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

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In the city of Moscow

On December 23, 2025

**On the Establishment of Claims of Persons Controlling the Debtor and  
Affiliated Persons of the Debtor in Bankruptcy Proceedings**

For the purposes of uniform application by courts of the provisions of Federal Law No. 127-FZ of 26 October 2002 "On Insolvency (Bankruptcy)" regarding the establishment of the requirements of persons controlling the debtor and affiliated persons of the debtor in bankruptcy proceedings of legal persons, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law of 5 February 2014, No. 3-FKZ "On the Supreme Court of the Russian Federation", hereby rules to provide the following clarifications.

**General Provisions**

1. The protection of the legally protected interests of persons involved in relations with an insolvent debtor is an important function of justice, which is an element of the public order of the State. Proper performance of this function is achieved through strict adherence to the procedures applicable in bankruptcy proceedings (hereinafter referred to as bankruptcy proceedings) by all parties involved. This means that the commercial court is called upon to ensure a balance between the legitimate interests of the parties involved in bankruptcy proceedings, in particular, to prevent abuse of rights by both the debtor and creditors

By virtue of Articles 12, 17, 20<sup>3</sup>, 48, 52, 75, 126, 129 of Federal Law No. 127-FZ of 26 October 2002 "On Insolvency (Bankruptcy)" (hereinafter referred to as the Law on Bankruptcy), the existence of financial difficulties that prevent full settlements with creditors and the introduction of bankruptcy proceedings implies the transfer of issues concerning the subsequent fate of the debtor to the control of

the commercial court along with the granting of a scope of powers to creditors and the insolvency officer to control the bankruptcy proceedings and the property of the debtor (bankruptcy estate), while simultaneously reducing the degree of influence of controlling and other affiliated persons.

Based on the above principles and taking into account that bankruptcy cases are aimed, among other things, at protecting public order, the use of procedures applied in bankruptcy cases for an unlawful purpose, as well as with the intention of causing damage to the debtor, other persons involved in the bankruptcy case, or public interests, is unacceptable (Item 1 of Article 10 of the Civil Code of the Russian Federation, hereinafter referred to as the CC RF).

2. Courts should take into account that the scope of creditors' powers in matters of decision-making at creditors' meetings, distribution of income from the debtor's activities, and proceeds from the sale of the bankruptcy estate is determined based on the content of the register of creditors' claims (hereinafter referred to as the register), which, by virtue of Articles 16, 134 and 142 of the Law on Bankruptcy, is formed on the basis of the principle of priority, which provides for consideration of the degree of significance of the interests of a specific group of creditors to be protected.

Thus, claims of social significance are prioritized, for example, compensation for injury to life and health is the first priority (paragraph two of Item 4 of Article 134 of the Law on Bankruptcy), payment of severance pay and (or) remuneration for persons who work or worked under an employment contract is the second priority (paragraph three of Item 4 of Article 134 of the Law on Bankruptcy). As a general rule, other claims are satisfied as part of the third priority (paragraph four of Item 4 of Article 134 of the Law on Bankruptcy). However, the legislator identifies cases in which the priority of satisfaction of certain claims is decreased (for example, paragraphs five and seven of Item 4 of Article 134, Item 4 of Article 142 of the Law on Bankruptcy).

3. The order of priority for satisfaction of the claims of a controlling or affiliated person in a legal relationship with a debtor is determined based on the nature of the obligation, the grounds and circumstances of its occurrence.

Persons controlling the debtor are understood to be persons that have the actual ability to determine the actions of a legal entity, regardless of the formal legal signs of affiliation, including the ability to give instructions to persons that are part of the debtor's management bodies (Item 1 of Article 61<sup>10</sup> of the Law on Bankruptcy, Item 3 of Article 53<sup>1</sup>, Item 1 of Article 67<sup>3</sup> of the CC RF), and that have the ability to control the use of funds invested in the debtor and receive profit (beneficiary interest), the amount of which is not determined in advance and is potentially unlimited (Item 1 of Article 50, Item 1 of Article 67 of the CC RF). A majority creditor or the sole (main) counterparty (customer, buyer) may also be recognized to be a person controlling the debtor if, in the situation of the debtor's property crisis, such persons, actually determining its actions, gain advantages from the unprofitable activities of the debtor.

