



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

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## **On Application of Private International Law Norms by Courts of the Russian Federation**

In order to ensure the correct and uniform application of private international law norms, 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 No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following clarifications:

### ***General Provisions***

1. Courts of general jurisdiction and commercial courts determine the law applicable to a legal relationship based on international private law norms, when one of the participants of the civil law relationship is a foreign person, or when the civil law relationship involves a different cross-border element, in particular when the object of civil rights is located abroad (Item 1 of Article 1186 of the Civil Code of the Russian Federation (hereinafter referred to as the CC RF)).

When resolving disputes involving cross-border relations, the courts apply the norms of the Constitution of the Russian Federation, the universal principles and norms of international law, the norms of international treaties and acts of international organizations, norms of national law of the Russian Federation and of other states (foreign law), the customs recognized in the Russian Federation.

Sources of national law of the Russian Federation containing private international law norms include, in particular, the Civil Code of the Russian Federation (in particular Section VI, “Private International Law”), the Family Code of the Russian Federation (Section VII, “Application of Family Legislation to Family Relationships with Participation of Foreign Citizens and Stateless Persons”, hereinafter – the FC RF), the Merchant Shipping Code of the Russian Federation (Chapter XXVI, “Applicable Law”, hereinafter – the MSC RF) (Item 1 of Article 1186 of the CC RF, Part 5 of Article 11 of the Civil Procedure Code of the Russian Federation (hereinafter – the CPC RF), Part 5 of Article 13 of the Commercial Procedure Code of the Russian Federation (hereinafter – the ComPC RF).

2. The list of possible cross-border elements provided in Item 1 of Article 1186 of the CC RF (foreign subject of a legal relationship, foreign object of a legal relationship) is not exhaustive. In particular, the performance of an action or the occurrence of an event (legal fact) abroad, resulting in creation, alteration or termination of a civil law relationship, may also be regarded as a cross-border element.

For example, in accordance with Article 1 of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980, hereinafter – the 1980 Vienna Convention), the convention applies to contracts of sale of goods between parties whose places of business are in different states, where the conditions stated in said article apply. Herewith, the location of the place of business is determined not by the nationality of the person (citizenship of a real person or place of incorporation of a legal person), i.e. by the existence of a cross-border element in the form of the legal relationship’s subject, but by the location in which the party to a contract of sale regularly conducts its commercial activities, or, in the absence of latter, by the place of residence of the real person (paragraph 3 of Article 1, Article 10 of the 1980 Vienna Convention).

Equally, in accordance with paragraph 1 of Article 1 of the Convention on the Contract for the International Carriage of Goods by Road (Geneva, 19 May 1956), the convention is applicable to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country. The convention is applied irrespective of the place of residence or nationality of the parties.

In accordance with paragraphs 1 and 2 of Article 1 of the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28 May 1999, hereinafter – the 1999 Montreal Convention), the convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking. Herewith, for the purposes of the convention, the expression “international carriage” means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two states parties, or within the territory of a single state party if there is an agreed stopping place within the territory of another state, even if that state is not a state party.

Thus, the 1956 Convention on the Contract for the International Carriage of Goods by Road and the 1999 Montreal Convention may in particular apply to a contract for international carriage, the parties to which (consignor or passenger, and the carrier) are Russian natural and legal persons.

3. If an international treaty of the Russian Federation contains norms of substantive law governing a given relation, it is prohibited to determine the law applicable to issues fully regulated by such norms of substantive law on the basis of conflict of laws norms (Item 3 of Article 1186 of the CC RF).

For example, Article 23 of the 1956 Convention on the Contract for the International Carriage of Goods by Road determines the amount of compensation in respect of total or partial loss of goods, Article 22 of the 1999 Montreal Convention – the limits of liability in relation to delay during carriage by air, destruction, loss, damage or delay of baggage and cargo.

Herewith, where there are issues not resolved by an international treaty of the Russian Federation, the applicable national law is determined using the conflict of laws norms contained in private international law (hereinafter also referred to as conflict of laws norms), which may be contained both in the norms of international treaties and in the norms of national law of the Russian Federation. For example, the 1980 Vienna Convention regulates neither the issues of validity of a contract of sale or of any of its provisions, nor the issues of effect which the contract may have on the property in the goods sold (Article 4). Thus, if a given contract of sale is within the scope of the 1980 Vienna Convention, some relations of the parties will be regulated exclusively by the provisions of the 1980 Vienna Convention (e.g. the

conditions of recovery of damages and their amount), while the rest (e.g. the invalidity of a contract) will be regulated by the legislation of the country determined in accordance with the conflict of laws norms.

4. If conflict of laws norms for determining the applicable law are stipulated in an international treaty of the Russian Federation (for example, in a multilateral or bilateral legal assistance treaty), the court is guided by the norms of the international treaty.

The court determines the scope of these norms in accordance with Section 2 of Part III of Vienna Convention on the Law of Treaties (done at Vienna on 23 May 1969, hereinafter – the 1969 Vienna Convention). If a state has concluded several international treaties with the Russian Federation, which contain conflict of laws norms, the court determines the applicable conflict of laws norms in accordance with the 1969 Vienna Convention, Federal Law No. 101 of 15 July 1995 “On International Treaties of the Russian Federation” and the norms of the international treaties, the issue of application of which is being resolved by the court.

By general rule, special norms of an international treaty have priority over general norms of a different international treaty, independent of the number of participants of the corresponding international treaties and the dates of their adoption, unless otherwise stipulated in the norms of such international treaties. For example, conflict of laws norms contained in the Agreement of the Commonwealth of Independent States of 20 March 1992 “On the Manner of Resolution of Disputes pertaining to Economic Activities” (hereinafter – the 1992 Agreement) have priority, as special norms, over the conflict of laws norms of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (done in Minsk on 22 January 1993, hereinafter – the Minsk Convention) in resolution of cases arising from contractual and other civil law relations among economic agents, from their relations with state and other bodies.

If no international treaty having scope over the civil law relationship contains an applicable conflict of laws norm in regard of a certain issue, the court is guided by the conflict of laws norm stipulated in Russian legislation. For example, neither the 1992 Agreement nor the Minsk Convention contain special conflict of laws norms for determining the law applicable to a contract with the participation of a consumer; a contract in regard of real property; a contract on creation of a legal person; a contract pertaining to realisation of rights of a participant of a legal person; to assignment of claim; to subrogation; to relationships of voluntary

representation between the represented person or the representing person and a third party (except for issues regarding the form and duration of a power of attorney); to termination of claims through offset, therefore the court determines the law applicable to such issues based on the conflict of laws norms contained in Articles 1212–1214, 1216, 1216.1, 1217.1, 1217.2 of the CC RF.

