

M&A Basics: Structures, Approvals, Process

Presentation by Barry Levenfeld
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YIGAL ARNON & CO.
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Yigal Arnon & Co. : Recent M&A Transactions



Spansion Inc.
has acquired
Saifun Semiconductors Ltd.

\$368,000,000



Closed: March 18, 2008



IBM Corporation
has acquired
XIV Ltd.

\$300,000,000*



December 31, 2007
*according to press reports



France Telecom Viaccess
has acquired
Orca Interactive Ltd.

\$21,400,000




Signed: March 9, 2008



Red Hat Inc.
has acquired
Qumranet Inc.

September 3, 2008



Fraud Sciences Ltd.
was acquired by
eBay Inc.

\$169,000,000



January 30, 2008




John Deere & Company
has acquired
Plastro Irrigation Systems Ltd.



\$170,000,000*




Signed: February 7, 2008
*approximate amount depends on exchange rate fluctuations



Symantec Corp.
has sold its Israeli assets to
Vector Capital

Amount Undisclosed



Closed: March 7, 2008



Medtronic Inc.
has acquired
Ventor Technologies Ltd.



February 23, 2009

Outline of Presentation

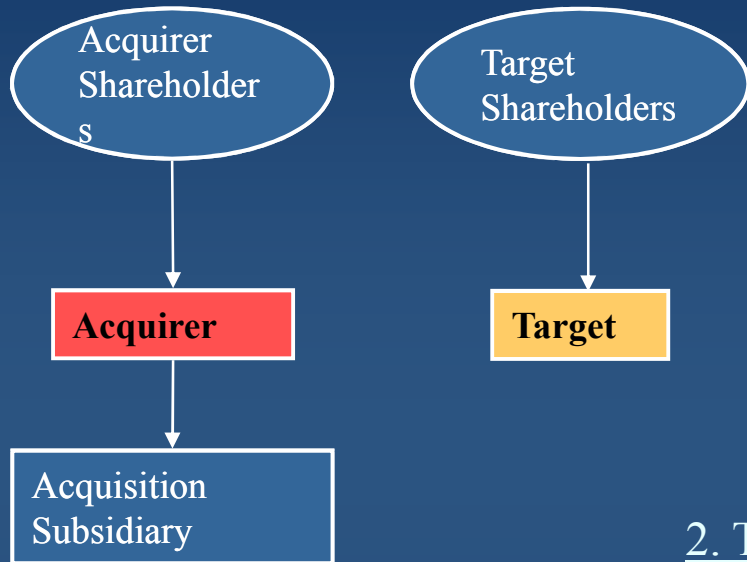
- M&A Structures
- Regulatory Issues
- Process

M&A Structures

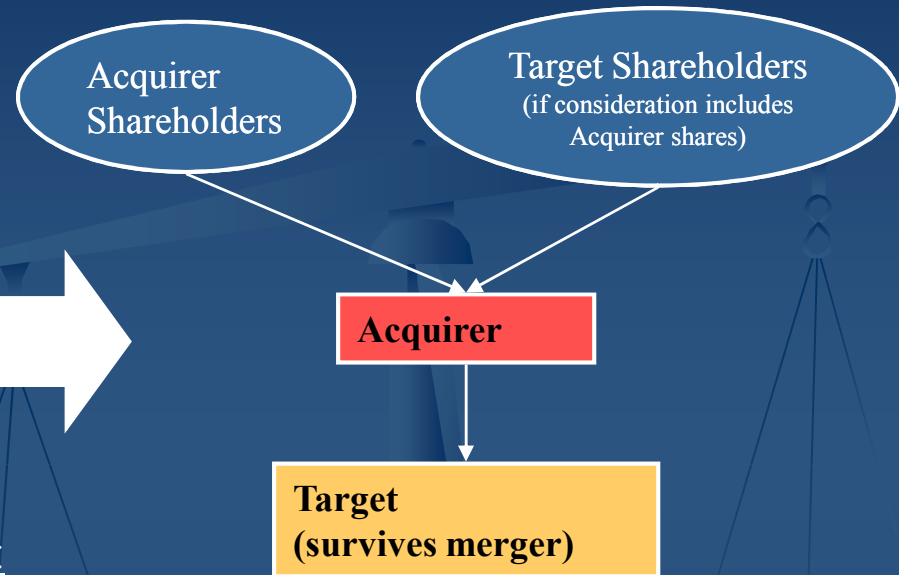
- Asset Acquisition
 - Potentially Fast
 - Need to transfer assets, contracts, employees, etc.
 - Two layers of taxation
- Acquisition by way of share purchase
 - public target – tender offer not practical
 - private target – best with 100% approval
- Best practice: Reverse Triangular Merger

