



**For the correct and uniform application by the arbitration courts of amendments made by Federal Law No. 296-FZ as of 30.12.2008 to the Federal Law "On insolvency (bankruptcy)", the Plenum of the Supreme Arbitration Court of the Russian Federation prepared Decision No. 60 as of 23.06.2009.**

The main provisions of the Decision of the Plenum of the Supreme Arbitration Court of the Russian Federation "On some issues related to the adoption of Federal Law No. 296-FZ as of 30.12.2008 "On amendments to the Federal Law "On insolvency (bankruptcy)" are set forth as follows:

1. The financial obligations and the compulsory payments arisen before the initiation of bankruptcy proceedings, irrespective of the term of their performance shall not be current ones under any procedure. If a financial obligation or a compulsory payment arise before the initiation of bankruptcy proceedings, but their performance must be due after the introduction of supervision, such claims by their legal status are similar to the claims, whose performance was due at the date of introduction of supervision. Therefore, they are covered by the provisions of the new version of the Law on the claims to be entered in the register.
2. Despite the fact that the new version of the Law enables the current creditors to participate in the arbitration proceedings on bankruptcy by appealing the actions or the failure to act of the bankruptcy trustee, such creditors may not be the parties to the bankruptcy proceedings and the their claims are to be submitted to the court according to the standard procedure stipulated by the procedural legislation, beyond the bankruptcy proceedings (items 2 and 3 of Clauses 5 of the Law).
3. If there is no evidence of submission by the creditor under a financial obligation of the enforcement document for execution to the Court Bailiffs Service when the application is filed to declare a debtor insolvent may not be the reason to discontinue and to return the application. However, for initiating bankruptcy proceedings on the basis of the claim confirmed by the decision of the arbitration court, the creditor shall attach the effective decision of the arbitration court or of the court of common law on the issue of a writ of execution for enforcement of this decision. This rule is not applied to the procedure for submitting the bankruptcy claims according to Clauses 71 and 100 of the Law (determining the amount of claims submitted by creditors). In this case, for the claim confirmed by the decision of the arbitration court, a court order is not required to deliver the writ of execution for enforcement of this decision.
4. When verifying the compliance with the procedure for submission by the authorized body of applications for declaring a debtor insolvent and with the term, upon whose expiry one may apply for declaring a debtor insolvent, the courts shall be guided, according to item 17 of Clause 4 of the Law 296-FZ, by the provisions of the Regulations on the procedure for submitting the claims on the obligations to the Russian Federation in the bankruptcy cases and in the bankruptcy proceedings approved by the Decision of the Government of the Russian Federation as of 29.05.2004 No. 257.
5. The right to attend the meeting of creditors with voting authority arises for the creditor after the decision is made to enter its claim in the register, but not after the bankruptcy trustee or the registry holder (item 6 of Clause 16 of the Law) enter its claim in the register.
6. Due to the fact that item 3 of Clause 15 of the Law regulating the special procedure for holding the adjourned meeting of creditors on the issues stipulated by item 2 of Clause 15 of the Law ceased to be in force, the courts shall take into consideration that the decisions on the aforesaid

issues at the adjourned meeting of creditors held on the basis of item 4 of Clause 12 of the Law shall be made by a majority of votes of the bankruptcy creditors and the authorized bodies attending the meeting of creditors.

7. The six-month term for appealing the decision of the meeting of creditors shall be preclusive and is not subject to renewal. The twenty-day term as a reduced limitation period may be renewed by court within the aforesaid six-month term in accordance with the provisions of Clause 205 of the Civil Code of the Russian Federation (the Civil Code of the Russian Federation), including when the application is filed by a legal entity.
8. The new version of the Law refers to the competence of arbitration courts a number of disputes, in particular, the disputes related to the professional activity of the bankruptcy trustee, his relations with the self-regulating organization of the bankruptcy trustee.
9. For securing the obligations assigned to him in a bankruptcy case, the bankruptcy trustee shall have the right to hire on a contractual basis other parties against payment of their jobs for account of the debtor unless otherwise provided for the Bankruptcy Law, the standards and rules of the professional activity or by the agreement of the bankruptcy trustee with creditors. Item 5 of Clause of 20.3 of the Law only limits the ability of the bankruptcy trustee to transfer to third parties the exclusive powers provided for to him by the Law as a special participant in bankruptcy proceedings. The powers that may not be transferred to third parties include the decision-making on the approval and signing the report on the financial standing of the debtor and other reports, decisions to enter in the register the claims for paying the dismissal allowance and the payment of persons working under a labor contract, decisions to consent to performing the transactions stipulated by item 2 of Clause 64 of the Law, a decision to convoke and to hold the meeting of creditors, keeping the register of creditors' claims, etc. (except for the transfer of the right to keep it to the registry holder).
10. When the court order to disqualify the bankruptcy trustee is revoked and the decision to exclude the bankruptcy trustee from the self-regulating organization is revoked or invalidated as a reason for his dismissal, the meeting of creditors may appoint the aforesaid bankruptcy trustee and the court may approve him unless a new bankruptcy trustee is appointed.
11. When the bankruptcy trustee withdraws from the self-regulating organization, he is subject to removal, but not to suspension from duties assigned to him.
12. The court is entitled to reduce the amount of interests paid on fees and the limiting amount of expenses, proceeding from the actual value of the debtor's assets at the request of the party to the case this party proves that the actual value of the assets is much less than the value calculated on the basis of the financial statements. If the balance sheet of the debtor is missing as of the reporting date for the reason that the debtor applied the simplified taxation system or did not draw up the financial statements, there may be conducted an examination to determine the value of the debtor's assets on the basis of item 3 of Clause 50.
13. The fixed amount of the fee payable to the bankruptcy trustee may be increased by court only if the debtor has sufficient funds to pay the increased amount of fee. The supplementary fee of the bankruptcy trustee established by the meeting of creditors is not subject to approval of the court and payable according to the decision of the meeting of creditors. If such a fee is not paid, it may be collected by the court, considering the bankruptcy case, upon application of the bankruptcy trustee in accordance



with the procedure established by Clause 60 of the Law together with the issue of a writ of execution.

