
THE PRODUCT REGULATION AND LIABILITY REVIEW

SECOND EDITION

EDITOR

CHILTON DAVIS VARNER
AND BRADLEY W PRATT

LAW BUSINESS RESEARCH

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Second Edition

Editors

CHILTON DAVIS VARNER
AND BRADLEY W PRATT

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EDITORS' PREFACE

In today's global economy, product manufacturers and distributors face a dizzying array of overlapping and sometimes contradictory laws and regulations around the world. A basic familiarity with international product liability is essential to doing business in this environment. An understanding of the international framework will provide thoughtful manufacturers and distributors with a strategic advantage in this increasingly competitive area. This treatise sets out a general overview of product liability in key jurisdictions around the world, giving manufacturers a place to start in assessing their potential liability and exposure.

Readers of this publication will see that each country's product liability laws reflect a delicate balance between protecting consumers and encouraging risk-taking and innovation. This balance is constantly shifting through new legislation, regulations, treaties, administrative oversight and court decisions. But the overall trajectory seems clear: as global wealth, technological innovation and consumer knowledge continue to increase, so will the cost of product liability actions.

This edition reflects some of these trends from 2014. For example, in a major development in Europe, class actions became available for the first time under Belgian law on 1 September 2014. In South America, the Superior Court of Justice in Brazil held its first public hearing prior to the trial of a landmark case addressing the legality of consumer databases. As another example, new recall legislation was promulgated in India across the food, pharmaceutical and automotive sectors. In Turkey, 2014 saw the introduction of a new Consumer Protection Law governing product liability. This edition also identifies trends to come. For example, product liability practitioners in England are carefully watching whether the Consumer Rights Bill will pass in the coming year; this new legislation would make considerable amendments to consumer law as a whole by attempting to simplify, consolidate and clarify existing law. Although these changes and trends may be valuable in their own right, they also create a greater need for vigilance on the part of manufacturers, distributors and retailers.

This edition covers 19 countries and provides a high-level overview of each jurisdiction's product liability framework, recent changes and developments, and a look

forward at expected trends. Each chapter contains a brief introduction to the country's product liability framework, followed by four main sections: regulatory oversight (describing the country's regulatory authorities or administrative bodies that oversee some aspect of product liability); causes of action (identifying the specific causes of action under which manufacturers, distributors or sellers of a product may be held liable for injury caused by that product); litigation (providing a broad overview of all aspects of litigation in a given country, including the forum, burden of proof, potential defences to liability, personal jurisdiction, discovery, whether mass tort actions or class actions are available, and what damages may be expected); and the year in review (describing recent, current and pending developments affecting various aspects of product liability, such as regulatory or policy changes, significant cases or settlements, and any notable trends).

Whether the reader is a company executive or a private practitioner, we hope that this edition will prove useful in navigating the complex world of product liability and alerting you to important developments that may affect your business.

We wish to thank all of the contributors who have been so generous with their time and expertise. They have made this publication possible. We also wish to thank our former colleague Dmitry Epstein, who has been invaluable in assisting us in our editorial duties.

Chilton Davis Varner and Bradley W Pratt

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Chapter 16

RUSSIA

*Sergey Yuryev*¹

I INTRODUCTION TO THE PRODUCT LIABILITY FRAMEWORK

Product liability in Russia is regulated by the Civil Code of the Russian Federation (the Civil Code) and the Law on Consumer Protection dated 7 February 1992 (the Consumer Protection Law). Certain specific issues are also governed by other normative acts such as decrees of the government of the Russian Federation.

In Russia, rather than having a single product liability statute, the relevant rules are scattered among a variety of different laws. The Civil Code and the Consumer Protection Law contain a number of provisions by which manufacturers (sellers, importers, service providers as well as their representatives) may incur liability for loss or damage suffered by the consumers (as defined below) of their products, regardless of whether a direct contractual relationship exists.

As Russia belongs to the continental system of law, court rulings (precedents) are not considered to be an official source of law. However, the legal interpretation provided by higher courts is of great importance to lower courts. Legal doctrine is also not recognised as a source of law.

The term ‘consumer’ is defined in the Consumer Protection Law – it is an individual who has the intention of ordering or acquiring goods (including works or services) or who orders, acquires or uses them exclusively for personal, family, household or other needs not relating to entrepreneurial activities.

