



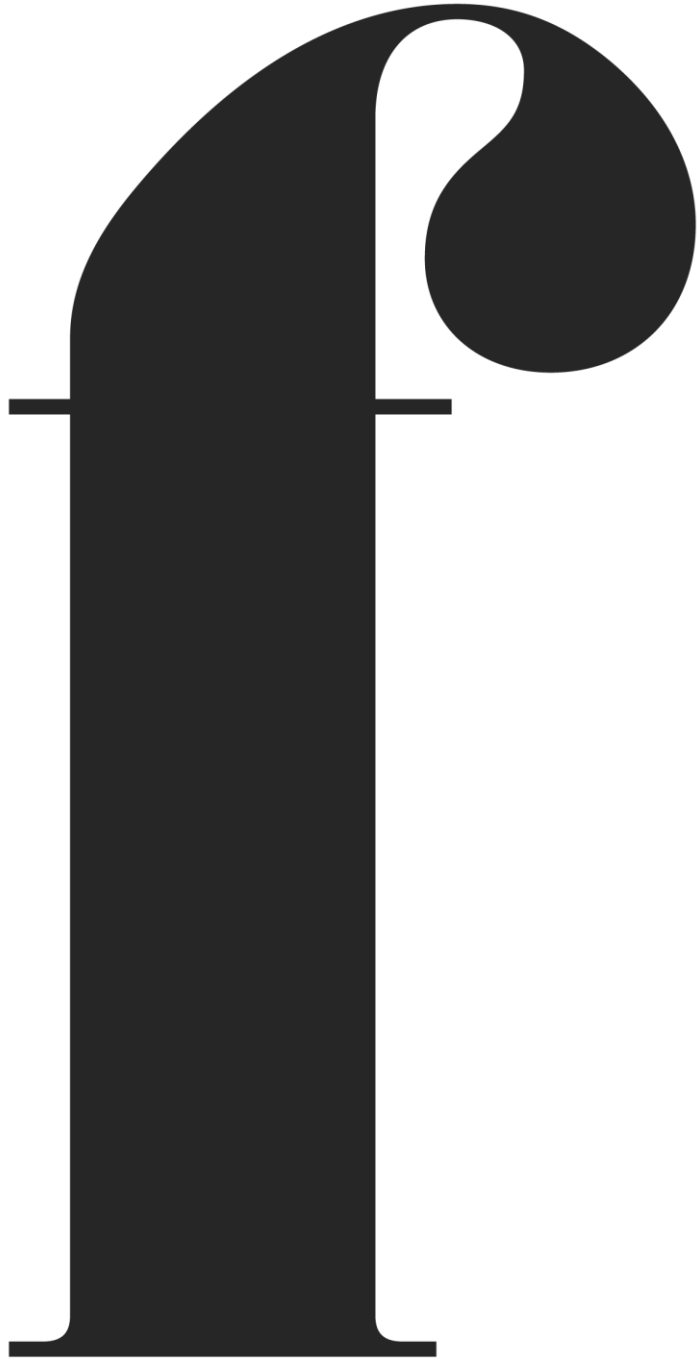
FORTE TAX & LAW

FOCUS ON YOUR BUSINESS

COVID-19

The impact on contracts

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COVID-19
The impact on contracts:
legal concepts

A close-up photograph of two hands shaking in a firm grip. The hand on the left is wearing a blue long-sleeved shirt, and the hand on the right is wearing a light-colored long-sleeved shirt. The background is blurred, showing what appears to be an office or meeting environment. The text 'Pacta sunt servanda' and 'Agreements must be kept' is overlaid on the image in white.

