



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

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On Certain Issues of Application of General Provisions of the Civil Code of the Russian Federation on Obligations and their Performance

In order to ensure the unity of court application of general provisions of the Civil Code of the Russian Federation (hereinafter referred to as “CC RF”) on obligations and their performance, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, by Articles 2 and 5 of Federal Constitutional Law of 5 February, 2014 No. 3 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following explanations:

1. By virtue of an obligation, one person (debtor) is obliged to perform a certain action in favor of another person (creditor) or to abstain from performing a certain action, and the creditor has the right to demand from the debtor the performance of its obligation (Item 1 of Article 307 of the CC RF).

Herewith, it is necessary to take into account that Article 307 of the CC RF does not stipulate an exhaustive list of actions, the performance or nonperformance of which may be the subject matter of an obligation.

Where so stipulated by law or follows from the nature of an obligation, a duty may be imposed upon a party to bear liability for the occurrence or non-occurrence of certain circumstances, including ones that do not depend on that party’s behavior, for instance, in case of unreliability of warranties and representations in carrying out entrepreneurial activity (Item 4 of Article 431.2 of the CC RF) or when goods are withdrawn from the buyer by third parties (Item 1 of Article 461 of the CC RF).

2. As a general rule stipulated in Item 3 of Article 308 of the CC RF, an obligation does not create rights and duties for persons that do not participate in it as parties (for third parties). Therefore, the parties to an obligation may not raise objections to third parties, based upon the obligation between them, and vice versa, third parties may not raise objections that are based on obligations in which they do not participate. For instance, when the creditor's rights are transferred to another person under a claim assignment agreement, the debtor (as an objection against the claims of the new creditor) may not refer to the assignee's nonperformance of obligation to pay the assignor for the right of claim.

However, where stipulated in laws, other legal acts or an agreement of the parties, an obligation may impose a duty upon the debtor to perform a certain action or to abstain from performing a certain action in regard of third parties, or may create rights for third parties in relation to the parties of the obligation (for instance, when a contract in favor of a third party is concluded in accordance with Article 430 of the CC RF).

3. Homogeneous obligations in relation to which creditors may conclude a subordination agreement (Item 1 of Article 309.1 of the CC RF), are, for instance, obligations that stipulate the transfer of generic things or rights, e.g. of monetary obligations or obligations to transfer non-certificated securities of a certain category (type).

4. By virtue of Item 3 of Article 309.1 of the CC RF, an agreement of creditors does not create a duty for the debtor that is not a party to this agreement. The manner of satisfaction of claims specified in this agreement shall not constitute grounds for a creditor's refusal to accept due performance offered by the debtor. If such refusal is given, the creditor shall be deemed in arrears (Item 1 of Article 406 of the CC RF).

Similarly, the creditors' subordination agreement regarding the manner of satisfaction of their homogenous claims to the debtor shall create obligations between the creditors, but shall not change the manner of procedures and the priority of satisfaction of the creditors' claims stipulated in Federal Law of 26 October, 2002 No. 127 "On Insolvency (Bankruptcy)".

5. Pursuant to Item 2 of Article 309.1 of the CC RF, due performance received by a creditor from the debtor shall be transferred to another creditor or other creditors in accordance with the agreement between them.

In such a case, the obligation is deemed as performed in the corresponding part in regard of the creditor that accepted due performance and to whom the right of claim (in the corresponding part) is transferred from the creditor to whom performance was transferred.

6. During settlement of disputes regarding the performance of obligations on transfer of performance by one creditor to another, the court checks whether the agreement between the creditors is a contract stipulated in laws and other legal acts, for instance, a commission contract, brokerage contract, simple partnership contract (Chapters 51, 52 and 55 of the CC RF), mixed contract or a contract not stipulated in laws and other legal acts (Items 2 and 3 of Article 421 of the CC RF).

Unless otherwise stipulated in contract or arises from the relations between the parties, the creditor obliged to transfer performance received from the debtor is not liable to other creditors for the nonperformance or improper performance of the obligation by the debtor. In such a case, the creditor is obliged to inform about the nonperformance or improper performance of the obligation by the debtor, collect all necessary evidence and upon request of the creditor, to whom the performance were to be transferred in accordance with the agreement, to transfer to it the rights under the transaction with the debtor. Herewith, the creditor that received performance from the debtor shall be answerable to the other creditor for the loss, deficiency or damage to the property received from the debtor.

7. Unless otherwise stipulated in laws, other legal acts or agreements and follows from the nature of relations between the creditors, the creditor who received performance from the debtor (in relation to Article 309.2 of the CC RF) shall bear expenses on the performance of obligation to transfer the performance received from the debtor to another creditor.

8. The provisions of Article 309.1 of the CC RF shall not apply to the assignment of claims performed by the creditors of one debtor between themselves.

9. As a general rule stipulated in Article 309.2 of the CC RF, the debtor shall bear expenses on the performance of the obligation according to the terms and conditions of this obligation.

At the same time, the creditor shall bear expenses on accepting performance, for instance, expenses on using special software, mobile communications, forwarding of documents, etc. Additional expenses of the creditor related to accepting the performance, incurred as a result of the debtor's actions, shall be borne by the latter.

