



FORTE TAX & LAW

FAQ Coronavirus Legal Aspects

Dear Clients, Partners and Friends,

The World Health Organization (WHO) described on March 12, 2020 the rapid spread of coronavirus (COVID-19) around the world as a pandemic.

COVID-19 has affected almost all areas of life. Governments are taking drastic measures to prevent the spread of the virus such as, among others, closing borders, introducing significant restrictions on the movement and social interaction of people. The activities of many organizations and businesses are suspended or significantly hindered.

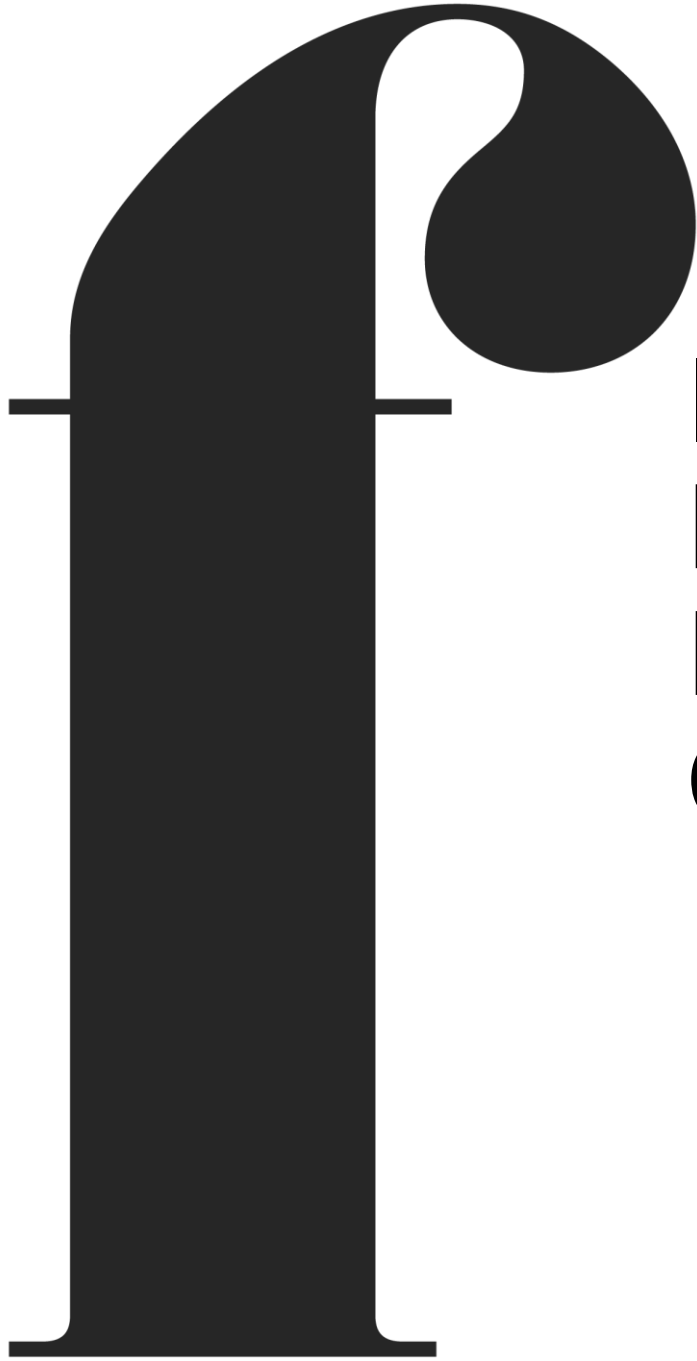
We have prepared for you an overview of the main legal aspects and difficulties that businesses face in the current situation.

Truly yours,

[The Forte Tax & Law Team](#)

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IMPACT ON CONTRACTS: RECOGNITION OF FORCE MAJEURE AND CURRENCY CONTROL

Many companies cannot fulfill their contractual obligations due to the restrictions introduced to contain the pandemic or due to the consequences of these restrictions.

