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CORPORATE RESTRUCTURINGS



Awara

Content

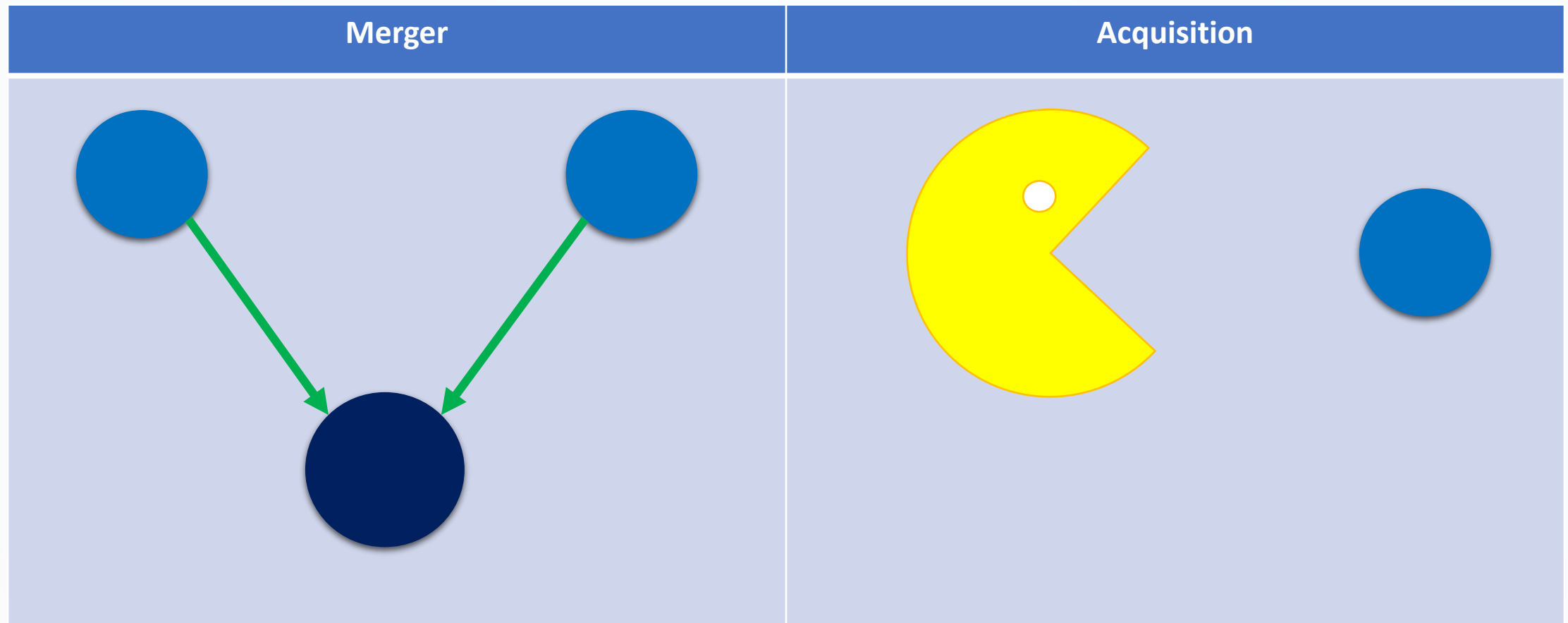
- Possible ways of business reorganization in Russia
 - ❖ Mergers and de-mergers
- Possible ways of winding down the company
 - ❖ Liquidation
 - ❖ Leaving the company dormant
 - ❖ Bankruptcy
- Sale of business
 - ❖ Sale of company (option 1)
 - ❖ Sale of enterprise (option 2)
 - ❖ Sale of assets, assignment of rights and obligations, transfer of employees (option 3)

Ways of business reorganization in Russia

- Making 1 out of 2 (combining entities)
 - Merger
 - Acquisition
- Making 2 out of 1 (separating entities)
 - De-merger
 - Spin-off
- Changing the legal form (e.g. from limited liability company to joint stock company or vice versa)