Additional expenses of the debtor incurred as a result of the creditor's actions, in particular incurred due to change of place of performance of the obligation by the creditor after the obligation appeared, shall be borne by the creditor (Item 2 of Article 316 of the CC RF).

The rules on expenses on the performance of obligations stipulated in Article 309.2 of the CC RF shall be applied, unless otherwise stipulated in laws, other legal acts

or agreements or follows from the nature of the obligations, custom or other normal requirements.

10. As a general rule, the right to unilaterally refuse to perform an obligation or to change its terms and conditions must be stipulated in the CC RF, other laws and legal acts (Item 1 of Article 310 of the CC RF).

The right to unilaterally refuse to perform an obligation or to change its terms and conditions may be stipulated in an agreement of persons engaged in entrepreneurial activity in relations between them, and for a person not engaged in entrepreneurial activity – in relation to a person engaged in entrepreneurial activity (first paragraph of Item 2 of Article 310 of the CC RF).

An agreement may stipulate the right to refuse to perform an obligation or to unilaterally change its terms and conditions for a person engaged in entrepreneurial activity in relation to a person not engaged in entrepreneurial activity only where so specially allowed by laws or other legal acts (Paragraph 2 of Item 2 of Article 310 of the CC RF).

By implication of Article 67.2 of the CC RF, the terms and conditions of a corporate agreement may provide for the right to unilaterally refuse to perform the obligations for any of its members.

11. When applying Article 310 of the CC RF, it is necessary to take into account the fact that the general provisions of an agreement may establish other rules regarding the right to perform the obligation or unilaterally change its terms and conditions under the agreement.

For instance, in an obligation arising from a public contract concluded by persons engaged in entrepreneurial activity, the right to unilaterally refuse to perform an obligation may be granted by the contract only to the party for whom the entry into this agreement was not obligatory (Item 1 of Article 6, Item 2 of Article 310, Article 426 of the CC RF).

Furthermore, the right to unilaterally reject the contract may be stipulated in the rules on certain types of contracts. In particular, the right to unilaterally reject the contract is granted to the customer in a contractor agreement (Article 717 of the CC RF), to the parties of a paid service contract (Article 782 of the CC RF), a freight forwarding contract (Article 806 of the CC RF), an agency contract concluded for an indefinite period of time (Article 1010 of the CC RF), a trust contract (Item 1 of Article 1024 of the CC RF).

12. If the unilateral refusal to perform an obligation or unilateral change of its terms and conditions is made when this is not stipulated in a law, another legal act or the agreement, or the corresponding requirements are not met, then, as a general

rule, such a unilateral refusal to perform the obligation or unilateral change of its terms and conditions shall not entail any legal consequences at which they were aimed.

13. In case of lawful unilateral refusal to fully or partially perform the obligation, the agreement shall accordingly be deemed as terminated or changed (Item 2 of Article 450.1 of the CC RF).

By virtue of Item 1 of Article 450.1 of the CC RF, the right to unilaterally change the terms and conditions of a contractual obligation or to unilaterally refuse to perform it may be carried out by the authorized party by correspondingly notifying the other party. The agreement shall be changed or terminated from the moment when such a notice is delivered or regarded as delivered in accordance with Article 165.1 of the CC RF, unless otherwise stipulated in the CC RF, other laws, other legal acts or terms and conditions of the transaction, or follows from custom or practice established between the parties.

14. When a party exercises its right to unilaterally change the terms and conditions of an obligation or to unilaterally refuse to perform it, it shall act reasonably and in good faith, taking into account the rights and lawful interests of the other party (Item 3 of Article 307, Item 4 of Article 450.1 of the CC RF). Failure to observe this obligation may result in refusal to provide court protection for the abovementioned right (fully or partially); in particular, the unilateral change of terms and conditions of an obligation or the unilateral refusal to perform it may be declared void (Item 2 of Article 10, Item 2 of Article 168 of the CC RF).

For instance, based on these grounds the court shall refuse to recover a part of interest under a credit contract in case of an unfounded and non-proportional unilateral increase of the interest rate by the bank.

15. The right to unilaterally refuse to perform an obligation (stipulated in an optional provision or a contract) pertaining to entrepreneurial activity carried out by its parties, or to unilaterally change the terms and conditions of such an obligation, may be conditioned (by agreement of the parties) by a duty to pay a certain monetary sum to the other party of the obligation (Item 3 of Article 310 of the CC RF).

If the right to unilaterally refuse to perform the obligation or to unilaterally change the terms and conditions of the obligation was established by a mandatory provision, for instance by the second paragraph of Item 2 of Article 610 of the CC RF, then it is not allowed to include a condition on payment of the monetary sum if the party exercises this right (Item 1 of Article 422 of the CC RF). Such a condition of the agreement is void, as it contradicts the nature of legislative regulation of the corresponding type of obligation (Item 2 of Article 168 and Article 180 of the CC RF).

Similarly, by implication of Item 3 of Article 310 of the CC RF, it is not allowed to charge a payment for unilateral refusal to perform the obligation or for unilateral change of its terms and conditions caused by the non-performance or improper performance of the obligation by the other party.