5. If Russian legislation contains special conflict of laws norms in regard of certain issues, the court should apply such special conflict of laws norms. For example, special conflict of laws norms are contained in Section VII, “Application of Family Legislation to Family Relationships with Participation of Foreign Citizens and Stateless Persons”, of the FC RF, Chapter XXVI, “Applicable Law”, of the MSC RF. Herewith, if the corresponding special legislative act does not contain norms regulating the general conflict of laws provisions, the court applies the provisions of Section VI, “Private International Law”, of the CC RF (Article 4 of the FC RF, Item 2 of Article 1 of the MSC RF).

6. If it is impossible to determine the applicable law using the international treaties of the Russian Federation and other sources indicated in Item 1 of this Ruling, the court applies the law of the country, with which the civil law relationship involving a cross-border element has the closest connection (Item 2 of Article 1186 of the CC RF). When determining the closest connection, the court studies the nature of the formed legal relationships of the parties and the totality of other facts of the case in order to determine the prevailing territorial connection of different elements of the legal relationship with the law of a certain state. In particular, the court takes into account the place of residence and citizenship of parties that are natural persons; the principal place of business and the place of incorporation of parties that are legal persons; the location of a separate unit of a legal person that participated in making the contract; the location of the civil law rights object in regard of which the legal relationship has formed; the place of performance of obligations. When determining the closest connection, the court may also take into account, the application of law of which country will allow to best implement the universal principles of civil law and the constructs of some of its institutions (protection of the good faith party, prohibition to profit from acting in bad faith, prohibition to abuse one’s rights, protection of the weaker party, preference for the survival of the transaction, prohibition of unreasonable refusal to perform one’s obligations, etc.).

7. Unless otherwise stipulated in law, in particular in Item 2 of Article 1187 of the CC RF, the interpretation of legal notions for the purpose of determining the

applicable conflict of laws norm is performed in accordance with Russian law, even if the applicable conflict of laws norm thereafter directs to foreign law (Item 1 of Article 1187 of the CC RF). For example, the mere fact that the norms of statute of limitations and the manner of its calculation are part of procedural law in the law of the corresponding foreign state does not preclude the court from applying the provisions of Article 1208 of the CC RF on determination of law applicable to the statute of limitations, since in accordance with Russian law the statute of limitations is qualified as a substantive law institution.

By virtue of exception stipulated in Article 1205 and sub-item 1 of Article 1205.1 of the CC RF, the issue, whether a thing pertains to real or movable property, is resolved in accordance with the law of the country where such a thing is located.

The provisions of Article 1187 of the CC RF on qualification of legal notions are used only for the purposes of interpreting the legal notions in Russian conflict of laws norms. After the applicable law is determined based on the corresponding conflict of laws norm, the court interprets the applicable foreign law norms using the rules of Article 1191 of the CC RF on establishment of content of foreign law norms.

Legal notions in conflict of laws norms of international treaties are interpreted in accordance with Section 3 of Part III of the 1969 Vienna Convention.

8. By implication of Article 1188 of the CC RF, if a conflict of laws norm allows to determine a specific legal system of a country with multiple legal systems as applicable law, the relation is regulated by the norms of that legal system. For example, if there are several legal systems effective in different administrative divisions of the corresponding country, and the conflict of laws norm of the legislation of the Russian Federation refers to the place of residence of a natural person, the legal relation is regulated by the law of the administrative division, in which that natural person permanently or primarily resides.

If the conflict of laws norm contains a connecting factor that does not allow to determine the applicable law of a specific administrative division of a country with multiple legal systems, the applicable legal system is determined in accordance with the law of the country with multiple legal systems. For example, if a conflict of laws norm of the legislation of the Russian Federation contains a connecting factor to the law of the country, of which a natural person is a citizen, the applicable law of a specific administrative division of that country is determined in

accordance with the conflict of laws norms of the country, of which that person is a citizen. If in such a situation it is impossible to determine the applicable law in accordance with the norms of the country with multiple legal systems, the legal system with which the relationship has the closest connection is subject to application.

9. Unless otherwise stipulated in an international treaty of the Russian Federation or the law, references to foreign law in the conflict of laws norms of the Russian Federation are regarded as reference to substantive law, not the conflict of laws law, of the corresponding country. Therefore the court should apply the corresponding foreign law, even if the conflict of laws norms contained therein stipulate that Russian law (remission) or the law of another foreign state (transmission) should be applied (Item 1 of Article 1190 of the CC RF).

In accordance with Item 2 of Article 1190 of the CC RF, the court should take the provisions of foreign conflict of laws norms into account, only when they contain a remission to Russian law for the purpose of determining the legal status of a natural person (Articles 1195–1199, 1201 of the CC RF, Article 156 of the FC RF).

10. The court applies Russian overriding mandatory provisions [direct applicability norms] to the legal relations in dispute, independent of what law those relations are regulated by in accordance with the choice of law or conflict of laws agreement of the parties (Article 1192 of the CC RF).

The courts should take into account that not all imperative norms in the sense of Article 422 of the CC RF are overriding mandatory provisions.

By implication of Article 1192 of the CC RF, overriding mandatory provisions include only those imperative norms that regulate the corresponding relations independent of the applicable law, where so stated in such norms or based on their special significance, in particular for ensuring the rights and legally protected interests of participants of the civil turnover. An imperative norm has special significance and falls within overriding mandatory provisions, if its main aim is to protect the public interest pertaining to the foundations of the state's economic, political or legal system. For example, overriding mandatory provisions include the provisions of Russian legislation that limit conveyance of certain civil law rights objects (in particular, limiting the procurement of land plots, stock and shares in charter capital of certain economic entities by foreigners, where so stipulated in

law, etc.), determine the facts that preclude marriage with a foreign citizen in the Russian Federation (Article 14, Item 2 of Article 156 of the FC RF). By virtue of direct instructions of the law, overriding mandatory provisions also include provisions of Item 2 of Article 414 of the MSC RF, stipulating that if the parties have a choice of law agreement, this cannot result in waiver or decrease of liability, which the carrier should bear for the damages to life or health of a passenger, loss or damage of cargo and luggage or delay in their delivery in accordance with the MSC RF.

Law determined in the choice of law agreement of the parties or by conflict of laws norms may be applied to the legal relations in dispute, in the part that is not regulated by overriding mandatory provisions.

11. The court is obliged to apply the Russian overriding mandatory provision, if the relations in dispute are within the scope of effect of that norm (Item 1 of Article 1192 of the CC RF).

Herewith, the court may take into account a foreign overriding mandatory provision, depending on the criteria listed in Item 2 of Article 1192 (close connection between the country that adopted the corresponding overriding mandatory provision and the relation in dispute; aim and nature of those norms, as well as the consequences of their application or non-application). Herewith, the court is obliged to refuse to apply a foreign overriding mandatory provision, if its aim and nature are incompatible with the fundamental principles of the legal system (public policy, *ordre public*) of the Russian Federation, affect the sovereignty or security of the Russian Federation, violate the constitutional rights and freedoms of Russian citizens and legal persons.