The notion of force majeure has become extremely relevant in this context.

WHAT IS FORCE MAJEURE?

Force majeure [1] is an extraordinary and unavoidable circumstance. Force majeure allows parties to a contract not to be held liable for non-performance (improper performance) of their obligations (subject to a number of conditions). Force majeure avoids paying, in particular, damages and penalties.

Also, if it is possible to fulfill an obligation after termination of circumstances of force majeure, then force majeure does not itself terminate the obligation.

“Extraordinary” refers to the uniqueness of the circumstance the occurrence of which is unusual in specific conditions. Such circumstance is beyond what is normal and ordinary.

“Unavoidable” means that anyone engaging in the same activity as the defaulting party could not avoid the force majeure circumstance or its consequences.

The violation of obligations by counterparties, the absence of goods on the market necessary for fulfillment of obligations and the lack of necessary funds, for example, are **not** circumstances of the force majeure.



DOES CORONAVIRUS CONSTITUTE FORCE MAJEURE?

Can COVID-19 and the bans and restrictions introduced due to its spread be recognized as force majeure? Yes, in many cases, but it is important to bear the following in mind.

First, it is necessary to refer to the force majeure terms specified in agreements. The parties to an agreement may under Russian law change the force majeure clause and set out some requirements for the application of force majeure. For example, it is often required that the party affected by a circumstance of force majeure should send a notice to the other party within a certain period following the onset of the force majeure circumstance together with evidence of the force majeure occurrence (e.g. a statement from a chamber of commerce and industry).

Second, even if force majeure is established, the court may not agree that this is precisely the circumstance specified as force majeure that was the actual cause of non-fulfillment of obligation. It is therefore important to understand that it might not be able to avoid liability even if force majeure occurs but does not directly prevent the performance of the agreement or any specific obligations under the agreement.

Third, the violation of obligations by counterparties or the lack of monetary funds do not constitute circumstances of force majeure.



MOSCOW MAYOR ORDER DATED MARCH 14, 2020

Moscow Mayor Order No. 20-YM dated March 14, 2020 [2] contains the following provisions:

"8(1). Establish that the circumstance of force majeure is the spread of the new coronavirus infection (2019-nCoV), the extraordinary and unavoidable circumstance in the given situation that has entailed the introduction of a high alert procedure in compliance with Federal Law No. 68-FZ On Population Protection from Natural and Man-Made Emergencies dated December 21, 1994".

It would seem that at least for Moscow this provision will help avoiding disputes in case of non-performance of obligations, but it will likely that this will be the opposite in practice.

The mere reference to force majeure in the Moscow Mayor Order is not a definitive ground for exoneration. This order may be used as one of the evidence of the occurrence of force majeure circumstances, but whether or not there is force majeure in a specific situation should be assessed in each individual case.

Example:

Has a restaurant right not to pay the rent for premises during the coronavirus infection period because of the lack of clients?

We do not think so because, in this case, the coronavirus is not the reason that made it impossible to transfer the money owed to the landlord (if banks work), and the tenant cannot cite lack of funds as force majeure. In this case, the tenant and the landlord could attempt to reach an agreement, referring to a significant change in circumstances [3].

So, to avoid liability for failure to fulfill obligations due to force majeure, how extraordinary and unavoidable the circumstances of force majeure are should always be assessed, as well as whether they have affected the obligations, whether they are the actual reason for non-fulfillment and whether the formal requirements specified in the contract have been observed.