16. By implication of Item 3 of Article 310 of the CC RF, the obligation of the relevant party to pay the specified monetary sum appears if it exercises the right to unilaterally refuse to perform the obligation or to unilaterally change its terms and conditions, i.e. if the relevant change is made or if the contract is terminated (Item 2 of Article 450.1 of the CC RF). Unless otherwise stipulated in law or agreement, since the moment of such refusal (change of the terms and conditions of the obligation), the original obligation is terminated or changed, and the obligation to pay a certain monetary sum appears.

If it is proved that such a monetary sum is evidently non-proportionate to the unfavorable consequences caused by the refusal to perform the obligation or the change of its terms and conditions, as well as if the willful and bad faith nature of exercise of the right to claim its payment is proved, in this exceptional case the court may refuse to fully or partially recover that sum (Item 2 of Article 10 of the CC RF).

17. As a general rule, the creditor may refuse to accept the performance of the obligation in parts (Article 311 of the CC RF).

Such a duty may be stipulated in laws, other legal acts, terms and conditions of the obligation and follow from custom or nature of the obligation. In particular, the nature of a monetary obligation, as a general rule, implies that it may be performed in parts; therefore the creditor cannot refuse to accept its performance in parts.

The dividable nature of the subject matter of the obligation does not itself oblige the creditor to accept its performance in parts.

18. Unless otherwise stipulated in the agreement of the parties or follows from custom or nature of the obligation, the debtor may, when performing its obligation, demand evidence that it is the creditor itself or a person authorized by it that accepts performance, and shall bear the risk of consequences of not making such a demand (Item 1 of Article 312 of the CC RF).

The debtor shall not be deemed in arrears, if it refuses to perform the obligation until it receives confirmation that the performance is accepted by the relevant person (Article 406 of the CC RF).

19. By implication of Item 2 of Article 312 of the CC RF, the debtor's right to demand that the creditor's representatives confirms its powers, in particular by

presenting a notarized power of attorney, appears when performance is accepted on behalf of the represented person by a person acting on the basis of a written document, and the written power was not directly presented by the creditor to the debtor and is not contained in the contract between them.

The parties may establish the manner of confirming the powers of the creditor's representative in their agreement, for instance, to stipulate that if the debtor has any doubts, it shall directly request the creditor to promptly confirm the powers of its representative in simple written form, in particular in the form of an electronic document or another message transferred by communication channels (Articles 165.1, 185.1, 434 of the CC RF). In such a case, the powers of the creditor's representative are confirmed in the manner established by the parties.

By virtue of special regulation, the debtor may not demand a notarized power of attorney, in particular from a legal representative (Articles 26 and 28 of the CC RF) and where the powers are apparent under the circumstances in which the representative acts (Item 1 of Article 182 of the CC RF).

20. By implication of Items 1 and 2 of Article 313 of the CC RF, the creditor shall be deemed in arrears if it refuses to accept the performance offered by a third party on behalf of the debtor only where the debtor is in arrears in regard of a monetary obligation, or the creditor knew or should have known that the performance of this obligation was transferred by the debtor to the specified third party, or the specified third party runs the risk of losing its rights to the debtor's property due to recovery of the property.

However, even if the circumstances specified in Items 1 and 2 of Article 313 of the CC RF exist, the creditor is not obliged to accept performance offered by a third party and thus shall not be deemed to be in arrears, if a law, other legal acts, terms and conditions or nature of the obligation imply that the debtor is obliged to personally perform the obligation (Item 3 of Article 313 of the CC RF).

An overdue monetary obligation may also be performed by a third party in cases where the appearance of the obligation is related to the personality of the debtor, for instance, payment of alimony debts.

The creditor in a monetary obligation is not obliged to verify the presence of imposition, on the basis of which a third party performs the obligation on behalf of the debtor, and may accept the performance if there is no such imposition. The monetary sum the creditor receives from the third party as performance shall not be recovered from the creditor as unjust enrichment, except when the debtor has also performed this monetary obligation or when performance of this obligation by the third party and the transfer of the creditor's rights to it are declared non-existent by the court (Article 1102 of the CC RF).

21. If the performance of the obligation was imposed by the debtor upon a third party, then the consequences of such performance between the third party and the debtor shall be regulated by the agreement between them.

Pursuant to Item 5 of Article 313 of the CC RF, if there is no such agreement, the third party that performed the debtor's obligation shall receive the creditor's rights in accordance with Article 387 of the CC RF. In such a case, pursuant to Item 3 of Article 382 of the CC RF, if the debtor was not notified in writing of the transfer of the creditor's rights to another person, the new creditor shall bear the risk of unfavorable consequences caused thereby. The debtor's obligation shall cease to exist if it is performed in favor of the initial creditor before receipt of notification regarding the transfer of right to another person.

However, pursuant to Article 10 of the CC RF, the court may deem the transfer of the creditor's rights to a third party non-existent, if it finds that when performing the debtor's obligation the third party acted in bad faith and exclusively for the purpose of causing damage to the creditor or the debtor under this obligation, for instance, if the third party discharged only the principal debt of debtor in order to obtain additional votes at a creditors' meeting during consideration of a bankruptcy case, without incurring expenses on the acquisition of claims regarding financial sanctions, thus depriving the creditor of the right to vote.