12. In exceptional situations, the court does not apply a foreign law norm, subject to application by virtue of a choice of law agreement of the parties, conflict of laws norms of international treaties or the laws of the Russian Federation, if the consequences of application of such a foreign norm are clearly inconsistent with the public policy of the Russian Federation, taking into account the nature of cross-border relations (first paragraph of Article 1193 of the CC RF, Article 167 of the FC RF).

The fact that Russian law does not contain norms or legal institutions similar to norms or legal institutions of the applicable foreign law does not by itself constitute grounds for applying the public policy clause.



13. When considering disputes arising from cross-border relations, the courts should make a distinction between the scope of effect of law that is applicable to a contract or another legal relation (e.g. Item 1 of Article 1215 of the CC RF) and the scope of effect of other special conflict of laws norms, in particular of the personal law of natural and legal persons, of the law applicable to rights *in rem*, of the law applicable to relations of representation (Item 2 of Article 1215 of the CC RF).

### *Law Applicable in Determining the Legal Status of Persons*

14. In relations regulated by norms of private international law, the legal status of natural and legal persons is determined in accordance with their personal law.

Unless otherwise stipulated in the norms of international treaties, the personal law of a natural person in the Russian Federation is determined using the conflict of laws norms of Article 1195 of the CC RF, the personal law of a legal person – those of Article 1202 of the CC RF.

In particular, the following issues related to contractual obligations are regulated by personal law:

- legal passive capacity and legal capacity of a person (Article 1196, Item 1 of Article 1197, sub-items 1 and 5 of Item 2 of Article 1202 of the CC RF);
- the power of a person to make transactions in the name of a legal person without the power of attorney (sub-item 6 of Item 2 of Article 1202 of the CC RF);
- the need to obtain consent (approval) of a transaction from the bodies of a legal person or the owner of its property and the manner in which such consent is provided, as well as the implications of violation of the stipulated manner of obtaining consent (approval) for the validity of a transaction (sub-item 6 of Item 2 of Article 1202 of the CC RF);
- the ability of a legal person to be liable for its obligations, as well as the issues of liability of the founders (participants) of the legal person with regard to such obligations (sub-items 8, 9 of Item 2 of Article 1202 of the CC RF).

15. By virtue of sub-item 7 of Item 2 of Article 1202 of the CC RF, the personal law of a legal person regulates, in particular, the internal relations of the legal person with its participants, the relations pertaining to forming the bodies of the legal person, their management of the affairs of the legal person and the liability of

members of those bodies to the legal person, as well as certain types of relations of participants of the legal person among themselves, e.g. the right of pre-emption or the need to obtain consent of the other participants in case of alienation of stock or shares in the charter capital of economic entities, the issues of participation of partners in the management of business partnerships.

16. By implication of Item 3 of Article 1202 of the CC RF, a Russian or a foreign legal person cannot refer to restriction of powers of a body or representative pertaining to making of transactions, stipulated in its personal law, as well as to excess of legal capacity of the legal person, where the following conditions are simultaneously met:

- at the moment when the transaction was made, the body or representative of the legal person was located outside the country of the legal person's law;
- the law of the country where the body or representative made that transaction does not contain said restriction;
- the other party to the transaction did not know and was not supposed to know about said restriction. The burden to prove that the counterpart was not acting in good faith when making the transaction lies on the party disputing the transaction.

This rule is applied both when a transaction is disputed by the legal person itself, as well as by its participant acting in the name of the legal person (Item 1 of Article 65.2 of the CC RF).

Natural persons are similarly prohibited from referring to provisions of their personal law in the part limiting their legal capacity to make transactions (Item 2 of Article 1197 of the CC RF).

17. In certain foreign states, some types of organisations do not enjoy the legal status of legal persons despite having civil passive legal capacity (e.g. *offene Handelsgesellschaft* and *Kommanditgesellschaft* in the Federal Republic of Germany). In accordance with Article 1203 of the CC RF, the law of the country in which such organisations are incorporated is regarded as their personal law. Therefore such foreign organisations may acquire and perform civil rights and perform civil obligations, act as plaintiffs and defendants in Russian courts.

### ***Law Applicable to Rights in rem***

18. The property right and other rights *in rem* to real and movable property (hereinafter also referred to as real statute) are determined in accordance with the law of the country, where that property is located (Article 1205 of the CC RF). The scope of effect of the real statute is stipulated in Article 1205.1 of the CC RF.

Unless otherwise stipulated in an international treaty, in the legislation of the Russian Federation or proceeds from the nature of relations, conflict of laws norms determining the real statute also apply to certified and uncertified securities. For uncertified securities, the country where the rights to such securities are registered is regarded as the country where the property is located. Therefore the courts should apply the Russian legislation to issues indicated in Article 1205.1 of the CC RF when resolving disputes pertaining to uncertified securities, registered in a register of shareholders or custodian accounting taking place in the Russian Federation.

19. In accordance with sub-item 5 of Article 1205.1 of the CC RF, the creation and termination of rights *in rem* in a transaction, in particular the transfer of the property right under contracts aimed at alienation of property, are regulated by the real statute, not by the law applicable to the contract (contract statute). In this regard, the choice of law agreement of the parties regarding the law applicable to their contract (Article 1210 of the CC RF) does not automatically apply to said issues. However, the contract parties may conclude a special agreement on application of the contract statute to the creation and termination of the property right and of other rights *in rem* to movable property (Item 3 of Article 1206 of the CC RF). Such an agreement may constitute part of the applicable law clause in a contract or may be recorded by the parties in a separate manner. By virtue of Item 6 of Article 1210 of the CC RF, provisions of Items 1–3 and 5 of Article 1210 of the CC RF are also to be applied to such a choice of law agreement.

By virtue of Item 3 of Article 1206 of the CC RF, the contract statute applies to creation and termination of the property right and of other rights *in rem* to movable property without prejudice to the rights of third persons. Third persons, who are not parties to the corresponding contract (e.g. the owner, who lost possession of the thing and files a claim for its vindication) may state their claims in regard of that same thing based on the law of the country in which it is located.

20. By implication of Item 1 of Article 1206 of the CC RF, if a contract of sale of movable property provides for the movement of goods from one country to another, the goods are not in transit at the moment when the contract is made, and the parties have not agreed on the law applicable to the moment of transfer of the property right (Item 3 of Article 1206 of the CC RF), the property right to the goods transfers from the seller to the buyer on the moment determined in accordance with the law of the country in which the goods are located.

