

Bird & Bird & Strategic Employment Consulting



Introduction

In these unprecedented times, many sectors of the global economy are now undergoing a period of consolidation and restructuring. The success or otherwise of such reorganisation is dependent on devising and implementing an integration plan based on realistic timescales and achievable goals. In order to be true business partners law firms need to be able to think strategically not simply legally and work collaboratively as part of a team.

One team

Our international employment team has considerable experience of advising clients in the employment related aspects of complex restructuring projects on a global basis. These include: pre and post-acquisition restructurings, moving operations from high to low cost jurisdictions, outsourcing support functions, harmonising terms and conditions, closing offices, and introducing home and flexible working practices, all on a global scale. We regularly work with global and US-headquartered clients and pride ourselves on providing timely, pragmatic, and commercial advice in a readily comprehensible form. We are a truly integrated international team.

We appreciate that the focus on law and compliance is only one part of the answer. We know that the issues you face are broad, sometimes contentious and an effective solution requires a multi-disciplinary approach and a different way of thinking. As one team, we can combine as necessary our legal advice with other experts such as management consultants, accountants and corporate affairs teams to help you future-proof your business for the changing competitive, technological and regulatory landscape. We are committed to delivering solutions not simply legal advice.

Technology

Effective use of technology is essential in order to deliver any multi-jurisdictional project on time and within budget. We have developed our own systems which are constantly updated and improved by those who work on the projects to drive efficiency and speed of coordination and to ensure the smooth implementation of a comprehensive integration plan. Clients love the fact that it provides them with much greater strategic oversight and budget control.

Strategic Employment Consulting

We are leaders in providing advice and guidance to companies unfamiliar with the legal and cultural challenges of effecting changes to ways of working in the Europe, Middle-East and Africa (**EMEA**) and Asia-Pacific (**APAC**) regions.

Our Strategic Employment Consulting team focuses on companies managing, as well as considering acquiring, business operations located in the EMEA and APAC regions. Our approach is to provide a coherent strategy for managing the workforce issues, which should be at the center of any integration plan – no more so than in these regions.

What is Strategic Employment Consulting?

Early input is imperative

We often find that our employment expertise is sought too late in international projects, typically where:

- opportunities for optimising the process from an employment perspective have already been lost, resulting in delayed achievement of (cost savings) objectives as initially targeted or anticipated by the company;
- employee-consultation and/or local governmental notification requirements have been breached;
- employee-consultation processes have been bogged down;
- inadequate preparation of political and social considerations.

Some common problems

Our experience has told us that the root cause is often that certain key differences between regional and local legal concepts are not being recognised in time. These include:

- employment at-will (in the US) versus some level of protection against dismissal and statutory severance entitlements;
- strict regulations on employee consultation with (internal) Works Councils and employee representatives and/or (external) Trade Unions;
- the requirement of having a legitimate justification that meets local legal scrutiny for intended restructurings;
- EU Directive on protection of employees in case of business transfers;
- strict rules on the selection of redundant employees in restructuring processes (no or limited options for “cherry-picking”);
- no “one size fits all” for EMEA and APAC countries (substantial local legal differences amongst countries within the same region, sometimes even within the same country across provinces or cities).

How do we work?

