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HR Guide for Cross-Border Deals

Managing and Engaging Talent Through Mergers, Acquisitions and Divestitures

Introduction

In today's business world, more companies are turning to cross-border mergers and acquisitions (M&As) to expand operational footprints, mitigate risks and improve overall financial performance.

Far from an easy or fail-safe process, according to research published by Harvard Business Review, M&A transactions suffer an alarming failure rate of up to 90%.

A failed talent strategy is often at the core of an M&A flop, with nearly half (47%) of key employees leaving the company within a year of the transaction and up to 75% exiting within the three years, according to data published by Gallup.

How you manage talent before, during and after a transaction can make or break the deal. Success hinges on the acquired team being integrated and fully capable, motivated and on board to fulfill the buyer's mission.

While corporate deals are almost always complex and subject to HR issues, talent engagement becomes even more precarious when the transaction crosses international borders.

Talent retention and engagement are important for both private equity and financial/strategic buyers. In any cross-border deal, the buying company is not just gaining financial assets. It is also acquiring the workforce and the intellectual capital of the target company. In order to ensure the success of a deal, it is crucial to retain key talent in the acquired company.

In this guidebook, we'll discuss navigating engagement and international HR issues before, during and following a cross-border deal. In particular, we will outline key considerations and discuss the pivotal role an Employer of Record (EOR) hiring solution can play.

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Why Cross-Border Deals?

Cross-border deals can bolster a business expansion strategy by increasing market access, unlocking new revenue streams and improving bottom-line profitability. Some of the other benefits include diversifying supply chains, mitigating operational risks, reducing competition and opening up new talent pools.

Why is M&A a key part of some company's global expansion strategy?

- Increases market access
- Unlocks new revenue streams
- Reduces competition
- Mitigates operational risks
- Diversifies supply chains
- Opens up new talent pools
- Improves bottom-line profitability
- Offers economies of scale/scope
- Provides faster path to growth

Talent Engagement & HR Considerations

While a cross-border deal can unlock a myriad of benefits for buying companies, there are far more considerations beyond what appears in the definitive merger agreement.

After all, behind the jargon and numbers on that agreement are human beings that form the team. These are the people who keep the lights on and make commercial success possible.

As Steve Jobs said, "Incredible things in the business world are never made by a single person, but by a team."

All too often, issues impacting talent engagement and HR are put aside until after the deal is inked. In the meantime, this delay spurs confusion and uncertainty in the workforce — which can seriously compromise performance in the long term.

The following are key considerations for talent engagement and HR:

COMMUNICATION PROTOCOL

Regular, comprehensive communication instills transparency. Both good and bad news should be delivered as soon as legally possible. This should be done in numerous formats, from emails to town-hall meetings and one-on-ones with individual team members.

CORPORATE CULTURE

There's a lot happening during a deal and sometimes HR departments and leadership remain focused on macro issues. However, empathy is more important than ever. Allowing employees to express their concerns can go a long way in supporting morale and preserving culture.

TRANSITION PROCESS

A timeline for when and how the deal will play out can also alleviate fears and bring the workforce into the fold. Committees and task forces may be formed to facilitate the transition, with HR explaining the benefits of participation and recruiting strong performers to serve as leaders.

COMPENSATION AND BENEFITS

Employees will want to know how the deal may impact them individually. A plan for compensation and benefits post-deal should be defined as early as possible — and communicated to the workforce.

LABOR RELATIONS

Buying companies will need to take into account how collective bargaining agreements and trade unions may impact compliance requirements and workforce integration.

