

On applicable law in international e-commerce

This summer, the Plenum of the Supreme Court of the Russian Federation adopted Resolution No. 24 of July 9, 2019 "On the application of the rules of private international law by the courts of the Russian Federation" (the "Resolution"). The Resolution contains legal positions that may be relevant for international Internet retailers and, in general, for the entire e-commerce industry.

In general, the positions set out in the Resolution are based on the current legislation and supported by court practice. However, a number of legal rules have been commented on in detail and are important for evolving practice.

In particular, the Supreme Court of the Russian Federation provided the following clarifications in its Resolution:

1. Applicable law may be determined by the agreement between an entrepreneur and a consumer.

However, despite the will of the parties, the court is entitled to apply the mandatory rules of the law of the consumer's country aimed at protection of consumers if **one** of the following conditions is met:

- the entrepreneur operates in the consumer's country and the contract is connected with his professional activity;
- the entrepreneur targets the consumer's country by any means (even if he also targets other countries) and the contract is connected with his professional activity.

If business is done through a website, the activity is considered targeted if the website focuses on consumers in that country. The website can be considered as targeting Russian consumers if one of the following conditions is met:

- one of the website's languages is Russian,
- prices are in Russian rubles,
- contact numbers are with Russian area codes,
- or other similar conditions, for example, the website's owner ordered services to increase his website's citation rate by Russian Internet users.

At the same time, these rules do not apply to contracts of carriage or to agreements for work or services, if the work is to be performed or the services are to be provided only in a country other than the consumer's country of residence.

Contacts

Victor Naumov

St. Petersburg office Managing Partner, Head of the Russia IP, IT and Telecommunications practice, Co-Head of Europe Internet & Tech Regulatory

T: +7 812 325 84 44

E: victor.naumov@dentons.com

2. If the mandatory rules of the law of the consumer's country do not apply to the legal relationship, the court shall have the right to apply the mandatory rules of the country which law would apply if there were no conditions in the agreement on the applicable law.

3. A person who has been harmed by defects in a product, work, or service has the right to choose the applicable law if he:

- purchased goods for consumer purposes, and
- the parties have not agreed on other applicable law.

The injured party shall choose the applicable law before the trial court goes to the deliberation room. If the right to choose was not exercised, the court determines the applicable law by the place of residence or main activity of the seller or manufacturer of the goods, unless otherwise provided by law, the substance of the obligation or factual circumstances.

At the same time, the injured party loses the opportunity to choose the applicable law if the infringer proves that he did not foresee and should not have foreseen that the goods would be in the country of the injured party. In order to do this, he shall prove that:

- the territory of the consumer's country is clearly not related to the country where the entrepreneur operates;
- the infringer forbade persons distributing the goods to sell them on the territory of that country;
- he did not carry out such distribution by himself.

Ruzanna Akhobekova

Associate, Russia IP, IT and Telecommunications practice

T: +7 812 325 84 44

E: ruzanna.akhobekova@dentons.com