

# Checklist

## Lease Termination

30 May 2023

Dear Ladies and Gentlemen!

In 2023 Russian real estate market continues its transformation. Some tenants are looking for ways to exit leases early. According to our experience, it's a complex process that requires assessing legal risks, making financial decisions, conducting negotiations, etc.

ALRUD experts have created a checklist that will guide you through lease termination process, making it smoother and safer for the company.

ISSUE	WHAT TO CONSIDER										
Choosing termination strategy	<p>It needs to be carefully assessed if the Lease Contract allows early break and/or if there may be applicable triggers to terminate under the statute law/case law.</p> <p>General break strategies:</p> <div><div>Contractual options</div><table><tr><th><u>(i) Early break option</u></th><th><u>(ii) Due to the Landlord's default</u></th><th><u>(iii) Due to the Tenant's default</u></th></tr><tr><td>Not often provided. Requires careful analysis of the procedure as normally there is (i) a minimum period of lease, (ii) uncertainty as to whether the notice could be served within this period (or only upon its expiration).</td><td>Requires careful consideration due to high materiality thresholds. In most cases, it is expected that the breach must result in inability to use the property or a material obstruction to such use.</td><td>Terminating through intended Tenant's breach is risky since (i) the Landlord is not obliged to terminate and may claim for debts through the court, (ii) there exist high risks of penalties, damages, and litigation costs for the Tenant.</td></tr></table><div>Extra-contractual options</div><table><tr><th><u>(iv) Termination through the court</u></th><th><u>(v) Termination through agreement</u></th></tr><tr><td>Same as with item (i), is not efficient unless there are duly evidenced material breaches on the Landlord's part.</td><td>The most practical scenario if there is no clear break option.</td></tr></table></div>	<u>(i) Early break option</u>	<u>(ii) Due to the Landlord's default</u>	<u>(iii) Due to the Tenant's default</u>	Not often provided. Requires careful analysis of the procedure as normally there is (i) a minimum period of lease, (ii) uncertainty as to whether the notice could be served within this period (or only upon its expiration).	Requires careful consideration due to high materiality thresholds. In most cases, it is expected that the breach must result in inability to use the property or a material obstruction to such use.	Terminating through intended Tenant's breach is risky since (i) the Landlord is not obliged to terminate and may claim for debts through the court, (ii) there exist high risks of penalties, damages, and litigation costs for the Tenant.	<u>(iv) Termination through the court</u>	<u>(v) Termination through agreement</u>	Same as with item (i), is not efficient unless there are duly evidenced material breaches on the Landlord's part.	The most practical scenario if there is no clear break option.
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Calculation of termination fee	<p>Termination through mutual agreement is based on agreeing the break fee. Possible grounds for calculation are:</p> <table><tr><td>Amount of rent for the period of search for a substitute tenant</td><td>Amount of rent in case of termination due to the Tenant's default</td><td>Amount of rent payable till liquidation of the Tenant's legal entity (if initiated)</td><td>Amount of rent to be paid till expiration of the Lease Contract (subject to early termination options, if applicable)</td></tr></table> <p>Other costs to be considered:</p> <ul style="list-style-type: none"><li>• Applicable penalties, damages</li><li>• Reinstatement obligations</li><li>• Risks of loss of deposit</li><li>• Judicial costs in case of a dispute</li></ul>	Amount of rent for the period of search for a substitute tenant	Amount of rent in case of termination due to the Tenant's default	Amount of rent payable till liquidation of the Tenant's legal entity (if initiated)	Amount of rent to be paid till expiration of the Lease Contract (subject to early termination options, if applicable)		
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Returning the property	<p>When preparing to return the property, we recommend considering the following issues (please see also below for details of each item):</p> <ul style="list-style-type: none"><li>– Inseparable improvements made</li><li>– Property condition subject to normal wear and tear</li><li>– Security Deposit return conditions</li><li>– the Act of Return signing procedure</li></ul>						
Inseparable improvements	<p>There is no unified approach in the Russian law as to which improvements are considered inseparable. There are different approaches within the case law. We recommend considering the following aspects with regards to inseparable improvements:</p> <table><tr><td>Making inseparable improvements under the Russian law shall be approved by the Landlord</td><td>Unapproved improvements will need to be removed at the request of the Landlord (entailing additional expenses)</td></tr><tr><td>Unapproved improvements may lead to imposition of a penalty by the Landlord (if provided in the contract)</td><td>Inseparable improvements remain in the landlord's property, Tenant can't break them when moving out</td></tr><tr><td>Inseparable improvements should be transferred to the Landlord upon termination of the Lease Contract. Please consider the accounting and tax aspects of transferring</td><td>Lease Contract may provide for a requirement to remove the inseparable improvements (even the approved ones) when vacating the property; these costs need to be considered</td></tr></table>	Making inseparable improvements under the Russian law shall be approved by the Landlord	Unapproved improvements will need to be removed at the request of the Landlord (entailing additional expenses)	Unapproved improvements may lead to imposition of a penalty by the Landlord (if provided in the contract)	Inseparable improvements remain in the landlord's property, Tenant can't break them when moving out	Inseparable improvements should be transferred to the Landlord upon termination of the Lease Contract. Please consider the accounting and tax aspects of transferring	Lease Contract may provide for a requirement to remove the inseparable improvements (even the approved ones) when vacating the property; these costs need to be considered
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Normal tear and wear	<p>The Tenant shall return the property to the Landlord in the initial condition subject to normal wear and tear (unless otherwise specified in the Lease</p>						