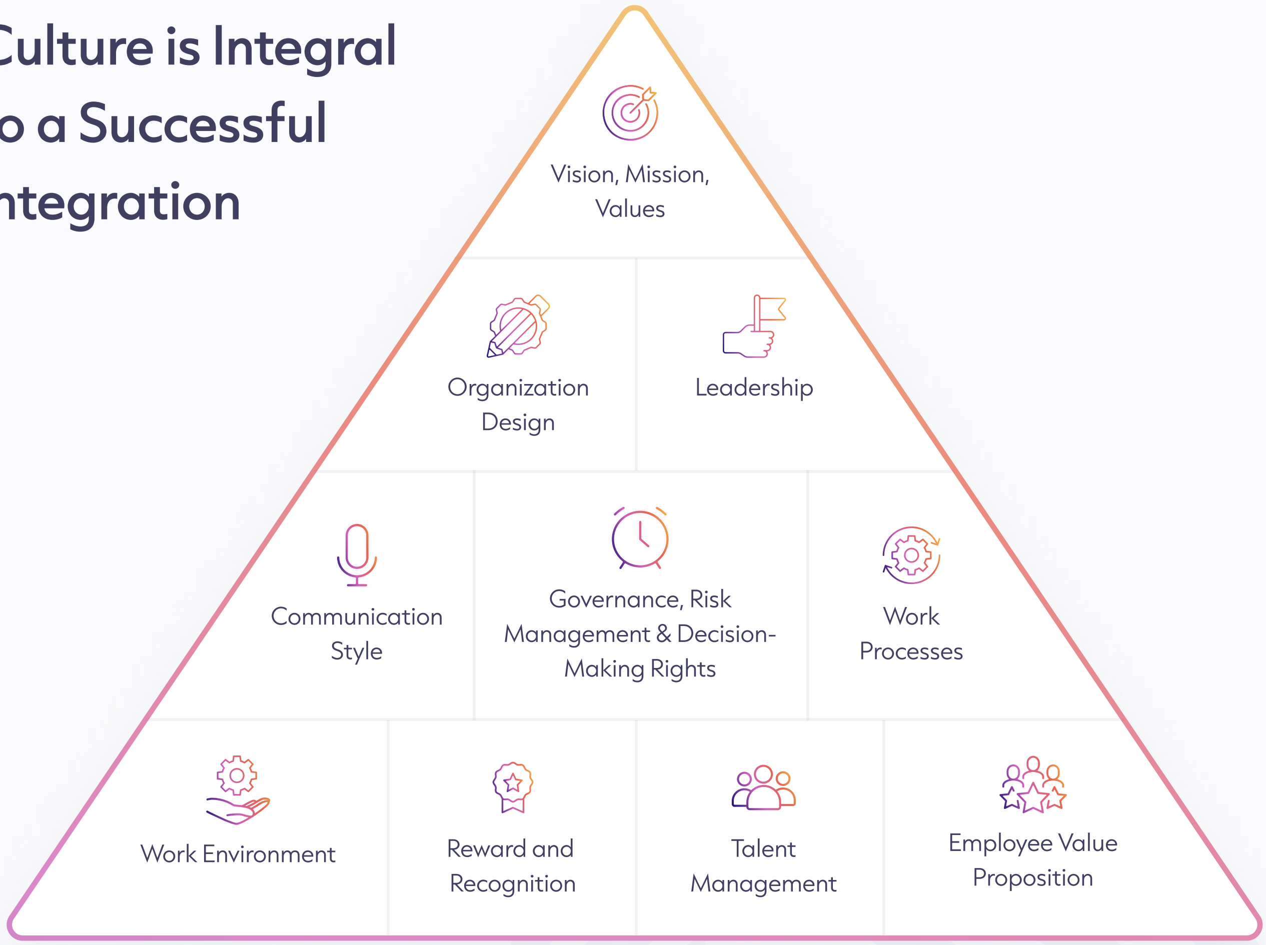
More on corporate culture

Culture is a critical and sometimes underestimated part of a deal.

In order for a deal to be successful in the near and far term, it is important for acquired talent to fit into the buying company. This doesn't just apply to key leadership but also critical talent roles, such as a high-performing sales person.

It is therefore recommended to conduct cultural due diligence, a process that can align values, unify the workforce and mitigate the risk of talent exodus.

Culture is Integral to a Successful Integration



When these issues are not addressed, acquired team members can feel left out, isolated and demoralized. This leads to problems for the buying company including but not limited to intellectual property (IP) threats, customer exodus and revenue losses.

THREATS TO IP

If key personnel leave, they may take proprietary ideas and innovation with them.