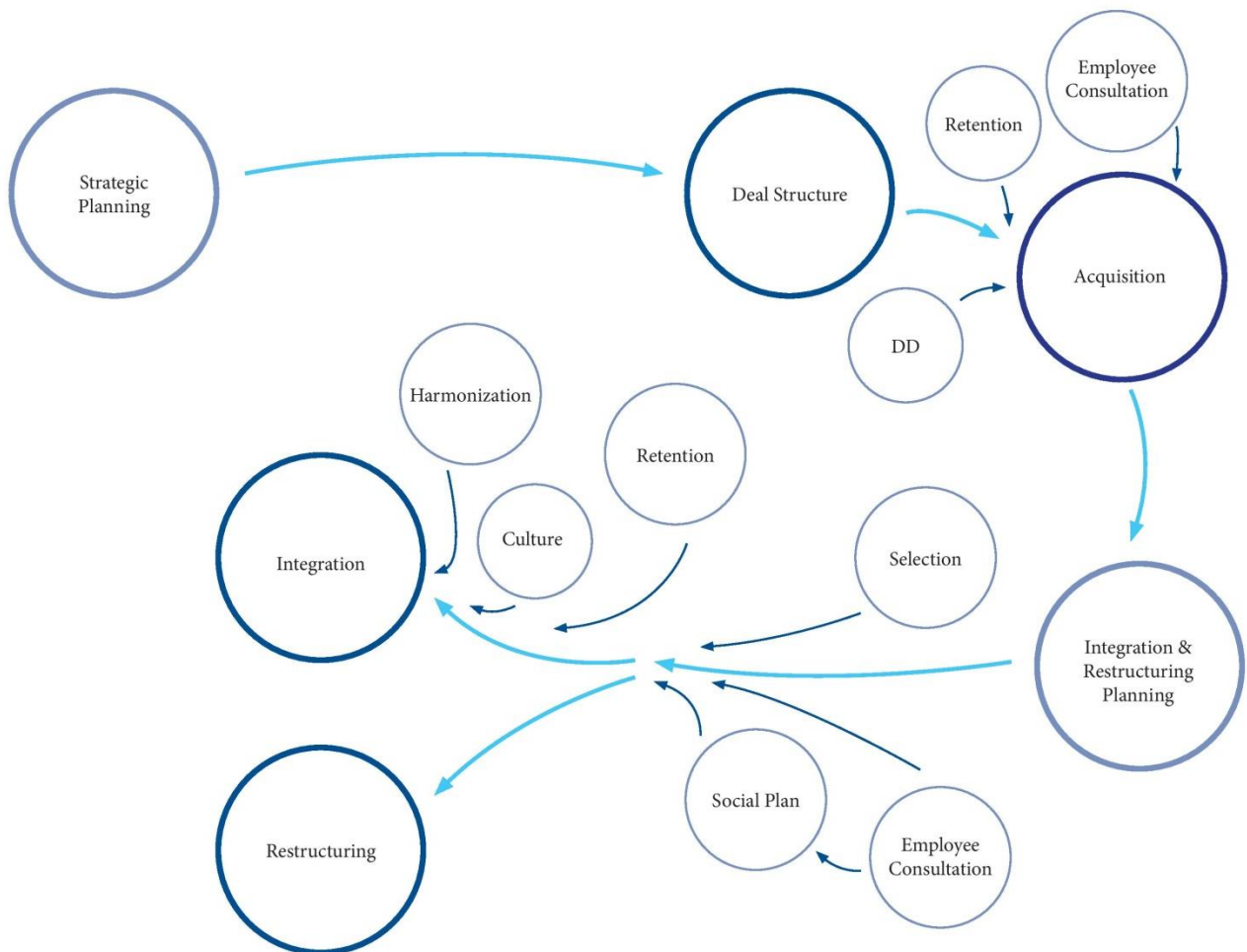
From our experience of advising companies on the employment related aspects of a global restructuring we have put together a Strategic Employment Consulting team. The aim of the team is to minimise disruption to clients' business, when implementing change. In our experience clients need a coherent strategy for managing their workforce, which should be planned at an early stage. You decide our level of involvement which can vary from a high-level review of approach with key stakeholders to detailed planning at each stage all costed according to needs. Every project is different but by way of example we have set out below a couple of typical situations in which our consulting services have been successfully utilised.

“Bird & Bird has huge experience and knowledge when it comes to employment matters, but what I appreciate most is the fact that they always deliver legal problem solutions and their advice is always business-oriented.”

Chambers, 2020

Strategic consulting in action

The flow chart depicts a typical acquisition and subsequent integration & restructuring process across the EMEA and APAC regions. It reflects the recommended planning phases.



