

International Mergers & Acquisitions: 10 Tips in 60 Minutes

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Topics Covered

- Due Diligence
- Cultural Differences
- Plan Assumption
- Compliance Issues
- Employee Communications and Education
- Vendor Related Tasks
- Special Issues

Overview: 10 Tips in a Nutshell

1. Get Started as Soon as Possible
2. Create a Due Diligence Checklist
3. Make an Effort to Understand and Address Cultural Differences
4. Be Aware of Differences in Expectations
5. Discuss Impact of Plan Assumption
6. Don't Be In the Dark Regarding Compliance Activities
7. Work with Advisors to Review Local Regulations
8. Extensive Communications are Critical to Integration Success
9. Engage Your Vendors Early
10. Special Issues: Expect the Unexpected

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TIP # 1: Get Started as Soon as Possible

- Create a task force and establish relationships with business partners
- Leverage lessons learned from past deals
- Create contact list
- Determine Target Demographics
 - How many employees are in each location
- Review documents

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Create a Task Force

- Task force will vary from deal to deal depending on special circumstances of deal
- HR, Legal, Payroll, Tax, Accounting, Finance
 - Create a team of experts
- Goal alignment is important
- Provide insights on resource allocation to minimize duplication of effort
- “Group Think” mentality



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Review Documents – Merger Agreement

- Type of acquisition
 - Cash
 - Stock
 - Combination
- Are you assuming plans?
 - Before and after snapshot
 - Qualified plans: will they still be qualified?
- What is being assumed?
 - All employees
 - Non-employees
 - Acceleration?
 - Rounding methodology for shares and price



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Review– Plan and Procedure Documents

- Plan documents
 - Types of plans offered
 - Any tax qualified plans?
 - Determine differences from existing plans and decide how to handle
 - Example: termination clauses, Leaves of Absences (LOAs)
 - Restate Prospectus
 - Are there any terminations, LOAs, or non-standard agreements that need special attention?
 - Are there any restrictions or special conditions for a “named” group?
- Are there any documented procedures?

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TIP # 2: Create a Due Diligence Checklist

- Checklist covers:
 - General Administration
 - Compliance
 - Treatment of existing and new grants
- Share checklist with business partners as soon as possible
 - Internal
 - HR, Accounting, Payroll, Finance
 - External
 - Broker(s), Transfer Agent, Exchange/Escrow Agents

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Checklist: General Administration

- System Evaluation
 - Manual or automated processes
 - How are grants/exercises tracked
 - Stock system
 - Spreadsheets
- Stock Broker, Transfer Agent, Exchange Agent
 - Is Target public or private?
- Trustee or other special arrangements
 - Escrow agent
 - Example: Israel

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Checklist: General Administration

(cont.)

- Ask open-ended questions
- Actively listen
- Determine:
 - Where the company is incorporated
 - If there are any outstanding loans
 - If there are any warrants
- Is there an Employee Stock Purchase Plan (ESPP)?
- Determine hire date for new employees
 - Keep original hire date
 - Use close date

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Checklist: Compliance

- Securities & Tax Filings
 - Where required and who currently does them?
 - Who will do them going forward?
 - Review rules & regulations for any “new” countries
- Shareholders representatives
 - Works Councils
- Section 16 persons
- Listings on multiple exchanges
- Tax consequences of merger for company and employee

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Checklist: Compliance (cont.)

- Any new securities or tax filings due to larger populations?
 - Example EU Prospectus
- Recharge agreements
 - Local tax deductions?
 - Who currently handles tax reporting for the corporate tax deduction?
- Who will handle employee and employer tax reporting and/or withholding going forward?

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Checklist: Treatment of Existing and New Grants

- Entering new employees into stock system
 - Depends on stock system
 - Depends on in-house/outsourced
- Database conversion
 - Required?
 - When to suspend trading?
 - Is there a blackout period?
- Convert historical information?
 - Time consuming
 - Could keep a separate database or spreadsheets for historical data

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Checklist: Treatment of Existing and New Grants (cont.)

- What are the Accounting/Measurement date(s) for the converted grants?
- Will new grants for any key Target employees post-close be made out of an assumed Target Plan or out of the Parent Plan?
- Assumed plan share handling post-close
 - Retire shares
- When will employees be able to activate their stock broker account?
- How soon will employees be able to trade?

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TIP # 3: Make an Effort to Understand and Address Cultural Differences

- Conceptual Variations
- Language Concerns
- Corporate Cultures
- Legal Differences



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Conceptual Variations

- Equity plans may not be well understood or used in a particular country/employee population
 - Explain benefits of equity plans to employees
 - In person, one-to-one training may be required
- Value/Perception issues
- US-based examples of new concepts may not work
 - Try to use local examples
 - Example: Martha Stewart & insider trading
- Be careful of stereotypical icons used to represent countries in any communications



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Language Concerns

- External local tax advisors may be recommended
 - Reduces company liability
 - Local language easier for employee to understand
- Translator may be helpful
- Define terminology/jargon



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Understand Corporate Culture of Target

- Working hours
 - “Business hours” vs 24/7 availability
- Preferred communication methods and expectations in response time
 - Instant messaging (IM) vs. email vs. phone
 - Enforceability of IM vs. email: no archive on IM
- Public company vs. private company
 - Subject to regulations
 - Trading window regulations: may not have applied to target before
 - Tax payments: timing and rates
- Standard procedures vs. ad hoc procedures



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Legal Differences

- US Sarbanes-Oxley Regulations (SOX):
anonymous hotline to report ethics violations may not be allowed due to local country rules
 - Example: EU countries require all complaints to be made in an open forum
- Works Councils
 - Notifications/approvals
 - Set up relationship as soon as possible
- Data Privacy Requirements
 - Employee records
 - Address of record: Company address or home address