WANING CUSTOMER RETENTION

If critical team members leave or are no longer engaged as they once were, it's only a matter of time before customers notice.

REVENUE LOSSES

Bottom line profitability can take a huge hit if employee engagement wanes, compromising the overall success of the deal.

Comparing operational, talent retention and HR considerations

CONSIDERATION	PRIVATE EQUITY BUYERS	FINANCIAL/ STRATEGIC BUYERS	DIVESTING COMPANIES
Operational	Focus on quick turnarounds and maximizing value creation through quick growth levers, operational efficiencies and cost-cutting measures. May prioritize short-term gains over long-term growth.	More focused on long-term growth and synergies between the acquiring company and the target. May prioritize investments in technology and innovation.	May have already undergone significant operational changes and may be looking to divest non-core assets or business units. May be focused on streamlining operations and reducing costs.
Talent Retention	May prioritize retaining top-level executives and other key personnel through retention bonuses and other incentives. May also bring in new talent with a track record of success in similar situations.	May prioritize retaining key personnel who have knowledge of the target company's operations, customers, intellectual property (IP) and culture. May also look to integrate the target company's employees into the acquiring company's culture, while providing opportunities for career advancement.	May prioritize providing employees with clarity and stability during the transition. May also provide severance packages and outplacement services to employees who are not being retained.
HR Policies & Practices	May focus on aligning HR policies and practices across portfolio companies to reduce costs and improve efficiency. May also implement new HR policies and practices to support the desired culture and values of the portfolio companies.	May focus on aligning HR policies and practices between the acquiring company and the target company to facilitate integration and reduce cultural barriers. May also prioritize diversity, equity and inclusion initiatives.	May need to conduct a thorough HR due diligence process to identify potential HR-related liabilities and risks. May also need to address any HR-related issues before the transaction is completed.

Distinguishing priorities for private equity buyers, financial/strategic buyers and divesting companies

Private equity buyers, financial/strategic buyers and divesting companies each have distinct priorities when it comes to talent development and HR management. Understanding the differences between these groups is important for promoting a smooth transition, ensuring compliance and maximizing value.

Private Equity Buyers

Private equity buyers may focus on talent retention and development as a key vehicles for business performance and value creation. Subsequently, they may require a high level of involvement in HR compliance issues to avoid legal issues and retain key human capital. Private equity buyers often conduct due diligence on HR policies and practices to detect potential risks, such as employment lawsuits, wage violations, harassment claims, permanent establishment, etc.

Financial/Strategic Buyers

Financial/strategic buyers have a vested interest in retaining key employees, such as subject matter experts, senior executives or key salespeople. Retaining this human capital can ensure a smooth transition and maximize the value of the acquisition. Financial/strategic buyers may come to the table with an existing talent development framework that can be extended to workers within the newly acquired asset.

Divesting Companies

Divesting companies are responsible for ensuring HR compliance for the divested asset up to the point of sale. This often requires them to conduct due diligence on HR policies and practices to identify looming risks, such as compliance issues, IP vulnerability, permanent establishment, employee lawsuits, etc. Divesting companies may need to confirm the proper documentation and procedures are in place to comply with the regulatory compliance requirements related to the deal.

Acqui-hiring on the Rise

M&A deals have traditionally been a means of unlocking new revenue streams and accessing valuable resources. In today's tight talent market, human capital is one of those resources. More companies are using 'acqui-hiring' as a means of bringing new skills and perspectives to the workforce.

What is Acqui-hiring?

Acqui-hiring is a type of financial/strategic deal where a buying company acquires another company primarily to tap into the skills and talent of its employees as opposed to its products, revenue or other assets.

Acqui-hiring offers the opportunity to buy talent rather than build it from scratch. As a fundamental strategy for global expansion, acqui-hiring can unlock a multitude of benefits:

Quick access to cost-effective, niche talent

By acquiring talent through strategic deals, buying companies can quickly obtain the resources they need to expand into new markets, forge partnerships and develop products.

Cultural perspectives

In acquiring a company abroad, the buyer also acquires the culture and values of the employees. This cultural perspective can help the buying company calibrate its company culture to better serve markets abroad.