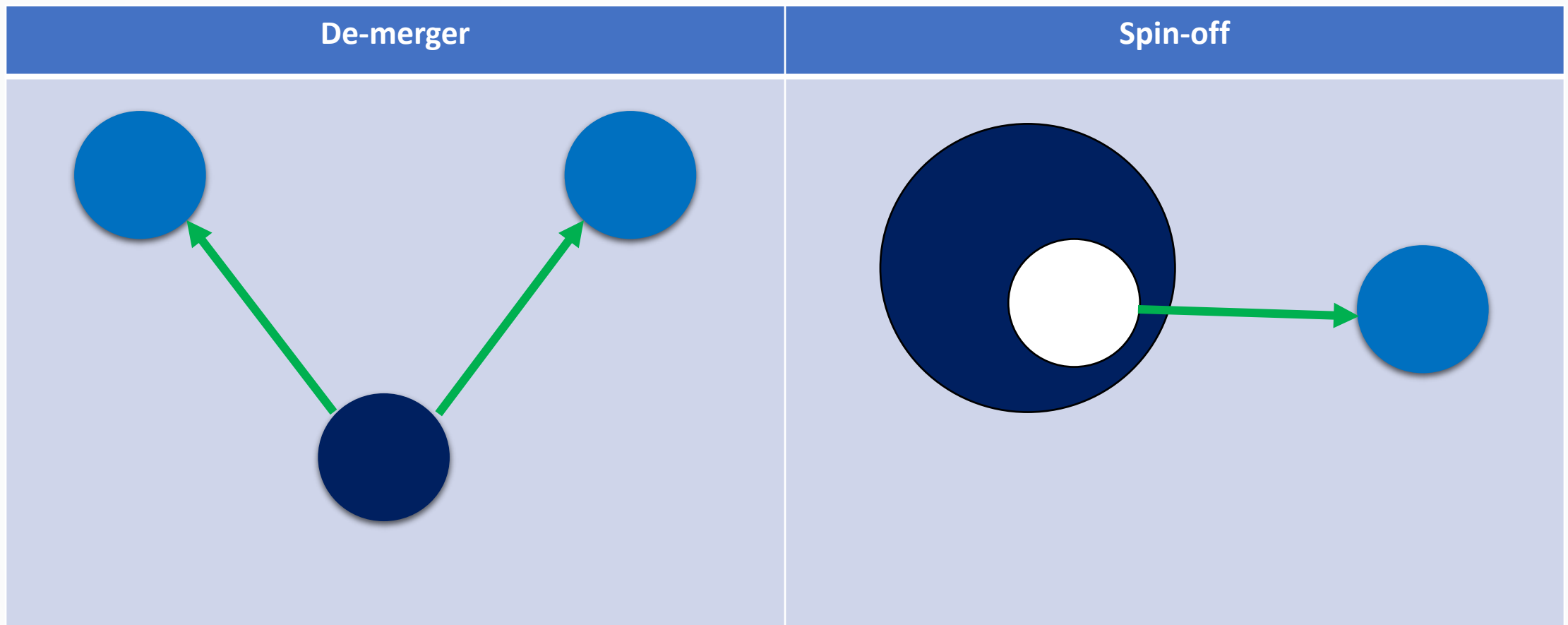
Ways of business reorganization in Russia

Merger



Ways of business reorganization in Russia

De-Merger



Ways of business reorganization in Russia

Issues to consider

- ✓ Anti-monopoly approval (merger control)
- ✓ Conversion of shares (relevant for joint stock companies)
- ✓ Early termination of contracts
- ✓ Relations with employees
- ✓ Tax registration in the location of the acquired or merged companies
- ✓ Reobtaining permits and licenses
- ✓ Re-registration of the real estate and vehicles
- ✓ Bank accounts of the merged companies
- ✓ Tax implications
- ✓ Timing

Ways of business reorganization in Russia

1. Anti-monopoly approval (merger control)

- ❖ Needed for both mergers and acquisitions (including intragroup restructuring)
- ❖ For de-mergers required if share capital of de-merged company is paid by certain tangible / intangible assets
- ❖ Required before starting the merger
- ❖ Possible to substitute with the post merger notification for intragroup restructuring (not recommended)
- ❖ Waived for mergers between direct parent company and its subsidiary
- ❖ Waived for SMEs:
 - Combined asset value of the companies involved and its affiliates does not exceed RUB 7 billion, *or*
 - Combined sales proceeds of the companies involved and their affiliates do not exceed RUB 10 billion
 - None of the companies involved hold dominant position on the market (evidenced by inclusion in the special register)
- ❖ Time-consuming and complicated process