NON-FULFILLMENT OF OBLIGATIONS BY FOREIGN COUNTERPARTIES AND CURRENCY CONTROL

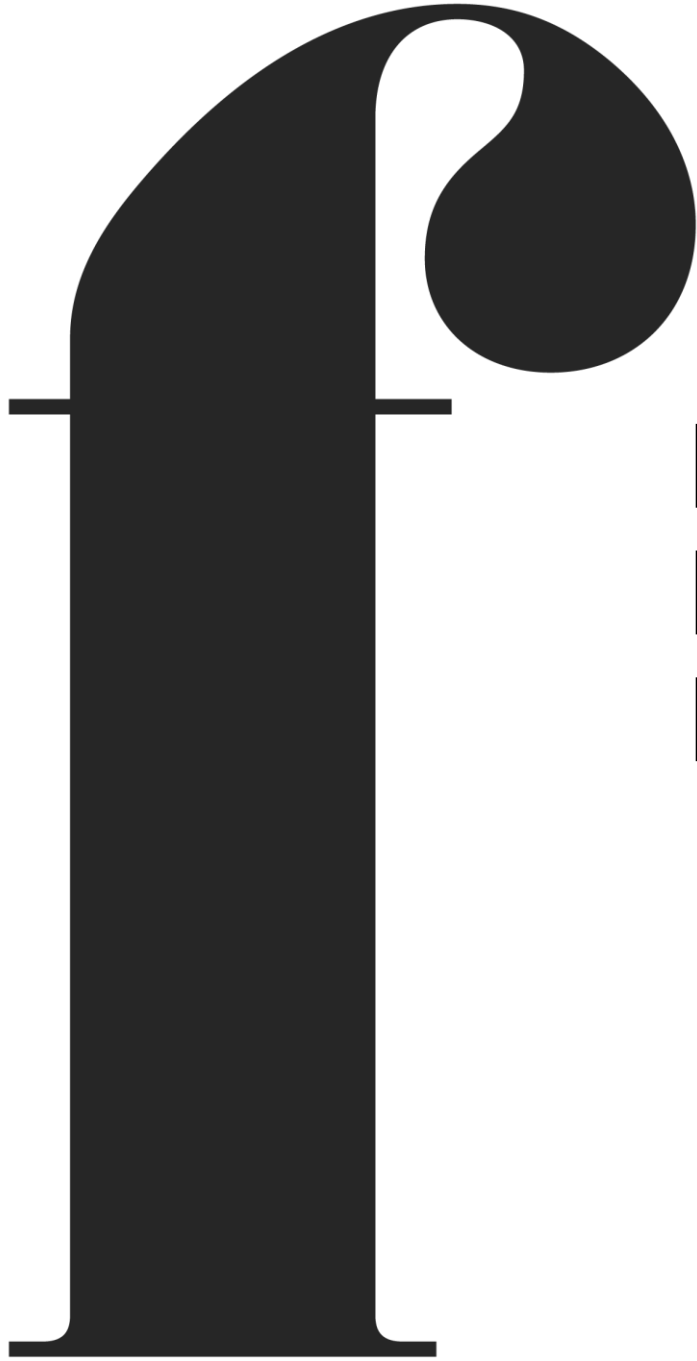
The law currently provides for substantial administrative liability [4], and in some cases, criminal liability [5] for Russian residents failing to pay for delivered goods, work performed or services rendered by the deadlines specified in foreign trade contracts, as well as for the non-fulfillment of the obligation to return to Russia the monetary funds paid to non-residents for goods, work, and services that are not imported or rendered.

According to the press, the Russian Ministry of Industry and Trade together with the Russian Ministry of Justice and the Russian Ministry of Finance are developing a document stating that the restrictions due to the new coronavirus will be recognized as force majeure for state and municipal procurement. First Deputy Prime Minister Andrey Belousov also said on March 17, 2020 : “We are introducing force majeure, i.e. the non-imposition of penalties, in two cases so far: the violation of state contracts and the non-fulfillment of contracts by non-residents if this is related to coronavirus [6].”

So, if the relevant regulations are adopted, Russian companies will be able to avoid liability for non-fulfillment of obligations to repatriate currency earnings.