	<p>Contract).</p> <p>Normal wear and tear is generally defined as wear and tear that occurs under proper operation or storage of an object, i.e., in compliance with the manufacturer's recommendations.</p> <p>No uniform legal criteria for normal wear and tear are established; various criteria and approaches are applied in ad hoc decisions.</p> <p>Some examples based on case law are:</p> <table> <tr> <th>Normal wear and tear</th><th>Abnormal wear and tear</th></tr> <tr> <td> <ul style="list-style-type: none"> <li>– Scuffs on the flooring</li> <li>– Stains</li> </ul> </td><td> <ul style="list-style-type: none"> <li>– Broken windows</li> <li>– Damages</li> <li>– Chips</li> </ul> </td></tr> </table>	Normal wear and tear	Abnormal wear and tear	<ul style="list-style-type: none"> <li>– Scuffs on the flooring</li> <li>– Stains</li> </ul>	<ul style="list-style-type: none"> <li>– Broken windows</li> <li>– Damages</li> <li>– Chips</li> </ul>
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Return of the Security Deposit	<p>Under the Russian law, the Security Deposit shall be returned, unless otherwise agreed contractually.</p> <p>Please bear in mind that some Lease Contracts contain conditional provisions (i.e. the Security Deposit shall be returned unless termination is triggered by the Tenant or unless there are breaches on the Tenant's part). This needs to be carefully assessed.</p>				
Unilateral signing of the Act of Return	<p>After agreeing on the amount of termination fee and other conditions (if applicable), the Tenant should return the premises / the building to the Landlord by signing the Act of Return.</p> <p>If the Landlord refuses to accept the property and sign the Act of Return, applicable case law allows in some cases to sign the Act of Return unilaterally, although subject to a procedure allowing to prove a good faith approach.</p> <table> <tr> <td><b>Nota bene!</b></td><td>Factual vacating of the premises / building doesn't mean automatic return of the premises / building.</td></tr> </table>	<b>Nota bene!</b>	Factual vacating of the premises / building doesn't mean automatic return of the premises / building.		
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How to increase chances for contract's termination	<p>(i) Collect all documentation, including correspondence with the counterparty, focusing on:</p> <ul style="list-style-type: none"> <li>– any reported defects / issues of the leased property</li> <li>– any pre-contractual correspondence / documentation that may contain representations regarding the premises</li> </ul> <p>(ii) Determine the highest possible termination fee amount and define the strategies for its reduction</p> <p>(iii) Decide on the future of the business in Russia, including this specific property</p> <p>(iv) Negotiate in good faith and share necessary documents on a regular basis</p>				
Other issues to consider	<p>If the leased property is used as a legal domicile of the company, it is recommended to negotiate leasing a room in the same building to retain legal address through wind-up procedure or dormancy period.</p>				

HOW CAN ALRUD HELP?		
Analysis of <b>opportunities for the termination or revision of the Lease Contract</b> , taking into account case law and market standards, preparing an opinion with calculation of possible losses	<b>Mediation of conflicts</b> between lessors and tenants: financial violations, shortcomings of the premises, unilateral termination, eviction, and assessment of measures to exert influence on parties that violate agreements	Analysis of opportunities for the <b>termination or revision of the Lease Contract terms</b> , review of the Lease Contract, case law and market standards, and preparation of an opinion with a calculation of possible losses
<b>Assessment of lessors / their banks</b> from the viewpoint of imposition of sanctions and the provisions of agreements on force majeure and changes in bank details, among other things	Assistance with <b>collecting data on the leased property</b> for a settlement strategy, including staff interviews, collection of technical documents, search in public registers, etc.	<b>Representation of the interests</b> of both lessors and tenants when concluding new agreements, reviewing the terms of existing agreements and terminating the Lease Contracts
Advising on alternative ways to <b>make payments to lessors</b> to minimize sanctions risks	Cohesive teamwork with <b>commercial and technical experts</b> to maximize the efficiency of projects	Advising on <b>liquidation of the company</b> , and the related risks and milestones relevant for such procedures

Hope that you will find the information in this Checklist helpful. If any of your colleagues would be interested in receiving our newsletters, please send them [a link](#) to our electronic subscription form. If you would like to know more about our [Real Estate](#) practice, please email us back. We'll be happy to send you our materials.

*NB: Please note that all information was taken from open sources. Neither ALRUD, nor the author of this letter is responsible for the consequences that arise as a result of making decisions based on this letter.*

If you have any questions, please, do not hesitate to contact us:



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