Mobility And M&A: Managing Global Talent During Organisational Disruption

Many of us can feel as though our organisations and our work lives are constantly being disrupted, a forgivable point of view given the last few years. This article focuses on the specific types of organisational disruption which can accompany any corporate transaction, whether that is a merger/de-merger, IPO, carve-out or spin-off, and considers how HR and global mobility teams can manage through, or even thrive in, times of merger and acquisition (M&A)-driven change.

No matter how well planned for, transactions undoubtedly bring disruption across a business – even though they also bring real opportunity. Areas with which mobility overlaps, such as organisational structures, leadership and headcount, policies, processes, vendors, and technology systems can all be subject to this disruption. Because of the range of business areas impacted, HR and global mobility professionals need to engage at an early stage and increase diversity of thought and action when considering how to assess and manage the risks and opportunities which present themselves.

Although some disruption is inevitable, there are a number of things which you can get right before, during and following a transaction, which will deliver immediate and longer-term results for your organisation and your global talent, and therefore this is an area which requires a good degree of thought and care.

Assumptions And Clarifications

Before we consider the transaction lifecycle in more detail, let's review some widely held assumptions around the scope and role of mobility in M&A, and in organisations in general.

1. Mobility Just Means 'Expats'

You know the ones, local employees sent overseas on a 2–3-year tax equalised assignment, relocated with their families etc. Well, yes it can still mean that, but today it also relates to a number of mobility personas - business travellers, cross-border commuters, non-resident Directors, contingent workers, virtual assignees etc. A new and fast-growing mobile employee group who can create compliance obligations and risks on a truly global scale are remote workers. In much the same way as we have seen with off-payroll compliance (e.g., IR35 in the UK), which is an area of review at the due diligence stage, the topic of remote working is now more widely recognised, and potential corporate purchasers are getting wise to the opportunity to apply a 'price chip' where there is perceived or actual risk in a target business.

In a previous IHRA article[1] we outlined the benefits and risks of remote working, so won't repeat those here, but one outcome of facilitating remote working or using it as an enabler to access global talent is the increased usage of Employers of Record (EOR); for example, to deliver pay in a location where you have no corporate presence. You may be familiar with EOR service providers in the context of M&A as they have been commonly engaged to meet urgent compliance gaps around transaction activity (more on that later).

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Due to the diverse global mobility models mentioned above, the challenges that HR teams must address are arriving at a faster pace and are more complex, requiring agility, global collaboration and data connectedness like never before. These challenges are exacerbated when M&A activity is introduced.

2. Mobility Is Immaterial In The Context Of M&A Activity

Naturally, corporate transactions will not 'live or die' due to how well or otherwise a mobility population is managed, but the risks in this area can often go somewhat 'under radar' during due diligence, with attention only finally turning back to key mobility issues once the 'dust has settled' on other transaction challenges.

Whilst perhaps not always seen as being financially material, being insufficiently prepared to address mobility-related issues may be operationally material, with the potential to create far-reaching impact across the organisation. A potential impact could be that on transaction day +1 business activities in country X can no longer operate because employees have now lost their right to work. Or a Senior Executive cannot clear immigration for a critical meeting. How would it look (and feel) if you now cannot deliver pay to employees in country Y or Z?

For organisations who use mobility as an enabler to deliver an effective global talent strategy, 'getting it right' as early as possible (accepting that aligning mobility policies and processes won't be top of list on day one) will deliver benefits. From the perspective of the business this could mean getting into 'noise-free' business as usual mode as soon as possible and maintaining global corporate, employer, and legal compliance. For your workforce there is also a more human element to be considered and getting that right could mean maintaining or improving engagement, retention and the productivity of your key talent - all important to a successful post-transaction business.

The Three Phases Of M&A Activity

The way in which mobility is managed in an organisation has the potential to impact a diverse and potentially risk-generating global employee population – more than just 'expats'! Effective global talent management at each stage has the potential to support the delivery of a 'low-noise' transaction experience to the benefit of all. With that premise agreed, let us move on to consider the three key transaction phases: (i) Pre-transaction, (ii) Post-transaction, the first 100 days, and (iii) Post-transaction, beyond 100 days.

(i) Pre-Transaction: Making The Time To Think Beyond Day One Will Pay Off Later

What is most important during this phase can and will vary by transaction type, and which side of the transaction you are on, but fundamentally activities undertaken pre-transaction tend to be focused on assessment and identification with less time available for action or bigger-picture thinking.

