HR’s Guide to M&A (Pre-Integration)

Looking at the process from a People Perspective

Setting the Scene

With a transaction as large as an acquisition, potential buyers want to be sure that the financial and strategic commitment they're considering makes sound business sense. Straightforward and unhindered visibility of the target company's current financial obligations, policies, liabilities, contracts, intellectual properties issues, possible legal risks, and more is essential especially when acquiring or merging with private companies that have not been subject to previous scrutiny.

There are two ways of structuring the sale of a business: a **share sale** or an **asset sale.**

A **share sale** is where the buyer acquires the shares of the target company from the seller who ends up as a subsidiary of the buyer. In this situation, nothing changes for the employees of the target company: the target company remains their employer and their contract terms and any liabilities will not be affected, so it's very much business as usual so far as the employees are concerned. The only change on the date of the acquisition is the ownership of the company which employs them, although the new owner may of course make changes in the future.

In an **asset sale,** the buyer only acquires certain assets which may be tangible (such as shops, factories, plant and machinery) or intangible (such as goodwill, brand names and other intellectual property). The buyer selects which assets of the business it wishes to acquire and acquires these from the seller instead of purchasing the shares in the company owning the assets. This allows the buyer to leave behind certain assets and liabilities of the seller. In the post pandemic world, it is likely that asset sales (as opposed to share sales) will become more popular as investors select the positive assets they wish to acquire leaving behind onerous leases and bad debts.

The Challenge

Whether it's an acquisition as described above or a merger (when two separate companies voluntarily and equally — for the most part — join to become one new company), news of such a change typically causes a wave of uncertainty and stress within the company employees being sold or the two joining forces. The process of achieving the best possible outcome is high risk, expensive and reliant ultimately on people coping with the change and mindset shift required.

What is Change

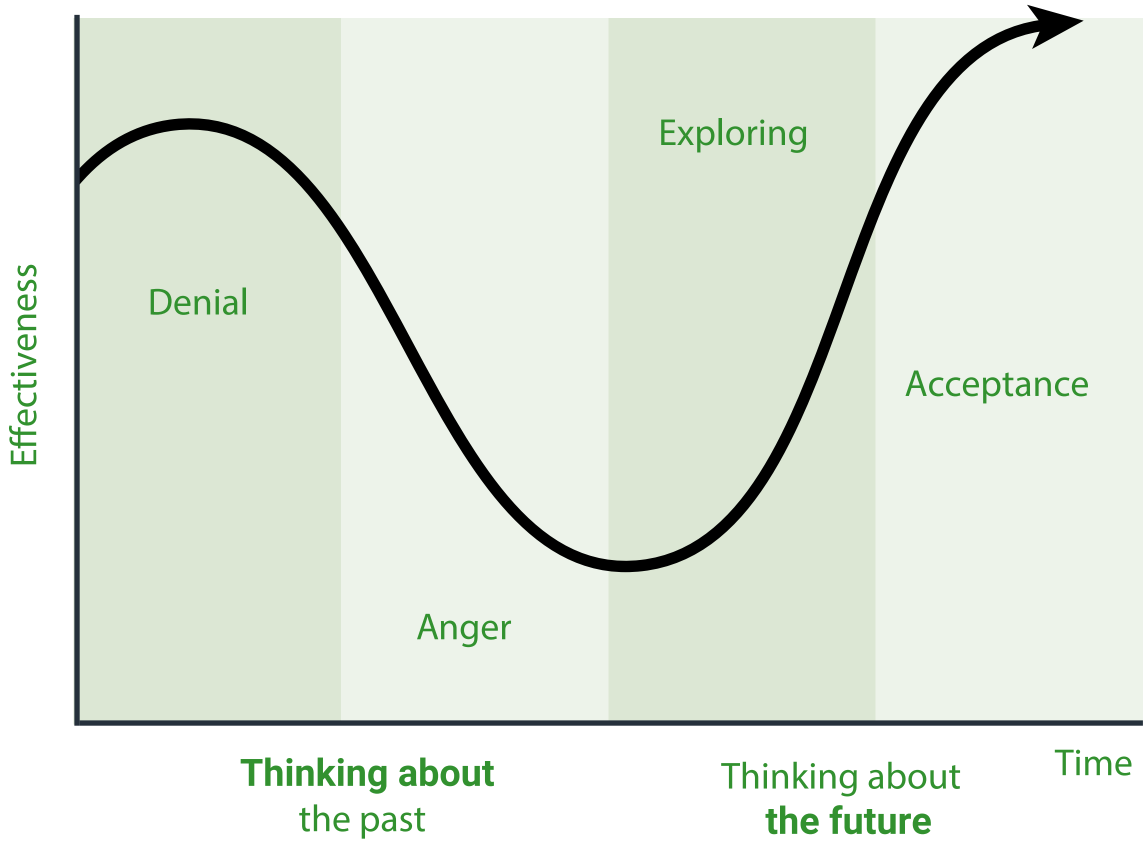
All organisations need to plan and manage the inevitability of change. Whether the change programme is triggered by M&A or other catalysts such as restructuring, redundancy, TUPE or relocation the outcomes are the same – people are impacted and the business requirements change over a period of time. Understanding that change is constant, inevitable and reliant on the willingness of employees to accept the new world post M&A is a keystone for each phase of the process and helps to underline the importance of Human Resources (HR) and their influence, involvement and inclusion in each and every key stage.