If the property right has not transferred to the buyer before the moment of transfer of the goods to another country, the elements of the set of facts occurring in the first country (e.g. the fact of conclusion of an agreement, the handing over of the thing, etc.) are regarded as completed for the purposes of applying the set of facts required in accordance with the law of the new location of the thing. For example, if a contract of sale was concluded when the goods were located in the first country, this legal fact is taken into account to determine whether the property right has arisen with the buyer in accordance with the law of the other country, to which the goods have been delivered.

If at the moment when the transaction is made the goods are in transit (e.g. shipped on a marine vessel), the creation and termination of the property right and of other rights *in rem* are determined based on the law of the country, from which the goods were shipped, unless otherwise stipulated in law (Item 2 of Article 1206 of the CC RF).

21. The scope of effect of the real statute includes, in particular, the issues of enforcement and protection of rights *in rem* (sub-times 6 and 7 of Article 1205.1 of the CC RF). In this regard, the issues of recovery and liquidation of things that are subject matter of pledge are resolved through application of law of the country in which they are located, independent of what law applies to the contract of pledge in accordance with Articles 1210 and 1211 of the CC RF.

### ***Law Applicable to the Form of Transaction***

22. Unless otherwise stipulated in law, in accordance with Item 1 of Article 1209 of the CC RF, a transaction or a power of attorney cannot be invalidated due to failure to observe the form, where the requirements stipulated in the law of at least one of the following countries are met:

- law of the country applicable to the transaction itself. The law of the country applicable to the rights and obligations under the contract is the law of the

- country chosen by the contract parties under their agreement (Article 1210 of the CC RF), and in the absence of such an agreement – the law determined based on Articles 1211–1214 of the CC RF. By implication of Item 4 of Article 1210 of the CC RF, the parties may also choose the law applicable to the form of the transaction as a separate part of the contract. The law of the country applicable to a unilateral transaction is determined in accordance with the norm of Article 1217 of the CC RF, and the law of the country applicable to a power of attorney – in accordance with the norms of Items 2–4 of Article 1217.1 of the CC RF;
- law of the country in which the transaction was made. If at the moment of making the contract the parties to the transaction are located in different countries, and the contract itself does not indicate the place where it was made, the contract is regarded as made at the place of residence of the citizen or at the location of the legal person that made the offer (Article 444, Item 1 of Article 1187 of the CC RF);
  - Russian law, if at least one of the parties to the transaction is a person whose personal law is Russian law, or if such a person is the principal under the power of attorney.

In order for a transaction to be invalidated due to failure to observe the form, the court should ensure that the application of law of each of the aforementioned countries leads to that result.

Since the choice of applicable law by the parties, made after the making of a contract, takes effect without prejudice to the validity of the transaction from the viewpoint of requirements to its form (Item 3 of Article 1210 of the CC RF), for the purpose of applying the first paragraph of Item 1 of Article 1209 of the CC RF, the law of the country applicable to the transaction itself may be both the law initially applicable to the contract, as well as the law chosen by the parties to the contract based on subsequent agreement – depending on application of which law will result in invalidity of the transaction.

23. Despite the fact that in accordance with the rule of Item 1 of Article 162 of the CC RF failure to observe the simple written form of the transaction has consequences of procedural nature (in case of dispute, a party loses the right to rely on witness testimony to confirm the fact of the transaction and its terms), this norm is a norm of substantive law (Item 1 of Article 1187 of the CC RF), therefore it does not prevent the court from applying foreign law norms containing other rules

on the form of transactions and the consequences of failure to observe them, in accordance with Article 1209 of the CC RF.

24. If the personal law of a legal person contains special requirements to the form of the contract on creation of a legal person or of a transaction pertaining to realization of rights of a participant of a legal person, the form of such contract or transaction is governed by the law of that country (Item 2 of Article 1209 of the CC RF). Special requirements are understood as requirements contained in legislation on legal persons of the corresponding country (e.g. in the case of Russian law – the rules of Chapter IV of the CC RF, “Legal Persons”, as well as the rules stipulated in laws on certain types of legal persons), but not the general provisions of civil legislation on the form of transactions.

25. State registration of a transaction or state registration of creation, transfer, limitation or termination of rights in accordance with that transaction is not an element of the form of transaction. Therefore these issues are not regulated by the law applicable to the form of the transaction (Article 1209 of the CC RF), but by the law regulating the substance of the corresponding relation (e.g. Russian law as regards contracts on real property located in the Russian Federation, in accordance with Item 2 of Article 1213 of the CC RF). Thus, if a transaction or the creation, transfer, limitation or termination of rights in accordance with it is subject to mandatory state registration in a Russian register, then both the issues of state registration and the form of the corresponding transaction are governed by Russian law (Items 3 and 4 of Article 1209 of the CC RF).

The consent to making of a transaction (Article 157.1 of the CC RF) is also not an element of the form of transaction, therefore the conditions and manner of expression of such consent are not regulated by the law applicable to the form of the transaction. For example, the law applicable to conditions and manner of expression of consent by the guardian are determined in accordance with Article 1199 of the CC RF; to conditions and manner of expression of consent to transfer of debt – in accordance with Articles 1210, 1211 of the CC RF.

### ***Law Applicable to Contractual Obligations***

26. By virtue of the principle of party autonomy in private international law, the parties to a contract, when making the contract or thereafter, may agree between them to choose the law applicable to their rights and obligations under the contract (contract statute). This directly expressed agreement may take the form of a choice

of law term (clause) in the text of the contract or the form of a separate agreement (Item 1 of Article 1210 of the CC RF).

The court determines the acceptable limits of choice of applicable law in agreements of the parties (e.g. whether it was allowed to choose applicable law after the contract was made, for certain parts of the contract) based on Russian law.

Herewith, the issues whether the choice of law agreement is valid (where there are grounds pertaining to defect of will) and whether it has been made as a type of a civil law transaction are determined based on the law indicated by the parties in the choice of law agreement.

By virtue of the principle of autonomy of the choice of law agreement, the invalidity, non-conclusion or termination of the principal contract do not by themselves result in invalidity or unenforceability of the choice of law agreement.

27. In accordance with Item 2 of Article 1210 of the CC RF, the choice of law agreement must either be expressed directly or must be clearly inferred from the contract terms or from the totality of facts of the case (implied choice of law agreement). The parties may use any notions and wording in their choice of law agreement, indicating their choice of specific law (e.g. indicate the application of law, legislation, laws, normative acts or norms of a given country).

When determining whether the parties had a will to choose the applicable law, the court may establish the existence of an implied choice of law agreement, in particular if the parties refer to specific civil law norms of a certain country in the text of the contract, or if the parties refer to the same applicable law in support of their claims and objections (e.g. in the statement of claim and the statement of defence). Moreover, the court may conclude that an implied choice of law agreement exists, where there is a close connection between two contracts in which the same persons participate, and where one of the contracts contains an applicable law clause, and the other contract, concluded at a later time, does not contain such a clause.