Pacta sunt servanda

Agreements must be kept

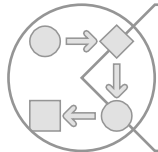


Crisis and contracts: legal concepts

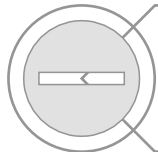
Three concepts of Russian contract law provide legal tools to deal with the effect of unexpected events and unforeseen changes in circumstances:



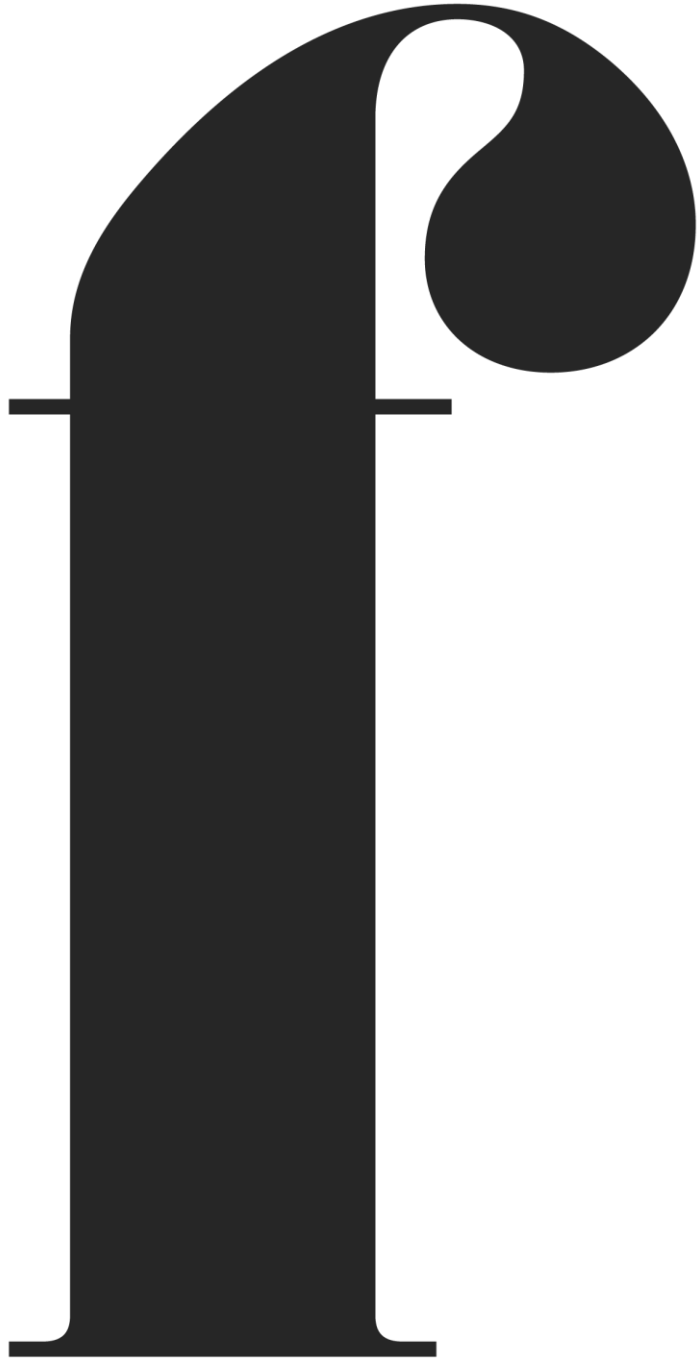
Insuperable force (“force majeure”) (Article 401(3) Russian Civil Code)



Substantial change of circumstances (Article 451 Russian Civil Code)



Impossibility of performance of an obligation (Articles 416 and 417 Russian Civil Code)



Insuperable force
("force majeure")



Force majeure: definition

Unless otherwise provided by law or in a contract, a party that has not performed or has unduly performed a contractual obligation relating to an entrepreneurial activity shall be liable for the consequences arising from this failure, unless the party proves that proper performance was impossible due to a force majeure event (i.e. an extraordinary and unavoidable circumstance).

