

MOSKAU MINSK



Liability-related issues of market exit

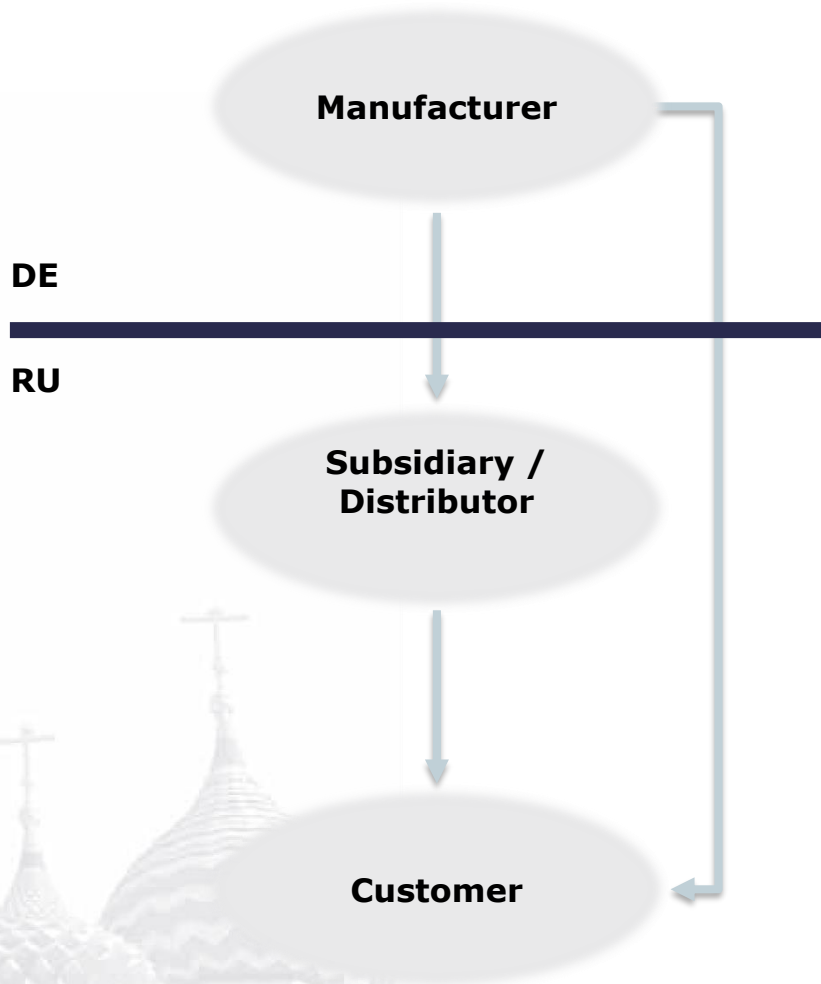
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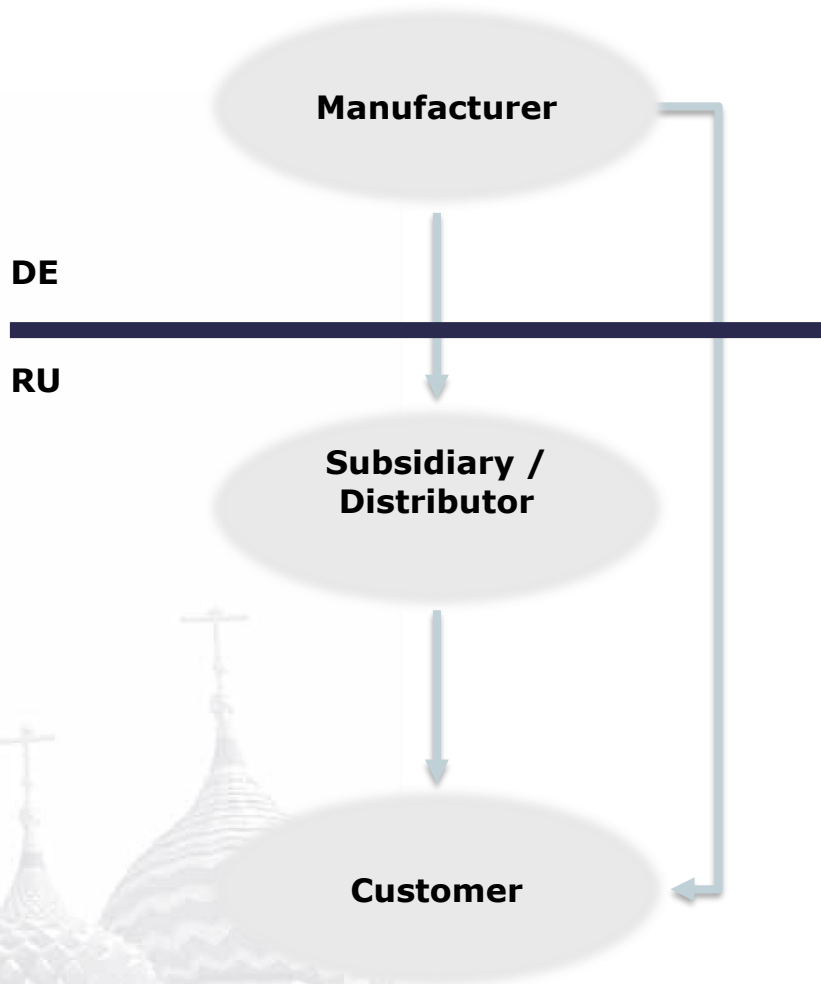
Market exit scenarios