The Importance of Pre-Acquisition Input

We have outlined below some of the reasons why companies benefit from Strategic Employment Consulting at the front-end of any acquisition (e.g. when identifying a target or, once the target business has been identified, but prior to the purchase price and deal structure having been set). This is in the case of an anticipated acquisition of one business, whether or not this is followed by the integration of that business into the acquirer's existing business operations.

Part of a wider team

Pre-acquisition Strategic Employment Consulting should be an embedded component of a much wider strategic planning process through a multi-disciplinary steering committee, chaired by the business leader who is intimately familiar with the transaction objectives, including (internal and external) experts on (without limitation) Finance, Tax, Strategic Planning, HR, Engineering, Supply Chain, Communications, Corporate Legal and Employment/Legal and IP. Since we are familiar with working closely with such teams we are effective at project managing and working within this process.

In the pre-acquisition phase, Strategic Employment Consulting is aimed at assessing:

- the employment aspects/consequences of the company's post-acquisition integration and/or restructuring objectives;
- the timing constraints influencing how quickly those objectives (and associated cost-savings) can be achieved and the impact thereof on the purchase price the company is prepared to offer for the target business;
- the restructuring costs and the impact on the purchase price;
- how to enhance the company's post-acquisition position, including the mitigation of potential risks;
- how to deal with the political and social impact arising from restructuring.

Our expertise of advising clients post-acquisition means we have developed a wealth of experience on enhancing a company's pre-acquisition position, which includes the areas below.

Deal Structure

The selected deal structure may assist in arriving at the preferred post-acquisition organisational structure and put the company in a better position to achieve its business objectives (synergies & cost savings) faster.

The most common options for deal structuring:

- avoid taking over certain 'material assets'
- carving-out of non-desired parts of seller's business
- pre-acquisition down-sizing of seller's business in certain circumstances

Contingency Planning

If the company has legitimate concerns about business disruptions during the post-acquisition restructuring process, and the negative effects those may have on its negotiation position in respect of any separation packages to be offered to redundant employees ('Social Plan'), contingency planning at a very early stage is recommended.

Communication Strategy

It is important that a clear communication strategy is devised from the outset. Trade Unions, Works Councils and Employee Representatives in one country will almost certainly speak to those in another and it is important that the impact of every statement to be made by the company is fully assessed country by country in order to minimise industrial relations challenges at a later date.

This is particularly sensitive when dealing with governments, social agencies and unions.

Stand alone Restructuring

In case of a contemplated restructuring of a business, whether or not following a recent acquisition, the preferred moment for (next stage) Strategic Employment Consulting is the phase prior to making any (public) announcements and/or the initiation of employee-consultation processes.

Steering committee

Again, the preferred method of operation is embedding the Strategic Employment Consulting in a multi-disciplinary steering committee, including experts in the following fields: Finance, Strategic Planning, HR, Engineering, Supply Chain, Communications and Employment/Legal.

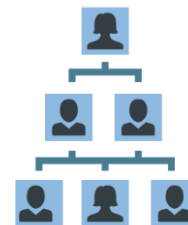
In this phase, Strategic Employment Consulting is aimed at setting the stage for:

- a law-compliant process (no litigation);
- a smooth - and socially responsible - process (no business disruptions);
- timely execution;
- an outcome that meets the budget requirements;
- an outcome that meets the business demands on the identity of “selected employees” to the maximum extent possible.

To that end, Strategic Employment Consulting includes exploring/enhancing/effecting:

- the company’s integration and/or restructuring objectives (restructuring plan);
- the justification for the intended ceasing, down-sizing and/or changes to certain business operations;
- the extent to which certain categories of employees will benefit from statutory protection against dismissal;
- Employee-consultation requirements at the regional level and the level of each affected country;
- communication with local provincial and/or federal governments to ensure any required approvals and/or notifications are sought before any intended restructuring and/or reductions in force;
- the applicable timelines in each country;

- the restructuring costs;
- options to enhance the company’s negotiating position, in employee-consultation and specifically in respect of exit packages (negotiation strategy and communications plan);
- options for mitigating risk and impact of industrial action (business continuity/contingency planning);
- requirements of cross-border redeployment of redundant employees.