Affiliated persons are understood to be persons that have common economic interests with the debtor and are under the control of the same controlling person or the same group of controlling persons (Article 4 of RSFSR Law of 22 March 1991

No. 948-I "On Competition and Restriction of Monopolistic Activity in Commodity Markets", Article 53<sup>2</sup> of the CC RF, Article 19 of the Law on Bankruptcy). When determining the status of a creditor, both its legal and actual affiliation with the debtor are taken into account. The actual affiliation may be indicated by the conduct of persons in the civil turnover, in particular the conclusion of transactions between them and the subsequent execution of these transactions on terms that are inaccessible to ordinary (independent) market participants.

4. In a bankruptcy case, the actions of controlling persons and affiliated persons under their influence may be aimed at restoring lost control over the debtor and its property. Therefore, when establishing the claims of these persons in the register of creditors' claims (Articles 71 and 100 of the Law on Bankruptcy), commercial courts, taking into account objections received from persons involved in the bankruptcy case, should verify these claims for fictitiousness (reality of the emergence of the relevant relations) or assess the need to decrease the priority of their satisfaction in relation to the claims of other creditors. In particular, if, on the basis of the objections presented, reasonable doubts have arisen regarding the existence of the relevant binding relations (Item 1 of Article 170 of the CC RF), the controlling or affiliated person, at the request of the commercial court, must comprehensively disclose all the circumstances of the provision of financing (for example, information on the sources of origin and the grounds for the further redistribution of the provided financing).

Failure to disclose this information shall be considered by commercial courts as unfair conduct, entailing a refusal to include claims in the register of creditors' claims (Item 2 of Article 71, Item 3 of Article 100 of the Law on Bankruptcy).

5. According to paragraph eight of Article 2 of the Law on Bankruptcy, bankruptcy creditors do not include the founders (members) of the debtor for obligations arising from such participation. The provisions of this norm apply, in particular, to the claims of members for the payment of distributed profits (Article 28 of Federal Law of 8 February 1998 No. 14-FZ "On Limited Liability Companies", hereinafter referred to as the Law on Limited Liability Companies), to the claims of shareholders for the payment of declared dividends (Article 42 of Federal Law of 26 December 1995 No. 208-FZ "On Joint-Stock Companies", hereinafter referred to as the Law on Joint-Stock Companies), as well as claims for the distribution of the property of a legal person remaining after satisfying creditors' claims among its founders (members, shareholders) that have rights in rem to this property or corporate rights in relation to the legal person (Item 8 of Article 63 of the CC RF, hereinafter referred to as the claim for distribution of liquidation quota).

6. The relationship of control or affiliation between the creditor and the debtor does not in itself indicate that the obligation to repay the financing received results from participation in the authorized capital, and therefore the mere fact of such a relationship cannot lead to a refusal to include the creditor's claims in the register.

Financing by a controlling person of a controlled organization (hereinafter referred to as internal financing) using civil transactions that are not based on

corporate relations cannot constitute grounds for invalidating them and reclassifying them into a relationship of participation in the authorized capital (Item 2 of Article 170 of the CC RF), since participants in the civil turnover have the right to determine the legal form of investment in their own business activities, including through giving loans or other civil transactions (Article 1 of the CC RF).

7. Courts should take into account that internal financing must be carried out on the basis of the principle of good faith and must not violate the rights and legitimate interests of other persons. Thus, in the presence of any of the circumstances specified in paragraph 1 of Article 9 of the Law on Bankruptcy, it is assumed that the debtor is in a state of property crisis, it must publicly disclose information about that (Item 1 of Article 30 of the Law on Bankruptcy) and file with the commercial court a bankruptcy petition. If the head of the debtor has not filed such a petition, then the persons controlling the debtor are obligated to initiate insolvency proceedings (Item 3<sup>1</sup> of Article 9 of the Law on Bankruptcy).

Failure to perform or unfair performance of such obligations by both the head and the person controlling the debtor gives grounds for holding them subsidiary liable (Item 1 of Article 61<sup>12</sup> of the Law on Bankruptcy).

### **Claim for the Return of Compensatory Financing**

8. Given that the institution of bankruptcy presupposes a fair distribution of the risks of business activities between the creditors and members (shareholders) of the debtor, in a situation where a controlling person, without the consent of the main creditors, attempts to overcome the property crisis and restore the solvency of the debtor through the provision of financing (hereinafter referred to as compensatory financing), in particular by using the structure of loan agreement, that is, chooses a model of conduct different from that prescribed by the Law on Bankruptcy, this person assumes all the associated risks, including the risk of losing compensatory financing in the event of objective bankruptcy.