Reverse Triangular Merger

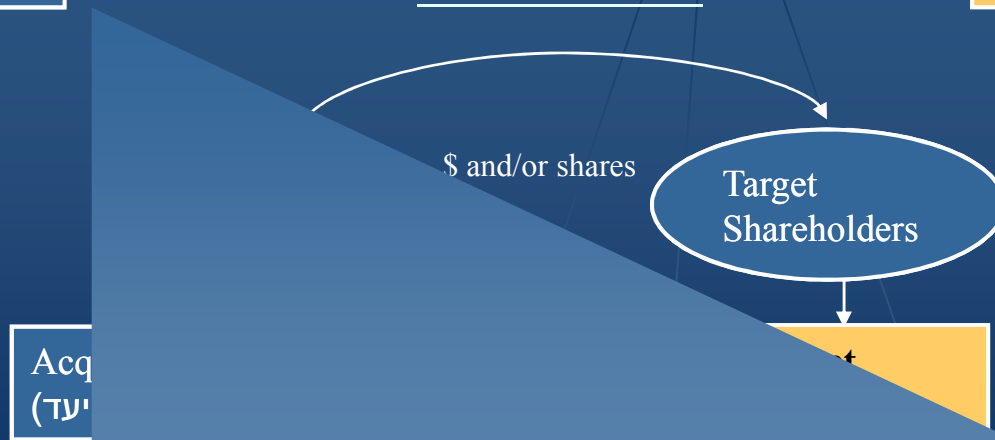
1. Start:



3. Finish:



2. Transaction:



Reverse Triangular Merger

Pro

- Only need majority of target shareholders attending meeting
- US companies/lawyers understand it better
- All agreements, etc. of target remain – no assignments needed
- Only capital gains taxes – foreign shareholders often exempt
- Only viable option for public targets

Con

- Originally, some uncertainty regarding reverse mergers, but now the courts have “blessed” this structure
- Can close only on letter of 50 days from signing or 30 days from shareholder approval