We recommend monitoring the adoption of the relevant regulations to timely comply with all the formal requirements these regulations may provide and already now taking all possible measures to return currency earnings (send claims and complaints, gather evidence that the non-fulfillment of obligations is connected with the spread of coronavirus, file lawsuits, etc.).

We will always be happy to offer our support and advise you on how to use force majeure to minimize your risks.



LABOR ASPECTS: WHAT MEASURES SHOULD EMPLOYERS TAKE

Due to the threat of the spread of coronavirus, federal and regional authorities have published recommendations and provided for a few mandatory rules for employers. The list of measures to be taken by employers varies, especially from one region to another.

Measures currently provided for:

Federal measures [7] (non-prescriptive guidelines)

- Check employees' body temperature at the beginning and during the working day;
- Monitor that employees work from home in self-isolation for 14 days when they return from a country where cases of coronavirus have been reported[8];
- Clean office premises with disinfectants every 2 hours;
- Ensure that there are enough disinfectants and face masks for five days;
- Ensure that office premises are aired every 2 hours;

- Refrain from sending employees on business trips to places where cases of coronavirus have been reported;
- Refrain from holding corporate events.





Measures for employers in Moscow [8] (mandatory)

- Check employees' body temperature at work and send employees with elevated temperature home;
- Assist employees who are self-isolated at home;
- At the request of the Department of Rospotrebnadzor in Moscow, provide information about all the contacts of those who caught the coronavirus and ensure that the office premises where they were are disinfected;
- Do not allow to work or company site anyone that has traveled from China, Italy, Iran, France, Germany, Spain, Albania, Great Britain, Ireland, Macedonia, Montenegro, Andorra, Norway, Switzerland, Monaco, Liechtenstein, Moldova, Belarus, Ukraine.



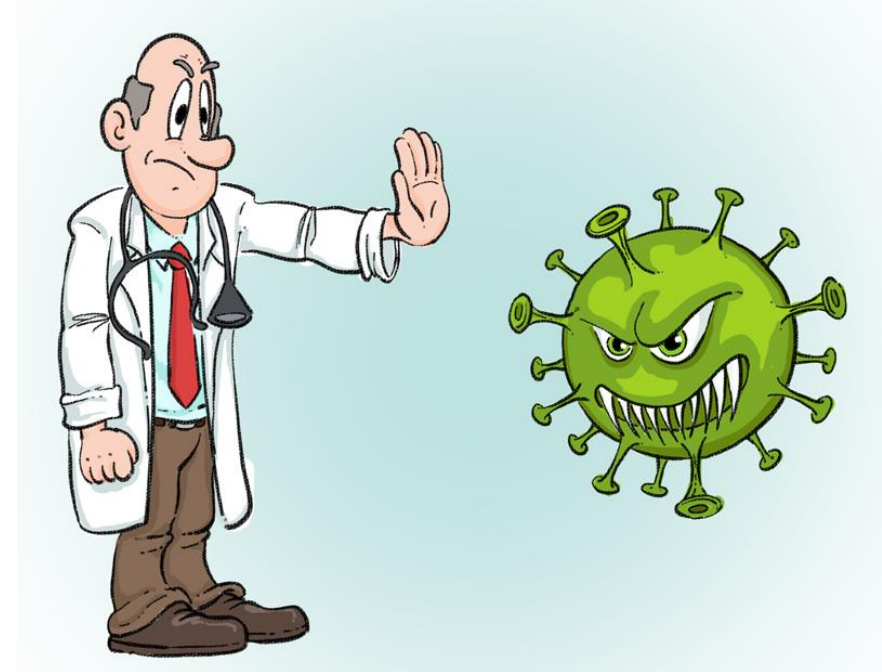
Measures for employers St. Petersburg [9] (non-prescriptive guidelines)

