



# RUSSIAN DESK

## The Supreme Court of the Russian Federation clarifies issues on resolving suretyship disputes

The Supreme Court of the Russian Federation adopted on 24 December 2020 Judgment No. 45 “On Certain Issues of the Resolution of Suretyship Disputes” (hereinafter the “**Judgment**”). The provisions of the Judgment repeat to a large extent the clarifications of Judgment No. 42 of the Plenum of the Supreme Commercial Court of the Russian Federation dated 12 July 2012 “On Certain Issues of the Resolution of Disputes Related to Suretyship”, but also contains new clarifications that we advise you to consider during the conclusion, execution and termination of a suretyship.

### FORM OF A SURETYSHIP AGREEMENT

A suretyship agreement must be concluded in writing. The Supreme Court stated that the written form of a suretyship agreement is met if the creditor accepted the written proposal of the surety to conclude the agreement. The written form of a suretyship agreement will also be met when the parties have not signed one and the same instrument if there are written documents attesting to the approval of the provisions of such an agreement by the parties.

### JOINT SURETYSHIP OF AFFILIATES

Under the general rule, a suretyship given by several persons is deemed separate. Furthermore, in the event of performance, the surety also assumes the rights of the creditor regarding other suretyships. However, if a suretyship undertaking is given by affiliates, then it will be qualified as a joint suretyship.

In particular, the Supreme Court stated that, until proven otherwise, a joint suretyship is demonstrated by a reference in a suretyship agreement (suretyship agreements) to its joint nature, provisions contained in suretyship agreements on the allocation of liability regarding a debtor’s obligation between sureties, and also the conclusion of suretyship agreements with affiliates.

### OBJECTIONS OF THE SURETY

The Supreme Court made it clear that agreements restricting the rights of the surety to raise objections, which might be submitted by the debtor, should be deemed null and void.

### TERMINATION OF THE SURETYSHIP

The Supreme Court stated that the debtor or the surety, if they hold that the primary obligation has ceased, is entitled to demand that a court declare that the primary obligation and/or suretyship agreement ceases to exist.

We recommend citing the indicated clarifications during the drafting and execution of a suretyship. We would be delighted to answer any questions that you might have on this topic.

The full text of the Overview is posted on the official website of the Supreme Court of the Russian Federation: <https://vsrf.ru/documents/own/29544/>.



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