By virtue of Item 1 of Article 2, Item 2 of Article 56, Articles 65<sup>2</sup>, 65<sup>3</sup> and paragraph one of Item 3 of Article 308 of the CC RF, these risks cannot be transferred to other (independent) creditors. In this regard, the claim for the return of compensatory financing is subject to satisfaction after repayment of the claims specified in Item 4 of Article 142 of the Law on Bankruptcy, but it takes precedence over the claims of persons receiving the debtor's property under the rules of Item 1 of Article 148 of the Bankruptcy Law and Item 8 of Article 63 of the CC RF (hereinafter referred to as the priority preceding the distribution of liquidation quota).

9. The provision of compensatory financing may be expressed in granting of a loan or transferring funds under another civil agreement; in the failure to take measures to recover earlier incurred debts; in deferral, installment payment provided by a controlling person that performed n-kind fulfilment of an obligation in favour of the debtor, for example, under purchase and sale agreements, leases, contracts, etc. (Item 1 of Article 317<sup>1</sup>, Item 1 of Article 486, Item 1 of Article 614, Item 1 of Article 711, Item 2 of Article 811, Article 813 of the CC RF).

10. The provision of deferral or installment payments, as well as non-claim of a debt upon maturity, is not recognized as compensatory financing if the

controlling person proves that the corresponding actions were common practice in its relations with other independent counterparties (including due to the objective characteristics of the respective market of goods, works, and services).

Likewise, if a deferral (installment plan) was granted by a controlling person on terms similar to those established for other independent creditors of the debtor, or on terms generally accepted by participants in the commercial turnover of the relevant commodity market, then such deferral (installment plan) cannot be considered as compensatory financing.

11. The acquisition by a controlling person from independent creditors of their claims against the debtor may be qualified as providing compensatory financing. Such an acquisition is possible, in particular, by means of the conclusion of a contract under which the claim is assigned (Article 384, Item 4 of Article 454 of the CC RF), by means of the fulfillment by the controlling person as a third party of an overdue obligation of the debtor (sub-item 1 of Item 2, Item 5 of Article 313 and sub-item 3 of Item 1 of Article 387 of the CC RF), by means of the issuance by the controlling person of security (surety, pledge or independent guarantee) for the debtor's obligation, after the performance of which the subrogation of the creditor's rights or recourse is expected (paragraph two of Item 1 of Article 335, Item 1 of Article 365, Articles 379 and 387 of the CC RF).

The priority of satisfaction of a claim transferred to a person controlling the debtor in connection with a change in the creditor's obligation is decreased if the agreement that gave grounds for the transfer of this claim had been concluded in a situation of a debtor's property crisis. For example, the priority of satisfaction of a claim acquired by a controlling person under an assignment agreement during the debtor's property crisis is decreased. Conversely, the claim of a controlling person, which is a guarantor, is not subject to the reduction in priority if the surety agreement was concluded before the emergence of signs of a property crisis in the debtor, even if the performance under the agreement took place after the emergence of the corresponding signs.

12. The activities of controlling persons to acquire claims against the debtor from independent creditors after the introduction of the first bankruptcy proceeding (for example, under a purchase and sale agreement, as per Item 4 of Article 454 of the CC RF) cannot be considered as compensatory financing. At the same time, when deciding on the inclusion of such a claim in the register or on the implementation of procedural succession, the priority of its satisfaction may be decreased if it is proven that the purpose of the acquisition by the controlling person of individual claims was to establish control over the bankruptcy proceeding by circumventing the provisions of Articles 113 and 125 of the Law on Bankruptcy in violation of the rules on equality and proportionality in satisfying the claims of all creditors (Item 1 of Article 10, Item 2 of Article 170 of the CC RF). In this case, the burden of proof lies with the person that claims to have grounds for decreasing the priority of the claim.