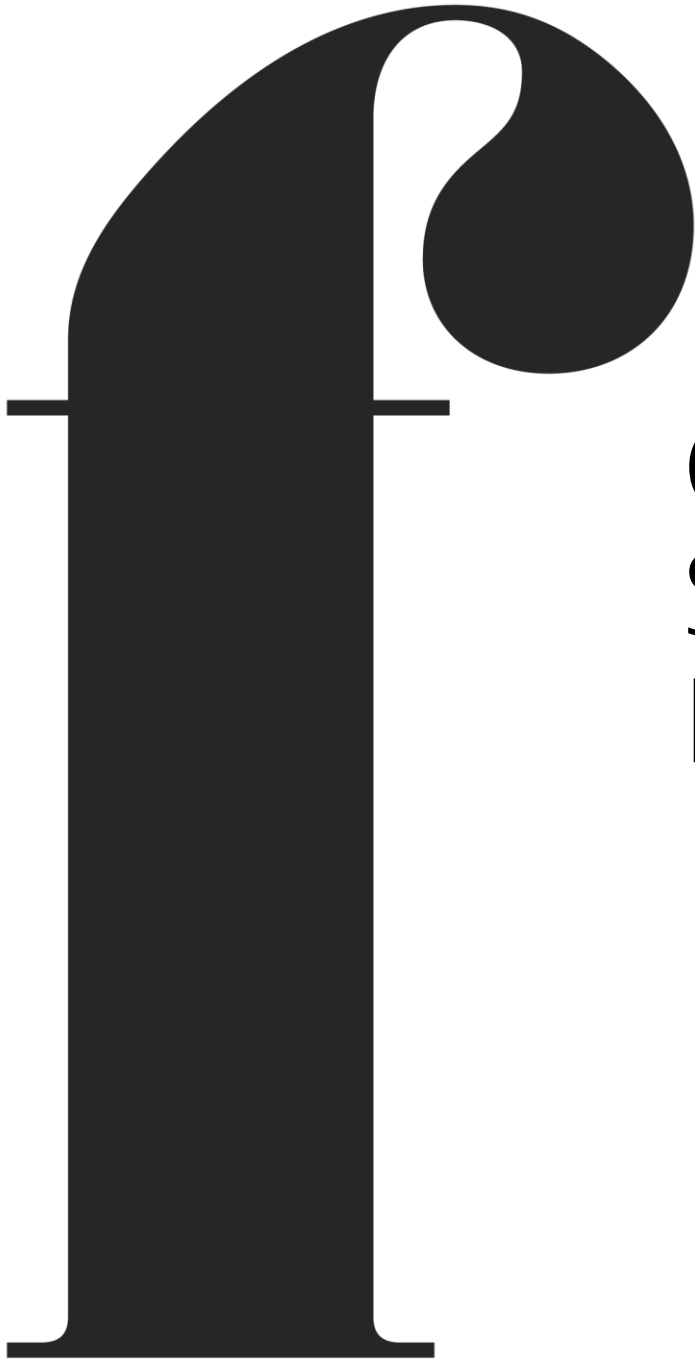
- Refrain from sending employees on business trips abroad;
- Identify employees showing signs of infection and do not allow them at work;
- At the request of the Department of Rospotrebnadzor in St. Petersburg, provide about all the contacts of those who caught the coronavirus;
- Disinfect all the rooms where anyone ill was;
- Put in place ways for employees to work remotely and hold meetings, interviews and other similar events through telecommunication networks;
- Ensure that contact surfaces are disinfected and use air disinfection equipment indoors.

To comply with the requirements of the law on personal data, it is necessary to warn employees that their temperature will be measured. However, since the measures to detect the disease allow determining whether employees can fulfill their work duties, it is not necessary to get the employees' consent to measure their temperature [10].

A question remains open: how and who should pay employees in self-isolation when they have no signs of illness and no sick leave note has been issued. This situation should most probably be considered as standby time/downtime beyond the control of employers and employees and should therefore be paid by employers in the amount of 2/3 of employee salaries.

To find out more about standby time/downtime and how to reduce staff costs in these difficult times, please click [here](#).