- **Termination of agreements with customers / distributors / subsidiary**
- **Sale of assets located in Russia**
- **Subsidiary:**
 - **Suspension of activities (“freezing”)**
 - **Liquidation**
 - **Sale of shares (including MBO)**



Types of liability when exiting the market



- **Liability of a manufacturer / subsidiary / distributor:**
 - contractual
 - statutory
- **Liability of management**



Issues to assess/analyze when exiting the market

- Settlement of contractual obligations:
 - consequences of non-performance/termination of contracts
 - presence of post-contractual obligations (incl. warranty obligations)
 - possible claims after termination of contracts
 - assessment of the possibility of making payments/final settlements in view of sanction/counter-sanction-related restrictions
- Risks of statutory liability relating to products
- Risks of litigation, possibility of recognition and execution of court decisions at the manufacturer's location
- In case of "freezing" of the subsidiary: consequences of claims, consumer complaints, risks of bankruptcy and subsidiary liability of the manufacturer as a shareholder
- Sale of property subject to claims
- Risks for executives (incl. managers of subsidiaries)
- Intention to return to the Russian market in the foreseeable future
- Preservation of existing license agreements subject to restrictions under the Decree of the President of the Russian Federation No. 322 of 27.05.2022



Contractual liability

General consequences of non-fulfillment of obligations under supply/construction/service contracts

Recovery of losses (direct damages + lost profits if not limited/excluded under contract, including, for example, in case of unilateral termination)

Recovery of forfeit penalty (for late performance / use of advance payment)

Additional contractual liability measures (fines, forfeit penalties, etc.)

Procurements under 44-FZ and 223-FZ: entry in the register of unreliable suppliers, fines under the Code of Administrative Offences of Russia for the company and its officials

Request for gratuitous elimination of defects / reduction of the contract price

Important:

- claims in regard to defects may be lodged within 2 years, when no warranty period established
- applicable law, venue, limitations of contractual liability



Statutory liability

Products' non-compliance with technical regulations
Obligation to eliminate defects or to voluntarily / involuntarily recall the product + compensation for damages
Administrative fines
Violation of consumer rights
Defects of goods (during the warranty period/expiry period, 2 years or 5 years for immovable property if no period is provided for) – compensation for damages, replacement/return of goods, price reduction
Compensation for (moral) harm
Substantial defects of goods (within 10 years if the term is not provided for) – compensation for damages, replacement/return of goods, price reduction
No possibility of repair and maintenance of goods during the service life of the product (10 years if the term is not provided for) provided for by the manufacturer – treated as a defect of goods
Fines in accordance with the Code of Administrative Offences of Russia for the company and its officials, fine in the amount of 50% of the amount awarded to the consumer under the Law "On Protection of Consumer Rights"
Payment of forfeit penalty for each day of delay in case of violation of the 10-day period for review of claims (1% for goods, 3% for works/services)
Defects of goods when selling through third parties
Recourse claims are possible (e.g., by distributors depending on defects of goods and contractual terms)



Liability of a subsidiary: currency and tax regulation

Tax regulation

In case of liquidation of a subsidiary – risks in connection with an on-site tax audit

Risks of expenses for satisfaction of counterparty's claims being disputed in the absence of parallel claims against the manufacturer

Risks of criminal liability for management in case of additional accruals of RUB 15 million +

Currency regulation

Non-fulfillment of repatriation obligation:

- Return of advance payments paid for non-delivered goods
- Return of loan amounts granted to foreign persons/interest payments

