How to close a limited company in Latvia

Any company's owners (members, partners, participants, shareholders) can choose to liquidate their private company (also called "winding up" a company) within the procedure of the shareholders' voluntary liquidation, or a company can be liquidated in a result of violations of regulatory enactments, when the controlling state institution initiates the procedure of compulsory liquidation. In both cases, the result of the liquidation procedure will be the closure of the company and its exclusion from the Latvian Commercial Register.

In Latvia there are 3 types of a capital company (commercial company) [1] liquidation:

1) compulsory - by a court decision, decision of the institution of the Commercial Register (Register of Enterprises) of Latvia or the State Revenue Service (SRS)[2] of Latvia;

2) voluntarily - by decision of the owners of the company who decide to close the company (LLC, JSC);

4) if the company was established for a certain period - after the expiration of a period specified by the articles of incorporation;

5) if the company was established to achieve certain goals - upon achievement of the goals defined by the articles of incorporation.

The termination of the company must be applied for registration in the Commercial Register of Latvia. A record on the termination of the company will appear in the Commercial Register. Information on all companies registered in the Latvian Commercial Register (including whether the company is in the process of liquidation or has already been liquidated) is available free of charge online without having to log in at: https://info.ur.gov.lv/#/data-search.

Compulsory Termination of Business Activity

Failure to comply with regulatory requirements may result in compulsory liquidation of the company, i.e. when the company's activities are terminated on the basis of a decision of a court or a competent state institution (Register of Enterprises or a court).

1. Termination of activity based on a court ruling

The company may be terminated based on a court ruling if:

1) company corporate documents (incorporation agreement and articles of incorporation) are in contrary with the law;

2) the paid-up capital of the company does not meet the requirements of the Commercial Law (including if the company with a reduced share capital has not increased the share capital in accordance with the requirements of the law);

3) the company does not submit information or documents required by law to the Commercial Register;

4) company shareholders did not decide to terminate the company in cases where they should have done so in accordance with the law or articles of incorporation.

The claim to terminate the activities of the company may be filed by the board, council, board member, shareholder, Register of Enterprises, as well as third parties whose interests are affected.

2. The termination of the company based on the decision of the institution of a Commercial register

The activities of the company may be forcibly terminated, and the company will be closed, based on a decision of the Register of Enterprises if:

- for more than three months **the company has no board member** and within three months after receiving a written warning the company has not elected a board member;
- **The company is not reachable at its legal address** and within two months after receiving a written warning from the Register did not register a new legal address;
- if **the company has not disclosed to the Register of Enterprises its true beneficiary owners** and within a month after receiving a written warning has not submitted the requested information.

It should be borne in mind that after having ascertained one of these shortcomings, the Register of Enterprises is obliged to begin the procedure of compulsory, or as it is also called, simplified liquidation of the company. Recently, the Register of Enterprises is actively starting such processes.

3. The termination of the company based on a decision of the tax authorities

The activities of a company may be terminated, and the company will be closed based on a decision of the tax authorities if:

1) the company has **not submitted an annual report** within one month after imposing an administrative penalty and at least six months have passed since the violation was committed;

2) the company within one month after imposing an administrative penalty **did not submit declarations** provided for by tax laws **for a six-month period**;

3) **the company's activity was suspended based on a decision of the tax administration,** and within three months after the suspension of activity **the company did not eliminate the shortcoming indicated by the tax administration.**

In fact, the process based on the decision of the tax authorities is the same simplified liquidation as in the case of the Register of Enterprises.

It must be borne in mind that the decision of the institution of a Commercial register or tax authorities to terminate the activities of the company does not come into force immediately, but within one month after it is communicated to the company. Accordingly, before the entry into force the decision can be challenged or appealed, and then it will not enter into force.

4. The liquidation process in case of compulsory termination of the company. Person interested in liquidation of a company.

If a case on the termination of the company has been instituted in court, any person interested in the liquidation of the company may apply for the position of liquidator. The court, deciding to terminate the company's activities, approves the declared interested person for the position of the company's liquidator.

If in the lawsuit on the compulsory liquidation no one has applied for the position of a liquidator, then the Register of Enterprises after registration in the commercial register for the termination of the company invites persons interested in liquidation of the company to apply for the position of liquidator of the company. The Register of Enterprises registers a person indicated in the first application of a person, who is interested in liquidation, to be the liquidator of the Company.

In the same way, in the case of simplified liquidation, the Register of Enterprises after registering in the Commercial register for the termination of the company invites persons interested in the liquidation of the company to apply for the position of the liquidator of the company and registers the first applicant to be the liquidator.

The liquidator so appointed shall carry out the liquidation process of the company in the same manner as described below for voluntary termination.

