

Insight

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Special Alert

Court practice on credit obligations of individuals

On 22 May 2013 the Presidium of the Supreme Court of the Russian Federation (the "Supreme Court") approved an overview of court practice in cases concerning the performance of credit obligations by individuals (the "Overview").

The Overview clarifies a number of issues related to the performance of credit obligations by individuals. The position taken by the Supreme Court with respect to some matters differs from the position of the Supreme Commercial Court of the Russian Federation (the "Supreme Commercial Court"). This alert discusses the most significant differences between the two.

Jurisdiction in relation to proceedings in which a natural person is participating in the capacity of guarantor (an "Individual Guarantor")

Clause 1 of the Overview deals with the issue of which courts have jurisdiction to deal with disputes arising out of lending relations involving individuals. The view of the Supreme Court is that the courts of general jurisdiction invariably have jurisdiction to consider such cases. This position does not fully conform to the approach adopted by the Supreme Commercial Court.

The Supreme Commercial Court has stated that claims against Individual Guarantors should be considered by the commercial courts in cases where, when the guarantee was issued, the individual had an economic interest as the founder and sole shareholder of the principal obligor (ie. the debtor) and was directly interested in the principal obligor's entering into a secured economic transaction. This approach was formulated in the Resolution of the Presidium of the Supreme Commercial Court dated 13 November 2012 with respect to Case No. A40-63017/2011.



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Bringing an action against debtors which are liable jointly and severally

Clause 1.2 of the Overview is devoted to the procedure by which a creditor should bring actions in circumstances involving both a debtor and its guarantor. The Supreme Court elucidated the idea that if a lender files a claim against one of a number of debtors (either principal obligors or guarantors), the other debtors who are jointly and severally liable with respect to the same obligation should be joined to the claim as co-defendants on the initiative of the court. Taking this statement to the effect that separate consideration of the claims against the debtor and the guarantors is not permissible alongside the Supreme Court's view on jurisdiction in Clause 1 of the Overview, one can conclude that (according to the Supreme Court), the commercial courts have in principle no authority to consider disputes arising out of lending relations involving one or more individuals as a party and, pursuant to Part 4 of Article 22 of the Civil Procedure Code of the Russian Federation, such cases should only be considered by courts of general jurisdiction.

The commercial courts do not share this view of the Supreme Court. In Clause 7 of Resolution No. 42 "On Certain Matters of Resolution of Surety-Related Disputes" dated 12 July 2012, the Plenary Session of the Supreme Commercial Court stated that a lender has the right to file claims simultaneously against a debtor and its guarantor, against the debtor alone, or against a guarantor alone. In the latter two instances, the court may, on its own initiative, implead the guarantor or the debtor (respectively) as a third party.

Validity of a guarantee in the event of a change in the principal obligation

With regard to the impact of changes in the nature of a secured obligation on an associated guarantee, the Supreme Court determined that if amendments are made to a loan agreement without the guarantor's consent and such amendments increase the guarantor's liability, the guarantee shall be terminated.

The Plenary Session of the Supreme Commercial Court set out its position on this matter in Clause 37 of Resolution No. 42 "On Certain Matters of Resolution of Surety-Related Disputes" dated 12 July 2012. This resolution provides that in the event of a change in the principal obligation, the general rule is that the guarantee remains in effect. The guarantor is liable to the lender on the basis of the initial terms of the secured obligation as if no change to the obligation had occurred. To the extent that the obligation has changed, the obligation is deemed unsecured by the guarantee.

The Supreme Commercial Court provided for a single exception to this general rule: the guarantee will terminate if the obligation it secures is amended without the guarantor's consent, and the guarantor proves that it granted the guarantee for reasons other than its common economic interests with the debtor (for example, if providing guarantees on a regular basis in return for consideration is carried on by the guarantor as a business), and as a result of the changes in the terms of the secured obligation the guarantee has become impossible to perform, unless it is proven that the guarantor knew or should have known about the change to the secured obligation but failed to dissent.

The Overview will serve as guidance for lower courts of general jurisdiction considering similar issues.¹

¹ The overview is available on the website of the Supreme Court: http://www.vsrfr.ru/Show_pdf.php?id=8650