About our team



Ian Hunter
Co-head of International
Employment Group,
London

+44 (0)20 7415 6000
ian.hunter@twobirds.com

Here at Bird & Bird, where I have worked since 1996, I co-head the International Employment Team and lead the employment team in London.

I specialise in ensuring that clients, wherever they are based around the world, receive the level of support to get the best from their key asset – their people.

I understand the importance to clients of receiving advice from a trusted adviser who combines legal expertise with honesty, acute awareness of a constantly changing world and how those changes will impact your workforce and business. My aim is to ensure we deliver more than legal advice but produce solutions based on a nuanced exercise of judgment of your particular circumstances and priorities.

We advise on all aspects of employment law on a multi-jurisdictional basis, moving your people around the globe, protecting your business interests, restructurings (including post-acquisition integration), investigations, establishing and maintaining an ethical workplace and evaluating your people risks. We will also keep you informed of legal developments and trends and most importantly how those developments and trends will impact on your business to enable you to plan and make the right decisions in a controlled manner, rather than simply react to events.

The “absolutely fantastic” Ian Hunter is co-head of the firm’s international employment group, a role which frequently sees him advise large employers in an array of multi-jurisdictional matters. Clients describe him as a “very knowledgeable practitioner who handles sensitive issues very diplomatically.”

Chambers UK, 2020



Philip Hartman
Co-head of International
Employment Group, The
Hague

+31 (0)70 353 8840
philip.hartman@twobirds.com

As co-head of our international and head of our Netherlands Employment Team, I have extensive experience in all employment, benefits & business immigration affairs, both domestically and across Europe. I am based in The Hague.

Working at the nexus of employment law, corporate law and payroll tax and pensions, I provide our clients with advice in employment, benefits (pension and insurances) and business immigration matters. I have gained vast experience in strategic HR-legal consulting, business set-ups, (post-acquisition) business integration and restructurings, outsourcing, M&A, employee consultation (ER), pension, investigations, executive/board room terminations, as well as litigation in those areas.

On the back of my very strong analytical and drafting skills, my strengths are found in the ability to translate complex legal issues into simple concepts and strategies and embedding those into the client's overall business strategy. My aim is to provide clear and simple business advice to facilitate clients' decision-making processes. I am used to doing that not just at the domestic level, but also in a multi-jurisdictional coordinating capacity. My clients are almost exclusively multinational companies. I frequently work in close cooperation with business leaders and experts in other domains (e.g. corporate, commercial, tax, finance and pensions).

“He is an expert at analysing complex issues” according to a client, who also says that “his advice is clear and his drafting meticulous.”

Chambers Europe, 2020



Pattie Walsh
Head of International
Employment Group,
APAC,
Hong Kong

+852 2248 6000
pattie.walsh@twobirds.com

Here at Bird & Bird, I am a partner in our International Employment Team and head of our AsiaPac employment team. I am also a member of our Board.

I am currently qualified to practise in Hong Kong, Australia and England. This reflects my recent history where I have been lucky enough to be based in London, Sydney and Hong Kong. At the moment my base is Hong Kong but I regularly meet and work with clients across AsiaPac, in the UK and the US.

I have had a long-term interest and developed expertise in the PRC. As a result, I spend a significant amount of time working with organisations as they navigate the complexities of doing business in China.

Being based in Asia, we tend to work across the whole of AsiaPac and our team manages projects and employment law challenges wherever our clients have people. We cover all aspects of employment law; I spent five years as a barrister in London and so enjoy both the contentious and advisory side of the practice.

Alongside day-to-day employment advice, I also enjoy being part of the key strategic conversations that are taking place around the globe as organisations seek to embrace a rapidly changing environment. I have been talking publicly and with clients about a variety of topics. These range from ethics in the workplace, to embracing 5G and increased workforce digitisation.

Pattie actively comes up with solutions in terms of what works best for us and is always at the end of the phone in urgent situations.

Chambers Asia Pacific, 2020