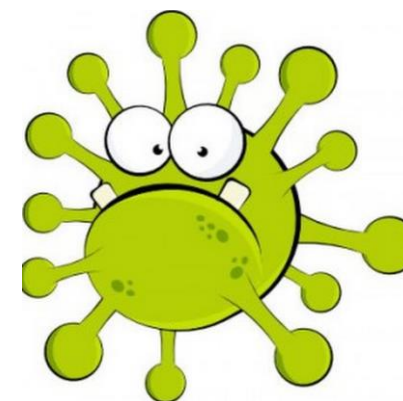
CLOSING BORDERS: WHAT SHOULD BE DONE WITH FOREIGN EMPLOYEES

On March 18, 2020, Russia closed its borders to foreign nationals [11]. Only the following foreign nationals can now travel to Russia:

1. Accredited or appointed employees of diplomatic missions and consular posts, international organizations and their representative offices as well as their family;
2. International motor vehicle drivers;
3. Crews of aircraft, sea and river vessels as well as international train;
4. Members of official delegations;
5. People holding diplomatic, business visas or regular private visas issued for the death of a close relative;
6. People permanently residing in the Russian Federation (with a permanent residence permit);
7. People in transit through air border crossing points.

According to a decree from the Russian Ministry of Internal Affairs, the following has also been suspended since March 18, 2020:

- Acceptance of documents;
- Processing and issuance of visa invitations for training and work;
- Processing and issuance of authorizations to hire foreign nationals and work permits for foreign nationals.



However, already on March 19, 2020 the Ministry of Internal Affairs had posted on its website that given the current situation:

- The validity term of visas of foreign nationals in Russia will be extended regardless of the purpose of their visit to Russia. If a valid visa has already expired, the period of temporary stay will be extended.
- Citizens who can travel and stay in Russia under a procedure that requires no visa will see their period of stay in the Russian Federation extended, especially if this period has already expired.
- The acceptance of applications for authorizations to hire foreign nationals and for work permits for foreign nationals in the Russian Federation has been resumed.
- Foreign nationals may also apply for new patents without having to leave the Russian Federation, and the administrative liability for failing to meet the deadline for application submission has been lifted.
- Foreign nationals staying in Russia on the basis of a residence permit or

a temporary residence permit will have the period of their stay extended if the validity term of their permit expires.

So, the acceptance of documents for authorizations to hire, work permits and patents for foreign nationals who are not in Russia currently remains suspended.

We monitor the situation very closely, so if you have any questions, please do not hesitate to contact us.

We hope that this review has been helpful and has answered some of the questions you may have about the coronavirus situation.

If you would like to discuss the current situation and what can be done to adapt to these extraordinary circumstances, please feel free to contact us. We are always happy to help.

Stay safe!

Truly yours,

[The Forte Tax & Law Team](#)



REFERENCES

1. Article 401(3) Russian Civil Code.
2. Moscow Mayor Order No. 20-YM Introducing High Alert Procedures dated March 14, 2020.
3. Article 451 Russian Civil Code.
4. Fine of 1/150 of the Bank of Russia refinancing rate on the untimely credited amount (for each day of delay in crediting the amount) or from 3/4 to the entire uncredited amount (Article 15.25(4-5) Code of Administrative Offenses).
5. The non-repatriation of especially large proceeds may result in imprisonment for up to 5 years (Article 193(2) Criminal Code).
6. Source: www.tass.ru.
7. Rospotrebnadzor Letter No. 02/3853-2020-27 dated March 10, 2020 on Preventive Measures for New Coronavirus Infection COVID-19.
8. China, Italy, France, Iran, Germany and Poland.
9. Moscow Mayor Order No. 12-YM Introducing High Alert Procedures dated March 5, 2020.
10. Roskomadzor explanations of how employers and personal data operators should use thermal imagers to prevent the spread of coronavirus.
11. Russian Government Decree No. 635-r dated March 16, 2020.
12. <https://мвд.рф/news/item/19812878>.