Article 401(3) Russian Civil Code





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Force majeure: key criteria

Force majeure events must meet four criteria:

The event is extraordinary (exceptional) – its occurrence is not usual in the relevant circumstances.

Circumstance is unavoidable - it is objectively impossible for any market participant to avoid such a circumstance or its consequences.

The event must have been unforeseeable at the conclusion of agreement.

The occurrence of the event must be beyond the control of the party seeking to use force majeure as an excuse for non-performance.

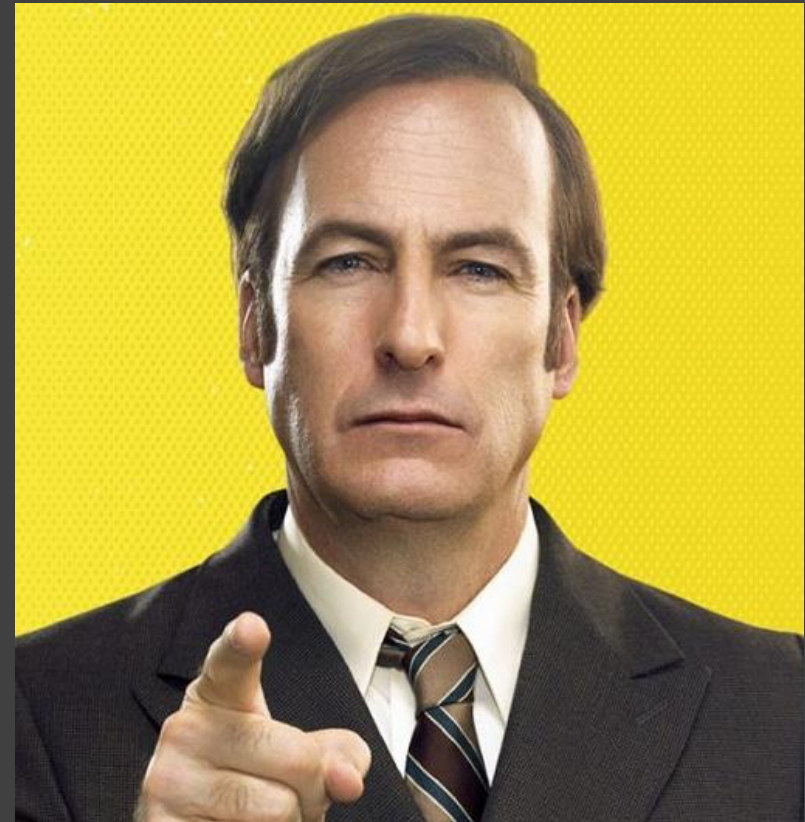


Force majeure: other key considerations

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Some circumstances, however extraordinary, do not qualify as force majeure:

- a breach on the part of the debtor's contracting partners, unavailability of goods required for the performance of the contract, or the absence of necessary cash amounts at the disposal of the debtor;
- reduced number of customers due to anti-virus measures;
- employee remote working because of anti-virus measures;
- a surge in currency rates.





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Force majeure: check your contract(s)

- Identify contracts that are likely to be affected by COVID-19.
- Consider in detail the contract as a whole, applicable law and precise wording of the force majeure clause, and the circumstances that have arisen.
- Consider whether (in addition to force majeure) other legal avenues are available.
- Ensure strict compliance with the notice provisions of such a clause.
- Collect documentary evidence in support of the occurrence of any force majeure event listed in the contract.





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Force majeure acts of regional authorities

The decree of the Moscow mayor dated 14 March 2020, which specifies the various “measures of increased readiness” due to the outbreak of Covid-19, expressly provides that the Covid-19 outbreak should be considered as an extraordinary and unavoidable event (i.e. force majeure).

The mere reference to force majeure in the Moscow mayor decree 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.