If an individual does not meet the required definition (e.g., an individual entrepreneur, who buys goods in the course of his or her business), he or she is not subject to the Consumer Protection Law. In this case the product liability is regulated by the general provisions of the Civil Code concerning obligations and liability as well as Part II of the Civil Code governing particular types of obligations.

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Article 1095 applies where goods, work or services obtained by a consumer or on behalf of a consumer have caused damage to health, life or property as a result of (1) a defective design or formula or other defect in such goods, works or services, or (2) unreliable or insufficient information concerning such goods, works or services. Strict liability is applied regardless of whether or not contractual relations exist.

If a product fails to comply with its description or the regulations regarding production or labelling, it is considered to be 'defective' for the purposes of this provision, thus subjecting the defendant to liability.

The test for whether 'insufficient information' was supplied to a consumer is quite uncertain. Currently, a manufacturer or seller is not expressly exempt from providing information on a product even if the risks associated with its use are 'open, obvious or commonly known'. In such cases, however, the court may reduce a defendant's liability in accordance with Article 1083 of the Civil Code, which deals with contributory negligence. Article 1083, however, does not permit the court to completely absolve the defendant of all liability if a consumer's health is damaged using the product.

The Consumer Protection Law is regarded as being supplementary to the Civil Code. General provisions from the Civil Code may be relied upon where further definition is needed.

Like the Civil Code, the Consumer Protection Law also imposes strict liability for goods that have caused damage to the health, life or property of a consumer as a result of (1) a defective design or formula or other defect in such goods, or (2) failure to provide a consumer with complete and reliable information concerning such goods, works or services. Again, for this liability to arise, privity of contract is not required.

Similar definitions, concerns and defences to those discussed in the paragraph above concerning Article 1095 apply when considering this liability.

A claim for damage caused to health, life or property as a result of (1) a defective design or formula or other defect in such goods, or (2) failure to provide a consumer with complete and reliable information concerning such goods, works or services may be brought against a manufacturer (either seller or executor) at the consumer's discretion.

Pursuant to the Consumer Protection Law, a manufacturer or seller must, as soon as it becomes aware of any risks of its products to the life, health or property of a consumer or to the environment, suspend the production or sale of any such products already on the market until the risk is eliminated. If appropriate, the manufacturer (seller) must recall the product from the market and from consumers. In the latter case the manufacturer (but not the seller) must compensate the consumer against losses suffered as a result of the product's recall.

The recall of products can also be ordered by the relevant authority. If the product is not recalled, an injured person may claim compensation for any damage caused by the product.

The basic feature of the Russian legislation regulating product liability is its pro-consumer orientation, under which additional warranties and rights are given to the consumer. The current court practice suggests that the overall legislative goal is to provide additional protection of consumer rights.

II REGULATORY OVERSIGHT

Consumer protection legislation grants a number of state agencies the authority to ensure product safety and also to control the protection of consumer rights.

Under the Russian law, the state control and supervision of consumer protection as well as sanitary and epidemiological safety of the population is conducted by the Russian Federal Consumer Rights Protection and Human Health Control Service (Rospotrebnadzor) either directly or via its territorial subdivisions, as well as by cooperating with other executive bodies of the Russian Federation.

State control and supervision of consumer protection by Rospotrebnadzor acting pursuant to its Regulations approved by Resolution of the Russian Government No. 322 dated 30 June 2004 includes:

- a* verification of the manufacturer's (distributor's, seller's, etc.) compliance with the obligatory requirements set by international treaties, the Russian Consumer Protection Law and other federal laws and legal acts on consumer protection, as well as decrees issued by Rospotrebnadzor's authorities; and
- b* inspection of products (works, services) as being in conformity with obligatory requirements ensuring safety towards consumers and environment as well as preventing harm and damages thereto.