Articles 71.1, 85.1, 112.1, 113 and 125 of Federal Law of 26 October, 2002 No. 127 "On Insolvency (Bankruptcy)" establish special rules regarding Item 2 of Article 313 of the CC RF, in view of which the performance of the debtor's obligation by its founders (members), the owner of property of a debtor-unitary enterprise or by a third party or third parties after the first bankruptcy procedure was initiated, is allowed subject to the manner stipulated in bankruptcy legislation.

22. On the basis of interrelated provisions of Item 6 of Article 313 and Article 403 of the CC RF, when performance is imposed by the debtor upon a third party, the debtor shall be liable for the non-performance or improper performance of the obligation by this third party before the creditor, unless otherwise stipulated in law.

23. By implication of Item 1 of Article 314 of the CC RF, Article 327.1 of the CC RF, the period of performance of obligation may start in particular from the time when the other party performs its obligation or certain actions or from the time when other circumstances stipulated in law or contract occur. If the creditor fails to perform actions conditioning the performance of the obligation by the debtor within the period stipulated in law, other legal acts or the contract (or, in the absence of such a period – within a reasonable time), the creditor is deemed in arrears.

For instance, the dates of start and end of works under a contractor agreement (Article 708 of the CC RF) may be established by indication to the creditor's

making of an advance payment, non-payment of which entails the consequences specified in Article 719 of the CC RF.

If a party, for which the occurrence or non-occurrence of a certain circumstance marking the start of time period of performance is unfavorable, impedes or contributes to its occurrence in bad faith, then upon request of the good faith party, this circumstance may accordingly be deemed as occurred or not occurred (Item 1 of Article 6, Article 157 of the CC RF).

24. By implication of Item 2 of Article 314 of the CC RF, where an obligation does not have a time period for performance and does not contain any terms and conditions which allow to establish such a period, and where the performance time period is established by the moment of demand of performance, the debtor may, if the creditor fails to demand performance of the obligation within a reasonable time, offer the creditor to accept such performance, unless otherwise stipulated in laws, other legal acts, terms and conditions of the obligation or follows from custom or nature of the obligation. If the creditor refuses to accept the performance, in particular by evading acceptance, the creditor shall be deemed to be in arrears (Article 406 of the CC RF).

25. As a general rule, the early performance of an obligation pertaining to entrepreneurial activity engaged in by all parties of the obligation is allowed only where so stipulated in Article 315 of the CC RF.

In other creditor-debtor relationships, the debtor may perform its obligation early, unless otherwise stipulated in laws, other legal acts, terms and conditions of the obligation or arises from its nature.

Where the right of early performance of the obligation is specifically stipulated in laws or other legal acts, it may not be excluded or limited by agreement of the parties; in particular, it may not be conditioned by the payment to the creditor for the early performance of the obligation.

26. By implication of Item 1 of Article 316 of the CC RF, unless otherwise stipulated in law, for monetary obligations performed by cashless transfer, the place of performance of the obligation shall be the location of the bank (its branch, subdivision) that services the creditor (the recipient of funds). In this case, the moment of performance of the obligation shall be the deposit of monetary funds to the correspondent account of the bank that services the creditor or of the bank that is the creditor.

If the debtor and the creditor in an obligation performed by cashless transfer are serviced by one and the same bank, the time of performance of the obligation shall be the deposit of monetary funds by the bank to the creditor's account.

27. By virtue of Articles 140 and 317 of the CC RF, when resolving disputes related to the performance of monetary obligations, it is necessary to discern the currency in which the monetary obligation is nominated (the currency of debt) from the currency in which the monetary obligation must be performed (the currency of payment).

As a general rule, the currency of debt and the currency of payment shall be the Russian ruble (Item 1 of Article 317 of the CC RF).

However, pursuant to Item 2 of Article 317 of the CC RF, the monetary obligation may specify that it shall be subject to payment in rubles (the currency of payment) in the amount equivalent to a certain amount in a foreign currency or in conventional monetary units (the currency of debt). In such a case, the payable amount nominated in rubles shall be established according to the official exchange rate of the relevant currency or conventional monetary unit as of the date of payment, unless another rate or another date of its establishment is stipulated in law or agreement of the parties.

28. When the court satisfies claims on recovery of monetary sums, which are subject to payment in rubles in the amount equivalent to the amount nominated in a foreign currency or in conventional monetary units in accordance with Item 2 of Article 317 of the CC RF, the operative part of the judicial act must contain:

- an indication of the sums in a foreign currency and regarding the payment of recoverable sums in rubles;
- the interest rate and (or) the amount of forfeit, charged thereon;
- the date when the charge of interest began, the date or moment when the charging should stop;
- the exact name of the body (legal person) establishing the rate, on the basis of which the recalculation of foreign currency (conventional monetary units) into rubles is performed;
- the moment for which the rate for recalculation of foreign currency (conventional monetary units) into rubles shall be established.

When establishing the rate and date of recalculation, the court shall specify the rate and date established by law or agreement of the parties.