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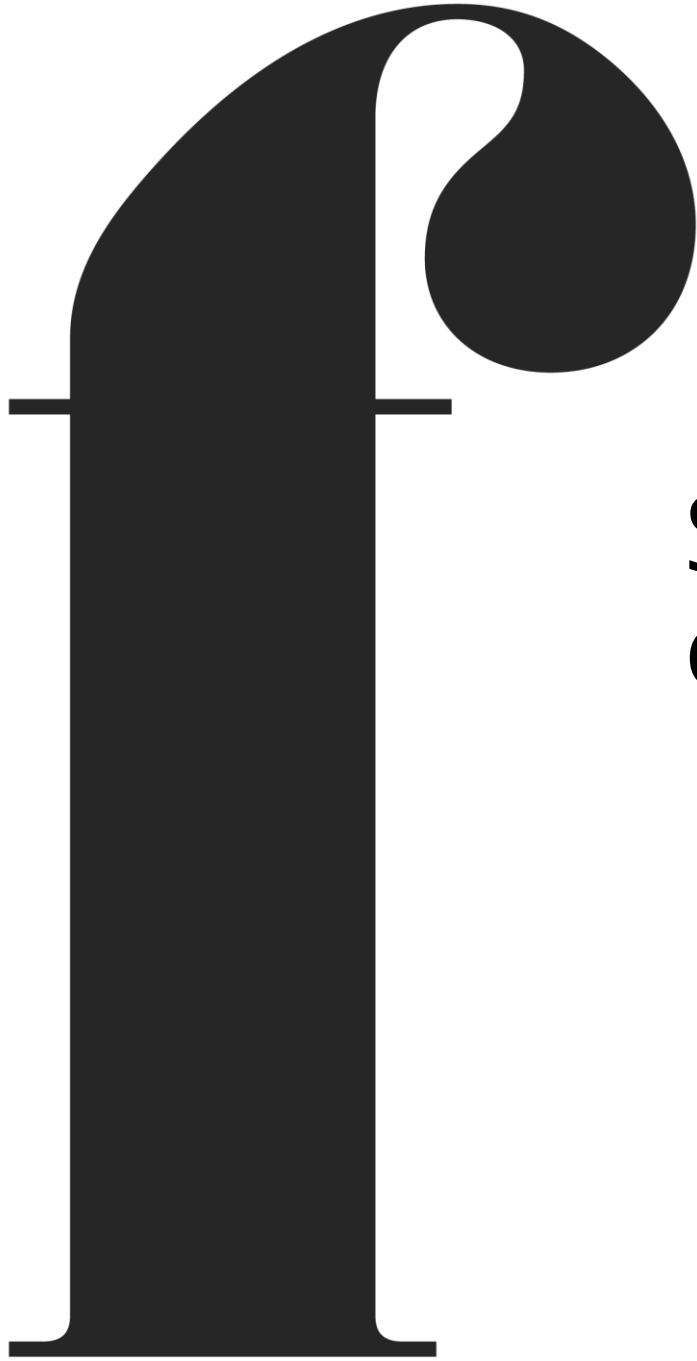
Force majeure: currency control obligations ("repatriation rules")

Problem: Russian law currently provides for substantial administrative liability, and in some cases, criminal liability 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.

Ministry of Finance: (letter dated 20.03.2020): if the resident fails to comply with "repatriation rules" due to force majeure, caused by, among other things, the measures taken by foreign countries to combat the spread of COVID-19, the resident could be considered not at fault.

Recommendation: Residents should take 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.).





