

Bird & Bird & Strategic Employment Consulting



Introduction

Global consolidation

In recent years we have witnessed a surge in global acquisitions, with US corporations leading the way. Many of these acquisitions have been strategic, aimed at achieving economies of scale or taking a dominant market position. Many sectors of the global economy are now undergoing a period of consolidation. The success or otherwise of these acquisitions is dependent on devising and implementing an integration plan based on realistic timescales and achievable goals.

One team

Our international employment team has considerable experience of advising clients in the employment related aspects of post-acquisition restructuring on a global basis. We regularly work with US clients and pride ourselves on providing timely, pragmatic, and commercial advice in a readily comprehensible form. Our team includes Wolf Von Kumberg, former Assistant General Counsel and European Legal Director at Northrup Grumman who provides additional commercial insight and understanding of the challenges faced by those responsible for implementing a successful integration, which clients find invaluable.

Technology

We are a truly integrated international team. We use technology to help drive efficiency and speed of coordination and to ensure the smooth implementation of a comprehensive integration plan. Clients value our experience in this area, especially since it provides minimum disruption to the newly acquired business.

Strategic Employment Consulting

We are leaders in providing advice and guidance to companies unfamiliar with legal and cultural challenges of effecting changes to ways of working in Europe.

This paper, and the concept of **Strategic Employment Consulting**, focuses on companies already owning and/or considering acquiring European business operations. It outlines an approach to providing a coherent strategy for managing the workforce, which should be at the center of any integration plan – no more so than in Europe.

If you would like more information on our capabilities or support on a particular employment issue, please do not hesitate to contact one of our team.



A handwritten signature in blue ink that reads "Ian Hunter".

Ian Hunter

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A handwritten signature in blue ink that reads "Philip Hartman".

Philip Hartman

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Strategic Employment Consulting

Early input is imperative

We often find that our employment expertise is sought too late in European acquisition and/or restructuring processes, typically where:

- opportunities for optimizing the process from an employment perspective has already been lost, resulting in delayed achievement of (cost savings) objectives as initially targeted or anticipated by the company;
- employee-consultation requirements have been breached;
- employee-consultation processes have 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 the US and European legal concepts are not being recognized in time. These include:

- employment at will (US) versus some level of protection against dismissal and statutory severance entitlements (Europe);
- strict European regulations on employee consultation with (internal) Works Councils and/or (external) Trade Unions;
- the requirement of having a legitimate justification 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 European countries (substantial legal differences amongst European countries).

From our experience of advising companies on the employment related aspects of post-acquisition restructuring we have devised an approach called [Strategic Employment Consulting](#). Not only to minimize disruption to clients and their newly acquired business, we also believe that they have benefited from a coherent strategy for managing their workforce, which should be at the center of any integration plan and planning at an early stage. We have outlined this process on the following page.

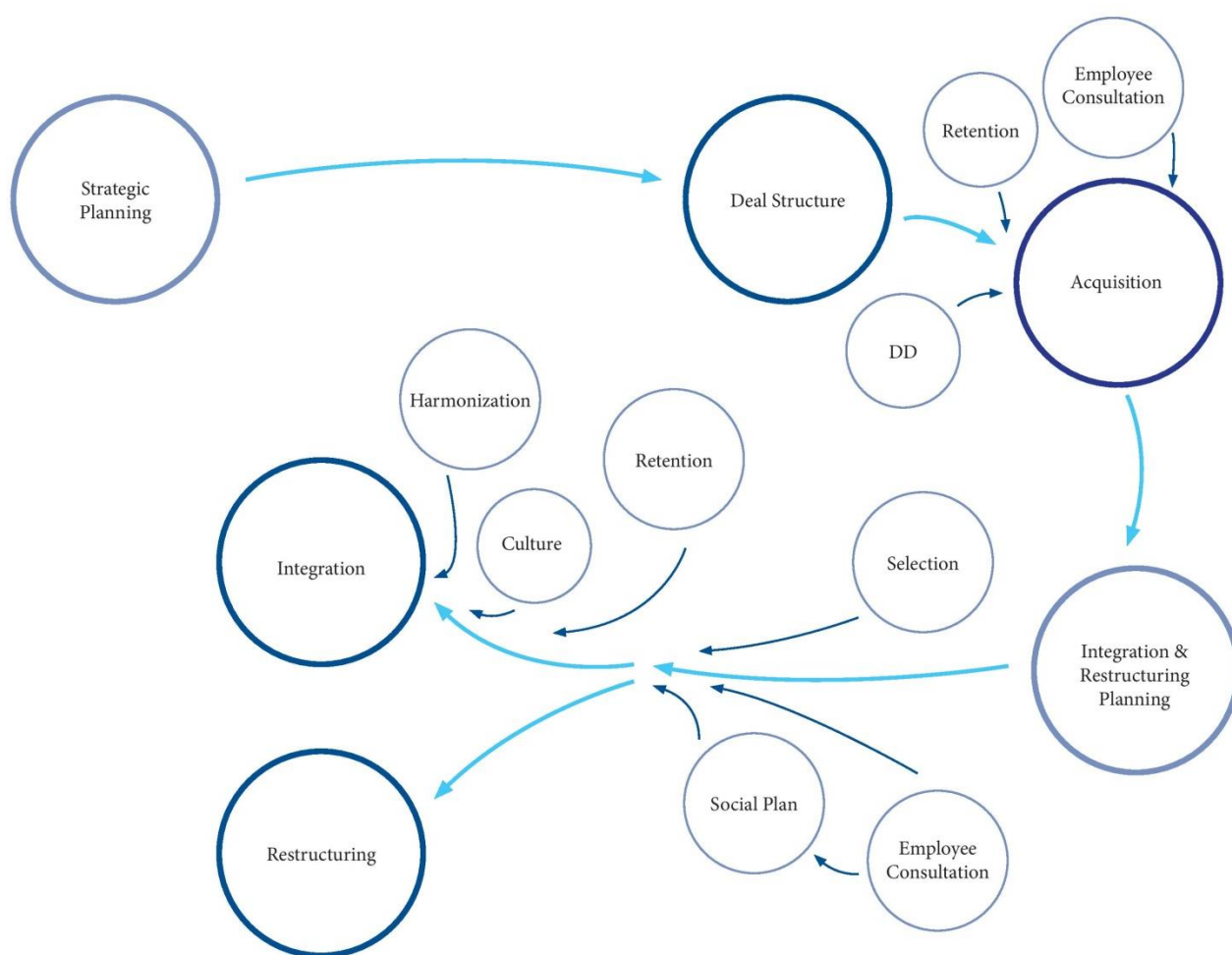
“They gave us very thorough advice and presented us with several options, thereby making the decision-making easier for us.”