If by law or contract the rate of recalculation of a foreign currency (conventional monetary units) into rubles (the currency of payment) is established on the date of adoption of decision or on an earlier date, the court shall recalculate the foreign currency into rubles on its own and specify the principal debt amount in rubles in the operative part of the decision. If the interest and (or) forfeit nominated in a foreign currency are charged before the date of decision, the court shall also recalculate the amount of interest (forfeit) nominated in foreign currency into

rubles on its own and shall indicate the recoverable sums in rubles in the operative part of the decision.

If, according to the writ of execution, the recalculation of recoverable monetary sum nominated in a foreign currency or conventional monetary units into rubles is performed at the rate specified in the operative part of the court decision, the bank that executes this writ shall perform this recalculation on its own and transfer the ruble equivalent to the recoveror's account.

29. The parties may specify the rate of recalculation of a foreign currency (conventional monetary units) into rubles or specify the manner for the establishment of such a rate in the agreement.

If neither rate nor date of recalculation is stipulated in law or agreement of the parties, the court indicates, pursuant to Item 2 of Article 317 of the CC RF, that recalculation shall be performed at the official rate as of the date of actual payment.

For foreign currencies and conventional monetary units listed by the Bank of Russia, the official rate shall mean the rate of these currencies (units) in relation to the ruble, established by the Bank of Russia in accordance with Article 53 of Federal Law of 10 July, 2002 No. 86 "On the Central Bank of the Russian Federation (Bank of Russia)".

If the Bank of Russia does not establish the rate of a foreign currency (conventional monetary unit) in relation to the ruble, recalculation shall be performed on the basis of information provided by the parties regarding the rate of this currency (unit) established by an authorized body (bank) of the relevant state or international organization in relation to one of the foreign currencies or conventional monetary units listed by the Bank of Russia.

30. If a monetary obligation is nominated in a foreign currency or conventional monetary units listed by the Bank of Russia, but requires payment in rubles not at the rate of the Bank of Russia, but at another rate that needs to be established, and no sufficient evidence of existence of such a rate and (or) the manner for its establishment is provided, then the rate of the Bank of Russia shall be applied.

If the monetary obligation is nominated in a foreign currency or conventional monetary units not listed by the Bank of Russia, and it requires payment in rubles at a rate, to the existence and (or) the manner of establishment of which there is insufficient evidence, information provided by the parties regarding the rate of that currency (unit), established by an authorized body (bank) of the relevant state or international organization in relation to one of the foreign currencies or conventional monetary units listed by the Bank of Russia is used.

31. A foreign currency may be used as a means of payment in cases, in the manner and under conditions stipulated in law or in the manner stipulated in law.

If a monetary obligation is nominated in the agreement in a foreign currency (the currency of debt) without any indication of the currency of payment, the court shall declare the currency of payment to be the ruble (Item 2 of Article 317 of the CC RF).

If the court declares the terms and conditions of the agreement in which a foreign currency is a means of payment to be invalid, it shall not mean that the agreement as a whole is declared invalid, if it is possible to assume that the agreement would have been concluded without that condition (Article 180 of the CC RF). In such a case, if the monetary obligation was not performed, the currency of payment shall be the ruble.

32. The claim for recovery of monetary sums in a foreign currency that is the currency of payment shall be satisfied if it is established that pursuant to the laws existing at the time of such a decision, the monetary obligation may be performed in this currency (Article 140 and Items 1 and 3 of Article 317 of the CC RF). In such a case, the recoverable sums shall be specified in the operative part of the court decision in the foreign currency.

The writ of execution regarding the recovery of monetary sums in a foreign currency may be sent directly by the recoveror to a bank or another credit organization in which the debtor has an account in the specified foreign currency (Article 8 of Federal Law of 2 October, 2007 No. 229 “On Enforcement Procedure” (hereinafter referred to as “the Law on Enforcement Procedure”), or to the bailiff-executor for initiation of enforcement proceedings. If the debtor has no bank account in the specified currency or no monetary funds on these accounts, the court decision shall be enforced by bailiff-executors in accordance with Article 69, Parts 2, 5 and 6 of Article 72 of the Law on Enforcement Procedure.

33. If the payment of the principal debt is overdue, this amount shall be subject to both interest that is the payment for the use of monetary funds (for instance, interest stipulated in Item 1 of Article 317.1, Articles 809, 823 of the CC RF) and interest that is part of civil liability (for instance, interest stipulated in Article 395 of the CC RF).

Herewith, pursuant to Item 2 of Article 317.1 of the CC RF, as a general rule it is not allowed to charge interest, stipulated in law or agreement that is the payment for the use of monetary funds, for the same interest for the previous period (compound interest), except for obligations arising out of bank deposit agreements or agreements related to entrepreneurial activity of the parties. However, unless otherwise stipulated in law or agreement, if the debtor delays payment of interest

that is the payment for the use of monetary funds, the creditor may demand the payment of a forfeit or of interest stipulated in Article 395 of the CC RF.

