

Organisational Structures: Where Do The Dotted Lines Go?

Organisational structures within multinationals take a huge variety of different forms, some carefully planned, some accidental. Juliet Carp, Employment Partner at Speechly Bircham LLP takes a look at some related technical issues.

It used to be quite normal to talk about the “law of master and servant”. Most workers knew exactly who “the boss” was and most bosses knew exactly who was “under” them. Now, of course, reporting lines are crossed and blurred and there is a strong emphasis on “working together” in a more informal way. Most of us would see this as a positive development but it is not always easy now to work out who manages who. Often an individual will have more than one person to report to and the picture is even more complex within multinationals.

If I were to ask a UK HR Manager who she reported to she might, for example, say:

“My line manager is the UK Managing Director and this is confirmed in my employment contract. But I have a functional dotted line to the International HR Director at our parent in New York, and I also cover our Paris office because they don’t have enough people to have their own HR team. I normally report to the European Area Manager when I do Paris work....”.

The modern World is complicated and structures reflect this. Does this really matter? The short answer is “yes it can”. That does not mean that everything should change or that every reporting arrangement needs to be approved by a lawyer, just that we should be aware of the way the preferred structure is likely to interact with other things - particularly things that cost money like tax. This helps us to assess risk better, ask the right people for guidance and make sure any necessary practical changes are made quickly.

At a very basic level, reporting lines are a strong indicator of the identity of an individual’s employer. If Jane Bloggs is employed by Tiny Ltd, I would expect her line manager to also be an employee of Tiny Ltd. If Jane’s line manager is an employee of Big Plc that may be an indicator either that Jane is really an

employee of Big Plc or that her line manager has a role in Tiny Ltd.

In an ordinary UK domestic employment law context this probably will not make much difference. For example, if Jane and Tiny Ltd fall out, Jane might make a legal claim. An Employment Tribunal might decide she is employed by Big Plc but getting her employer wrong may not make much difference to the group’s bottom line. Does it make a significant difference to group profits whether Tiny Ltd or Big Plc has to make a compensation payment to Jane? The English taxman probably has the money he is expecting anyway.

In an international context getting the identity of the employer wrong can have much more serious consequences. Here are some examples of areas where this might make a difference.

- Internationally mobile employees: The identity of the employer could make a significant difference to the individual’s tax or social security bill, for example where tax relief is available on housing for assigned employees but not local hires. If the employee’s remuneration is tax equalised it may be the business that picks up the extra costs.
- Intellectual property: Typically, the employer owns intellectual property created by its employee. If the creator is not employed by the “right” group company intellectual property may be created in the wrong place. Fixing this could potentially lead to a big tax bill.
- Benefits and insurance arrangements: Usually these arrangements apply to employees of specific companies. Getting the employer wrong could, for example, lead to insurance being invalid, the employee not being eligible to participate in a plan or additional tax or funding costs.
- Corporation tax, VAT and other taxes: Most multinationals take a great deal of care over their corporate structures. Getting individual arrangements wrong could, for example, undermine transfer pricing compliance, lead to VAT being due on intercompany payments, create a permanent establishment for corporation tax purposes in the wrong place or

mean that a corporation tax deduction is not available.

Of course, reporting lines are not the only determinant of an individual’s employer and it is possible to structure a role so that there is one clear “line manager” who takes key “employer” decisions, while keeping other channels open for more informal business-related discussion. It would be sensible though, if reporting lines are a bit muddy, to make absolutely sure that other facts are consistent with correct employer status, for example, that the right company’s representative signs the employment contract, the right headed paper is used to communicate a pay rise, the right company makes salary payments, business cards are appropriate etc.

These issues should be considered before an offer of employment is made and also later on if things change. For example, an individual may take on extra duties when a colleague is absent or markets change. If there is any doubt about the position of an employee within an organisation and whether reporting lines are consistent it may be sensible to start by talking with internal tax specialists.

“Dotted lines” may look good on paper but we do need to understand what they mean practically. There is a big difference between a parent’s IT, HR or legal function overseeing group activity/liasing with specialists in other group companies and working across the World as one seamless business. It is so easy to forget that multinationals are usually structured as a group of separate legal entities for good reasons.

In HR, for example, it is common for a parent company’s HR specialist to take the lead in managing the hire or dismissal of an employee based at an overseas subsidiary. This raises some quite complex issues, for example:

- personal data about the employee will be flowing across borders and the business will need to ensure that it has complied with applicable privacy laws
- legal privilege may not apply to related advice (some countries for example do not recognise privilege for advice given by an in house lawyer)
- there may be a temptation for the

“wrong” people to make decisions which may prejudice defence of legal claims and in some situations lead to a “void” dismissal

- if litigation does arise there may be additional jurisdictional issues to deal with and additional claims may be available to the employee
- compliance with disclosure obligations could be complicated
- people from the parent company and the parent company itself may be unnecessarily drawn into litigation;
- it may be appropriate to document the inter company arrangements and charge a fee for services provided by the parent to the subsidiary.

Clearly, this does not mean that HR issues should never be managed from another country but if they are this should be done with “eyes open”. A relatively relaxed approach might be taken to dealing with a simple disciplinary matter, whilst allegations of fraud might be treated with more care.

It is worth keeping an eye on dotted line reporting and functional overlap. This is not just a line manager or HR issue but a whole business concern.

Juliet Carp, Speechly Bircham LLP,
juliet.carp@speechlys.com

Disclaimer: This article is intended to provoke thought not provide advice and is no substitute for up to date, fact specific advice from specialists from relevant jurisdictions.



Juliet Carp
Partner,
Speechly Bircham LLP.
Juliet specialises in UK and international employment law and advises on all aspects of UK employment law.
juliet.carp@speechlys.com
+44 (0)20 7427 6412
www.speechlys.com



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