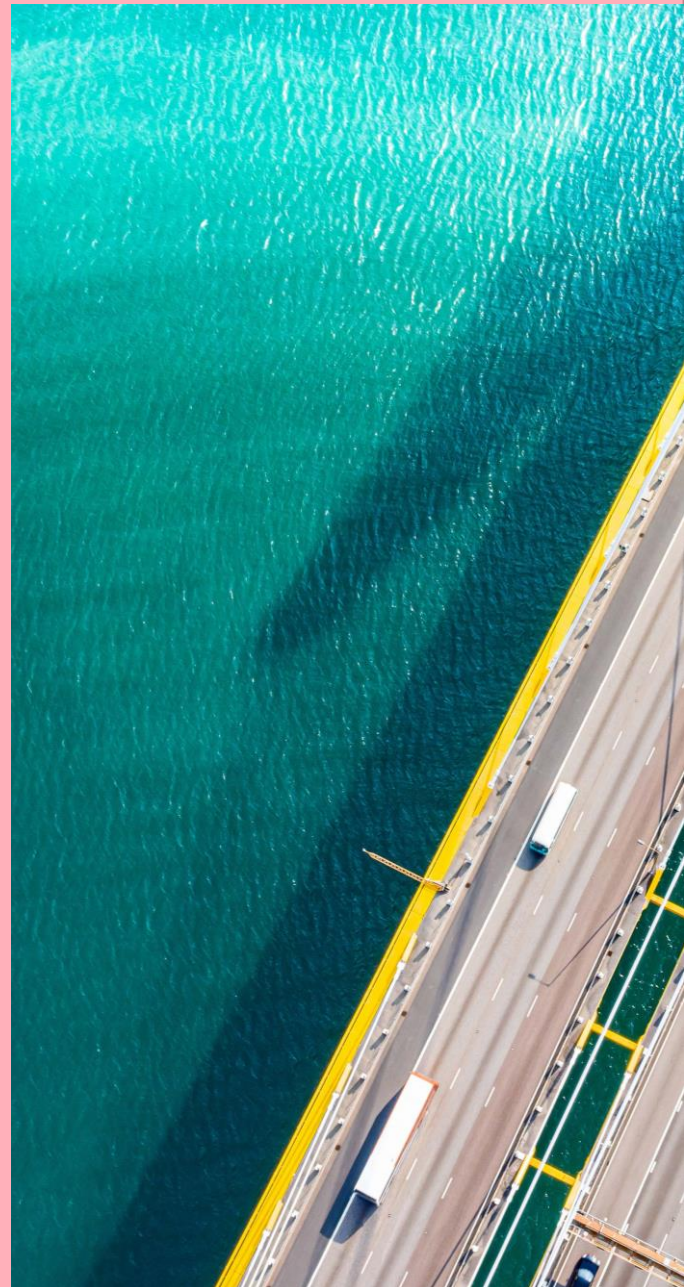


Bird & Bird

Strategic Employment Consulting

International HR Services

December 2022



Introduction

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

This paper, and the concept of Strategic Employment Consulting, focuses on companies engaging in organisational changes with direct workforce impact, including those already operating in and/or considering acquiring businesses located in the EMEA and APAC regions. It outlines an approach to providing a coherent strategy for managing the workforce, which should be at the centre of any such proposals.

Global change and disruption

Many sectors of the global economy are now undergoing a period of unprecedented disruption and change as a result of various economic, social and geopolitical factors. These factors require businesses to rapidly adjust and to become more agile in order to survive and flourish in the current climate.

The success or failure of such change management or restructuring processes most often depends on the 'human factor', that is the impact of the change on the profiles, performance, motivation and engagement of the workforce. It is important to devise and implement thorough plans for the people aspects of any such projects, which are based on realistic timescales and achievable goals.

Our team

Our international employment team has considerable experience of advising clients in the employment related aspects of complex change management and restructuring projects on a global basis. We have years of experience working with international and US-headquartered clients with global operations and pride ourselves on providing timely, pragmatic, and strategic commercial advice in a readily comprehensible form.

As necessary, we include in our team outside experts who provide additional commercial insights and a practical understanding of the challenges faced by those responsible for implementing successful change management or restructuring projects, which clients find invaluable.

We appreciate that the focus on law and compliance is often only one part of the answer. We know that the issues our clients face are broad, and an effective solution requires a multi-disciplinary approach and a different way of thinking. Working as necessary with management consultants, we help our clients future-proof their business in the face of an ever-changing competitive, technological and regulatory landscape.

