

Consumer disputes: the Russian Supreme Court issues clarifications

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On 14 October 2020, the Presidium of the Russian Supreme Court approved a [Review*](#) on judicial practice relating to disputes over consumer protection.

The Review provides important clarifications on a number of topical issues arising in consumer disputes.

For example, the Supreme Court has allowed consumer market players to limit the number of claims for product returns and purchase refunds.

As a general rule applicable to all types of products, a consumer can only submit a claim for the return of a product and the refund of its purchase price after a claim has been submitted to eliminate the defect in the product.

In addition, the Supreme Court has complicated the activities of “professional buyers” of consumer penalties, which also removes certain risks for consumer market players.

The Supreme Court further indicated that an agreement with a consumer cannot contain conditions for a mandatory pre-trial settlement of claims. This clarification will make it easier for consumers to start legal proceedings.

The Review also sheds a light on the rules applicable to the return of technically complex products by defining what constitutes a substantial defect in this case, and clarifies how an expert examination should be conducted to ascertain whether a defect is substantial.

Details of the Supreme Court’s most important comments are specified below.

Rules applicable to all types of products

Obligation to demand the elimination of a significant defect

If a significant defect is found in a product after the expiry of the warranty period but during its service life, the consumer must first demand the defect’s elimination and the product’s repair. If this process is not followed, the consumer cannot demand the return of the product and the recovery of its value.

The Supreme Court pointed out that, after the expiry of the warranty period, the buyer has the right to return the product and receive a refund of the purchase price only in the following situations:

- when a buyer first makes a claim for the defect to be eliminated free of charge and this claim was not satisfied within 20 days; or
- when the detected defect is inherently irremediable (i.e. it cannot in principle be repaired).

In both cases, the defect must be significant.

Assignment of the right to claim consumer penalties is limited

The Supreme Court took a position on the assignment of consumer penalties. It is public knowledge that “professional buyers” of consumer claims are active in the Russian market. The activities of these buyers are essentially a form of consumer extremism that poses a threat to consumer market players.

The Supreme Court indicated that the right to seek the payment of a consumer penalty before it is awarded by a court can only be assigned to another consumer. If the penalty has already been awarded under a court decision, then it can be assigned to any person or entity. For all practical purposes, this makes “professional buyers” redundant.

A pre-trial procedure cannot be imposed by contract

An agreement with a consumer cannot contain a clause on a mandatory pre-trial procedure.

The Supreme Court confirmed this in the context of a common situation where a bank included a pre-trial dispute resolution procedure in a consumer contract.

The Supreme Court pointed out that the laws do not support such restrictions on consumer rights. Consequently, this condition in the contract should be considered null and void.

Technically complex products

Return of technically complex products

A product is deemed technically complex when it is listed in a [Russian Government Decree](#)*.

A technically complex product can only be returned if there is a substantial defect.

The Review considered the situation where a consumer found a manufacturing defect in a technically complex product within 15 days of receipt and subsequently demanded its return and a refund of the purchase price.

The Supreme Court noted that such a claim can only be satisfied provided that the substantial nature of the manufacturing defect is proved.

At the same time, a defect in a technically complex product should be considered substantial when:

- it is impossible to eliminate;
- it can be eliminated but only with disproportionate costs or time;
- it is revealed repeatedly;
- it appears again after having been eliminated; or
- other similar defects occur.

Expert examination

To resolve the issue of the extent of a defect in a technically complex product, the court may order an expert examination, but only if a formal request is made by a party to the dispute. If this procedure is not followed, a re-examination will be required.

The parties to the dispute have the right to be present when the examination is held provided this does not interfere with the process.

The Supreme Court also pointed out that experts have no right to independently collect evidence for the examination.

Even though the Review deals with the situation where a dispute arose in connection with a defect in a car, we believe that these clarifications are applicable to all technically complex products listed in the Decree.

For more information on this eAlert, please contact CMS Russia experts [Sergey Yuryev](#), [Igor Sokolov](#) or your regular contact at CMS Russia.

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** In Russian*

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