However, the choice of the competent court or the choice of forum for international commercial arbitration by the parties does not by itself mean that the substantive law of the same state was chosen as applicable to the legal relations in dispute. Where there is no expression of will of the parties as to applicable law,

this means that the competent court or the arbitration tribunal determines it based on the applicable conflict of laws norms.

28. The parties may choose or decide to change the earlier chosen applicable law after concluding the contract. This choice has retroactive effect and is regarded valid, without prejudice to the rights of third parties and the validity of the transaction from the viewpoint of requirements to its form, from the moment on which the contract was concluded (Item 3 of Article 1210 of the CC RF).

If the parties chose the applicable law after concluding the contract, third persons, who did not express their consent to the choice of particular law and are not the legal successors of the parties, may, in support of their claims pertaining to the contract, refer to the law that would have been applied to the contract in the absence of the subsequent choice of law agreement. In particular, such third persons include the third persons in whose favour the contract was made (Article 430 of the CC RF). By implication of said article, the rule stipulated in Item 3 of Article 1210 of the CC RF is applicable to third persons, in whose favour the contract was concluded, on condition that they had expressed their intent to use their right under the contract before the subsequent choice of law agreement was concluded by the parties.

29. The contract parties may choose the law that is applicable to the contract in full, as well as to some of its parts (Item 4 of Article 1210 of the CC RF). This choice is allowed on condition that the application of different law to different parts of the same contract does not create insuperable contradictions and does not result in invalidation or loss of the contract or its part. If there are such insuperable contradictions, the court declares the choice of law agreement unenforceable and determines the contract statute based on the conflict of laws norms applicable in the absence of a choice of law agreement.

30. The parties may conclude a conditional (alternative) agreement, stating that the choice of applicable law depends on the choice of the party that will act as the plaintiff in a future trial, or stating that the applicable law will be the law of the party acting as the plaintiff or defendant in future disputes (Item 1 of Article 1210 of the CC RF). Within the framework of such agreements, the law applicable to the contract is established at the moment of filing the first claim; filing of further claims based on the same contract, including counterclaims, does not change the established applicable law. The risks related to the fact that the applicable law is



not established until the moment of filing of the first claim are borne by the parties, concluding the conditional (alternative) choice of law agreement, themselves.

Herewith, the courts should act on the premise that the condition in an alternative choice of law agreement cannot be of one-sided (asymmetrical) nature, depending solely on the will of one particular party (e.g. providing only the lender with a choice of several options of applicable law, depriving the borrower of the same choice). The court should regard such agreements as invalid and determine the contract statute based on the conflict of laws norms applicable in the absence of a choice of law agreement.

31. If at the moment when the parties to the contract choose the applicable law all the facts pertaining to the nature of relations of the parties are connected only to one country, the choice of law of another country by the parties cannot infringe upon the effect of imperative norms of law of the country to which all the facts pertaining to the nature of relations of the parties are connected (Item 5 of Article 1210 of the CC RF).

By implication of this norm, the court applies any imperative norms of Russian legislation, irrespective of whether they qualify as overriding mandatory provisions in the sense of Article 1192 of the CC RF, if the relation in dispute is completely devoid of the cross-border element, relevant for the case (e.g. all the parties of the relation in dispute are Russian organisations; the subject matter of the dispute is located in the Russian Federation; the actions of the parties, relevant for the dispute and pertaining to creation, alteration or termination of civil rights and obligations, were performed in the Russian Federation).

When determining whether a cross-border element relevant for the case exists, the court should not only take into account the elements of a specific contract, but also other facts pertaining to the nature of relations of the parties. For example, Item 5 of Article 1210 of the CC RF is not subject to application to a suretyship contract between two Russian organisations, if it ensures the due performance of the principal obligation governed by foreign law, the debtor in which is a foreign organization. Equally, Item 5 of Article 1210 of the CC RF is not subject to application to a subcontractor agreement between two Russian organisations pertaining to construction in the Russian Federation, if the client in the general contractor contract governed by foreign law is a foreign organization. Herewith, the mere presence of foreign investments in the charter capital of a Russian

company does not create a sufficient cross-border element in application of Item 5 of Article 1210 of the CC RF.

Item 5 of Article 1210 of the CC RF is also not subject to application, if the cross-border element, relevant for the case, existed at the moment when the parties concluded the choice of law agreement, but was later lost (e.g. a loan contract was concluded between a foreign lender and a Russian borrower, and the foreign borrower later assigned all its claims to a Russian assignee).

32. The parties to a contract containing a cross-border element may choose the law of a country that has no relation to the contract or its parties in the choice of law agreement (choice of neutral law) (Item 1 of Article 1210 of the CC RF).

The parties may also choose documents containing the rules recommended for participants of the turnover by international organisations or unions of states (e.g. UNIDROIT Principles of International Commercial Contracts, Principles of European Contract Law, Model Rules of European Private Law). Such rules are applied only in case of explicit agreement of the parties. Issues that cannot be resolved in accordance with such documents chosen by the parties, as well as with the universal principles on which they are based, should be resolved in accordance with the national law determined in accordance with the agreement of the parties or by conflict of laws norms.

33. Provisions of Article 1211 of the CC RF are applied by the court in the absence of a choice of law agreement. Unless otherwise stipulated by the international treaties of the Russian Federation, the CC RF or other Russian federal laws, the law applicable to the contract is the law of the country in which, at the moment when the contract is made, the party effecting performance vital for the contract has its place of residence or principal place of business (characteristic performance) (Item 1 of Article 1211 of the CC RF). The parties regarded as effecting characteristic performance for different types of civil law contracts are in particular listed in Item 2 of Article 1211 of the CC RF. Said conflict of laws norms provide for the application of law of the country in which the party effecting characteristic performance has its place of residence or principal place of business, not the law of the country in which the corresponding obligation is to be performed.

The place of residence is regarded as the place in which a natural person permanently or primarily resides (Item 1 of Article 20 of the CC RF). The principal

place of business should be understood as the place of economic activity, where the affairs of a legal person or an individual entrepreneur are managed. The principal place of business does not necessarily coincide with the place of incorporation of a legal person.

34. In purchase and sale contracts, the seller is recognised as the party effecting characteristic performance (sub-item 1 of Item 2 of Article 1211 of the CC RF). If, pursuant to the contract terms, the buyer undertakes significant non-pecuniary obligations (e.g. the obligation to provide advertising and marketing of the seller's goods on a particular territory, to sell the goods at a determined minimal price, etc.), then the court, based on assessment of the terms and nature of the contract, as well as of the totality of other facts of the case, may conclude that the buyer is the party effecting characteristic performance.

35. Items 3–8 of Article 1211 of the CC RF contain exceptions from the general rules of Items 1, 2 of Article 1211 of the CC RF, when other conflict of laws norms are used to determine the contract statute for certain types of civil law contracts.

