

December 13, 2016

Dear Sirs and Madams,

On November 22, 2016 the Plenary Session of the Supreme Court of the Russian Federation (hereinafter referred to as the "Plenary Session") adopted the Ruling No. 54 "**On application of general provisions of the Russian Civil Code on obligations and their performance**" (hereinafter referred to as the "Ruling"), which contains clarifications of the Plenary Session related to the provisions of the general part of obligations law.

The Ruling focuses on new institutes of the Russian Civil Code (hereinafter referred to as the "Civil Code"), which entered into force on 1 June 2015, namely: intercreditor agreement on procedure of fulfillment of claims to the debtor, unilateral repudiation of an obligation and alteration of terms of an obligation, performance of an obligation by a third party, currency of monetary obligations, statutory interest in monetary obligations.

We would like to inform you on the most important provisions of the Ruling.

Intercreditor agreement on the procedure of fulfillment of claims to the debtor

Pursuant to Art. 309.1 of the Civil Code the debtor's creditors in uniform obligations may enter into an agreement on procedure for satisfaction of their claims, which may include priority of claims performance and disproportional allocation of performance.

According to the position of the Plenary Session such agreement does not change the procedure and priority of creditors' claims satisfaction established by the Federal Law dated October 26, 2002 No 127 "On Insolvency (Bankruptcy)".

Pursuant to the Ruling the creditor having an obligation to transfer the performance if received in breach of the agreement to the other creditor, is not liable for non-performance or improper performance of the obligation by the debtor. In such cases, the creditor is obliged to:

- Report of non-performance or improper performance of the obligation by the debtor;
- Collect all the necessary evidence;
- At the request of the creditor, to which performance must be transferred, transfer the rights under the deal with the debtor.

Payment for repudiation of performance and alteration of terms of an obligation (Termination fee)

Pursuant to Art. 310 of the Civil Code, the right to unilaterally repudiate of performance or unilaterally alter the terms of an obligation related to commercial activity may by agreement of the parties be conditioned upon a requirement to pay a certain monetary amount (hereinafter referred to as the "Termination fee").

According to the Ruling, the clause on the Termination fee is deemed void if:

- The right to unilateral repudiation of obligation performance or unilateral alteration of its terms is stipulated by an imperative rule (e.g., in lease agreement concluded for an indefinite term);

- Unilateral repudiation of obligation performance or unilateral alteration of its terms is caused by non-performance or improper performance of the obligation by the other party.

In addition, if a party proves obvious discrepancy between the amount of the Termination fee and adverse effects caused by unilateral repudiation of obligation performance or unilateral alteration of its terms, as well as knowingly unfair exercise of the right to demand its payment in this amount, the court may refuse to recover the Termination fee fully or partially.

Performance of an obligation to the proper person

According to the Ruling the parties may establish in their agreement the procedure for confirming the powers of the creditor's representative. For example, they can establish that in case of any doubt the debtor appeals directly to the creditor demanding to confirm the powers of its representative in writing promptly, including in the form of an electronic document and other messages transmitted over the communication channels.

In this case the powers of the creditor's representative are confirmed in the order agreed by the parties.

Pursuant to the provisions of the Civil Code the debtor has no right to demand a notarized power of attorney, in particular, from the legal representative (Art. 26, 28 of the Civil Code) and if the powers are obvious from the context, in which the representative acts (Art. 182 of the Civil Code).

Performance of an obligation by a third party

According to the clarifications of the Plenary Session the creditor is not obliged to check for presence of an entrustment, on the basis of which a third party performs an obligation for the debtor, and is entitled to accept performance in case of absence of such entrustment.

In the event of performance of an obligation by a third party the monetary amount received by the creditor, cannot be demanded from the creditor as unjust enrichment, except in cases where the debtor also performed this monetary obligation or when performance by the third party and transfer of creditor's rights to the third party are considered frustrated by court.

In case performance of an obligation is entrusted by the debtor to a third party, the debtor remains liable to the creditor for non-performance or improper performance of an obligation by the third party.

Currency of monetary obligations

Pursuant to Art. 317 of the Civil Code a monetary obligation may provide for that it shall be paid in Russian rubles in the amount, equivalent to a particular sum in a foreign currency or coins of account. In such case the amount to be paid in Russian rubles is determined at the official rate of the respective currency or coins of account, unless other rate or exchange date are provided by law or agreement of parties.

The parties may set the foreign currency exchange rate to Russian ruble or the procedure for determining such rate. If the law or agreement of the parties do not specify the rate and date of currency conversion, the courts shall in accordance with Art. 317 of the Civil Code specify that the conversion shall be made at the official rate as of the date of actual payment.

Statutory interest in monetary obligations

The Plenary Session has confirmed the position expressed in its Ruling №7 «On the application by the courts of certain provisions of the Russian Civil Code on liability for violation of obligations» dated March 24, 2016. According to the said Ruling, in case any payments of principal debt are overdue, both interest as payment for use of the monetary funds (e.g., interest in accordance with Art. 317.1 of the Civil Code) and interest as civil liability measure (e.g., interest in accordance with Art. 395 of the Civil Code) are accrued on the amount of debt.

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We hope that you find the information above helpful. Should you have any questions, please contact the Head of ALRUD Commercial practice, Partner **Maria Ostashenko** via e-mail: mostashenko@alrud.com.

Kind regards,

[ALRUD Law firm](#)

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