It is important to understand that a person who is not affiliated with the company can become a liquidator, gaining access to the accounts, assets and documents of the company being liquidated with the right to freely dispose them on behalf of the company after registration in the status of a liquidator. Therefore, news on "threats of corporate raiding" appear in media recently. In fact, the company under compulsory liquidation has been already "abandoned" by its owners/ board members. Of course, there are exceptions when, for example, board members/ owners do not pay due attention to the requirements of the law. The most common cases leading to the launch of a compulsory closing of a company that clients contacted us about are:

- The legal address of the company is not effective for delivering documents addressed to the company;
- Failure to comply with the requirements for the disclosure of beneficiaries.

If no liquidator is appointed, the company's liquidation does not occur, and the institution of the Commercial register excludes the company from the commercial register. In this case, all the property and cash of such a company is considered abandoned (ownerless) property, which becomes the property of the state. On behalf of the state, all matters relating to property with such status are decided by the State Revenue Service of Latvia. The State Revenue Service of Latvia keeps records and provides control over the assessment of such property, its sale and payment of revenues to the state budget.

Voluntary liquidation

1. Initiation of liquidation

The decision to terminate the activities and start liquidation (winding-up) of the Latvian company is made by the meeting of the company's participants (shareholders). At the same meeting, members of the company appoint the liquidator(s) of the company. As a rule, a former member of the board is appointed to be the liquidator.

2. Liquidator's actions

The liquidator has all the rights and obligations of the executive institution (board) of the company, while he/she has the right to conclude only those transactions that are necessary for the liquidation of the company.

Liquidator:

-terminates current agreements,

-fires employees,

- collects debts from company debtors,

- if necessary, sells property of the company,

- pays taxes and settles all relations with the tax inspection,

- settles with the creditors of the company (if the company has debts).

If during the liquidation of the company it is discovered that all the property and funds of the liquidated company are not enough to satisfy all the claims of the creditors, the liquidator is obliged to file an insolvency petition to the court.

All creditors of the company should be notified about the start of the liquidation process. The deadline for submitting creditor claims is determined by the meeting of participants and by law such a deadline cannot be less than one month from the date of publication of notification. Usually a period of 1 month is set. A notice of termination of activity and the beginning of liquidation of a company shall be published in the official publication of the Republic of Latvia *"Latvijas Vēstnesis"* (https://www.vestnesis.lv/). In addition, the liquidator must send a notice about liquidation to all known creditors of the company and invite them to submit their claims to the liquidator within the specified time.

Within the time-frame specified in notification, creditors shall submit their claims to the liquidator.

In the event that a known creditor has not submitted his claim, or has not accepted the performance, or the deadline for the fulfillment of his obligation has not yet reached, the liquidator is obliged to transfer the amount due to this creditor to a deposit (deposit) account of a notary public.

3. Completion of liquidation

After the creditors' claims have been satisfied or the amounts due to them have been deposited, and all liquidation expenses are covered, the liquidator:

- prepares and submits to the State Revenue Service of Latvia the final liquidation financial report of the company and the plan for the division of the remaining property of the company (if any). The distribution plan establishes a liquidation quota, i.e. amount payable to each member of the company;
- organize the transfer of company documents for storage;
- distributes the remaining property of the company between the participants in accordance with the plan for the division of property drawn up by the liquidator;
- closes all bank accounts of the company;
- file an application to the Register of Enterprises of Latvia on the completion of liquidation and requests to remove the company from the commercial register.

A company is considered liquidated from the moment the decision is made by the Register of Enterprises to remove the company from the commercial register. If the company is liquidated, then it no longer exists as a legal entity with all the ensuing consequences.

As follows from the above, it is impossible to liquidate a company with debts. However, in our practice, we have encountered cases of unfair closing of companies with existing debts (outstanding obligations to creditors), when the liquidator (who, as a rule, acts in collusion with the owners / former management board) does not inform the known creditor about the beginning of the liquidation process and does not deposit the corresponding amount to the notary public, then prepares and submits the final liquidation financial report of the company with false information about the alleged absence of debts to creditors and quickly closes the company. In this case losses incurred from the actions of the liquidator and other persons can be recovered by turning to the civil court and to the police.

NJORD has extensive experience in advising on liquidation processes as well as in litigation related to such processes. If you have any questions or need additional consultation in connection with the above information, please contact the partner of the NJORD Riga office, attorney-at-law Dmitri Kolesnikov (t. +371 67 313 315, dk@njordlaw.lv*).*

[1] This article will only deal with the liquidation of capital companies - limited liability companies (LLC) and joint stock companies (JSC).

[2] State Revenue Service (SRS)[2] of Latvia ("VID" in Latvian) – tax authorities.

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