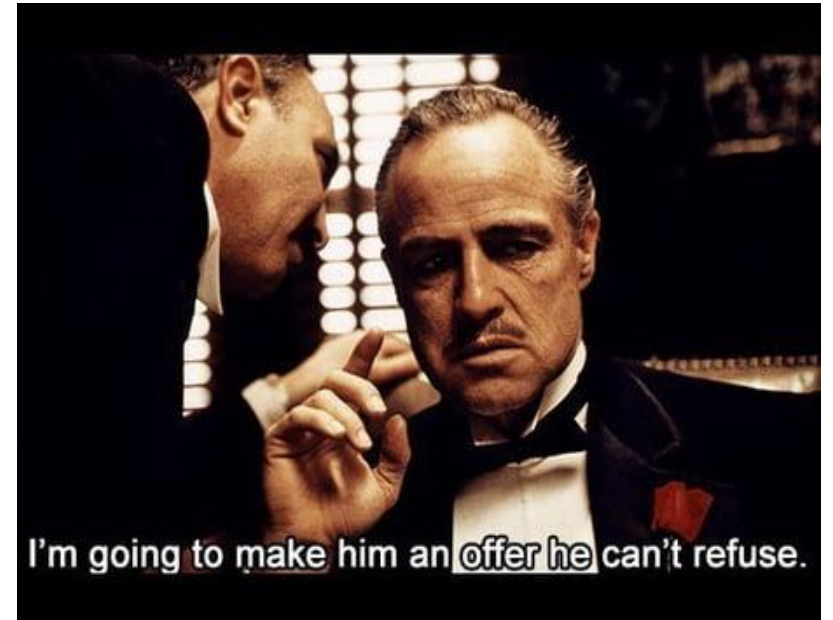
Substantial change of
circumstances



Substantial change of circumstances

A substantial change of circumstances on which parties relied at the time of the conclusion of the contract is a ground for its amendment or termination, unless otherwise specified by the contract or emanates from its nature.

A change of circumstances is substantial if the circumstances changed to the extent that, if the parties could have reasonably foreseen it, they would not have concluded the contract, or they would have concluded it on significantly different terms.



HOW HELSINKI DEALS WITH CORONAVIRUS



CREDIT: EIRA ROOS

Substantial change of circumstances: conditions

Four basic conditions must be satisfied:

- 1) When entering into an agreement, the parties proceeded on the basis that such circumstances would not arise.
- 2) The change in circumstances could not be avoided with the degree of care and caution that was required in light of the nature of the contract and the conditions of the trade.
- 3) The performance of the agreement without amending its terms would have affected the balance between the parties' interests to such an extent and would have entailed such a loss for the interested party that it would have been significantly deprived of what it could have expected when entering into the agreement.
- 4) It does not follow from the usual business practice or the nature of the agreement that the risk of the change of circumstances shall be borne by the interested party.



“Anti-virus” law: rent adjustment

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“Anti-virus” Federal Law No. 98-FZ Amending Certain Legislative Acts of the Russian Federation on Emergency Prevention and Mitigation (further “Law No. 98-FZ”) was officially published and became effective on April 01, 2020.

Article 19 of Law No. 98-FZ provides for three rent adjustment options:

- Deferment of rent payment;
- Multiple change of rent in 2020;
- The tenant’s right to request a reduction in rent for 2020.





“Anti-virus” law: deferment of rent payment

Tenants are entitled to submit to their landlord a proposal for concluding an additional agreement for deferment of rent payment payable in 2020. Landlords must sign such additional agreement within 30 days of the proposal date.

The terms and conditions for granting deferment are set out in Government Decree No. 439 dated April 03, 2020.

Tenants (organizations or individual entrepreneurs) from the most affected sectors of the economy are entitled to rent deferment. The Federal Tax Service recommends referring to the list approved by Government Decree No. 434 dated April 03, 2020 and the code of main activity as recorded in the State Register of Legal Entities/State Register of Individual Entrepreneurs as of March 01, 2020.

