

Newsletter

Voluntary liquidation of a lessee

June 20th, 2022

Dear Ladies and Gentlemen,

Many companies, that lease commercial premises in Russia, have resolved to put on hold, or cease their activities, in the Russian market. Such withdrawal may be legally formalized as **voluntary liquidation of a legal entity**.

Today, we would like to address the most frequently asked questions, regarding consequences that voluntary liquidation of the lessee ("**Liquidation**") entails, both for the lease agreement and for the lessor.

Liquidation procedure and its timeframes

- Liquidation of a legal entity includes the following main stages and normally takes at least 6 months to complete:
 - Taking a formal decision on Liquidation by the shareholders;
 - Notification of supervising bodies and creditors of such a decision;
 - Approval of the interim liquidation balance sheet, produced on the basis of information (claims) presented by creditors;
 - Settlement with the creditors;
 - Approval of the liquidation (final) balance sheet;
 - Registration of the liquidation in the Unified State Register of Legal Entities.
- Voluntary Liquidation, without resorting to the bankruptcy procedure, is possible only when the liquidated entity possesses enough assets to satisfy all its creditors' claims.
- The lessor should be notified of the Liquidation in writing, as well as other creditors. Information about Liquidation is published in mass media and is also available on the unified federal register of information on the activity of legal entities.

When is the lease agreement terminated?

- The lease agreement, with a liquidated legal entity, **shall be deemed to be terminated at the moment of registration of the liquidation (making an entry on termination of the entity in the**

Unified State Register of Legal Entities) (Art. 419, Art. 63 cl. 9 of the Russian Civil Code). This is the final stage of Liquidation. It takes place once all obligations to creditors have been settled, all tax records verified, etc.

- Until this moment, the obligations under the lease agreement shall be duly performed and the ceasing of rental payments shall be considered as contractual default.

Is the lessor entitled to terminate the lease agreement in case of commencement of the Liquidation procedure?

- The lessor **is not entitled to terminate the lease agreement** when the lessee resolves to perform its Liquidation, **unless such right is specifically provided for by the lease agreement**.
- It should be noted that major lessors, in Russia, normally include such a termination trigger in the lease agreement.
- Please bear in mind that some statutory provisions may be interpreted in favour of the possibility to repudiate, or terminate, the lease agreement through the court, especially where a Liquidation is obviously used to terminate a long-term lease agreement.

Is the lessor entitled to request early payment of the entire amount of rent until expiration of the lease term?

- Based on the current case law, the lessor **is not entitled to claim for the rent** for the entire duration of the lease agreement.

Is the lessor entitled to claim recovery of losses and payment of penalties if the resolution on Liquidation is made?

- The Russian Civil Code **does not provide any general rule that the liquidated lessee shall pay damages, or a forfeit fee**, due to Liquidation and early termination of the lease agreement. We see a remote possibility of recovery of damages, using an analogy of law.
- Applicable case law upholds the effectiveness of contractual provisions that allow the lessor

to terminate the lease agreement and charge a forfeit fee if a resolution on Liquidation is made by lessee.

May the debt under the lease agreement be respected after Liquidation is complete?

- As a general rule, liquidation of a legal entity entails its termination, without assignment of its rights and obligations to other persons, by way of universal succession.
- On the other hand, the lessor is entitled to recover damages from the lessee's shareholders

or other controlling entities, and/or the liquidator, if the lessor was unable to receive payment as a result of unlawful actions (e.g. if the liquidator failed to include its claims in the liquidating balance sheet, without legal grounds for this omission).

- Therefore, **completing Liquidation does not ultimately preclude recovery** of debt that accrued (and was claimed) beforehand.

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