Sector focus

A key aspect of our legal service delivery is our constantly evolving sector focus. Our team has an in-depth understanding of the employment landscape within a number of sectors. We are therefore able to tailor our advice and approach to reflect the trends, opportunities and challenges relevant to the business of our clients. This industry experience sets us apart from our peers and allows us to provide strategic and focused legal advice on complex restructuring projects and change management processes that reflects market standard.

Technology

We are committed to using technology to help drive efficiencies in the speed of project coordination and to ensure the smooth implementation of comprehensive change management projects including reorganization programs, integration plans and sourcing schedules, amongst other complex projects. We understand the importance of effective project management on complex projects and clients value the project management tools we offer in this area, especially since it provides them with greater strategic oversight and budget control. See further details in our video [here](#).

Planning your business reorganisation

The importance of early input

From our experience of advising companies on the employment-related aspects of cross-border restructurings and change management programmes we have devised an approach called Strategic Employment Consulting, which aims to minimize the risk of disruption to the business when implementing strategic and business critical projects.

We believe that our clients benefit from a coherent strategy for managing their workforce, which should be at the centre of any change or integration plan and planning at an early stage. We have outlined below some of the reasons why we believe companies benefit from this approach at the front-end of any transaction with major employment impact, be it an acquisition, merger or disposal, a stand-alone restructuring, an alternative sourcing transaction or otherwise any type of transaction which substantially affects the workforce.

Part of a wider team

Pre-transaction 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 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 such cross-disciplinary teams.

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

- The employment aspects/consequences of the company's corporate objectives, notably in terms of integration or reorganisation and restructuring
- The timing constraints influencing how quickly those objectives (and associated cost-savings) can be achieved and the impact thereof on the financial terms of the transaction
- The restructuring costs and anticipated people management priorities
- How to enhance the company's post-transaction position, including the mitigation of potential risks; and
- How to deal with the political and social impact arising from change and restructuring

Our expertise of advising clients in this context means we have developed a wealth of experience on enhancing a company's position prior to the commencement of any transaction, which includes the areas below.

Transaction and Deal Structure

The way a transaction or deal is structured has a direct impact on its (legal and practical) HR-related consequences. It is therefore important to give careful consideration to how a transaction is structured as this has a direct impact on the cost, process and risks associated with for all employment related liabilities. Effective deal structuring at an early stage may put the company in a better position to achieve its business objectives, synergies and cost savings at a later stage.



Some common issues relating to transaction or deal structuring include:

- How to avoid taking over certain 'material assets'
- Carving-out of non-desired parts of a seller's business
- Pre-acquisition down-sizing of seller's business in certain circumstances
- Employing entity rationalisation

Contingency Planning

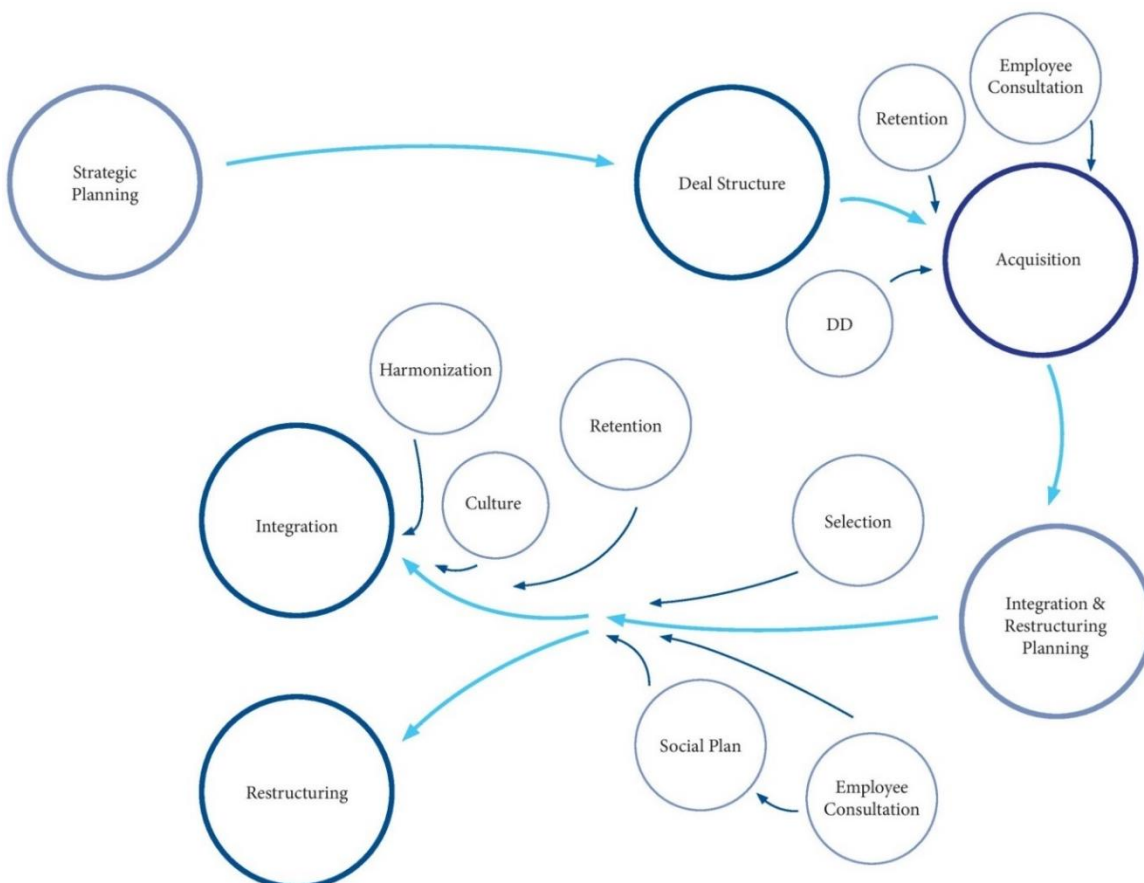
If the business has legitimate concerns about disruption during the change management or restructuring process, and the adverse effects this may have on its negotiation position in respect of any separation packages to be offered to redundant employees ('Social Plan'), contingency planning at a very early stage is recommended.