Process mapping and data gathering are crucial activities. For example, it is always surprising how many organisations are unable to quickly confirm the locations in which they have employees or contractors operating. Ensuring that global payroll, tax, and other reporting obligations related to stock awards for mobile individuals are identified and managed can be particularly challenging, and highly emotive for the employees involved. Getting to the point where you have a 'single source of truth' will make compliance easier to achieve, and will make strategic planning and analysis much more impactful.

During the pre-transaction phase, HR and mobility teams may (rightly) be involved in high level HR/tax/legal due diligence risk checks to identify any deal-breakers which would erode value, but their participation and impact could and should extend beyond risk evaluation.

For example, after assessing your current state and concluding on how any necessary and immediate changes will be handled, you could begin to think about what mobility could look like in your new reality. Be bold! - this will enable more effective management through the potential disruption ahead. It is never too early to start thinking about what would need to be true, e.g., investment in technology, size and skills of team etc., to deliver what the business will be asking you for in due course.

A transaction can present an excellent opportunity for mobility leaders to plant seeds of thought and push for change, which may not have otherwise been accepted. It may present a window to secure transaction-related budget to deliver programme improvements for which you may have been campaigning for some time.

As a starting point, these are some of the key areas you may wish to consider pre-transaction:

- **General:** Review and map programme information to gain better visibility of current states (e.g., demographics/impacted populations, operating model, policies, technology, vendors, etc.)
- **Payroll:** Cross-reference active and trailing populations, e.g., bonus/equity reporting, against vendors or in-house capability to identify any gaps to be backfilled with a minimum viable process
- **Immigration:** Review any existing sponsorship obligations and sponsoring licences, review the work authorisation status of employees, understand and map any changing roles/responsibilities/job titles (updating visas accordingly)
- **Talent:** Prepare to fulfil any talent requirements in support of transaction activity (i.e., if new assignments are needed); measure the impact of potential redundancies on existing assignee population (e.g., early repatriation costs, tax treatment of termination payments, accelerated stock vesting)
- **Technology:** Identify critical systems and data sources and confirm ongoing access, e.g., compensation and benefits data, payroll systems etc. In the case of a spin off – is everything ready to be stood up outside of the former technology ecosystem?
- **Vendors:** Catalogue vendors and review contractual arrangements to ensure continuity of provision post transaction, e.g., are there any audit related restrictions which require a change of tax, payroll and immigration vendor(s)? Are there changes in terms to be negotiated e.g., increased scope/scale could reduce pricing for a combined business, or are you prepared for vendors to seek to change pricing for a drop in scale following a spin off?
- **Change Management:** Develop communication strategies for existing assignee populations (e.g., to mitigate attrition upon repatriation/post transaction).

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All of this is easy to say but difficult to do, and one should not underestimate the challenge. You will need a raft of data, hours in the day and access to stakeholders across your business at a time when all three of those resources may be in short supply, and at a time when your global workforce, team and you may be feeling uncertain and anxious about the future.

(ii) Post-Transaction, Days 1 - 100; Is Day 1 A Non-Event Or Are You In Survival Mode?

In many ways we need to stop thinking of day one as 'day one'. In many instances starting to do something only on day one may mean you are already too late! Ideally what you want to aim for is day one being a non-event, but this can be very difficult to achieve in practice.

There may have been sensitivities with sharing certain types of information in advance of day one. Teams may only be provided with demographic data, policy information, compensation information etc. at this stage. Knowledgeable and valued colleagues may not have made the transfer over to the new entity.

During the initial days, immediately post-transaction, HR and mobility teams may need to be very operationally (re)active, ensuring that existing assignee experience is maintained – no drop in the levels of focus or service provision – and that corporate compliance is delivered.

Getting people paid is one of the most urgent and critical tasks to be taken care of. As mentioned earlier, the increased use of EORs when it comes to remote working - though EORs have supported businesses by providing employer services in the aftermath of transactions for some time now. For example, if you have acquired a business with employees in locations where you have no entity or infrastructure, or if you have divested in a location and no longer have infrastructure in a country where you still have people, what can you do to quickly stand up the compliance processes you need to deliver? Whilst not a silver bullet for all elements of talent engagement and compliance, EORs are often used for short-term purposes until longer-term needs are assessed and decisions are made in regard to a more permanent global talent engagement and deployment solution.