Ways of business reorganization in Russia

2. Conversion of shares

- ❖ Required for joint stock companies
- ❖ Complicated and time-consuming process, BUT could be performed in parallel with merger process
- ❖ Generally 3 main steps:
 1. Issue of additional shares by the acquiring company. NOTE: to be registered with the Central Bank
 2. Conversion of shares of acquired company into shares of acquiring company
 3. Registering placement of shares with the Central Bank

Ways of business reorganization in Russia

3. Early termination of contacts

- ❖ Creditors are to be notified of the reorganization by:
 - Registering the decision to reorganize with the trade register
 - Publishing the notification of reorganization with the media
 - Notifying personally each creditor in writing
- ❖ Creditors may through court require:
 - Early fulfillment of the contract
 - Early termination of the contract and indemnification of damages caused by early termination
- ❖ Waived if creditors' interests are sufficiently secured
 - Bank guaranty;
 - Other security accepted by creditor. *Does setting a penalty which is treated by Russian law as security suffice?*
- ❖ Subsidiary liability of the controlling entity and management bodies if they contributed to non-fulfillment of creditors' claims

Ways of business reorganization in Russia

4. Relations with employees

Employees are to be dismissed		Myth
No need to do anything		Myth
Employees are to be notified 2 months in advance if their employer would be changed	True	
Need to sign amendments to the employment agreements	True	
"Excess" employees may still be dismissed	True	

Ways of business reorganization in Russia

5. Tax registration in the location of the acquired or merged companies

- ❖ Company to be tax registered at each place establishes permanent working places (subdivision)
- ❖ If employees are to continue working at the location of acquired company, acquiring company is to carry out tax registration at this location
- ❖ Certain tax reports to be filed and taxes to be paid at the location of its subdivisions

Ways of business reorganization in Russia

6. Reobtaining permits and licenses

Type of reorganization	Is it necessary and which company is to obtain a new license?
Merger	None if both had before merger
Acquisition	N/A
De-merger	Both
Spin-off	Entity which spins off

Ways of business reorganization in Russia

7. Re-registration of the real estate and vehicles

- Vehicles and real estate are subject to registration in Russia
- Changes of registration data -> necessity of registration actions

Type of reorganization	What to do?
Merger	Re-register vehicles and real estate to the new company
Acquisition	Re-register vehicles and real estate to the acquiring company
De-merger	Re-register vehicles and real estate to the new companies
Spin-off	Re-register vehicles and real estate to the spun off company

Ways of business reorganization in Russia

8. Bank accounts of the merged companies

- ❖ Relevant for merger, de-merger, spin-off.
- ❖ New bank account and bank signature rights
- ❖ Time consuming; officially starts after reorganization

Ways of business reorganization in Russia

9. Tax implications

- ❖ VAT

 - Transfer of assets through reorganization is not subject to VAT

- ❖ Profit tax

 - Transfer of assets through reorganization is not subject to profit tax

- ❖ Field tax inspection may be initiated

Ways of business reorganization in Russia

10. Timing

- ❖ Minimum 3 months (required by law to wait till expiration of 3 months period)
- ❖ Could take up to 6-8 months (including anti-monopoly approvals and registration of shares placement; licenses re-issuing)

Ways of business reorganization in Russia

11. Merger action plan

Anti-monopoly approval

Initiation of merger

- Adopting a resolution to reorganize
- Notification of the tax inspectorate of the adopted resolution
- Notifying employees

Identification of the Creditors; settlements

- Notification of creditors of the adopted resolution
- Settlements with creditors

Completion of reorganization

- Issue of shares
- Approval of the transfer deed
- Election of the management bodies of the newly established company
- Registering new company as a result of the merger / de-merger

Post-completion work

- Tax registration of subdivision
- Reapplying for licenses and permits
- Re-registration of the vehicles and real estate
- Amending employees' contracts
- Opening bank accounts
- Registering shares placement