In order to perform the above-mentioned functions, Rospotrebnadzor's officials are authorised to, *inter alia*:

- a* attend premises used by the manufacturer (distributor, seller) to conduct the necessary inspections and control;
- b* collect samples of products to conduct analysis;
- c* urge manufacturers (distributors, sellers) to end any violation of consumer rights and obligatory requirements established by law;
- d* initiate administrative proceedings and adjudicate administrative cases regarding consumer protection;
- e* apply to the court to protect consumers, the general public and to bring class actions; and
- f* claim for the liquidation of any manufacturer (distributor, seller, etc.), if such legal entity has repeated infringed the law (twice or more within one year) as well as having the power to notify relevant authorities accordingly to initiate criminal proceedings.

Rospotrebnadzor also has the right to give an expert opinion in consumer protection cases and provides guidance to consumers regarding applicable legislation and regulations.

Apart from Rospotrebnadzor, protection of consumer rights in Russia is also conducted by municipal authorities that review applications from consumers, give necessary consultations and apply to courts to protect consumers.

There are also voluntary associations of consumers (generally formed as non-commercial enterprises) (currently there are approximately 580 registered in Russia) who also protect consumers by, *inter alia*:

- a* providing legal support and consultation to consumers regarding their rights and the measures to be undertaken in order to secure those rights;

- b* applying to the courts in support of consumers, the general public, and bringing class actions and conducting public control; and
- c* informing Rospotrebnadzor and other authorities (i.e., police and state prosecution) about revealed violations, etc.

III CAUSES OF ACTION

Under the Consumer Protection Law the following entities may be held liable:

- a* manufacturers (an entity or an individual entrepreneur (IE) producing goods for consumers);
- b* executors (an entity or an IE conducting works or rendering services to consumers);
- c* sellers (an entity or an IE selling goods to consumers);
- d* authorised entities or IE (an entity or an IE engaged in a certain type of business and/or established in the territory of the Russian Federation by the manufacturer (seller), including a foreign manufacturer (foreign seller) on a contractual basis to exercise certain functions and authorised to accept and satisfy consumer claims in respect of goods of improper quality); and
- e* importers (an entity or an IE engaged in importing products for their subsequent sale on the territory of the Russian Federation).

As noted above, in Russia rather than having a single product liability statute, the relevant rules are scattered among various laws. The Civil Code and the Consumer Protection Law contain a number of similar provisions by which manufacturers (sellers, importers, executors as well as their representatives) may incur liability for loss or damage suffered by the consumers of their products.

Article 1095 of the Civil Code and the Consumer Protection Law apply where goods, work or services obtained by a consumer have caused damage to health, life or property as a result of (1) a defective design or formula or another defect in such goods, works or services, or (2) unreliable or insufficient information concerning such goods, works or services.

Strict liability is applied regardless of whether contractual relations exist.

The test for whether ‘insufficient information’ was supplied to a consumer is quite uncertain. Currently, a manufacturer or seller is not expressly exempt from providing information on a product even if the risks connected with its use are ‘open, obvious or commonly known’. In such cases, however, the court may reduce the defendant’s liability in accordance with Article 1083 of the Civil Code, which deals with contributory negligence. However, Article 1083 does not permit the court to discharge the defendant from liability completely if a consumer’s health is damaged using the product.

The Code of Administrative Offences establishes liability for certain offences committed against a consumer, such as:

- a* selling goods and rendering works or services of improper quality or violating the requirements of technical regulations and sanitary rules; such administrative offence leads to a fine of up to 50,000 roubles and seizure of the improper goods;
- b* consumer deception – acting dishonestly in measuring, weighing or counting, misleading consumers in respect of properties and qualities of goods (works,

services), or acting dishonestly towards consumers in any other way; such activities lead to a fine of up to 500,000 roubles; and

c violating other consumer rights, such as:

- failure to provide necessary and reliable information about the goods (works, services) or about the manufacturer, seller or executor thereof) as well as failure to provide a consumer with privileges and advantages established by law; punished by a fine of up to 10,000 roubles; and
- providing a contract with terms and conditions that infringe consumer rights established by law; punished by a fine of up to 20,000 roubles.

The Criminal Code of the Russian Federation establishes two types of criminal product liability:

- a* negligent and unlawful termination or limitation of electrical energy supply to consumers or disconnection of consumers from other life support sources (committed by an official or individuals conducting managerial functions in an entity), which caused major damage or grievous injury to health or death. Such is punished by up to five years' imprisonment; and
- b* production, storage, carriage or sale of goods (rendering services or works) that do not meet standards of safety for a consumer's life or health; as well as the wrongful issue or use of an official document certifying compliance of such goods, works or services with safety standards. Such activities are punished with up to 10 years' imprisonment.