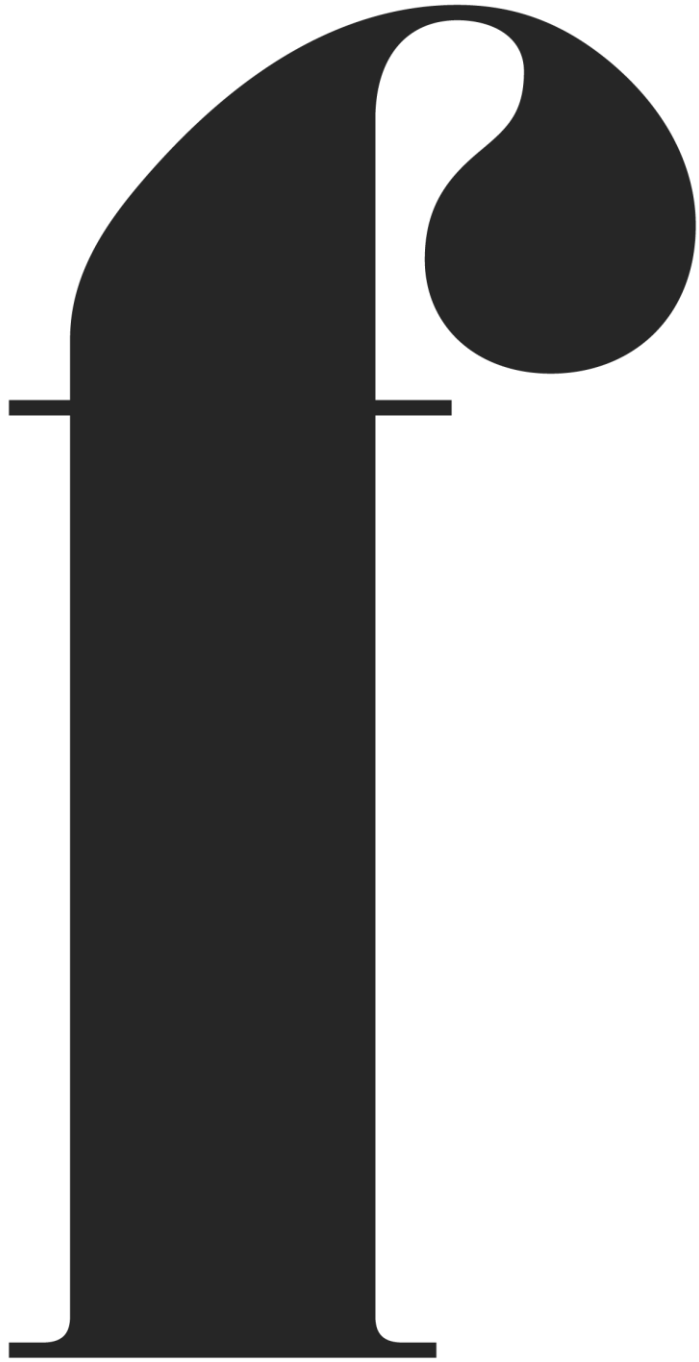
Deferment is granted for the rent payable from the date of introduction of high alert or emergency procedures until October 01, 2020. If high alert or emergency procedures are canceled before this date, then deferment of half the rent is granted for the remaining period.

No penalties, interest for wrongful use or retention of funds, and other sanctions are to be applied in connection with the deferment.

The following requirements have also been established:

- ✓ Arrears should be paid no earlier than January 01, 2021;
- ✓ Payments should be made in equal installments no more than once a month;
- ✓ The amount of one payment cannot be more than half of the monthly rent.

What to do if your landlord ignores and rejects your deferment request? In this case, the tenant may file a petition with a court to order the landlord to conclude an agreement under Article 445(4) of the Russian Civil Code.