13. A transaction on the basis of which a controlling person acquires a claim against a debtor from an independent creditor may be recognized to be a sham transaction (Item 2 of Article 170 of the CC RF) if the execution of the transaction is conditioned by the existence of an actual agreement between the controlling

person and the debtor (for example, Item 3 of Article 365 of the CC RF, hereinafter referred to as the coverage agreement). In particular, if the performance by the controlling person of a surety agreement, payment under an agreement of purchase and sale of a right, or the performance of the debtor's overdue obligation by the controlling person as a third party is carried out at the expense of the debtor's own funds (earlier redistributed within the framework of intra-group relations), then such performance is assumed to be a consideration under the coverage agreement. In this case, the creditor's rights in the obligation do not pass to the controlling person, and the petition of the latter for inclusion of the claim in the register must be dismissed (Item 2 of Article 170 of the CC RF).

14. Courts should take into account that, in view of the prohibition provided for in Item 4 of Article 1, Article 10 of the CC RF to take advantage of one's unlawful or unfair conduct, the actions of the controlling person aimed at increasing the priority of satisfying the claim belonging to the controlling person do not entail the corresponding legal consequences. For example, the priority of satisfaction of a claim for the return of compensatory financing assigned by a controlling person to a creditor independent of the debtor does not change (Article 384 of the CC RF). Likewise, this clarification applies in the event of the sale of a block of shares (participation interests) that ensures the possibility of exercising control over the debtor (loss of the status of a controlling person for another reason), after the occurrence of the obligation.

In this case, the bad faith actions of the person controlling the debtor, committed contrary to the interests of other creditors, as well as the public interest, may entail liability under the Law on Bankruptcy.

15. Financing provided by the founders (members, shareholders) to the debtor at the initial stage of its activity, as well as during the implementation of plans for significant changes or expansion of business activities, may be qualified as compensatory financing if, in violation of paragraph two of Item 4 of Article 65<sup>2</sup> of the CC RF, the actual amount of the authorized capital was obviously insufficient for the normal operation of the debtor based on the planned subject matter and the scale of its activities in the civil turnover (under-capitalization of the debtor). However, the formal allocation to a legal person of an authorized capital in accordance with the rules regarding its minimum amount (Item 1 of Article 14 of the Law on Limited Liability Companies, Article 26 of the Law on Joint-Stock Companies, Item 1 of Article 66<sup>2</sup>, Item 2 of Article 114 of the CC RF) does not in itself indicate compliance of the founders (members, shareholders) with rules on the proper capitalization of a legal person and on the sufficient level of participation in the formation of its property if the selection of such a financing model is due to the redistribution of risk in case of bankruptcy.

16. If compensatory financing was provided during a period of property crisis, but was agreed upon with majority (i.e., those holding collectively more than half of the claims from the total debt burden of the debtor) independent creditors (an extra-judicial agreement on rehabilitation), the claim for the return of compensatory financing is not subject to a reduction in the priority of satisfaction, provided that it does not violate the rights and legitimate interests of other (minority) creditors that have not been parties to such an agreement (Item 3 of

Article 30, Item 1 of Article 31 of the Law on Bankruptcy, Item 3 of Article 308, Item 3 of Article 309<sup>1</sup> of the CC RF). It is assumed that the rights of such creditors are not violated if they receive payments for obligations in the same amount (taking into account inflation processes) as if financing had not been provided, the debtor had been declared bankrupt and its property had been immediately sold in bankruptcy proceedings.

When verifying the fact of violation of the rights of minority creditors, the commercial court must evaluate the good faith and reasonableness of the actions of controlling persons and majority creditors retrospectively, that is, based on the amount of information that was available at the time the decision to provide financing was made.

17. When resolving the issue of the priority of satisfaction of the current claim for the return of financing (Article 5 of the Law on Bankruptcy) provided to the debtor by controlling persons, commercial courts must take into account the following. The financing provided after the introduction of the first bankruptcy proceeding (Item 3 of Article 48, Article 225 of the Law on Bankruptcy) is subject to return according to the priority provided for in Item 2 of Article 134 of the Law on Bankruptcy.

The claim for the return of financing provided after the initiation of the case of bankruptcy, but before the introduction of the first proceeding, is subject to repay according to the priority preceding the distribution of liquidation quota. The same rules apply to the claim for the return of such funding as to the claim for the return of compensatory funding, including the declarative procedure for the establishment of a claim in the register and the verification of both the priority of the claim and its validity and amount (Articles 16, 71 and 100 of the Law on Bankruptcy). If the specified claim has not been submitted for inclusion in the register, issues of decrease in priority, of validity and amount of the claim may be resolved on the initiative of the insolvency officer or another creditor according to the procedure for consideration of disagreements under Item 2 of Article 60 of the Law on Bankruptcy; if such a claim has already been satisfied as part of current expenses, actions to repay the debt can be challenged according to the rules of Article 61<sup>3</sup> of the Law on Bankruptcy.