IV LITIGATION

i Forum

The Russian civil court system consists of two branches: courts of common jurisdiction and state commercial courts that specialise in cases arising from economic and business activities of legal entities.

Consumer claims are tried exclusively by the courts of common jurisdiction. Initially, the case is resolved by the court of first instance (the district court). This initial ruling may be challenged by either the appeal instance (where the case is reviewed on the merits once again) or the cassation court (which reviews the 'procedural' aspect of the case). Afterwards, the case may be finally reviewed by the Supreme Court of the Russian Federation.

In cases of appeal or cassation the case is reviewed by the higher court. The Supreme Court of the Russian Federation conducts supervisory review of product liability claims.

Minor claims (involving an amount less than around €700) are tried by magistrate judges. All other consumer cases are reviewed by a district court as the first instance court.

ii Burden of proof

The defendant (manufacturer, seller, executor, etc.) always has the burden of proof in product liability cases.

The causation between the defect and the loss has to be proved (or at least be claimed) by the consumer. Thus, it is for the defendant to prove the absence of such causation.

iii Defences

The law provides for a set of defences available to manufacturers (sellers, importers, service providers and their representatives) in consumer protection cases.

Contributory negligence

Where a claimant is at fault for incurring damage, the compensation awarded may be reduced depending on the degree of fault of the claimant. This limitation of damages (as opposed to a complete defence) is available by virtue of Article 1083 of the Civil Code. Article 1083, however, does not permit the court to absolve the defendant of all liability if a consumer's health or life is injured by using the product in question. Article 1083 of the Civil Code also states that an injured party may not claim compensation for injury resulting from his intentional consent to incur the damage claimed.

Manufacturers (sellers, importers, service providers and their representatives) will be fully absolved from liability if the damage, including damage to health or life, is caused solely due to the consumer's breach of the manufacturer's instructions for use, storage or transportation of the product. The burden of proof is on the defendant to establish that the claimant suffered damage as a result of improper use of the product.

Time limitation

Article 1097 of the Civil Code states that in product liability cases the damage shall only be compensated if such damage was caused within either (1) the established lifetime or shelf life of the product, or (2) if the lifetime or shelf life is not established, within 10 years from the date of manufacture of the product. However, the latter defence may only be used when the manufacturer or seller is not required to specify a lifetime or shelf life for their product. Where the manufacturer or seller is required, but simply fails to specify the lifetime or shelf life, a consumer incurring loss may make a claim for compensation regardless of the time the damage was caused. The 'established lifetime or shelf life' of a product is defined as the period during which the product should be able to be used by consumers without danger to health or property (this is different from the 'warranty period', which is the period of time during which a manufacturer warrants, for example, to restore, repair or replace a product if the buyer is not satisfied with its quality).

Compliance with regulatory requirements

Products and product ingredients are quite broadly regulated (e.g., so-called GOSTs or 'state standards' set out technical characteristics or requirements for products; methods for sampling and testing products; and methods of packing, transportation and storage). Consumer protection legislation grants a number of state agencies the authority to ensure product safety and also to control the protection of consumer rights. A manufacturer that has complied with all the regulations and state standards may argue that he acted in good faith. Such defence is likely to be taken into account by the court for the purposes

of determining the amount of compensation to be awarded. However, in cases where damage is caused to a consumer's health or life, the court will not accept such defence.

Force majeure

The defence of *force majeure* is available under the Consumer Protection Law to negate a manufacturer's or seller's liability in consumer protection cases. The Civil Code defines *force majeure* as extraordinary circumstances unavoidable in a given situation, for example, natural disasters, war and other major events that are clearly outside a party's control and cannot be avoided by the exercise of due care by that party. The Civil Code expressly provides that the failure of third parties, such as suppliers and subcontractors, to perform their obligations to the contracting party does not constitute *force majeure*.

iv Personal jurisdiction

Any foreign company whose products are used in Russia may be sued by Russian courts even if the entity does not have a representative office in Russia. *De jure* the defendant's place of residence does not have any effect on the outcome of the case. However, in such circumstances certain problems relating to notification may occur.