In particular, such special conflict of laws norms are stipulated for the contracts on disposal of exclusive rights to results of intellectual activity and means of individualisation (Items 6–8 of Article 1211 of the CC RF). When resolving disputes arising from such contracts, the courts should take into account that the content and limitations of exclusive rights to results of intellectual activity and means of individualisation, their duration, admissible ways of disposal and the need of state registration of contracts or of alienation, pledge, transfer, limitation or termination of an exclusive right, granting of the right of use are in any case determined based on the law of the corresponding countries, on the territory of which these results of intellectual activity and means of individualisation enjoy legal protection (Item 2 of Article 1186, Item 1 of Article 6 and Item 2 of Article 1231 of the CC RF).

36. In exceptional situations, the court does not apply the conflict of laws norms stipulated in Items 1–8 of Article 1211 of the CC RF, if it is clear from the law, the terms or nature of the contract, or from the totality of facts of the case that the contract has closer connection with the law of a different country (Item 9 of Article 1211 of the CC RF). The court should indicate the reasons, for which it deems the contract to clearly have closer connections with the law of a different country. Taking into account the need to ensure predictability and certainty of the contract statute, the court, when evaluating the totality of facts of the case, should

by general rule take into account only those facts that took shape at the moment when the contract was made, not those that appeared later.

For example, if a contract is made, and, in accordance with its terms, is performed by the seller, sub-contractor or operator through a branch office or another separate unit in a different country, the court may apply not the law of the country which is the principal place of business of the seller, sub-contractor or operator, but the law of the country in which its branch office or another separate unit is located.

37. By implication of Items 1 and 10 of Article 1211 of the CC RF, when determining the applicable law for a mixed contract that contains the elements of contracts listed in Item 2 of Article 1211 of the CC RF, the law of the country in which, at the moment when the contract was made, the party effecting characteristic performance had its place of residence or principal place of business (if such performance may be determined in a given situation) should be regarded as the law of the country with which such a mixed contract, viewed as a whole, has the closest connection.

It may be implied from the law, the terms or nature of a mixed contract, or from the totality of facts of the case that the applicable law should be determined separately for the elements of different contracts comprising such a mixed contract.

38. If the countries used trade terms contained in the Incoterms rules, however did not refer to Incoterms, unless there is evidence that the will of the parties was different, it is presumed that the parties agreed to apply Incoterms rules to their relations, as in force at the moment when the contract was made (Item 11 of Article 1211 of the CC RF). In this situation, Incoterms provisions have priority over the dispositive norms of the contract statute.

39. Item 2 of Article 1213 of the CC RF contains an imperative conflict of laws norm for determining the law applicable to a contract regarding real property located in the Russian Federation, which makes it impossible for the parties to conclude a choice of law agreement.

By implication of Item 2 of Article 1213 of the CC RF, a contract regarding real property located in the Russian Federation is a contract, the object of which is a real thing located in the Russian Federation, on condition that the contract itself or the creation, transfer, limitation (title encumbrance) or termination of rights from

that contract are subject to registration in the Unified State Register of Property Rights or another state register of the Russian Federation.

For the purposes of applying Item 2 of Article 1213 of the CC RF, aircraft and marine vessels, as well as inland ships are regarded as located in the Russian Federation, if the property right or other rights to them are registered in a state register of the Russian Federation (Item 1 of Article 6, Article 1207 of the CC RF).

40. In accordance with Item 1 of Article 1214 of the CC RF, parties to a contract on creation of a legal person and of a contract pertaining to realization of rights of a participant of a legal person may conclude a choice of law agreement in accordance with Article 1210 of the CC RF. However, such an agreement does not infringe the priority application of imperative norms of the corresponding legal person's personal law with regard to issues indicated in Item 2 of Article 1202 of the CC RF.

The court applies imperative norms of the personal law of the corresponding legal person, irrespective of whether they qualify as overriding mandatory provisions in the sense of Article 1192 of the CC RF. For example, if the parties make a corporate contract regarding the management of a Russian economic entity and (or) participation therein, the court should take into account the imperative norms of the first paragraph of Item 2 of Article 67.2 of the CC RF, in accordance with which a corporate contract cannot oblige its participants to vote in accordance with the instructions of the entity's bodies, establish the structure of the entity's bodies and their competence. Herewith, the law chosen by the parties applies in the part that is not regulated by the imperative norms of personal law of the corresponding legal person.

41. If the parties have not concluded a choice of law agreement, and Articles 1211–1214 of the CC RF do not contain conflict of laws norms for specific types of civil law contracts (e.g. for a contract of exchange), the court should be guided by the general conflict of laws norm stipulated in Item 2 of Article 1186 of the CC RF when determining the applicable law.

42. By general rule, the contract statute in particular regulates the consequences of the contract's invalidity, independent of grounds on which the contract is invalidated (sub-item 6 of Item 1 of Article 1215 of the CC RF). Herewith, different conflict of laws norms apply to different groups of grounds for invalidity of transactions.

For example, rules on the personal law of a natural person (Articles 1195–1197 of the CC RF) or of a legal person (Article 1202 of the CC RF) apply to the grounds for invalidity of transactions pertaining to limited legal capacity of a natural person, making of transactions contrary to the aims of activities of a legal person, restriction of powers of bodies of a legal person, need to obtain corporate consent (approval) in making of transactions and to other analogous situations.

Conflict of laws norms regarding the law applicable to the form of the transaction apply to the grounds for invalidity of transactions pertaining to violation of requirements to their form (Article 1209 of the CC RF).

Taking into account the principle of autonomy of the choice of law agreement, the grounds for invalidity of transactions pertaining to the discrepancy between the true will and the actual expression of the will of the parties to the transaction, as well as other defects of will (transactions made under the influence of substantial error, deceit, threat, onerous and other similar transactions) are regulated by the law chosen by the parties, and in the absence of a choice of law agreement – by other conflict of laws norms determining the contract statute (Articles 1211–1214 of the CC RF). The validity of transactions from the viewpoint of correspondence of their contents to the applicable law is determined in the same way; herewith, the court also takes into account the applicable overriding mandatory provisions in accordance with Article 1192 of the CC RF.

43. Conflict of laws regulation of assignment of claims contained in Article 1216 of the CC RF respects the interests of the debtor not participating in the contract, on the basis of which assignment is performed. Thus, law applicable to the contract, on the basis of which assignment is performed, regulates the relations between the original and the new creditors. Herewith, the law applicable to the claim that is the subject matter of assignment regulates whether it is allowed to assign the claim, the relations between the new creditor and the debtor, the conditions under which this claim may be made against the debtor by the new creditor, as well as the issue of due performance of the obligation by the debtor (Item 2 of Article 1216 of the CC RF).