Intelligence and expertise transfer

Acqui-hiring can also facilitate the transfer of intelligence and expertise from the acquired company to the buyer, which can prove critical for success in a new market or industry.

Cost-effectiveness

Acqui-hiring serves as a cost-effective way for tapping into the talent a company needs when expanding into new markets. It essentially eliminates the need to build a team from scratch in an unfamiliar country.

Reputation

Acqui-hiring can also be a way to improve a company's reputation among workers, particularly if the company that is being acquired already has a strong, well-established reputation. This can help a buying company be successful long-term in a market abroad.

Carve-Out Deals in the Spotlight

Corporate divestiture activity lagged in 2022, according to data published by Dealogic, likely due to slow economic growth. However, market conditions may be paving the way for a 'Great Carve-Out Comeback' in 2023.

With a potential global economic recession on the horizon and interest rates expected to continue rising, financial health assessments will be a topic of daily discussion in board rooms around the world.

As cash flow increasingly becomes a priority, it's likely some companies will look to carve-out and cash out on non-core business lines. Despite lower valuations, liquidity pressures may still encourage companies to bite the bullet and sell assets through a divesture.

For companies with healthy balance sheets, lower valuations may make 2023 a prime time to acquire new business. However, when it comes to carve-out deals, there are potential talent gaps that must be accounted for.

Carve-outs and the dilemma of 'orphaned' workers

While any type of corporate transaction can be a complex process – from diligence to integration – the global M&A carve-out deal can prove to be especially challenging in terms of talent management. That's because carve-outs often produce 'orphaned' workers.

Many times, when a carve-out deal is on the table, the details and implications for orphaned workers can initially be overlooked. When not planned in advance, this situation can cause a real headache and throw off the timing of a deal or later emerge as an expensive surprise.

Gaps in benefits and employee engagement can also impact talent retention and, thus, compromise the long-term success of a transaction.

To bridge the gap, there are three main options a buying company can consider in engaging and paying orphaned employees.

Options for engaging and paying acquired workers overseas

HIRING OPTIONS	KEY CONSIDERATIONS
Migrate them into your own local entity (if one exists)	• This option only applies if the company already has an in-country established. • While absorbing workers into the buying company's already existing in-country entity may be the most straightforward option, there may still bechallenges in aligning benefits.
Establish a local entity to directly employ them	• Buying companies, and their professional service providers can underestimate the time it takes to become operation, which may impact time schedules outlined in the transition service agreement (TSA). This can potentially change the terms of a deal. • Requirements and compliance will vary country by country. • Buying company must manage functions in compliance, payroll administration, HR management, taxation and more.
Engage an Employer of Record (EOR) provider to employ them	• An EOR service provider can be a bridge solution or a long-term solution, particularly for smaller headcounts. Notably, it requires significantly less infrastructure, cost and time than setting up an entity. • When selecting an EOR provider to support with a carve-out deal, be sure to ask them about their M&A experience. This includes transactions and relevant references. • It is also advisable to speak directly with the team that will be involved hands-on in managing the project, so you can gauge their level of understanding, expertise and how the arrangement will operate. Please see page 15 for a series of recommended questions to ask of a prospective EOR provider.

Orphaned workers, although included as part of the acquired asset, come without an in-country legal business entity to employ them.

In the remaining sections, we will further discuss how an EOR hiring solution can support talent retention and streamline HR processes during M&A deals.

SOLUTION

What is an EOR?

For some companies, hiring through an Employer of Record (EOR) is a solution that allows them to tap into foreign talent quickly and compliantly.

What does an EOR do?

An EOR is an organization that has legal entities already established in the target countries in which a company (the EOR's client) wishes to hire talent. It legally employs local workers on behalf of the hiring company, rather than the hiring company directly employing the worker.

The EOR assumes the liabilities of operating a local business as well as the responsibilities of administering payroll and employment in the country.

An effective EOR offers a combination of specialized knowledge in local HR regulations, statutory requirements, customary benefits, culture and hiring practices. They also provide the administrative acumen and due diligence to ensure international employees are welcomed locally, onboarded efficiently and well-cared for throughout the entire employment tenure.

