律关系所产生的权利义务因判决的阻断效力将不再适用，当事人须按照判决书主文的内容履行义务。即使当事人约定了高于迟延履行期间加倍利息的利率，但当事人起诉至法院时，就企图通过国家公权力将权利义务固定并强制督促债务人履行义务，约定的利率在判决书主文所确定履行期限届满后将不再适用。此时，债务人不履行债务的，债权人可以申请法院强制执行，以实现其权利。若债务人为了追求更高的利息怠于行使诉权，是对自己权利的处分，将承担债务人履行不能的风险。其次，《民事诉讼法》</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">第二百三十九</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">条</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">规定：&ldquo;</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">申请执行的期间为二年</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">&rdquo;，若当事人基于追求加倍利息而怠于申请执行的，系当事人对自己权利的处分，同时也将承担执行不能的风险。</span><span style="font-family: '仿宋\_GB2312'; background: #7f7f7f; font-size: 16pt; mso-spacerun: 'yes'; mso-shading: #7f7f7f;"></span></p><p class="p0" style="line-height: 28pt; margin-top: 0pt; text-indent: 32pt; margin-bottom: 0pt;">><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">因此，将借款合同纠纷案中利息计算截止日期的表述统一为&ldquo;利息从&times;年&times;月&times;日起至判决确定的履行期限届满之日止，参照&hellip;&hellip;利率计算&rdquo;</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">，能够起到督促当事人及时行使权利、快速解决纠纷的目的，在执行中也具有可操作性：债务人在履行期限届满之前履行义务的，利息应计算至履行义务之日</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">；债务人在履行期限届满之日履行义务的，利息计算至届满之日<span style="font-family: 'Times New Roman';"></span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">二百</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">五</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">十</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">三</span><span style="font-family: 'Times New Roman'; font-size: 16pt; mso-spacerun: 'yes';">条</span><span style="font-family: '仿宋\_GB2312'; font-size: 16pt; mso-spacerun: 'yes';">的规定加倍支付迟延履行期间的债务利息。</span></p>