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TIP # 4: Be Aware of Differences in Expectations

- Differences in Expectations
 - Corporate
 - Employees

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Differences in Expectations - **Corporate**

- Acquirer may have high expectation regarding:
 - Seamless integration
 - Example: stock databases are merged easily
 - No issues
- May not be practical
 - i.e. Target data may not be clean
- Clear communications
 - Mandating corporate policies on target company
 - Potential repercussions

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Differences in Expectations - **Employees**

- Emphasize key benefits: additional benefits
 - “Welcome” grants with faster vesting
 - Key employees may receive special terms
 - Make sure these are communicated properly
 - Explain that all benefits are not going away
 - Explain differences in equity plans
- Employee retention plans
- Is acquisition viewed as beneficial or adversarial by target?
 - Respond, don't react to employee concerns
 - Be proactive when possible

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TIP #5: Discuss Impact of Plan Assumption

- Cross-functional Impact
- Administrative Impact
- Handling Qualified plans



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Cross-functional Impact

- Review impact on:
 - Tax
 - Legal
 - Accounting
 - Administration
 - Compliance
 - HR



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Cross-functional Impact (cont.)

- Involve entire M&A team in discussion before a new deal arises
- Assumption may create disparate compensation plans as compared to existing plans
 - Existing employees may feel new employees are receiving better benefits



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Administrative Impact

- Effect of assumed plans on outsourced stock administration
 - Multiple vendors may be involved depending on outsourcer relationships
 - Allow enough time to convert/enter data
- Determine:
 - Where plan history will be stored
 - Grant date of assumed equity
 - Measurement date of assumed equity programs



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Administrative Impact (cont.)

- Transitional people (people who leave before becoming employees)
 - Make sure all agreements are signed before trading is permitted
 - Set up accounts with brokers before first day of trading
 - Encourage employees to activate brokerage accounts before first day of trading



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Handling Qualified Plans

- May be driven by local entity, not parent
- How many people are affected?
 - Cost/Benefit analysis
 - Small number of people may not warrant high legal costs associated with keeping qualified plans
 - Examples: UK EMI Plan, Israel
 - What is competitive with other companies in region?
- Who will manage qualified plans going forward?



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Impact Activities

- Government regulations
- Internal/External Auditors
- Management reporting
- Participant education
- Data Quality
- Annual Disclosure
- Budget justification
- Internal politics/investigations
- Software provider management
- Data Privacy & Security

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TIP # 6: Don't Be In the Dark Regarding Compliance Activities

- Compliance issues
 - Fair Market Value (FMV) calculations
 - Setting tax policies and rates
- Review existing tax reporting & withholding policies
 - Historical tax information
 - Tax rates used
- Determine tax policies going forward
 - Impose acquiring company's tax policies
 - Storage of historical data for audit purposes

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Compliance Issues – FMV Calculations

- Review plan documents for definition of FMV
- Is target's FMV calculation methodology correct and compatible with acquirer?
 - Example: France, Malaysia, Italy
- Handling non-compliances
 - Impose acquirer's rules prospectively
 - Modifications to historical data may have accounting implications
 - Document risk of past non-compliances
 - Review with internal and external M&A team
- Have a consistent process from deal to deal



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Tax Policies – Current and Future

- Review existing tax reporting & withholding policies
 - Multiple reviewers: target & acquirer
 - Use your expert advisors!
 - Tax rates used
- Determine tax policies going forward
 - Impose Parent company's tax policies
 - Communications, education, and training
 - Have tax advisors:
 - Prepare country-specific tax memorandums
 - Present country-specific tax information in person/webinars
 - Multi-layer delivery



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Tax Policies – Current and Future (cont.)

- Storage of historical data for audit purposes
 - Keep a copy of original target database for external reporting (financial, legal, tax...)
 - Will be needed for historical pre-acquisition/pre-conversion data
 - Make database read-only if possible
 - Standardize & preserve passwords!



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TIP # 7: Work with Advisors to Review Local Regulations

- Review past filings
 - Securities
 - Tax
 - Payroll
 - Legal
 - Exchange control
- Determine responsible party for future filings
 - Integration with acquirer filings
- Works Councils
 - Notification/Approval



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TIP # 8: Extensive Communications are Critical to Integration Success

- Employee Communications and Education
 - Providing education in countries where equity is not widely used/understood
- Be careful of key points being “lost in translation” when using multiple presenters



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Employee Education

- Develop multi-layered education program
 - Memorandums
 - In-person/webinar presentation
 - Local language if needed
 - Email
 - Post on intranet
 - Hotline for questions
 - Train the trainer sessions
 - Benefits call center
 - Broker call center
 - Regional HRs/Payroll



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TIP #9: Engage Your Vendors Early

- Broker
 - Will target use their own broker or acquirer broker?
 - May need to re-negotiate broker agreements
 - Transaction fees
 - Challenges of having an out-sourced broker
 - Extra time may be needed for data integration
 - May involve multiple vendors & system conversions
 - Have back-up plans
 - Allow time for testing!
 - Conversion and integration of target data
 - Employee communications
 - Account set-up and activation

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Vendor Engagement (cont.)

- Escrow, Exchange, and Transfer Agents
 - Fees
 - Legend removal
 - Stock-for-stock exchanges
 - Exchange stock for cash
 - May need to re-negotiate agreements
 - Determine who will manage the accounts

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TIP # 10: Special Issues: Expect the Unexpected

- Special Issues
 - Handling special agreements
 - Customizing procedures
 - Addendums to agreements not disclosed in due diligence
- Look out for deal breakers
 - Varying interpretations of merger agreement
 - Tax rates
- Keep your sense of humor!



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What Questions Do You Have?

Thank you for your participation



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