How does an EOR support its clients?

A company can circumvent the arduous business incorporation process by partnering with an EOR – and workers can be hired almost immediately. An EOR hiring solution is particularly instrumental in cases where a carve-out asset deal leaves behind orphaned employees.

The company, as the client of the EOR, pays one predetermined amount to the EOR, rather than putting up the usual capital requirements (setting up a local bank account, infrastructure costs, office overhead, registration fees, hiring local consultants, etc.).

> The EOR hiring model essentially removes global market entry barriers, empowering companies to tap into new talent pools around the world with flexibility and ease.

At the same time, the worker is managed by the company and carries out day-to-day responsibilities — just like any other member of the team.

Key back-office tasks handled by an EOR partner

- **Payroll**
- **Statutory and supplemental benefits**
- **Tax withholdings**
- **Visa and immigration support**
- **Onboarding tasks** including background checks and drug testing
- **Compliance with labor laws** such as bonuses, leave and termination protocols

Getting Started

The application of EOR services in the global marketplace is anticipated to grow at a steady but solid compound annual growth rate (CAGR) of 6.9% through 2028.

Source: Valuates

While hiring through an EOR can facilitate global expansion plans, not all companies are familiar with how the arrangement works – and getting started may not always be so simple.

The following questions can help determine whether an EOR is the right partner for building a cross border team:

- What level of local expertise and global hiring experience does the EOR have?
- Is the EOR compliant with regulatory frameworks for data protection and cybersecurity? (e.g. GDPR, ISO 27001, etc.)
- Will your HR staff receive support in their time zone and first language?
- Will your workers have access to support in their time zone and in their first language?
- Has the EOR worked with organizations similar to yours before?
- How does the EOR secure your data and the data of your workers?
- Does the EOR have an easy-to-use platform?
- How will the EOR onboard and communicate with the new hires?

Empowering People Management Throughout the Deal Lifecycle

An EOR partner can help both buying and selling companies address compliance issues, bolster employee engagement and build teams during all phases of a deal.

How does an EOR hiring strategy support the M&A lifecycle?

PRE-DEAL
preparing for valuation and purchase agreement (seller side)

DUE DILIGENCE AND TRANSITION
planning a road map (buyer side)

BEYOND THE DEAL
empowering agile, sustainable global expansion

> The need for an EOR solution is most often triggered by an asset deal, not a stock deal.

PRE-DEAL:
The typical demands for companies to grow quickly and cost-effectively often promote short term, band-aid solutions, which can trigger complex and potentially costly challenges further down the road. These nearsighted decisions can even compromise a company's valuation.

As the divesting company (the seller) prepares for a corporate transaction, these missteps are likely to be detected. Before signing an agreement, the buying company will apply due diligence to identify red flags in corporate risk such as compliance for misclassified workers, permanent establishment, IP, tax liabilities and more.

An EOR partner may be engaged by a selling company to avoid these common pitfalls, mitigate risks and uphold its marketplace value. For example, the EOR can support the transition from an independent contractor engagement strategy to hiring permanent employees.

The EOR can also help a divesting company set up workers for EOR employment before the sale, in accordance with local regulations.

DUE DILIGENCE AND TRANSITION:

Due diligence is conducted before the deal closes to assure the buyer of what they're getting in the transaction. This also allows them to come up with a plan for how they will hire and retain talent once the deal is completed.

An EOR partner may prove to be a critical tool during this phase, as plans can be made to bridge any hiring gaps, reduce operational risks and promote talent development.

During due diligence, the buying company can work with an EOR to address the following questions and develop a road map for transition:

- Will any employees be 'orphaned' by the deal? How can this be addressed?
- How can an EOR solution help mitigate permanent establishment risk and other compliance risks related to employment?
- Can an EOR hiring model serve as a solution to help further support hiring or talent retention?
- Will the EOR hiring model serve as a bridge or a long-term solution?

> “Whether you are a buyer or a seller, your company can be supported by an EOR solution throughout a transaction and enjoy streamlined HR processing, compliance assurance and a lower risk profile. Time is of the essence when a cross-border deal is on the table.
>
> A flexible and nimble EOR hiring model lets you onboard ‘orphaned’ employees or new hires in as little as 24 hours, significantly accelerating the process.”