Moreover, issues pertaining to the transfer of the right to claim from the original creditor to the new one (in particular regarding the transfer of the proprietary right from the assignor to a specific assignee, the competition of several assignees with

regard to the same proprietary right) are resolved based on the law applicable to the claim that is the subject matter of assignment.

44. By implication of Article 1217 of the CC RF, the person undertaking obligations in a unilateral transaction may choose the applicable law that will regulate the obligations arising from such a unilateral transaction in the text of the document stipulating the conditions on which the unilateral transaction is made (e.g. in the text of an independent guarantee). The scope of effect of law chosen in this manner should be determined in the context of Article 1215 of the CC RF.

After the corresponding obligations arise, a person undertaking obligations in a unilateral transaction may make or change the choice of applicable law only with consent of the creditor in that obligation.

Provisions of Article 1217 of the CC RF are not applied to issues within the scope of effect of other conflict of laws norms. In particular, said article does not apply to unilateral transactions pertaining to amendment or termination of a contract (Item 1 of Article 1215 of the CC RF), as well as pertaining to relations regarding inheritance (Article 1224 of the CC RF).

### *Law Applicable to Relations Involving Consumers*

45. In accordance with Article 1212 of the CC RF, if a contract is concluded between a professional party and a natural person using, procuring or ordering, or intending to use, procure or order movable things (works, services) for personal, family, domestic and other needs, not pertaining to engagement in entrepreneurial activities (a consumer), the parties may conclude a choice of law agreement in accordance with Article 1210 of the CC RF.

However, in accordance with Item 1 of Article 1212 of the CC RF, the conclusion of such an agreement does not preclude the court from using the means of consumer rights protection provided by imperative norms of the law of the country in which the consumer resides, where one of the following conditions applies:

- either the professional party exercises its activities in the consumer's country of residence, and the contract pertains to such activities of the professional party;
- or the professional party directs its activities to the territory of the consumer's country of residence or the territory of several countries,

including the consumer's country of residence, using any means, and the contract pertains to such activities of the professional party.

The professional party is regarded as directing its activities to the territory of the consumer's country of residence in particular if it maintains a website, the contents of which demonstrate that it's oriented at consumers from the corresponding country. A website may be regarded as oriented on Russian consumers, if Russian is one of its languages, the prices are shown in Russian rubles, contact phone numbers with Russian codes are indicated, or where other similar evidence is available (e.g. the website owner ordered services aimed at improving its website's citation rank with Russian Internet users).

Where one of the above conditions applies, the court may, upon its own initiative, apply consumer rights protection provided by imperative law norms of the consumer's country of residence. Such imperative norms may be contained both in special legislation acts (e.g. Law of the Russian Federation No. 2300-I of 7 February 1992 "On Consumer Rights Protection") and in general acts (e.g. the CC RF). The court uses imperative law norms of the consumer's country of residence, irrespective of whether they are qualified as overriding mandatory provisions in the sense of Article 1192 of the CC RF.

The rules stipulated in this Item do not apply to contracts indicated in Item 3 of Article 1212 of the CC RF.

46. If the rules of Item 1 of Article 1212 of the CC RF are not applicable, and the consumer cannot use the protection of her/his rights provided by the imperative norms of her/his country of residence, the conclusion of a choice of law agreement does not preclude the court from applying the consumer rights protection provided by the imperative norms of the country, the law of which would apply to the contract in the absence of a choice of law agreement in accordance with the general conflict of laws norms (Item 4 of Article 1212 of the CC RF). For example, when a contract is concluded with a consumer for provision of medical services exclusively in a country other than the consumer's country of residence (sub-item 2 of Item 3 of Article 1212 of the CC RF), and the law of a third country is referred to in the choice of law clause, the court may apply the consumer rights protection provided by imperative norms of the country in which the medical services provider resides or has its principal place of business.



47. Special conflict of laws norms of Article 1221 of the CC RF are subject to application when goods are purchased (works are performed, services are provided) for consumer purposes, not for their use in entrepreneurial activities (second paragraph of Article 1095 of the CC RF). These rules provide the injured party with the choice of applicable law from several options stipulated in law, unless the parties have agreed upon the applicable law in accordance with Article 1223.1 of the CC RF. The injured party is not obliged to provide reasons for its choice. The injured party may use the right of choice provided to it during the consideration of the case in a court of first instance until the moment when the court retires to the deliberations room to adopt a decision. If until that moment the injured party has not used its statutory right of choice, and there is no choice of law agreement of the parties, the court applies the law of the country where the seller or producer of goods or another party that caused the damage resides or has its principal place of business, unless otherwise proceeds from law, the nature of the obligation or the totality of facts of the case (Item 3 of Article 1221 of the CC RF).

It is not admissible for the injured party to choose the law stipulated in sub-items 2 or 3 of Item 1 of Article 1221 of the CC RF, if the party that caused the damage proves that it did not anticipate and was not supposed to anticipate the distribution of goods in the corresponding country. For this purpose the party must prove that the territory of the corresponding country is clearly not included into the territory of distribution of goods or that the party prohibited it to persons engaged for the distribution of goods (buyers, distributors, etc.) to sell goods in the corresponding country, and also did not engage in such sale itself.

### ***Law Applicable to Relations of Voluntary Representation***

48. When determining the law applicable to the relations of voluntary representation, the courts should distinguish between the relations arising between the principal [represented party] and the authorised agent [representing party] on the one hand (hereinafter also referred to as internal relations), and the relations between the principal or the authorised agent and a third person (hereinafter also referred to as external relations).

In accordance with Item 1 of Article 1217.1 of the CC RF, conflict of laws norms regulating the corresponding types of contracts are applicable to internal relations of representation, for example the rules on the contract statute for a contract of mandate or a contract of agency (Articles 1210–1212 of the CC RF).

General rules of the CC RF on determination of the contract statute also apply to contractual obligations arising from a transaction made by the authorised agent with a third party in the name of the principal (Articles 1210–1214 of the CC RF). Herewith, the place of residence or the principal place of business of the represented person is taken into account for the purposes of application of Items 1 and 2 of Article 1211 of the CC RF (as that of a person in whose name the corresponding contract is concluded).

49. Unless otherwise proceeds from the law, external relations of representation are determined based on the law of the country chosen by the principal in the power of attorney, provided that the third person and the authorised agent were notified of that choice (first paragraph of Item 2 of Article 1217.1 of the CC RF). This condition is regarded as met, if the applicable law clause is included into the text of the power of attorney, which was handed to the authorised agent, and herewith the authorised agent provided the power of attorney to the third person in confirmation of its powers.