Chambers, 2014



Process

The flow chart depicts a typical acquisition and subsequent integration & restructuring process in Europe. It reflects the recommended planning phases.



The Importance of Pre-Acquisition Input

We have outlined below some of the reasons why we believe 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 a European 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 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 on client's post-acquisition means we have developed a wealth of experience on enhancing a company's post position-acquisition position, which includes the areas below.

Deal Structure

The selected deal structure may assist in arriving at preferred post-acquisition organizational 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 and Works Councils in one country will 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 minimize industrial relations' challenges at a later date.

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

Post-Acquisition (or stand-alone) Restructuring

In case of a contemplated restructuring of a European 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 e.g. the following fields: Finance, Strategic Planning, HR, Engineering, Supply Chain, Communications and Employment/Legal.

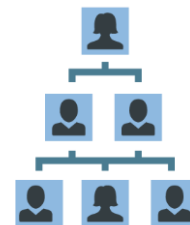
In this phase, the Strategic Employment Consulting is aimed at setting the stage for:

- 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, the Strategic Employment Consulting includes exploring/enhancing:

- 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 wherein certain categories of employees will benefit from statutory protection against dismissal;
- Employee-consultation requirements at the pan-European level and the level of each affected country;

- the applicable timing lines in each country;
- the restructuring costs;
- options to enhance the company’s (negotiations) 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

The International Employment Group of Bird & Bird LLP includes a number of first class lawyers, who have the requisite expertise to act as a seamless workbench to provide specialty legal support to the internal team or participate in the multi-disciplinary steering committee directly.



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Ian has been practicing employment law for over 25 years and has significant experience of managing the employment related aspects of multi-jurisdictional projects, including mergers and acquisitions, re-structurings and outsourcing operations. He is client relationship partner for some of the firms leading clients and is recognized in the legal directories as a leader in his field.

Ian is Head of the UK Employment Practice and is Co-head of our International Employment Group.

He has extensive experience of advising on a broad range of contentious and non-contentious issues including the negotiation and termination of contracts of service for senior personnel, discrimination issues, collective and trade union matters, the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”), and other employment aspects of corporate transactions and outsourcing programmes.

Ian writes regularly for the national press and is the author of the WHICH? Guide On Employment Law and co-author of “Britain’s Invisible Earnings”. He appears regularly on BBC radio including “The Today Programme”, “Five Live” and “Money Box Live”. He also speaks regularly at a number of conferences on a range of employment law issues.



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Philip is experienced in outsourcing and M&A-related employment matters, bringing his extensive experience to advise a wide variety of clients.

Philip is a Partner and Co-head of our International Employment Group. He has been practicing law for over 25 years and is based in The Hague.

Philip has broad experience in all aspects of employment law, with an emphasis on the HR/Legal aspects of business transactions including outsourcing and M&As and restructurings on both a national and multi-jurisdictional basis. Philip very often operates at the cross-section of employment law, payroll tax and financial/actuarial pensions, enabling him to provide clients with advice on pensions, employee incentive schemes including stock options, stock purchase, variable pay and all other forms of employment benefits such as company car arrangements and various types of insurance.

His strongest asset is his ability to translate complex legal issues into simple concepts and strategies and provide clear business advice to facilitate his clients' decision making processes and solve legal issues. This allows him to act not just in a local environment but also to easily assume a multi-jurisdictional coordinating role. During his career Philip has worked with international corporations doing business in the Netherlands and abroad, often in close cooperation with corporate, commercial, tax and financial/actuarial pension experts.



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Wolf is an experienced former European deputy GC at Northrop Grumman and has a wealth of experience of the in-house perspective with his many years of international experience.

Wolf von Kumberg brings over 30 years of international legal and business experience to the practice of ADR. Having served as Legal Director and Assistant General counsel to Northrop Grumman Corporation and before that to Litton Industries Inc., he has unique knowledge related to the Aerospace, Defence and High Tech Industries. His practice involved most regions of the World and included commercial, government and state entities. He is now applying this accumulated knowledge to the field of global compliance and international transactions.

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