18. The fact that a controlling person is under bankruptcy proceedings does not entail a change in the priority of satisfaction of its claim against the earlier controlled debtor, including for the protection of the interests of the controlling person's creditors. The corresponding approach is also applied to restitutionary claims that have arisen as a result of challenging transactions of a controlling person with a controlled debtor in a bankruptcy case of the former (Article 61<sup>6</sup> of the Law on Bankruptcy), with the exception of the case specified in Item 6 of Article 134 of the Law on Bankruptcy.

19. Claims of creditors that were objectively forced to enter into a relationship with the debtor or continue existing relationships (involuntary creditors, for example, under tort claims, claims arising from an energy supply agreement – Articles 539, 548, 1064 of the CC RF) cannot be considered as mediating compensatory financing and therefore are not subject to increase in the priority of satisfaction until proven otherwise.

20. A person controlling the debtor, which is held subsidiary liable for the inability to fully repay creditors' claims (Article 61<sup>11</sup> of the Law on Bankruptcy) or otherwise liable for losses caused (Article 61<sup>20</sup> of the Law on Bankruptcy), as well as persons held liable for joint actions with such a person (Article 1080 of the CC RF) are not entitled to have their claims against the debtor satisfied before repayment of the claims of other creditors, which suffered damage caused by the actions of such a controlling person, regardless of whether this person's claim is included in the third priority of the register or recognized as subject to satisfaction as compensatory financing (Item 1 of Article 6, Item 4 of Article 401, Articles 404, 406 and Item 2 of Article 416 of the CC RF).

Before resolving the issues of the controlling person's guilt and the existence of grounds for holding it liable, the insolvency officer must reserve funds in an amount sufficient to proportionally satisfy the claim of such a person (Item 6 of Article 142 of the Law on Bankruptcy).

After the controlling person or co-perpetrator of damages has paid off the claim for recovery of losses (Articles 61<sup>11</sup>, 61<sup>20</sup> of the Law on Bankruptcy), settlements with them are carried out without the application of the specified restrictions.

21. When resolving the issue of the priority of satisfaction of the claim of a creditor that, upon provision of financing or in connection with such provision, received the powers to control the activities of the debtor (for example, through an agreement, including a corporate agreement, as well as a pledge of shares (interests in the authorized capital) of the debtor with the right to vote at a general meeting, as well as delegating its representative to the management bodies of the debtor; by transferring rights to shares (participation interests) to the creditor through the conclusion of repurchase agreements, options; by agreeing on special terms of financing. requiring that the debtor or persons controlling it perform certain actions or refrain from performing the same, such as: agreeing on certain management decisions with the creditor, prohibiting the acquisition of non-core assets by the borrower, voting of the controlling person in a certain way, etc. (Item 9 of Article 67<sup>2</sup>, Articles 329, 358<sup>15</sup>, 358<sup>17</sup> of the CC RF, Articles 51<sup>3</sup> and 51<sup>6</sup> of Federal Law 22 April 1996 No. 39-FZ "On the Securities Market"), commercial courts must proceed from the following.

If the relevant powers of control is conditioned solely by the intention to ensure the fulfillment of the obligation to repay the financing and the payment for the use of the financing in the absence of the creditor's purpose of making a profit from the debtor's business activities (beneficiary interest), such financing cannot be recognized as compensatory. In particular, security control is provided for if the ownership of shares (participation interests) in the authorized capital of the debtor is limited by the loan maturity and the creditor does not gain advantage from the increase in the value of shares (participation interests) during such a period, and the profit is used to restore solvency.

If the degree of control obtained over the debtor's activities actually has led to the creditor replacing the controlling persons (jointly acting with the said persons) and gaining the opportunity to make profit from the debtor's business activities, the commercial court has the right to recognize such a creditor as the

controlling person that provided compensatory financing. In particular, by implication of sub-item 3 of Item 4 of Article 61<sup>10</sup> of the Law on Bankruptcy, this may be expressed in the conclusion, by direction of the creditor, of transactions with the debtor's assets on terms that are obviously unfavorable for the debtor, in which the creditor is the actual beneficiary; in the receipt of dividends by directing the profit received by the debtor (or the person that is the beneficiary from the debtor's activities) not to repay the loan, but to distribute it in favor of the creditor as a controlling person.