Impossibility of
performance of an
obligation



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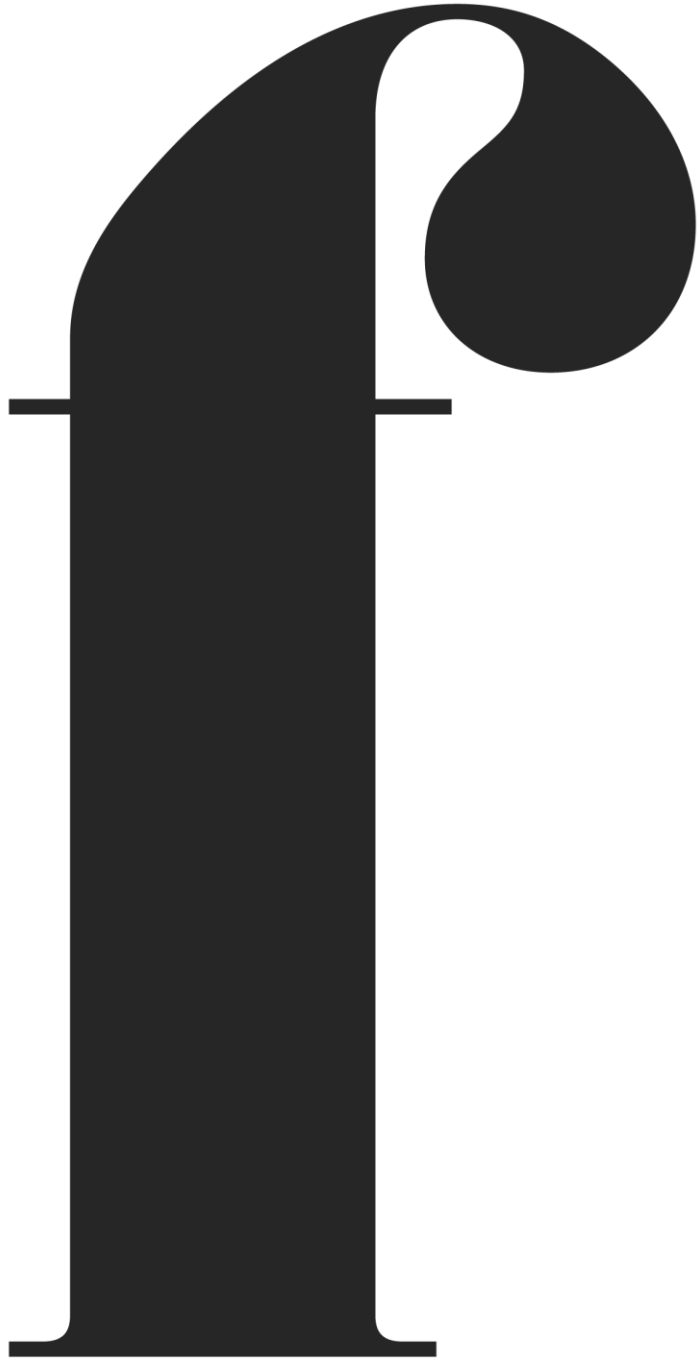
Impossibility of performance of an obligation

- Termination of the obligation due to actual impossibility of performance (Article 416 of the Russian Civil Code)
- Termination of the obligation due to legal impossibility of performance (Article 417 of the Russian Civil Code)