34. Articles 318 and 1091 of the CC RF guarantee that the amount of payments for the maintenance of a citizen shall be increased. The terms and conditions of an obligation may provide for an increased amount of payment indexation in comparison to the amount established by Article 318 of the CC RF. Lesser payment indexation or any other deterioration of position of the citizen, for whose maintenance the monetary sums are paid, is not allowed.

35. By implication of Item 1 of Article 316 and Article 318 of the CC RF and Article 2 of Federal Law of 24 October, 1997 No. 134 “On Subsistence Minimum in the Russian Federation” in their interrelation, the amount directly paid for the maintenance of a citizen shall be increased proportionately to the increase of the subsistence minimum established in the constituent entity of the Russian Federation in which this citizen resides. Herewith, the subsistence minimum established for the population as a whole, and not for separate socio-demographic groups, should be taken into account, unless otherwise stipulated in law.

If no subsistence minimum is established in a constituent entity of the Russian Federation, the amount directly paid for the maintenance of the citizen shall be increased proportionately to the increase of the subsistence minimum established in the Russian Federation as a whole.

By implication of Items 1, 2 of Article 2 of Federal Law of 8 March, 2015 No. 42 “On Amendments to Part I of the Civil Code of the Russian Federation”, the manner of increase of amounts paid for the maintenance of a citizen, established by Article 318 of the CC RF as amended by this law from June 1, 2015, shall be applicable to all relevant obligations, irrespective of the date of their appearance.

36. Pursuant to Article 318 of the CC RF, another manner of increasing the amount directly paid for the maintenance of a citizen may be stipulated in law.

In particular, the amount of indexation of sums paid under the monetary obligation directly for the maintenance of a citizen as compensation for the harm inflicted upon the life and health by virtue of a judicial act that provides for recovery at the expense of the federal budget, may be stipulated in the federal law on the federal budget for the corresponding financial year.

37. By implication of Article 319 of the CC RF, interest specified herein shall mean interest that is the payment for the use of monetary funds (for instance, Articles 317.1, 809, 823 of the CC RF). Interest that is part of civil liability, for instance, interest stipulated in Article 395 of the CC RF, shall not be related to the interest specified in Article 319 of the CC RF and shall be repaid after the principal debt has been discharged.

The provisions of Article 319 of the CC RF that establish the sequence of discharge of claims under a monetary obligation may be changed by agreement of the parties. However, this agreement of the parties may only change the sequence of discharge of the claims specified in Article 319 of the CC RF.

Another sequence of discharge of claims under a monetary obligation may also be stipulated in law. In particular, as for consumer credit (loan) contracts concluded after the entry into force of Federal Law of 21 December, 2013 No. 353 “On Consumer Credit (Loan)”, the sequence of discharge of claims specified in Part 20 of Article 5 of this law shall be applied.

38. If an obligation is created on the basis of an adhesion contract, and the condition of such a contract regarding the sequence of discharge of claims under monetary obligations deprives the joined party of the rights usually granted by contracts of this type or contains other terms and conditions that are clearly cumbersome for the joined party, which it would not have accepted (based on its reasonably understood interests) if it had had an opportunity to participate in the drafting of terms and conditions of the contract, then Item 2 of Article 428 of the CC RF shall be applied to this contract.

39. The rules of Article 319.1 of the CC RF shall be applied to any homogenous obligations irrespective of the grounds for their creation, in particular to homogenous obligations of the debtor to the creditor, created both under different agreements and under the same agreement.

40. The provisions of Item 2 of Article 319.1 of the CC RF shall be applied in cases when the time for performance of all homogenous obligations has come or when the time for performance of all homogenous obligations has not come.

For instance, if the debtor fails to specify, in regard of which homogenous obligation (the time for performance of which has come) the performance relates, and among such obligations there are those secured for the creditor, such performance shall be regarded as made towards the obligations that are unsecured for the creditor. Herewith, an obligation for improper performance of which only a forfeit is stipulated is not regarded as secured in the sense of Item 2 of Article 319.1 of the CC RF.

The provisions of Item 3 of Article 319.1 of the CC RF shall apply only when there are either only secured or only unsecured homogenous obligations with different time for performance. In such a case, from among secured or unsecured obligations, the priority is given to the obligation the time for whose performance has come or will come earlier, or, when no such time is stipulated, to the obligation that was created earlier. If the time for performance of several secured or

unsecured obligations comes simultaneously, performance is distributed between such obligations proportionately.

Herewith, if among homogenous obligations there are those whose performance time has come and those whose performance time has not come, the performance shall be firstly distributed among obligations whose performance time has come, in accordance with Items 2 and 3 of Article 319.1 of the CC RF.

41. By implication of Item 3 of Article 199 of the CC RF, if the debtor fails to specify, to which homogenous obligation the performance relates, and among them there are creditor's claims, for which the prescription period has expired, performance is counted towards the claims for which the prescription period has not expired, in the manner stipulated in Items 2 and 3 of Article 319.1 of the CC RF.

42. Based on provisions of Article 308.1 of the CC RF on alternative obligations, an obligation, whose subject matter is established, but the creditor may choose (out of several remedies stipulated in law) the remedy for its violated rights, shall not be deemed to be an alternative obligation, for instance, in cases stipulated in Item 1 of Article 475, Item 1 of Article 612, Item 1 of Article 723 of the CC RF.