22. The rules on classifying financing as compensatory apply to the debtor's obligations to affiliated creditors if such creditors acted under the influence of a controlling person of the debtor.

The provision of financing by a person that does not have formal legal signs of control, on clearly unusual or unfavorable terms (for example, the provision of a loan for several years without interest or with interest accrual at an amount several times lower than the discount rate) may indicate that this person is in fact a controlling person or an affiliated person acting under the influence of a controlling person, unless a reasonable economic motive for such conduct, unrelated to control over the debtor is proven.

23. The burden of proving that the financing is not compensatory lies with the controlling person. If there are unresolved doubts about the classification of the provided financing, the commercial court submits the relevant issue for discussion by the parties (Article 133 of the Commercial Procedure Code of the Russian Federation, hereinafter referred to as the ComPC RF) and explains to the controlling person the consequences of failure to provide relevant evidence. In order to provide clarification regarding the circumstances of the provision of financing to the debtor, the commercial court has the right, by virtue of Part 4 of Article 66 of the ComPC RF, to consider mandatory the appearance at the court hearing of a creditor citizen or the head of a creditor legal person.

### **Powers of Persons Controlling the Debtor and Affiliated Persons of the Debtor in the Bankruptcy Case**

24. Creditors whose claims for the return of compensatory financing are included in the register according to the priority preceding the distribution of the liquidation quota, are persons participating in the bankruptcy case (Article 34 of the Law on Bankruptcy) and have the same scope of powers as bankruptcy creditors whose claims are included in the third priority of the register (paragraph fourth of Item 4 of Article 134 of the Law on Bankruptcy), unless otherwise follows from their status and the nature of their relationship with the debtor.

In a situation where by the closing date of the register (paragraph three of Item 1 of Article 142 of the Law on Bankruptcy), independent creditors have not declared their claims for inclusion in the register, creditors seeking the return of compensatory financing, enjoy the rights of third-priority creditors without any exceptions. A similar approach is also used for the purpose of making decisions at the first creditors' meeting (Articles 73 and 74 of the Law on Bankruptcy) in a situation where independent creditors' claims have not been filed by the deadline specified in Item 1 of Article 71 of the Law on Bankruptcy.

25. Creditors seeking the return of compensatory financing have the right to claim for the initiation of bankruptcy proceedings (Articles 7 and Item 1 of Article 11 of the Law on Bankruptcy), including in a situation where the previous bankruptcy case was terminated due to lack of funds sufficient to finance the bankruptcy proceedings (paragraph eight of Item 1 of Article 57 of the Law on Bankruptcy).

26. Courts should proceed from the fact that, as a general rule, within the claim for the return of compensatory financing, creditors do not have the right to file petitions for challenging of the transactions on special grounds provided for in Articles 61<sup>2</sup> and 61<sup>3</sup> of the Law on Bankruptcy, as well as for holding other controlling persons subsidiary liable (Articles 61<sup>11</sup> and 61<sup>12</sup> of the Law on Bankruptcy), since the institutions of challenging in bankruptcy and subsidiary liability are primarily aimed at protecting independent creditors from controlling persons and their unfair actions for the withdrawal of assets on the eve of bankruptcy.

It should be taken into account that the legislation protects the interests of controlling and other affiliated persons through a mechanism for the protection of corporate rights, which allows for the possibility of challenging transactions concluded without the necessary consent or with a violation by a representative of the conditions for exercising the powers or interests of a legal person, as well as the recovery of losses from persons determining the activities of a legal person (in particular, Articles 53, 53<sup>1</sup>, 173<sup>1</sup> and 174 of the CC RF).

27. In a situation where the debtor's capital, prior to the commencement of bankruptcy proceedings, was divided between controlling persons (members, shareholders) belonging to different groups of persons, creditors seeking the return of compensatory financing from one group are not deprived of the opportunity to prove that the claims they have made to challenge transactions or to hold [controlling person(s)] subsidiary liable are aimed at obtaining compensation for losses arising as a result of the actions of another group of controlling persons. In this case, the submitted claims are subject to consideration by the commercial court on the merits. By implication of Item 2 of Article 61<sup>9</sup> of the Law on Bankruptcy, the existence of a creditor's claim in the amount of ten percent or more in order to determine the right to challenge is established by calculating the specified amount from the total amount of accounts payable accounted according to the priority preceding the distribution of the liquidation quota.