Impossibility of performance of an obligation



Corporate issues



Corporate issues: easing of procedures in 2020

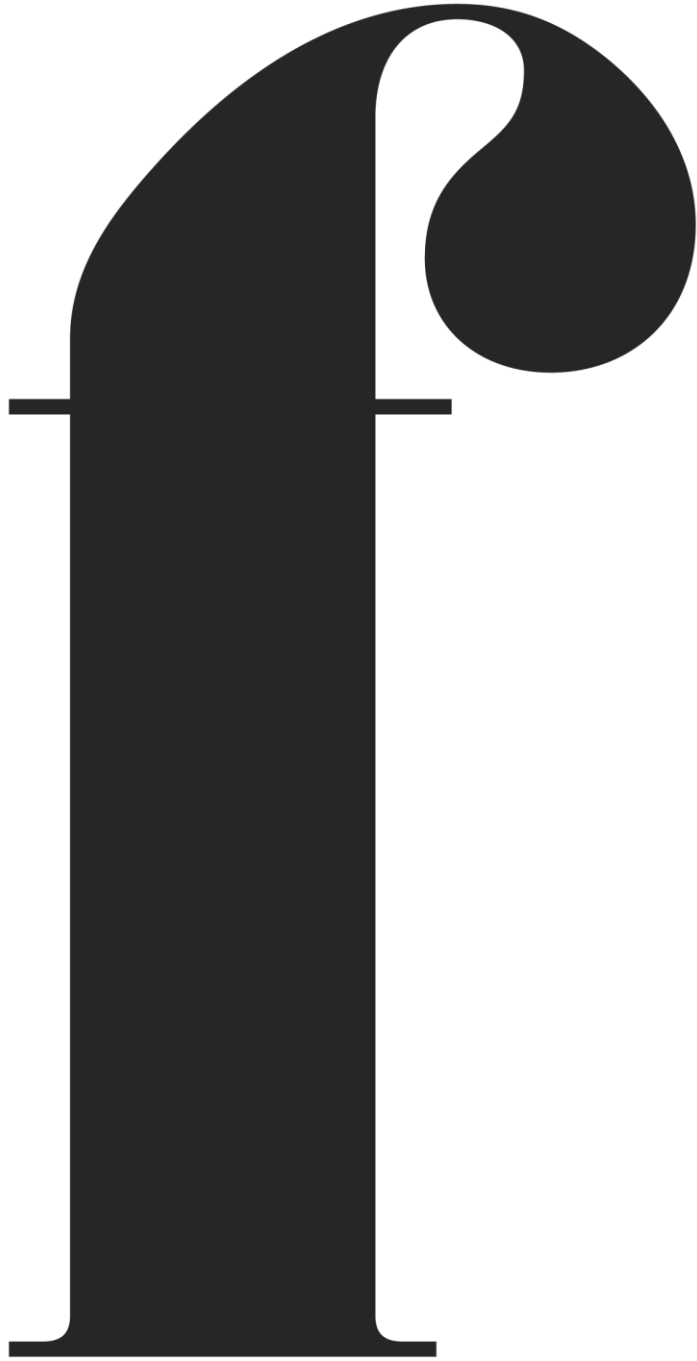
- **Annual Meetings – deadlines extended**

Usually, annual general meetings must be held no later than 30 June for JSCs and 30 April for LLCs. On 7 April 2020, Federal Law No. 115-FZ came into force to replace these deadlines for the current year 2020 with a single 30 September deadline.

- Previously it has been permitted for **JSCs** to convene the annual meeting using **absentee voting**.

- **Net assets of JSC/LLCs**

The value of a JSC/LLC's net assets (as determined upon the results of 2020) being lower than the relevant company's charter capital will not trigger an obligation to either decrease the charter capital of, or liquidate, the company.



Insolvency filing
moratorium



Insolvency filing moratorium

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On 6 April 2020, the Russian Government introduced a six-month moratorium preventing creditors from initiating bankruptcy proceedings against certain debtors.

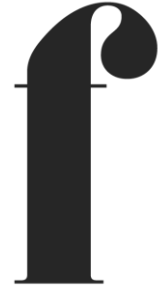
The moratorium (among other things):

- applies only to certain types of debtors determined by the Russian Government, including strategic and systemically important enterprises and companies as well as companies operating in the industries most affected by the consequences of the pandemic (“qualifying debtors”);
- prohibits enforcement against pledged assets of qualifying debtors during the term of the moratorium;
- restricts any set-off, occurrence of penalties on any monetary obligations of the qualifying debtors, any share buyouts or payment of dividends by the qualifying debtors;
- where a qualifying debtor goes bankrupt within the first three months after the moratorium is terminated, declares void any transactions made by such qualifying debtor during the Moratorium (other than any transactions made in the ordinary course of business and with a value not exceeding 1% of its assets).



THANK YOU





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Thank you for your time!

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