



LT in focus

Changes to the RF Civil Code: performance, modification and termination of obligations

On 1 June 2015, Federal law № 42-FZ of 8 March 2015 “On amending the first part of the Civil Code of the Russian Federation” (hereinafter – “the Law”) came into force, introducing a number of significant changes to the general provisions of the Civil Code of the Russian Federation (hereinafter – “the RF Civil Code”).

This article analyses the most interesting amendments for businesses, related to the performance, modification and termination of obligations.

Agreements between creditors (Art. 309.1 of the RF Civil Code “Creditors’ agreement on the discharge of their claims against the debtor”)

The Law introduces a new type of contract – the “creditors’ agreement on the discharge of their claims against the debtor”. In such a contract, the creditors may agree on the procedure for the discharge of claims against their mutual debtor.

Thus, the creditors have the opportunity to establish the hierarchy of their claims against the mutual debtor and the proportion in which the amounts paid by the debtor towards the performance of his obligations to one of the creditors must be distributed between the creditors.

Such aforementioned agreements can be concluded only between the creditors whose claims to the debtor are of the same kind (for example, monetary claims or claims to provide the same generic things resulting from civil law relations).

It is worth mentioning that the provisions of the creditors’ agreement are not obligatory for the debtor (because the debtor is not a party to the agreement). This means that the debtor can perform its obligations in accordance with the provisions of the contract with the respective creditor.

Nevertheless, if one of the creditors receives money or things from the debtor that, in accordance with the provisions of the creditors’ agreement, are due to another creditor, the former must transfer the received money and things to that creditor. The creditor who transferred said money and things receives the claim against the debtor in the corresponding proportion.

We presume that the introduction of the aforementioned provisions to the RF Civil Code will have a positive impact on business relations (for example, these provisions can be applied by banks while granting syndicated loans).

Performance of an obligation in favour of the proper person (Art. 312 of the RF Civil Code)

A new provision has been introduced to Article 312 of the RF Civil Code, allowing the debtor not to fulfil obligations in favour of the representative of the creditor until the notarized power of attorney is produced. This rule applies only to cases prescribed by law, as well as to situations in which written authorization has been given to the debtor directly by the creditor or when the powers and authorities of the creditor’s representative are stipulated in the contract between the creditor and the debtor.



The rule protects the interests of the debtors who previously were at risk, on the one hand, of performing the obligation in favour of an improper person and, on the other hand, to be in default, refusing to perform the obligation to the representative of the creditor due to doubts over his powers and authorities. At the same time, the right of the debtor to require a notarized power of attorney can cause difficulties for the creditor due to the necessity of executing a notarized power of attorney for each representative.

Performance of an obligation by a third party (Art. 313 of the RF Civil Code)

The Law broadens the list of cases when the obligation can be performed by a third party on behalf of the debtor without the expression of the debtor's will. If the debtor does not perform a monetary obligation in due time, the obligation can be performed by another person even if the debtor did not impose the performance of the obligation on that person.

Previously, a third party could perform an obligation on behalf of the debtor only if there was a risk for that party to lose his rights to the debtor's property due to the threat of foreclosure upon that property.

According to the revised Article 313, the third party, which performed the obligation of the debtor, obtains the rights of the creditor under this obligation. Thus, in some cases, this rule allows the assignment of claims to be executed, bypassing the prohibition of such assignment stipulated by the contract between the creditor and the debtor.

Term for the performance of obligations (Art. 314 of the RF Civil Code)

Certain amendments were made to the provisions of the RF Civil Code concerning the term for the performance of obligations.

An obligation which doesn't have a determined due date, must be performed within 7 days from the day when the performance was required by the creditor, whereas, previously, the obligation had to be performed within a reasonable period of time.

Interest on monetary obligations (Art. 317.1 of the RF Civil Code "Interest on a monetary obligation" and Art. 395 of the RF Civil Code "Liability for the nonperformance of a monetary obligation")

The Law added Article 317.1 to the RF Civil Code which provides for the right of the creditor in a monetary obligation to receive the interest on the debt from the debtor for the period of use of the monetary funds (unless otherwise stipulated by law or the contract). This rule applies to relations between commercial organisations. Article 317.1 allows the charging of interest from the moment of the creation of the monetary obligation. If the interest rate is not established in the contract, it is defined by the refinancing rate of the Central Bank of the Russian Federation effective in the respective periods.

Article 317.1 doesn't substitute Article 395 of the RF Civil Code, which provides for the charging of interest in case of the nonperformance or delay in the performance of a monetary obligation.

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We hope that you will find the information in this issue both interesting and useful. Our specialists are available to answer any questions you may have with regard to the contents of this issue.

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