28. Since the purpose of decreasing the priority of satisfying the claim for the return of compensatory financing is, among other things, to reduce the degree of influence of controlling persons on the economic activities of the debtor during the period of consideration of the bankruptcy case, by implication of Items 1 and 3 of Article 12 of the Law on Bankruptcy, claims accounted according to the priority preceding the distribution of the liquidation quota, as a general rule, do not grant the right to vote at the creditors' meeting.

If the claims of higher-priority creditors have been repaid or do not exist, creditors in the claims accounted according to the priority preceding the distribution of the liquidation quota have the right to vote at the creditors' meeting.

29. Regardless of whether the claim of a controlling or other affiliated

person is included in the third priority of the register preceding the distribution of the liquidation quota, these persons are not entitled to vote at the creditors' meeting on issues related to the selection of the insolvency officer or a self-regulating organization, from among whose members the insolvency officer is approved by the commercial court (paragraph six of Item 2 of Article 12, Item 5 of Article 37 of the Law on Bankruptcy, Item 1 of Article 6 of the CC RF).

30. When deciding on the choice of the bankruptcy proceedings following the monitoring, the creditor seeking the return of compensatory financing, along with the debtor and creditors that did not vote at the first meeting for the introduction of the bankruptcy proceedings, has the right to petition the commercial court for the introduction of the receivership proceedings if there are sufficient grounds to believe that the debtor's solvency can be restored (paragraph four of Item 2 of Article 75 of the Law on Bankruptcy).

In the event of the introduction of receivership, such persons and the receiver have the right to develop a receivership plan including a list of measures to restore the debtor's solvency, as well as the procedure, term and conditions of repayment of creditors' claims. The commercial court has the right to approve such a plan even in the event of disagreement by the majority of creditors, provided that the proposed plan does not worsen the situation of creditors in comparison with the results of fulfilling the obligation under the original conditions or with the potential results of bankruptcy proceedings. (Article 10 of the CC RF, Articles 106 and 107 of the Law on Bankruptcy). The commercial court may also take into account other socially significant factors confirming the priority of the rehabilitation procedure: preservation of the debtor's property complex, preservation of an operating production facility with a team of employees and, accordingly, preservation of jobs, etc.

31. Since majority creditors in a bankruptcy case are required to act in good faith and reasonably (Item 4 of Article 1, Article 10 of the CC RF), their decisions to continue the economic activities of the debtor under bankruptcy proceedings should not harm other creditors or public interests. If the fact of causing such damage is established (for example, if, within the framework of ongoing economic activity, a center of losses is formed on the debtor, while all profits are transferred to the benefit of the majority creditor or a person affiliated with it), the claim of the majority creditor that made the corresponding decision may be lowered and recognized as subject to satisfaction according to the priority preceding the distribution of the liquidation quota, upon the application of other creditors (Item 8 of Article 71 and Item 8 of Article 100 of the Law on Bankruptcy). The burden of proving the fact of damage lies with the person claiming for a decrease in the priority of a majority creditor's claim. Moreover, in such a case, the majority creditor may additionally be required to compensate the bankruptcy estate for the losses caused. (Articles 15, 393 and 1064 of the CC RF).

32. Transactions for the withdrawal of compensatory financing may be challenged not only according to the rules of Article 61<sup>3</sup> of the Law on Bankruptcy for reasons of preference, but also under Item 2 of Article 61<sup>2</sup> of the Law on Bankruptcy as causing damage to the debtor's creditors.

33. Claims for the return of compensatory financing included in the register

for the period of bankruptcy proceedings are subject to accrual of moratorium interest in accordance with Item 4 of Article 63, Item 2 of Article 81, Item 2 of Article 95 and Item 2<sup>1</sup> of Article 126 of the Law on Bankruptcy.