Although Russia is a member of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965, the process of notifying the defendant in such circumstances may be very time-consuming and involve bureaucratic acrimony.

A consumer may have a choice of jurisdiction depending on the particular case – the claim may be submitted to the first instance court located at the:

- a* defendant's registered office;
- b* place of consumer's residence (permanent or temporary); or
- c* place at which the consumer contract was entered into or performed.

v Expert witnesses

Pretrial examination

Subject to the Consumer Protection Law, a consumer has the right to pre-judicial expertise at the expense of the seller (manufacturer, etc.). Being conducted by the seller (manufacturer, etc.), such expertise is considered to be a way of protecting the consumer's rights and is conducted where there is a dispute as to the origin of a product's defects.

The consumer has the right to be present during such examination and may challenge the results in the court.

If the court rules in favour of consumer unions acting on behalf of the general public, the liable seller (manufacturer, etc.) will reimburse the costs for independent expertise evidencing the breach of obligatory product requirements.

Judicial examination

Subject to the procedural rules, the court will appoint experts if any questions requiring special knowledge in science, technology, etc. appear within the case. Such expertise may be delegated to a forensic expert institution, an individual expert or a group of experts.

Each party may raise questions to be reviewed by such experts. The final list of questions to be answered is determined by the court. If the court dismisses any question raised by a party, it shall give a substantiated response thereto.

If either party escapes participation in the expert evidence process or makes its conduct impossible by any means, the court may acknowledge the issue in favour of its counterparty.

The expert assessment may be conducted within a court hearing or outside if it is necessary due to the nature of the examined issue. The parties have the right to be present during the examination.

An expert will conduct a complete, independent and justified examination by answering all the questions raised by the court and the parties. Afterwards, the expert shall come to trial and respond to the questions connected with the conducted examination.

Where the issues exceed the bounds of special knowledge or the materials and the documents are insufficient or improper, the expert will provide the court with a written and reasonable notification about the impossibility of conducting the examination.

The parties may demand the appointment of a particular expert, but it is the court that ultimately decides. The parties may also obtain private expert opinions, although such opinions have no significant value. Their main purpose is to influence the court-appointed experts in their conclusions (or to criticise it).

vi Discovery

The procedural legislation does not provide any special regulation similar to the discovery/disclosure procedure in the United Kingdom or the United States. Due to fundamental differences in the procedure law a Russian court has a much more significant role in the court hearing and the examination of evidence.

Subject to the procedural legislation, evidence is considered legally obtained information about the facts constituting the claims and objections of the parties, as well as other circumstances that are important for the correct examination and resolution of the case.

Such information may be obtained by the court from:

- a* explanations of the parties or third persons;
- b* testimony of witnesses;
- c* written or material evidence;
- d* audio and video materials; and
- e* expert examination.

No evidence may have its force established in advance. The court will assess the relevance, admissibility and authenticity of all evidence, as well as its sufficiency and interconnection.

Each party must prove the circumstances it refers to within the claim or objection. However, it is the court that determines which circumstances are relevant to the case and which party successfully proves it. The court may also propose the parties bring additional evidence.

Explanations of the parties or third persons

Explanations of the parties or third persons concerning the circumstances necessary to resolve the case are checked and evaluated like any other evidence. Thus, such explanations do not take precedence over other evidence, such as witness or material evidence. In addition, if the party acknowledges any facts constituting the claim of the counterparty, the latter does not have to prove it later on.

Witness evidence

Such evidence provides any facts that may assist the case adjudication. However, witness evidence may not be considered by the court if the witness cannot name the source of its information. Legal representatives, judges and members of the jury shall not be considered as witnesses.

Witnesses must come to trial and give true evidence. The Russian Criminal Code provides criminal liability for intentional misrepresentation by a witness.

Written and material evidence

Written evidence is any possible documents that provide information about the circumstances of the case and must be filed in original form or a duly verified copy.