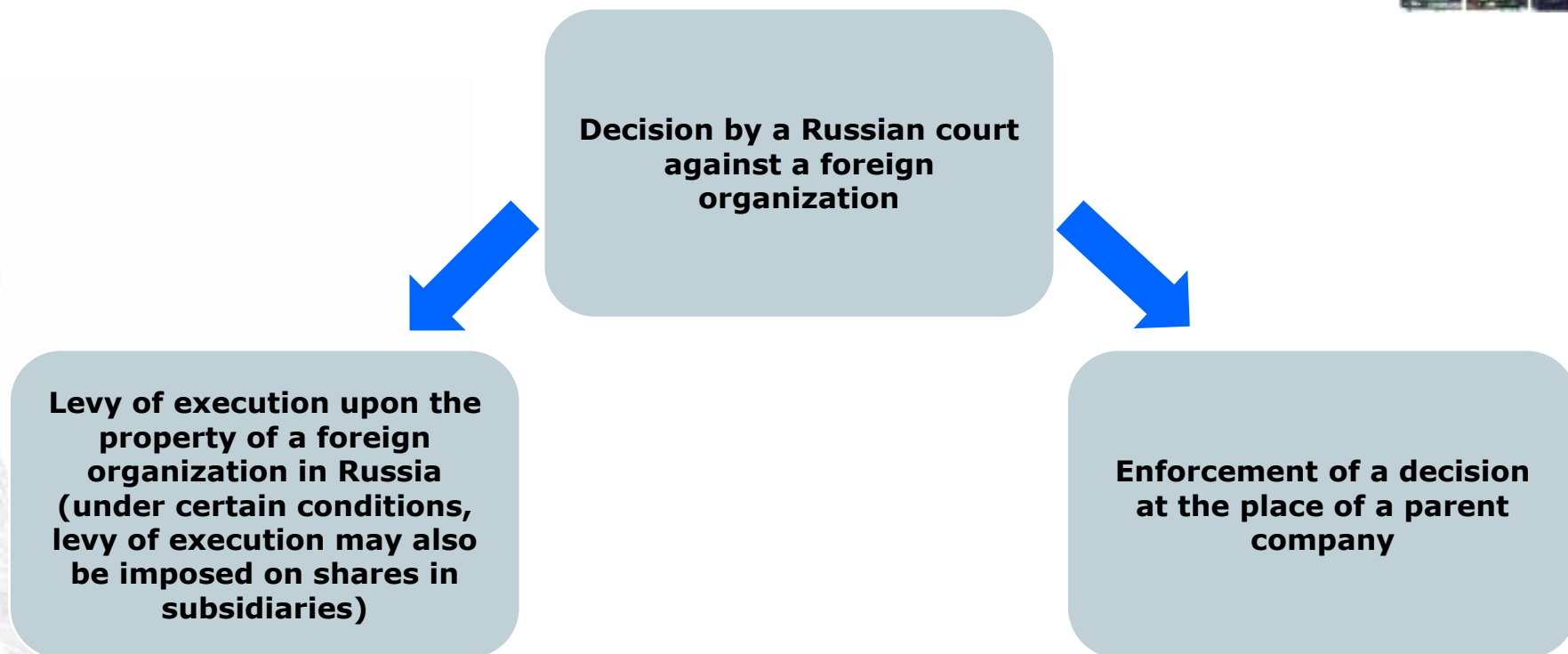
Failure to properly fulfill/terminate obligations

Fines in accordance with the Code of Administrative Offences of Russia for the company and its officials;

Risks of criminal liability for management should the amount of illegal transaction(s) exceed RUB 100 million



Enforcement of decisions of courts of the Russian Federation



Limitation period – 3 years (general rule)

- **General rule:** from the day the person learned or should have learned about the violation of the right
- **A definite period of performance:** from the date of expiry of the term of performance
- **Recourse:** from the day of performance of the main obligation



Enforcement of decision of courts of the Russian Federation

Commercial arbitration only	Commercial Arbitration and State Courts*
Austria	Bulgaria
Belgium	Hungary
Germany	Greece
Denmark	Spain
Ireland	Italy
Luxembourg	Cyprus
Malta	Latvia
Netherlands	Lithuania
Portugal	Poland
Finland	Romania
	Slovakia
	Slovenia
	Croatia
	Czech Republic
	Estonia

*on the basis of international agreements in force providing for the recognition and enforcement of decisions of Russian courts in civil cases concluded between the Russian Federation and the relevant foreign state



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