

Over the last few months, we have been supporting our clients in their pulling out of the Russian market. Herewith, we would like to share a brief summary about options of doing so and the consequences an international company may face.



Main options for pulling out of the Russian market:

1.  
**Winding up**

2.  
**Bankruptcy**

3.  
Sale of business  
to a third party

## Winding up / Liquidation

### Pros

- Foreign investors that **are not considering selling** their Russian business may pull out of the Russian market by winding it up.

### Cons

- There is a tendency to set up **legislative hurdles** for foreign businesses wishing to pull out and withdraw their assets from Russia. The current government policies aim at making this difficult and impose restrictions on withdrawing one's assets and cash from Russia. Moreover, between March and October 2022 these policies have been significantly tightened, thus further narrowing one's opportunities to pull out and withdraw the assets. Moreover, winding up takes quite long time to complete, and new restrictions may appear while the process is underway, thus making it impossible to get through with it.
- Applicable Russian laws may be interpreted as **prohibiting to wind up Russian companies** owned by investors from jurisdictions that are **'unfriendly'** to Russia without a permit from the Russian Government Commission.<sup>1</sup>

As set out in the latest decrees of the Russian President<sup>2</sup>, transactions or other operations that result, directly and/or indirectly, in establishing, modifying, or terminating the possession, use, and/or disposal of stakes in limited liability companies will require a permit issued by the Government Commission on Monitoring Foreign Investment.

1. Government Commission on Monitoring Foreign Investment

2. Decree No. 618 of the Russian President dated September 8, 2022; Decree No. 737 of the Russian President dated October 15, 2022

## Winding up

A similar rule will also apply to shares in joint-stock companies. This restriction applies to stakes/shares directly or indirectly owned by foreign entities linked to countries that take unfriendly actions against the Russian Federation or Russian entities (so-called 'unfriendly' jurisdictions). Since winding up formally involves a termination of stakes/shares ownership, taking this pathway may necessitate obtaining a pre-authorisation from the Russian Government Commission.

- **Long time.** Winding up takes 6 to 12 months, depending on the company assets value. The statutory limit for the duration of winding up process is one (1) year, though it may be extended by another six (6) months.
- **Members/shareholders will face obstacles to appropriating the company assets** remaining after winding up. Unless by a special permit from the Russian Ministry of Finance, Russian companies are currently prohibited from paying more than RUB 10m (or a foreign currency equivalent) to members/shareholders linked to 'unfriendly' jurisdictions if such payments result from share capital reduction of winding up.<sup>3</sup>
- Winding up may result in **bankruptcy**. Where a company is being wound up and a public notice thereon is made, the company's creditors may lodge claims against it. If a Russian company cannot settle such claims with its cash and assets, it must file for a bankruptcy.
- The Russian State Duma is considering a draft Federal Law No. 104796-8 *On Legal Entities Going into Administration* (still on the table). Thus it cannot be ruled out that at some point this bill may be passed and take effect. This would create **a risk of having the control over a subsidiary transferred** from foreign investors linked to so-called 'unfriendly' countries **to a government-appointed manager** if such subsidiary is deemed vital for the economic and market stability in Russia.

## Bankruptcy

If a Russian company that is being wound up does not have the assets to settle the claims raised by its creditors or employees and/or to pay due taxes and mandatory social contributions, it must file for a bankruptcy. If the liquidator fails to do so, it may incur a secondary liability for the company's debt.

### Pros

- Possibility of pulling out of the Russian market **even if there is any outstanding debt** to creditors.

### Cons

- **Loss of control over the company and the pulling out process.** If a company is declared bankrupt, its chief executive officer/liquidator and its owners (members/shareholders) will lose full control over it. Thus, the control over the company management – and eventually the management itself – will pass to an official receiver. Where a voluntary bankruptcy filing is made, the company cannot nominate an official receiver: one will be appointed by a court.
- Risk of the company management and owners incurring **a secondary liability**.

Official receiver must search for and identify the debtor's assets and collect the receivables; it may also impose joint and several liability on the persons whose actions or decisions have caused the insolvency (the Russian company management, officers, or the foreign owner).

3. Para. 3 of Decree No. 737 of the Russian President dated October 15, 2022

## Bankruptcy

Secondary liability means that the persons incurring it will be liable for the company's debts to the extent they are not settled by the company itself.

- Sometimes, persons whose actions or decisions have caused the insolvency may also incur **criminal liability in Russia** (e.g., where the company's cash is illegitimately transferred to accounts owned by foreign entities linked to unfriendly countries).
- Official receiver may also file lawsuits with foreign courts on behalf of a Russian company seeking to **collect from such foreign beneficiaries the cash** they received from such Russian company (by evoking claim seniority, lack of evidence supporting payment legitimacy, etc.)
- Bankruptcy is **time-consuming**. Sometimes it may take several years to complete. Until the process is finished, the foreign company will remain being linked to Russia by virtue of still being a member of the Russian subsidiary.

## Sale of business to a third party

In practice, selling the business (including MBOs) has been the option most frequently used by American and European companies; it enables them to pull out of the Russian market in a fastest and safest way.

### Pros

- **It is fast.** Usually, selling a company can be done much faster vs. winding up or bankruptcy.
- **It is transparent.** All transactions are made directly between a non-sanctioned third party acting as the buyer and the foreign owner of a business acting as the seller. For this reason, selling a company is not deemed a circumvention of any international sanctions since such transaction does not involve any settlements between foreign owners and any Russian entity (except the buyer only).
- Once the business is sold, the foreign company will **no longer be linked to its subsidiary**. Selling a company severs all ties between the former owner and the Russian subsidiary; the former owner is no longer liable for the company's debt owed to Russian creditors.

### Cons


- Selling stakes in a limited liability company or shares in a joint-stock company will require obtaining a **pre-authorisation** from the Russian Government Commission, and this process may take as long as 1.5 to 2.5 months.

## Disclaimer

This document is intended for informational purposes only and provides a high-level analysis of the current legislation and its interpretation. It does not take into account all the specifics of a concrete case and therefore may not substitute for a legal opinion or advice.


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