Court Approved Plan Of Arrangement

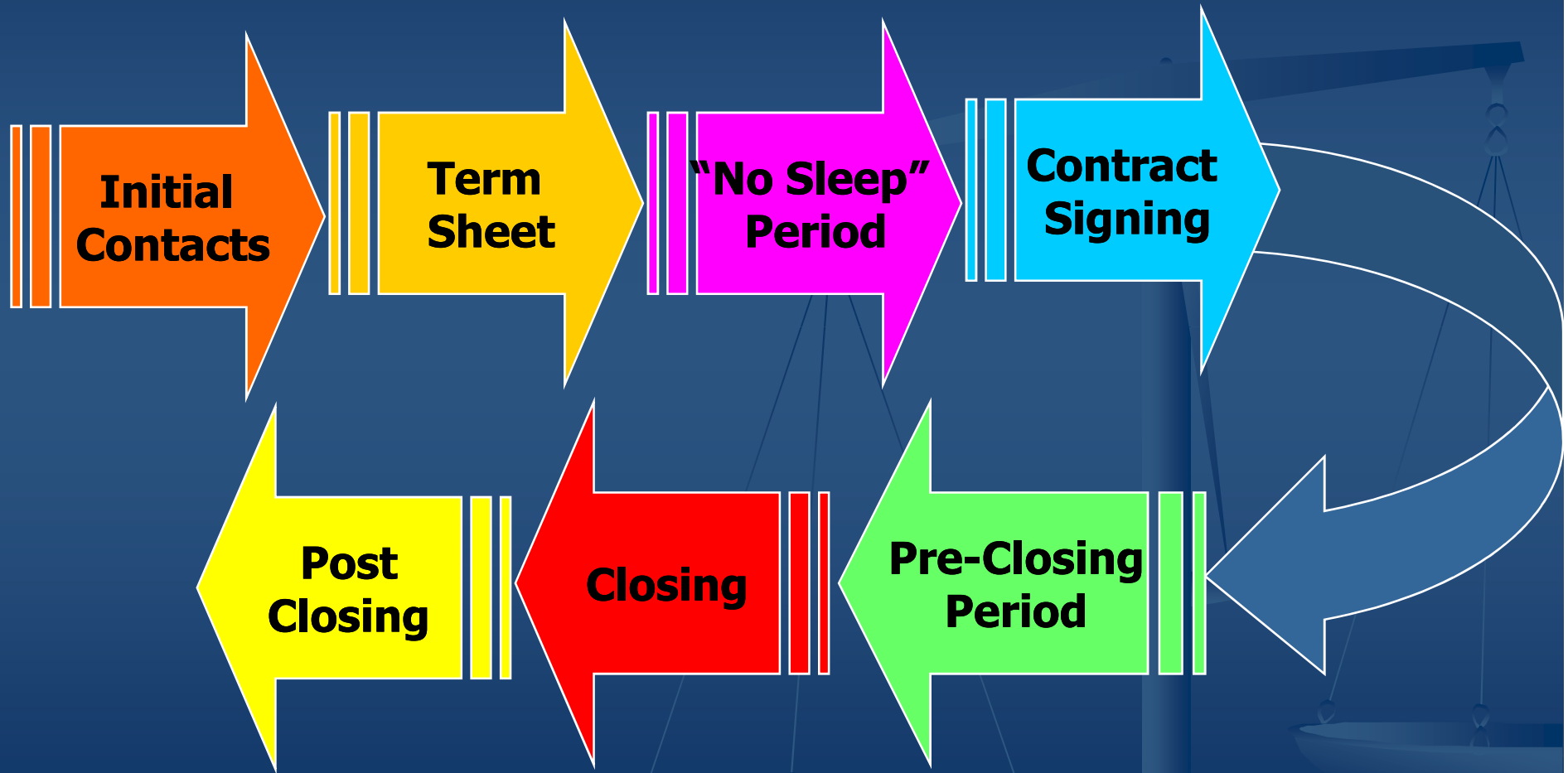
- To overcome securities law and other problems, sometimes the merger is implemented as a “Plan of Arrangement” (essentially a court-approved merger)
- The District Court approves the convening of a meeting of Target’s shareholders
- Required Shareholder Approval
 - 51% of the shareholders present
 - Representing at least 75% of shares present
- Court Approval
 - Court then considers fairness of the transaction
 - If all shareholders are treated equally, the deal will be considered fair

Regulatory Concerns



- Antitrust
- Israel Securities Authority
 - Options substitution
 - Acquirers using stock as consideration
- Taxation
- Office of the Chief Scientist
 - Approvals to get the deal done
 - Restrictions applicable after the deal

M&A: The Process





Initial Contacts

- Business and technical contacts, possibly with multiple potential purchasers
- Target needs to be sure sensitive technical and fiscal information is protected
- Broad outlines of transaction are discussed
- Bankers (if any) involved; lawyers and accountants in background



Term Sheet

- Not legally binding, but morally binding and hard to escape
 - Need good reason or new facts to change terms
 - Almost always contains binding “no shop”
- Don't sign without lawyer and accountant involvement
- Different schools of thought regarding level of detail
- Only select few should know about the deal



“No Sleep” Period

- Lawyers and business people transform term sheet into full blown agreement: intense negotiations and exchanging of drafts
- Due diligence proceeds in parallel
 - Legal/IP
 - Accounting/Tax
 - Business
- Intense management involvement – hard to run the company at the same time
- Circle of knowledge expands; need to keep confidentiality
 - Use of Code Names



Contract Signing

- Binding Legal Obligation
- Remembers signing is not closing (although they may be simultaneous)
- Deal usually becomes public knowledge
 - Press releases
 - TASE and SEC filings
- No champagne yet!



Pre-Closing Period

- Obtain regulatory approvals
 - SEC/ISA
 - OCS
 - Tax Rulings
 - Antitrust
- Convene shareholders meeting to obtain shareholder approvals
- Restrictions on target's actions
- Mandatory waiting periods before closing



Closing

- Money changes hands; shares issued
 - Public deals use payment agents or exchange agents
 - Sometimes some funds deposited in escrow
 - Trust company involved for option issues
- Deal is “done”
- Usually virtual – no meetings in big conference rooms



Post-Closing

- Paying Agent pays target shareholders
- Escrow Agent holds funds for escrow period
- Filings with Registrar of Companies, etc.
- Integration: Now the real work begins
 - Employees
 - IT systems
 - Corporate culture



Thank You!

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