Andrew Lindquist
Partner at GoGlobal

By knowing your company is operating compliantly and efficiently at any point during the M&A, your team can then focus on employee engagement and the core business-growth activities that drive the bottom line.

> In the end, by using a trusted EOR partner, your fast-growth company can approach cross-border deals with agility, efficiency and peace of mind.

EOR Transition Methodology

If an EOR is identified as the right solution for engaging talent, it is important to consider how the transition to the EOR model will take place.

IF DONE PROPERLY

The EOR model can be an overall benefit to the end client, intermediaries and employees.

IF DONE HAPHAZARDLY

It can be a time and money drain with regrets by all parties.

The transition period marks a sensitive and potentially volatile moment for the buying company and its workforce. The steps taken must be appropriate for the situation at hand, especially given the nuances and factors at play.

In general, employees often feel apprehensive about their job security or satisfaction. At the same time, employers are generally distracted by the numerous details of the transaction beyond just HR matters.

By understanding how a transition impacts both employees and employers, an approach can be taken to drive positive communication and account for nuances.

More about the transition:

EMPLOYEE MINDSET

Employees are usually nervous about the future. Sometimes operations suffer. During chaos and transitions, talent may be tempted to exit.

EMPLOYER APPROACH

Employers are distracted with 'big picture' issues beyond HR matters. Additionally, time zones and language barriers may impede communications.

COMMUNICATION

Communication is generally centralized via a project management office (PMO) due to matters beyond HR. Frequent, consistent communication is recommended.

NUANCES

A TSA may present time limitations. It is important to address other matters such as office space, laptops, mobile devices, etc. All employees' concerns should be identified and addressed.

COMPARING BENEFITS

When comparing benefits, it is virtually impossible to match the exact plan. Instead, as a rule of thumb, the worker's overall compensation, including benefits, should be equal or better under the new employer. In some cases, this is a legal requirement.

EOR Bridge or Operational Solution

All deals are different so, before engaging an EOR, a company will need to assess what is required for the asset at hand. This includes factoring in the type of deal, deal terms, people, geography, etc.

EOR arrangements can be flexible and adjustable during the deal lifecycle, depending on the needs of the acquiring company and the specific circumstances of the acquisition.

In general, though, the duration of the EOR arrangement will be determined by the amount of time the buying company needs to integrate the acquired workers into its own company.

The common duration for EOR arrangements in M&A deals include:

SHORT-TERM

In some cases, the buying company will only need the EOR's services for a short period of time (e.g. a few months) while it works to set up an entity in-country.

LONG-TERM

In other cases, the buying company may need the EOR's services for a longer period of time, such as a year or more, while it tests the market and determines whether a permanent establishment is required.

OPERATIONAL

In some cases where this is a small headcount, the buying company may choose to outsource the employment of acquired workers to the EOR as an ongoing solution. The EOR will continue to serve as the EOR for those workers indefinitely.

Is an EOR Hiring Solution Right for You?

Given the rapid pace and complexity of M&A deals, it is often a race against the clock to determine how to best keep key personnel engaged. In many scenarios, an EOR solution is the most agile way to support cross-border talent retention and streamline international HR processes.

Namely, keeping employees on the seller's payroll post-sale is burdensome and can result in an estranged, uncommitted workforce. Moreover, a robust EOR strategy can ease the transition by enrolling team members in benefit programs that meet or exceed previous terms – while maintaining compliance and reducing overhead.

In any event, it is crucial to transfer employees and make them part of the team in a timely and compliant manner. Effectively, the EOR takes over all employee transfer tasks and assumes the liabilities and responsibilities of administering global payroll.

An EOR solution can be used either as a temporary bridge to complete the transaction or as a long-term solution to sustain global operations.

Because of its numerous advantages, many leading global organizations are making the EOR model a critical pillar of their M&A strategy.

Contact us with your questions about hiring overseas talent quickly, compliantly and cost-effectively with our proven EOR solution.

Contact Us

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