43. By implication of Article 308.1 of the CC RF, when the authorized person chooses one of alternative obligations, the obligation ceases to be an alternative one and is deemed to consist of the chosen action (act of omission) from the moment of its creation. For instance, if the choice is made in favor of a loan obligation, then interest for the use of monetary funds shall be charged not from the moment of such a choice, but from the moment on which it would be established, were the obligation initially a loan obligation (Item 1 of Article 809 of the CC RF). After making the choice, the authorized person cannot withdraw the choice unilaterally (Item 2 of Article 308.1 of the CC RF).

44. Laws, other legal acts or agreement may stipulate the time period, within which the authorized person is obliged to make its choice.

Where this time period is not stipulated, the authorized debtor may make its choice by performing one of alternative obligations within the period stipulated for the performance of such an obligation.

If the debtor fails to make its choice within the abovementioned period, the creditor becomes authorized to make the choice (Item 1 of Article 320 of the CC RF).

45. If there is no condition regarding the period for making such a choice, the authorized creditor or a third party must make this choice within a reasonable time (Item 3 of Article 307 of the CC RF, Item 2 of Article 314 of the CC RF). If they

fail to do so, the debtor may demand that the creditor or a third party provides instructions on performance of the obligation, and if such instructions are not given within the time stipulated in Item 2 of Article 314 of the CC RF, the debtor may perform the obligation at own disposal. The debtor that has not received any instructions from the authorized person shall not be deemed in arrears, in particular if the debtor did not request such instructions from the creditor or a third party after the period stipulated for making the choice expired (Articles 405, 406 of the CC RF).

46. If before the authorized person makes a choice, the performance of one of alternative actions becomes reasonably impossible due to circumstances that are beyond the parties' responsibility, the creditor may demand that the debtor performs in the manner that remains possible.

If performance of one of two actions becomes impossible due to circumstances that are within the debtor's responsibility, and the debtor had the right of choice, then the creditor may demand that the debtor performs in the manner that remains possible. If in such a situation the right of choice belonged to the creditor, then it shall at own choice demand either that the debtor compensates for losses caused by such impossibility or performs in the manner that remains possible.

If the impossibility to perform one of the actions was caused by circumstances within the creditor's responsibility, and the debtor had the right of choice, the latter shall be relieved from performance of this obligation (Article 416 of the CC RF). If in such a situation the creditor had the right of choice, then it may demand that the debtor performs in the manner that remains possible, as if the creditor made such a choice itself.

47. By implication of Article 308.2 of the CC RF, the debtor's right to replace the principal performance by another (optional) performance shall be agreed upon by the parties at the time of conclusion of the contract that gives rise to the principal obligation, or subsequently, prior to the performance of the principal obligation.

By implication of Article 308.2 of the CC RF, unless laws, other legal acts or contract stipulates otherwise, the creditor is obliged to accept the debtor's optional performance, in particular when the principal performance is in arrears.

48. The creditor has no right to demand optional performance from the debtor, in particular when it is impossible to perform the principal obligation or when it is in arrears. If the parties agree that the debtor, instead of the principal obligation, shall pay monetary funds or transfer other property, such an agreement, as a general rule, shall give the debtor a right, but not a duty, to provide other (optional) performance for the purpose of discharging the obligation. If the debtor fails to perform this agreement, the creditor may demand that the debtor performs the

principal obligation and compensates for losses caused by arrears or impossibility to perform the principal obligation (Item 1 of Article 320.1 of the CC RF).

Herewith, the parties may enter an agreement under which the creditor may demand that the debtor (at own disposal) performs the initial duty or a duty subsequently established by such an agreement (an alternative obligation with the creditor's right of choice).

49. When liability of each joint debtor in relation to the injured person is insured by different insurers, the insurers shall indemnify for damages jointly, however the payment made by one of the insurers may not exceed the corresponding insured amount (Item 2 of Article 323, Item 4 of Article 931 of the CC RF).

50. Pursuant to Item 1 of Article 323 of the CC RF, the creditor may file a claim for the full recovery of debt against any of the joint debtors. The existence of a court decision satisfying the same claims of the creditor in regard of one of the joint debtors does not constitute grounds for refusing to satisfy the claim for recovery of debt from another joint debtor, if the creditor has not received performance in full. In such a case, the court decision should refer to the joint nature of liability and to the judicial acts known to the court, which satisfy the same claims to other joint debtors.

Until receipt of full satisfaction, the creditor may demand the institution of a bankruptcy case in relation of each joint debtor (for instance, the principal debtor and the guarantor), based on the total amount of debt.

51. Pursuant to Part 1 of Article 34 of the Law on Enforcement Procedure, enforcement proceedings initiated against several debtors under a joint recovery in favor of one recoveror shall be united into one joint enforcement procedure.

In such a case, the recoveror and each joint debtor may file an application to unite enforcement proceedings initiated against them into one joint enforcement procedure, in particular when claims against them are satisfied by court decisions in different cases.

