Damages for breach of contract: a Russian and English law comparison

**Calculation of damages for breach of contract**

**Damages for breach of contract**

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| **English law** | **Russian law** |
| Damages in contract seek to put the injured party in the position they would have been in if the contract was satisfactorily performed. Not all losses flowing from a breach of contract are recoverable:   * The losses may be viewed as too remote to be recoverable. * There may not be a sufficiently strong causal connection between the breach and the loss. * The claimant may have failed to mitigate their loss. * The claimant may have suffered loss partly as a result of their own fault.   For further information see [*Practice note, Remedies: damages and agreed remedies*](http://uk.practicallaw.com/8-107-4864). | Generally, the buyer has two main rights in the event of a breach by the seller of the implied warranties:   * It must return the asset in exchange for its money back and potentially claim for compensation for its deal costs and expenses. * It can demand a price reduction and rebate part of its purchase monies, to reflect the actual state of the asset it acquired. |

**Consequential loss**

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| **English law** | **Russian law** |
| A party can claim for:   * Direct loss, which flows directly from the breach. * Consequential loss, which does not flow directly from the breach, but arises in special circumstances which are known or foreseeable at the time of entering into the contract. | Damages to recover consequential loss can be claimed, but are difficult to prove in court. The courts are reluctant to compensate for large amounts of damages, especially those related to consequential loss. |

**Loss of profit**

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| **English law** | **Russian law** |
| It is possible for a party to claim damages for loss of profit, sometimes even if this exceeds the amount originally paid under the contract. This can be an important provision on an M&A deal where the asset being acquired is:   * Of a high strategic value. * A key part of a larger project.   The parties can contractually agree to limit recoverable loss by excluding consequential loss or loss of profit. | Damages to recover loss of profit can be claimed, but are difficult to prove in court. The courts are reluctant to compensate for large amounts of damages, especially those related to loss of profits. |

**Grossing up**

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| **English law** | **Russian law** |
| Parties can also agree to [***Grossing up***](http://uk.practicallaw.com/1-107-6673) provisions, under which the amount payable as damages is increased to compensate for any tax liability or withholding the claimant may have to pay or incur on the payment. | Grossing up provisions would normally be unenforceable, although sometimes they are instead indirectly dealt with by pricing assumptions. |