Ways of winding down the company

Liquidation

Leaving the
company
dormant

Bankruptcy

Ways of winding down the company

Pros & cons

Liquidation

- Time consuming & unpredictable time schedule (settling debts, tax authorities)
- Requires funding and resources
- Most straight-forward way to terminate business
- Controlled process

Leaving dormant

- Requires constant support
- Requires General Manager and bookkeeping
- Does not solve the problem
- Less expensive in the short run
- Easy to resume activity

Bankruptcy

- Practically no control over the process
- Subsidiary liability for management and shareholders
- Only option if insufficient funds to settle all liabilities

Ways of winding down the company

What to consider

- ❖ Dismissing employees
 - Severance payments for downsizing or compensations based on mutual agreement. Notification of employees in advance.
- ❖ Collecting debts
- ❖ Settling liabilities
 - **NB: If there are insufficient funds to settle liabilities, bankruptcy proceedings should be initiated against the company.**
- ❖ Settling intercompany debts / tax efficient way to terminate intercompany debts
- ❖ Transferring remaining assets to shareholder(s)
- ❖ Transferring IPR (if any)
- ❖ Closing the company

Ways of winding down the company

Description of standard liquidation procedure

1. Initiation of liquidation process
 - a) *Adoption of a resolution on liquidation*
 - b) *Appointing liquidation manager (substitutes GD)*
 - c) *Re-issuing the bank signatures cards (if necessary)*
 - d) *Notifying registering authorities of liquidation*
2. Notification of the company's creditors and employees (starting after 2.5-3 months)
 - a) *Publication of a notice of liquidation*
 - b) *Notification of the creditors about the liquidation*
 - c) *Notification of the employees about the liquidation*
3. Settlements with the creditors, collecting accounts receivable, paying accounts payable and selling assets
 - a) *Drafting and approval of an intermediate liquidation balance sheet.*
 - b) *Settlements. Depending on possible court cases with creditors or debtors timing may be from 3 weeks up to 2 years*
 - c) *Drafting closing balance sheet*
4. Closing down the company (several weeks)

Ways of winding down the company

How long does liquidation take?

**Usually
takes from
6 months
to 1.5
years
depending
on:**

How quickly liabilities are settled by the company

If any of the creditors initiate court proceedings

The company does not have enough money to settle liabilities: getting more financing, selling equipment, etc. takes time

Collecting accounts receivable may take time (debt collection procedures might be needed)

Tax authorities and field tax audit – possible claims from tax authorities and possible litigation

Ways of winding down the company

Leaving company dormant. What to consider

- ❖ Company continues to exist, but does not operate

Ways of winding down the company

Leaving company dormant. What to consider

- ❖ Dismissing employees
 - Severance payments due to liquidation or compensations based on mutual agreement
- ❖ Collecting debts
- ❖ Settling liabilities
- ❖ Transferring or selling assets
- ❖ Company should have a general manager
- ❖ Company should have an address to communicate with third parties and authorities
- ❖ Company should file tax & financial reports (internal accountant / outsourcing)

Ways of winding down the company

Bankruptcy

- ❖ Is a must if certain conditions are met
- ❖ Subsidiary liability of management and shareholders
- ❖ External bankruptcy manager is appointed
- ❖ Ban on settlements with creditors (allowed in the last stage of bankruptcy)

Sale of business

Option 1.
Sale of
company

Option 2.
Sale of
enterprise

Option 3.
Sale of
assets,
rights and
obligations

Sale of business

Option 2: sale of enterprise

- ❖ Enterprise is a property complex including assets, land plots, real estate, equipment, goods, raw materials, trademarks, as well as accounts payable and accounts receivable
- ❖ Labor force and licenses are generally not transferred
- ❖ Requires registration of the enterprise as real estate
- ❖ Complex and rare in practice
- ❖ Subject to VAT and profit tax for seller

Sale of business

Option 3: sale of assets

- ❖ Transferring pledged assets might be difficult
- ❖ Transfer of accounts payable will and accounts receivable may require negotiations with the debtors and creditors
- ❖ Transfer of licenses might be impossible
- ❖ Tax and other risks are not transferred to the purchaser
- ❖ Could be reclassified as the purchase of an enterprise, resulting in inheritance of all liabilities thereof
- ❖ Subject to VAT and profit tax in Russia

Thank You!

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