14. When applying items 8 and 9 of Clauses 42 of the Law, the courts shall take into account that, if there are several applications for declaring a debtor insolvent, they shall be considered by the arbitration court as they are received by the court. The court shall appoint an interim trustee who is set forth in the application for declaring the debtor insolvent that will be the first recognized as reasonable, or an interim trustee presented by the self-regulating organization set forth in the application. If, after the application for declaring the debtor insolvent is discontinued, there is received an application for declaring the debtor insolvent from another party, the court shall indicate in its decision on the acceptance of the second application that the date of examination of its validity will be determined after a decision on the acceptance of the first application is made.
15. When the supervision is conducted on the basis of the discontinued application as provided for in Clause 51 of the Law, the term of examination of a bankruptcy case shall begin to expire as of the date of the court decision on the acceptance of the application.
16. Before the regulatory authority determines the term for publishing the information on the introduction of supervision according to paragraph 2 of item 1 of Clause 28 of the Law, this information, by virtue of the similarity of the law (item 1 of Clause 6 of the Civil Code of the Russian Federation), shall be submitted by the bankruptcy trustee for publication within a ten-day term as of the date of its approval (item 1 of Clause 128 of the Law).
17. The standing of the party to the bankruptcy case and the relevant procedural rights to object to the claims of creditors shall arise for the creditor after its claim is accepted for consideration by the court.
18. The new version of the Law introduces the procedure providing for the repayment of the debtor's liabilities under the compulsory payments by the debtor's founders, the debtor's property owner - a unitarian enterprise or by a third party (Clauses 71.1, 85.1, 112.1 and 129.1 of the Law). If another party performs the obligation to make the compulsory payments instead of the debtor, the appropriate evidence of the repayment of the debtor's liabilities under the compulsory payments shall be the documents confirming the receipt of funds by the relevant budgets and by the extra-budgetary funds.
19. The bankruptcy trustee shall state, at the request of the persons wishing to submit their claims, the estimate of expenses on notifying the creditors of the claims and the requisites of the bank account of the bankruptcy trustee required for payment of these expenses (according to item 100 of the Law). If the creditor submitting a claim according to Clause 100 of the Law did not attach the evidence of the transfer to the relevant account of the amount required to repay the expenses of the bankruptcy trustee on the notification of the creditors and reported to him by the bankruptcy trustee, the court shall discontinue this claim according to Clause 128 of the Arbitration Procedural Code of the Russian Federation. If the creditor fails to submit this evidence within the term provided for by the decision, the court shall return the submitted claim subject to item 5.1 of the Clause 100 of the Law.
20. When applying such a procedure for satisfying the claims of creditors by the debtor's founders, the debtor's property owner or by a third party as the transfer of funds to the deposit of the notary, it should be taken into account that, by virtue of the special regulation provided for by the Bankruptcy Law, all the funds shall be subject to transfer to the notary's deposit at the location of the debtor.
21. When applying paragraph 2 of Clause 113 of the Law, by virtue of which the bankruptcy trustee shall satisfy the claims of creditors according to the decision to satisfy the application on the intention within three business days upon receipt of funds from the applicant to the special bank account of the debtor, the courts shall take into account that the bankruptcy trustee is entitled to proceed to the transfer of funds to the creditors only upon receipt to the special bank account of the amount sufficient to satisfy in full the claims of creditors.
22. The interests to be charged in accordance with item 2.1 of Clause 126 of the Law) for the amount of claims of the bankruptcy creditor and of the authorized body shall not be regarded as current payments. As these interests are charged directly by the bankruptcy trustees when settlements are made with creditors, there will be issued no court order on the charge thereof and they will not be entered in the register of claims of creditors.
23. Item 2 of Clause 134 of the Law establishes the special ranking of creditors' claims under the current payments to be satisfied in the bankruptcy proceedings. In this connection, Clause 855 of the Civil Code of the Russian Federation, determining the order of writing funds off the account when they are insufficient to satisfy all the claims to the account, shall not be applied to these relations. When applying the said provision, the courts shall take into account that it is applicable as well in other bankruptcy proceedings when the debtor's funds are insufficient to satisfy all the claims under the current payments. The compliance with the order of withdrawal of funds from the debtor's account provided for by Clause 134 of the Law shall be controlled by the credit entity engaged in the verification on its face by determining the sequence of payments on the basis of data available in the settlement document.
24. By virtue of paragraph 4 of item 3 of Clause 149 of the Law, the appeal of a court decision on the completion of the bankruptcy proceedings shall suspend the execution of this decision. The suspension shall occur directly by virtue of the Law, and there is no need to submit any application for that. Such suspension shall be indicated by the court in the decision on the acceptance of the complaint against the decision on completing the bankruptcy proceedings to be submitted by it to the authority engaged in the registration of legal entities.

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