Transactions often come with expectations or targets for cost and/or headcount reduction in relatively short order, but terminating mobile individuals should be carefully considered. As mentioned above, it is important to understand where employees are (and where they have been!) in order to manage through a termination process, without being impacted by unexpected costs or risks. For example, remote workers may have obtained employee rights for the country in which they are working, but this may not be their employment country. Termination packages, including stock being delivered on exit, may need to be reported and subject to local taxes in a current or former host location etc. Advance knowledge of these types of issues may influence decisions taken, or at least enable more effective management of them.

Beyond getting the job done, there are some strategic aspects to be considered in the immediate post-transaction phase:

- **Operating Model/Processes:** Determine new ways of working e.g., evaluate team bandwidth and consider increasing headcount to manage additional cases; update roles/responsibilities, ensuring alignment with new corporate structure
- **Corporate Structure:** As business plans become clearer, review global corporate structure and strategy and start to consider how global talent engagement and

deployment could best be managed within this, e.g., Global Employment Company (GEC), EORs, local employing entities etc.

- **Policy:** Review and consolidate mobility, tax and immigration policy types and provisions to promote a consistent and equitable experience across assignee populations e.g., determine whether to continue to use separate current policies for existing assignees or transfer to a new policy
- **Technology:** Evaluate opportunities to streamline technology ecosystems
- **Vendors:** Review vendor landscapes and identify areas for alignment or consolidation (e.g., explore possibilities for global vendors to absorb the scope of local contracts in place, if applicable)
- **Change Management:** Continued communication with global workforce as decisions are taken and changes implemented.

Why the focus on the first 100 days? It is because during this period you will have started to discover the truth of your new reality. Any theories or intentions you had about what and how your mobility programme would need to deliver, will start to be borne out or dispelled. Before it becomes too difficult to implement permanent change (e.g., by undoing or optimising any necessary, yet sub-optimal, temporary arrangements), or before mobility retreats out of the limelight to resume being perceived as a back-office function, the first few weeks and months post-transaction are when you can (re)evaluate and socialise your ideal longer-term mobility programme strategy and delivery frameworks.

(iii) Post-Transaction, Beyond 100 Days; The Pay Off

As mentioned earlier, M&A-driven organisational disruption is not only something to be managed but is also something which can be exploited – there may be unexplored opportunities, untapped efficiencies, and unanticipated benefits.

Until now in the transaction cycle there has rightly been a need to prioritise getting the job done, but having already extinguished the fiercest fires in the first 100 days – everyone got paid and no one was stopped at the border! – the longer-term post-transaction environment allows for time and attention to be paid to closing off temporary arrangements or dependencies and replacing them with optimised permanent operations, technology and vendor ecosystems.

It is critical before finalising and implementing any mobility programme change that there is collective understanding of the role of mobility in the new (merged/spun out) organisation, as part of the wider global talent management strategy and approach. This requires HR and mobility teams to identify and engage with stakeholders across the business.

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Mobility is an enabler to the engagement, employment and deployment of people across the world and so, among others, mobility leaders should be considering the following questions – and be ready to articulate the answers to secure buy-in:

- **Global Expansion/Talent Deployment:** What approaches can be used to engage/employ/deploy global talent legally in all locations (current and future)?
- **Global Talent Acquisition:** How can we engage/employ key skills physically sited in other locations?
- **Long-term Remote Work:** What options are available to enable compliant long-term cross-border remote working, from both a business and/or individual driven perspective?

Mobility is in and of itself an exciting place. In the post-pandemic world of global talent, with new market pressures and increased demand for flexible working, what we used to consider as 'in scope' for mobility teams has already markedly changed, and there is more than enough to manage. Adding in M&A-driven change could be seen as one disruptor too many, or perhaps it could be just the catalyst to keep driving the ongoing transformation of talent mobility, repositioning it as a dynamic, diverse and strategic function, one with the ability to make a material impact on a business whether pre, mid or post M&A transaction stages. Embrace the change, and the challenge!

References:

(1) *Winter 2022 02 International HR Strategy.pdf (internationalhradviser.com)*

HAYLEY STRACHAN
Director
Mobility M&A Lead, Global Employer Services
T: +44 1224 847385
E: hstrachan@deloitte.co.uk

Hayley leads the Global Employer Services team in Scotland. She oversees the delivery of GES advisory and compliance services to clients in the region - predominantly in the Energy, Resources & Industrials (ER&I) and Financial Services sectors. Hayley also leads our Global Talent and Mobility Advisory consulting services in the area of Mergers, Acquisitions, and Divestitures. Hayley has a degree in Economic Science and a Masters in Chinese Studies. She is a current yogi and lapsed runner and cyclist, having completed over 50 half marathons and the Deloitte Ride Across Britain (980 miles in 9 days!).