Material evidence is any object that by its nature may lead to an adjudication of the case. Generally, such evidence is kept at the court. Where the material evidence cannot be delivered to the court, the judge shall examine the piece of material at the place where the evidence is kept.

vii Apportionment

The concept of ‘apportionment’ is not recognised by Russian law. As indicated, Russian legislation directly specifies the list of the ‘liable’ entities that bear joint and several liability under consumer claims.

viii Mass tort actions

The concept of class action is not recognised in Russian legislation. Under procedural law, if a judge establishes that there are several similar cases involving the same or similar parties, or that various claims against the same defendant were filed in one court, the court may aggregate those cases into one proceeding in order to have a combined hearing, provided this ensures a more expedient and accurate consideration and resolution.

The Consumer Protection Law specifically allows certain state agencies, local authorities and consumer protection associations to file lawsuits on behalf of an indefinite number of consumers. In these cases, however, a court may only issue an injunction against the wrongdoing rather than award damages. Also, the court may declare the activity illegal; such a declaration would have a *res judicata* nature and may be subsequently used by an individual in a separate private claim for damages.

ix Damages

The general remedy against injury caused by defective products is compensation in the form of damages.

Russian law requires full compensation for all damage. The definition of damage includes expenses actually incurred or to be incurred in order to restore the right breached, property loss or damage and lost profits. In the case of bodily injury, the compensation may include regular payments based on the loss or earnings of the injured party and payments for medical treatment and medicine; in the case of wrongful death, payments shall be made to dependants. However, a court may take any contributory negligence or intent of the victim into account and lessen the amount of compensation if necessary.

In addition, the claimant may be awarded 'moral damages' (i.e., compensation for physical and emotional suffering) above the actual damages. Moral damages are available to the claimant only when the damage was caused at the fault of the defendant. The levels of moral damages awarded in reported case law have not been that high, however they do appear to be increasing.

Moreover, by virtue of the Consumer Protection Law if a claimant wins a case the court is required to impose a fine on the defendant equal to 50 per cent of the amount awarded to the claimant. The fine is normally payable to the state budget. In cases where the claim has been brought by a local authority or a consumer protection association, half of the penalty is payable to the local authority or the consumer protection association, respectively.

Apart from the right to claim for damages caused by a product of improper quality, the consumer has the right, at his or her own discretion, to choose to:

- a* demand its replacement with a product of the same brand (model, type);
- b* demand its replacement with a product of another brand (model, type) with the relevant recalculation of the purchase price;
- c* demand a proportional decrease of the price for the product;
- d* demand immediate and free-of-charge remediation of the defects of the product or reimbursement of the expenses of their remediation by the consumer or by a third person; or
- e* refuse to perform the sale-purchase agreement and demand the return of the price paid for the product – the consumer may return the defective product at the seller's request and at the seller's expense.

Additionally, the Consumer Protection Law provides that the seller (manufacturer, etc.) must pay a penalty to the consumer, of 1 per cent of the price of the goods for every day of delay, for failure to abide by the time limits for satisfying the aforementioned remedies. Although the law does not cap the maximum amount of such penalty, the courts usually limit such compensation by awarding not more than 100 per cent of the price of the goods.

V YEAR IN REVIEW

Russia has now reached the stage where the consumer protection legislation has developed into a highly consumer-oriented set of rules and practices along with substantial supporting court practice and legislative guidance. There is an increasing number of product liability cases as a result of the developed awareness of consumers with regard to their rights. Moreover, legislators have introduced some guidance on the existing

legislation, detailing the rights and obligations and increasing liabilities under consumer protection legislation.

In some instances consumers demonstrate abusive attitudes towards the rights granted to them by the Consumer Protection Law and bring poorly reasoned claims with the sole purpose of harassing the seller or manufacturer (in Russia this is called consumer extremism). For example, in a recent case an individual asked the court to prohibit production and to withdraw from trade all tobacco products within the Russian Federation. To support the claim he referred to provisions of the Consumer Protection Law prohibiting production of goods that may cause harm to human health. Such cases arise quite frequently.

Appendix 1

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Sergey Yuryev is a partner of CMS, Russia, and heads the dispute resolution practice. He has worked at the firm since 2000. Before joining CMS, he worked at an American law firm in its Moscow and Baku offices, as well as in the United States.

Mr Yuryev has over 15 years of experience advising clients in the following practice areas: dispute resolution, environmental law, and general commercial and corporate law. Leading CMS, Russia's dispute resolution practice, he handles commercial, corporate and energy disputes.

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