34. When resolving the issue of termination of proceedings under paragraph seven of Item 1 of Article 57, Articles 113 and 125 of the Law on Bankruptcy, the established creditors' claims for the return of compensatory financing are subject to repayment along with other claims included in the register. Until the creditors' claims for the return of compensatory financing are fully satisfied, the bankruptcy case cannot be terminated on the grounds given (except in cases where such creditors petition for the termination of the proceedings despite the fact that their claims have not been repaid). In this event, it is not required to repay the interest provided for in Item 4 of Article 63, Item 2 of Article 81, Item 2 of Article 95, and Item 2<sup>1</sup> of Article 126 of the Law on Bankruptcy, and current payments.

### **Other Issues**

35. When resolving the issue of the relationship between the priorities for satisfying creditors' claims established by the Law on Bankruptcy, commercial courts must proceed from the fact that after the satisfaction of the claims of third-priority creditors (paragraph four of Item 4 of Article 134 of the Law on Bankruptcy), the claims of creditors in the register of creditors' claims are satisfied according to the following order of priority:

- creditors' claims filed after the closure of the register of creditors' claims (Item 4 of Article 142 of the Law on Bankruptcy);

- claims of creditors that own bonds with no maturity date (paragraph seven of Item 4 of Article 134 of the Law of Bankruptcy);

- creditors' claims under a transaction declared invalid under Item 2 of Article 61<sup>2</sup> or Item 3 of Article 61<sup>3</sup> of the Law on Bankruptcy (paragraph five of Item 4 of Article 134 of the Law on Bankruptcy), as well as claims provided for in Item 3 of Article 136, Item 2 of Article 189<sup>84</sup> and Item 7 of Article 189<sup>92</sup> of the Law on Bankruptcy;

- claims of persons controlling the debtor or affiliated persons of the debtor according to the priority preceding the allocation of the liquidation quota (Articles 9 and 134 of the Bankruptcy Law);

- claims for payment of the actual value of the share of a member that left a limited liability company before the emergence of signs of insolvency of the company (Articles 23 and 26 of the Law on Limited Liability Companies);

- creditor's claims for the debtor to provide initial execution (Article 328 of the CC RF);

- claims of the founders (members) of the debtor with respect to obligations arising from such participation (paragraph eight of Article 2 of the Law on Bankruptcy);

- claims of a person held subsidiary liable, including upon its counter claim (Item 3 of Article 61<sup>15</sup> of the Law on Bankruptcy).

When the claims of creditors of each of the specified priorities are satisfied, the second sub-priority is used to settle claims for payment of financial sanctions (penalties, fines) and compensation for losses in the form of lost profits (Item 3 of

Article 137 of the Law on Bankruptcy).

36. When calculating the amount of interest on remuneration of the receiver or insolvency officer, the claims for the return of compensatory financing repaid by him are also taken into account (Items 12 and 13 of Article 20<sup>6</sup> of the Law on Bankruptcy).

37. By virtue of sub-item 1 of Item 3 of Article 9<sup>1</sup> of the Law on Bankruptcy, and taking into account the purposes of legislative regulation, the priority of satisfaction of a claim for repayment of the financing provided to the debtor by the person controlling the debtor during the period of the moratorium on bankruptcy proceedings is not lowered, but is determined according to the general rules of Article 134 of the Law on Bankruptcy.

38. The clarifications regarding the classification of financing as compensatory and the procedure for satisfying the corresponding claims set out in this Ruling are not applicable in bankruptcy cases of citizens and individual entrepreneurs.

39. Courts should keep in mind that when considering cases of insolvency (bankruptcy) of debtors whose activities are related to ensuring the defense and security of the country, construction of blocks of flats, provision of housing and utility services to the community or implementation of other public interests, a prosecutor may be involved in the insolvency (bankruptcy) case in accordance with Article 52 of ComPC RF.

### **Final Provisions**

40. In connection with the adoption of this Ruling, the following items shall be recognized as not applicable:

Item 3 of Ruling of the Plenary Session of the Supreme Commercial Court of the Russian Federation of 30 April 2009 "On Certain Issues Related to Challenging Transactions on the Grounds Provided for by the Federal Law On Insolvency (Bankruptcy)";

Second sentence of paragraph five of Item 11 of Ruling of the Plenary Session of the Supreme Commercial Court of the Russian Federation of 22 June 2012 No. 35 "On Certain Procedural Issues Related to the Consideration of Bankruptcy Cases."

Chief Justice of the Supreme Court of the  
Russian Federation

I.V. Krasnov

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

O.K. Zatelepin