The actual performance (at the expense of one or several debtors) of the claim for joint recovery, contained in enforcement documents united into one joint enforcement procedure, shall constitute grounds for its termination by the bailiff-executor (Item 2 of Part 1 of Article 47 of the Law on Enforcement Procedure).

If the creditor's claims are satisfied by one of the joint debtors, the creditor acting in good faith shall file an application on withdrawal of enforcement documents in regard of the remaining joint debtors. Based on the abovementioned application, enforcement proceedings in regard of the remaining joint debtors shall be terminated by the bailiff-executor (Item 4 of Article 1 of the CC RF, Item 1 of Part 1 of Article 46 of the Law on Enforcement Procedure). If this obligation is not

performed, and the creditor obtains performance from other joint debtors as well, the creditor shall return what it has unjustly received and shall compensate for losses caused to the debtors (Articles 15, 307, 393, 1102 of the CC RF).

52. Pursuant to Article 324 of the CC RF, the joint debtor may not refer (in objection to the creditor's claim) to the fact that the creditor withdrew its claim against another joint debtor or released its debt. Irrespective of these actions of the creditor, the debtor who performed the joint obligation shall receive a recourse claim, in particular to the debtor in whose regard the creditor withdrew its claim or released its debt.

However, as a general rule, the guarantor may refer to the fact that the creditor released the debtor's debt or withdrew its claim to the debtor (Item 1 of Article 364 of the CC RF).

53. By implication of Item 2 of Article 325 of the CC RF, unless otherwise stipulated in an agreement between joint debtors or follows from relations between them, the debtor who performed its obligations in the amount which exceeds its part shall have the right of a recourse claim to the remaining debtors in the corresponding part, including reimbursement of expenses on the performance of obligation stipulated in Article 309.2 of the CC RF.

Unless otherwise stipulated in law, agreement or follows from the nature of relations between joint debtors, they shall be held liable in equal proportion.

54. Deposit of monetary funds or securities to a notary as the debtor's performance in favor of the creditor is allowed, if there are circumstances specified in Item 1 of Article 327 of the CC RF. The features of performance of certain obligations by deposit of monetary funds or securities to a notary may be stipulated in law.

Pursuant to Item 11 of Article 327 of the CC RF, an agreement of the parties may stipulate that the debtor shall perform its obligation by depositing monetary funds or securities to a notary irrespective of cases specified in Item 1 of this Article.

55. Pursuant to Item 2 of Article 327 of the CC RF, deposit of monetary funds or securities to a notary or the court shall be deemed to be the performance of the obligation, whereof the notary or the court that received the deposited monetary funds or securities notifies the creditor.

The monetary funds and securities deposited to a notary shall be deemed belonging to the creditor from the moment it receives the specified property from the deposit. In such a case, the notary may not return the specified monetary funds and securities to the debtor, if he/she has received an application for their receipt from the creditor.

56. If profit accrues on the monetary funds and securities deposited to a notary, the right to receive such profit for the period of their storage in the notary's deposit shall belong to the creditor who receives the monetary funds and securities from the deposit. If the monetary funds or securities deposited to the notary are returned to the debtor upon its demand (Item 3 of Article 327 of the CC RF), the right to receive such profit belongs to the debtor.

57. Counter-performance shall mean the performance of the obligation by a party, whose performance depends upon the performance of obligations by the other party, irrespective of whether the parties specified the sequence of such performance (Item 1 of Article 328 of the CC RF). For instance, as a general rule, in a sale and purchase agreement the seller's duty to transfer the goods to the buyer's ownership and the duty of the latter to pay for the goods are counter-performance in relation to each other.

Unless otherwise stipulated in law or contract, if the obliged party fails to perform the obligation or if there are circumstances that evidently show that such performance shall not take place in due time, the party charged with counter-performance may cease to perform the obligation or refuse to perform the obligation and demand compensation for losses (Item 2 of Article 328 of the CC RF).

The party that intends to cease the performance of its obligation or to refuse to perform it only upon the basis of circumstances that evidently show that the other party shall not perform its obligation in due time, shall notify the other party of it within a reasonable period of time (Item 3 of Article 307 of the CC RF).

58. Pursuant to Item 3 of Article 328 of the CC RF, neither party to the obligation, whose terms and conditions provide for counter-performance, may claim specific performance in court without having performed its part of the obligation to the other party. However, such a right of the relevant party may be stipulated in law or agreement (Item 4 of Article 328 of the CC RF). Herewith, the creditor shall not be deprived of the right to demand compensation for losses caused by such non-performance or improper performance in accordance with the terms and conditions of the obligation (Articles 15, 393, 396 of the CC RF).

Moreover, if there is a dispute over the amount of the plaintiff's counter-performance, and the court finds that its nonperformance was insignificant, the court may satisfy the claim for specific performance of the obligation by the defendant, stipulating the amount of such performance of the part of the plaintiff.

59. Unless otherwise stipulated in law, in cases where the debtor is not able to perform its obligation until the creditor commits actions stipulated in laws, other legal acts or contract or actions that follow from custom or the nature of obligation,

the provisions of Article 405, 406 of the CC RF shall be applied. The rules of Article 328 of the CC RF shall not be applied in such circumstances.

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation

V.V. Momotov