Communication Strategy

It is important that a clear (internal and external) communication strategy is devised from the outset. It is always key for management to keep communication lines with its workforce open, despite the pressure and tensions of any sort of change management programme. The timing of any communications is also critical where there are information and consultation obligations. For the trade union movement, the use of media and press has become a fierce weapon in such circumstances, to be reckoned with by management. Any government agency or authority is likely to be quite sensitive to this so external communications should always align with what is communicated internally.

Process

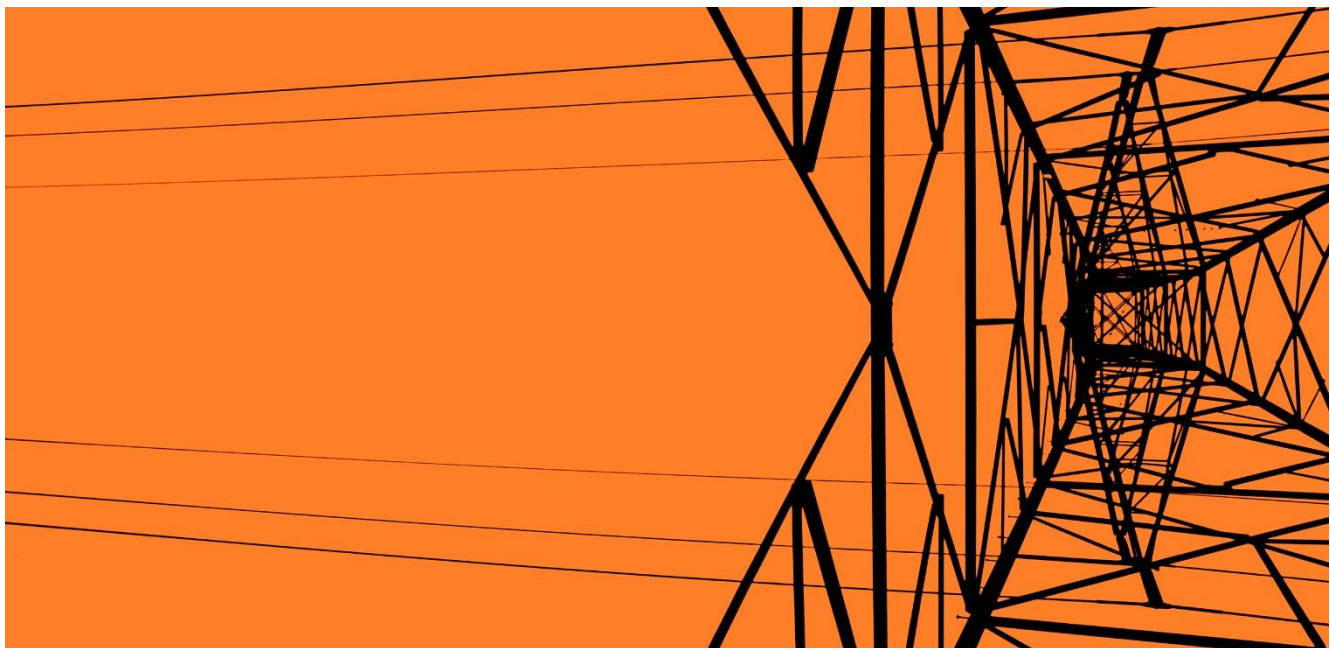
A restructuring or change management programme will usually consist of many moving parts. This diagram provides an example of the relevant workstreams that will need to be factored into a typical acquisition and subsequent integration & restructuring process across the EMEA and APAC regions.