If the power of attorney does not contain a choice of law clause and herewith gives the authorised agent the powers to make transactions or perform other legal actions exclusively on the territory of one country, then the court, proceeding from the terms of the power of attorney and the totality of other facts of the case, may conclude that the law of said country was implicitly chosen by the principal when issuing the power of attorney. If the power of attorney was issued by the principal solely for the purposes of performing obligations under an contract earlier concluded with a third person, which is explicitly stated in the power of attorney (e.g. a power of attorney is issued exclusively for the purpose of acceptance of goods or works under a certain contract), then the court, proceeding from the terms of the power of attorney and the totality of other facts of the case, may conclude that the law regulating the corresponding contract was implicitly chosen in the power of attorney (Items 2 and 6 of Article 1210 of the CC RF).

50. By implication of Item 1 of Article 1217.1 of the CC RF, if the principal failed to choose the applicable law in the power of attorney, or if the chosen law is not subject to application in accordance with the law, external relations of representation are regulated by the law of the country that is the place of residence or the principal place of business of the authorised agent. If the authorised agent was an employee of a legal person – the principal, and this fact was known to the third person at the moment when the transaction was made, then the location of the employer or of the corresponding separate unit, in which the employee –

authorised agent – was working at the moment when the transaction was made with the third party, is regarded as the principal place of business of such an authorised agent.

If a third person did not know and was not supposed to know the place of residence or the principal place of business of the authorised agent, the law of the country where the authorised agent primarily acted in a given situation is applied. The burden to prove that the third person knew or was supposed to know the place of residence or the principal place of business of the authorised agent lies on the represented person or on the authorised agent. The fact that said place was indicated as the place of residence or the principal place of business of the authorised agent in the power of attorney or in other documents, provided to the third person before the transaction was made, may serve as evidence.

The law of the country where the authorised agent primarily acted in a given situation is understood as the law of the place where the transaction with the third person was made, if at that moment both the agent and the third person were in the same place. If the transaction with the third person was made through exchange of messages by persons located in different countries, the law of the country in which the agent was located when forwarding the offer or the acceptance to the third person should be regarded as such law.

51. Items 3 and 4 of Article 1217.1 of the CC RF stipulate special conflict of laws norms for determining the law applicable to the powers of an authorised agent to make transactions in regard of real property, as well as to handle a case in a state court or a court of arbitration. These special conflict of laws norms are imperative and do not allow the principal to choose different applicable law in the power of attorney.

### ***Law Applicable to Non-Contractual Obligations***

52. If damages are caused, the law of the country in which the action or another circumstance forming grounds for claims for damages took place is applied to resulting obligations. If such an action or another circumstance took place in one country, and the damages occurred in another country, the court may apply the law of the country, in which the damages ensued, on condition that the person causing the damages anticipated or was supposed to anticipate the ensuing of damages in that country (Item 1 of Article 1219 of the CC RF).

For example, if a claim arises due to an action or another circumstance taking place in the Russian Federation, or due to ensuing of damages in the Russian Federation, the court may apply the law of the Russian Federation to the relations of the parties.

53. If parties to an obligation resulting from damages have their place of residence or principal place of business in the same country, the law of that country is applied, and not the law of the country in which the unlawful action was performed or the damages ensued. If parties to an obligation resulting from damages have their place of residence or principal place of business in different countries, but are citizens or legal persons of the same country, the law of that country is applied (Item 2 of Article 1219 of the CC RF). These special conflict of laws norms are used when a tort is committed in the Russian Federation, as well as in a foreign state.

54. If it proceeds from the totality of facts of the case that the obligation resulting from damages has close connection to a contract between the injured party and the person that caused the damages, concluded in the course of entrepreneurial activities of these parties, the contract statute is applied to this obligation (Item 3 of Article 1219 of the CC RF). Herewith, the contract statute should be determined based on the general provisions on law applicable to contractual obligations (Articles 1210–1214 of the CC RF).

The rules of Item 3 of Article 1219 of the CC RF do not apply to tort claims of third persons, who did not express their consent to the terms of the corresponding contract and are not legal successors of the contract parties.

55. By implication of Item 1 of Article 1222.1 of the CC RF, if a circumstance arises due to contract negotiations in bad faith, the contract statute is applied to that circumstance. If the contract has not been concluded, the contract statute that would be applied to the contract, were it concluded, is applied. Herewith, if within the framework of contract negotiations the parties reached a choice of law agreement, the chosen law is subject to application, even if other terms of the non-concluded contract were not agreed upon by the parties. If the parties did not reach a choice of law agreement, the rules determining the contract statute in the absence of a choice of law agreement are subject to application (Articles 1211–1214 of the CC RF). These rules depend on the type of the civil law contract concluded or supposed to be concluded by the parties.

The parties to an obligation arising due to contract negotiations in bad faith may reach a choice of law agreement in accordance with the rules of Article 1223.1 of the CC RF after a dispute takes place.

The rule of Item 2 of Article 1222.1 of the CC RF is subject to application only when the parties fail to reach a choice of law agreement during negotiations, and also when it is impossible to apply the rules determining the contract statute in the absence of a choice of law agreement (for example, the parties were negotiating a simple partnership contract, but could not agree either on applicable law or on the principal place of business of the simple partnership).

56. If unjust enrichment results from an existing or implied legal relationship, within the framework of which property is procured or saved, the law of the country that regulated or could regulate that legal relationship applies to obligations resulting from such unjust enrichment (Item 2 of Article 1223 of the CC RF). The notion of existing or implied legal relationship in particular includes a non-concluded, invalid or terminated contract. Accordingly, general rules determining the contract statute apply to unjust enrichment resulting from such a contract (Articles 1210-1214 of the CC RF).

57. If the parties have not concluded a choice of law agreement in accordance with Article 1223.1 of the CC RF, and it is impossible to determine the law applicable to obligations resulting from unjust enrichment based on Item 2 of Article 1223 of the CC RF, the law of the country in which the enrichment took place is applied (Item 1 of Article 1223 of the CC RF). If unjust enrichment results in the form of cashless monetary funds, the country where the purchaser's servicing bank (its branch office, unit), into accounts in which the funds were transferred, is located should be regarded as the country in which the enrichment took place (Item 1 of Article 316 of the CC RF).

58. Pursuant to Article 1223.1 of the CC RF, the parties to any non-contractual obligation, except for obligations stipulated in the first paragraph of Item 1 and in Item 2 of Article 1222 of the CC RF resulting from unfair or restrictive business practices, may agree to choose the law applicable to their non-contractual obligation. When such an agreement is concluded, general conflict of laws norms regarding the law applicable to circumstances resulting from damages or unjust enrichment (Item 4 of Article 1219, Item 2 of Article 1221, Item 2 of Article 1222.1, Item 3 of Article 1223 of the CC RF) are no longer effective.

In addition to the special rules of Article 1223.1 of the CC RF, such agreements are regulated by the general norms of Items 1–3 and 5 of Article 1210 of the CC RF (Item 6 of Article 1210 of the CC RF).

Chief Justice of the Supreme Court of  
the Russian Federation

V.M. Lebedev

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

V.V. Momotov