Some common problems

From our experience, we have observed that the root cause of many of the problems that arise during a change management process is often that certain key differences between regional and local legal concepts are not being recognised in good time. These include:

- Employment at-will (in the US) versus some level of protection against dismissal and statutory severance entitlements in EMEA and APAC
- Strict regulations on employee consultation with (internal) Works Councils and employee representatives and/or (external) Trade Unions
- The requirement to have a legitimate justification for intended restructurings
- The EU Directive on protection of employees in case of business transfers and/or outsourcings
- 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)



Helping you reshape your business

In our experience, in the case of a contemplated change management process, whether or not this is following a recent acquisition or disposal or due to an internal reorganisation and/or cost saving measures, our Strategic Employment Consulting approach helps you to manage your workforce whilst achieving your strategic goals.

What do we aim to cover?

Strategic Employment Consulting is aimed at setting the stage for the following:

- A legally compliant procedure that avoids litigation
- A smooth (and socially responsible) process that doesn't risk business disruption
- Timely execution and planning
- A project plan that meets the budget requirements
- An outcome that meets the business demands on the identity of "selected employees" to the maximum extent possible

What support can we provide?

We regularly advise and support our international clients on the following aspects of cross-border change management and restructuring projects:

- The company's change management and/or restructuring objectives
- The justification for the intended cessation, down-sizing and/or change to business operations
- The extent to which certain categories of employees will benefit from statutory protection against dismissal and legal restrictions on selection processes
- Employee consultation requirements at the regional and country level and possibly the involvement of a European works council
- Communication with local provincial and/or federal governments to ensure any required approvals and/or notifications are sought before any intended restructuring or reduction in force
- The applicable timelines in each country including review of the internal and external communications plan from a legal perspective
- The change management or restructuring costs and overall budgeting requirements
- Options to enhance the company's negotiating position during employee consultation and specifically in respect of negotiation strategy for exit packages
- Options for mitigating risk and impact of industrial action from a business continuity and contingency planning perspective
- Requirements of cross-border redeployment of redundant employees

Bird & Bird lawyers are recommended because they "always deliver exceptional quality, they are always a step ahead of what the client might need and they customise their advice."

Chambers Europe, 2022

About our team



Ian Hunter

Co-head of International HR Services

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Here at Bird & Bird, where I have worked since 1996, I co-head the International HR Services Group 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.



Philip Hartman

Co-head of International HR Services

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As co-head of our international and head of our Netherlands HR Services Group, 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).



Pattie Walsh

Co-head of San Francisco office

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Here at Bird & Bird, I am a partner in our international Employment group and Co-head of our San Francisco office.

Alongside day-to-day employment advice, I enjoy being part of the key strategic conversations that are taking place around the globe as organisations seek to embrace a rapidly changing environment. As well as speaking publicly and with clients about a variety of topics such as D&I, ethics in the workplace and increased workforce digitisation, I also drive the firm's related thought leadership initiatives surrounding these areas, such as [Workforce of the Future](#), and [The Ethical Workplace](#). Within these initiatives, I have led the conversation on a number of marketing leading topics.

I also sit on Bird & Bird's Diversity & Inclusion Leadership Group which is committed to driving the firm's ambitious global D&I strategy.



Pieter De Koster

Partner, International HR Services

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I am a partner in our International HR Services group in Brussels with over 30 years' experience of advising on contentious and non-contentious issues in employment and benefits, including high profile employment litigation, boardroom advisory work, strategic change management, industrial relations, compliance and reward issues.

Clients come to me for all aspects of employment & benefits law, preferably complex, sensitive and cross-border ones, including compliance issues, works council and industrial relations matters, remuneration and benefits. Combining bespoke, in-depth yet hands-on advice and counselling with strategic insight and proper business perspective is in my view the key role of a senior and experienced partner. That is where clients need me most.

My client base ranges from start-ups, over SME's through global (top-branded) organisations including authorities, in all lines of business and industry.

Bird & Bird “understand what an in-house lawyer is looking for,” according to one impressed interviewee, who particularly appreciates that the team “can provide a commercial response and not just the strictly legal answer.”

Chambers Global, 2022



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