Everyone has their right to take their time with where they are on the curve which can't be misconstrued as resistance, because that's not always the case. So having that **authentic dialogue** with individuals so they understand the place they are in with enough support around is important.

Preparing for Organisational Change forms part of the approach:

White Paper: Preparing for Organisational Change

The Change Curve



The Process for Successful M&A

Keeping the process simple, realistic and thorough enables all contributors involved in the M&A approach to meet their objectives and ultimately deliver a successful integration.

A **simple 5 phase** approach maps the key requirements whilst guiding teams on the order in which to operate and when to ask the right questions.

Each of these phases requires input and specialisms from the team , however this guide is particularly interested and focused on what HR contributes and WHY it is CRUCIAL.

Phase 1

M&A Strategy - High Level Planning

- Define M&A strategy and goals
- Create M&A executive committee

Phase 2

Target Business Screening – The Options

- Organise search team and plan target screening
- Identify potential M&A targets
- Screen, select and contact target candidate(s)
- Execute confidentiality agreement
- Analyse potential M&A synergies
- Submit M&A letter of intent

Phase 3

Due Diligence & Employee Liability Data (ELI)

- Plan M&A due diligence
- Organise due diligence teams
- Define due diligence approach, methods, and protocols
- Conduct M&A due diligence
- Compile and analyse due diligence findings

Phase 4

Post Transaction Planning

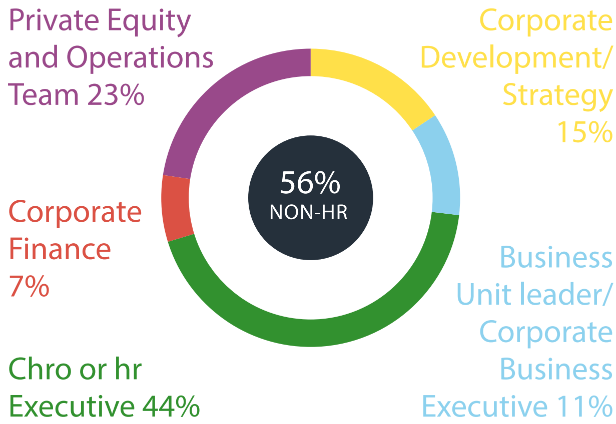
- Develop target valuation
- Develop M&A deal structure
- Present M&A deal offer
- Negotiate M&A terms
- Plan M&A integration
- Conduct M&A deal closing

Phase 5

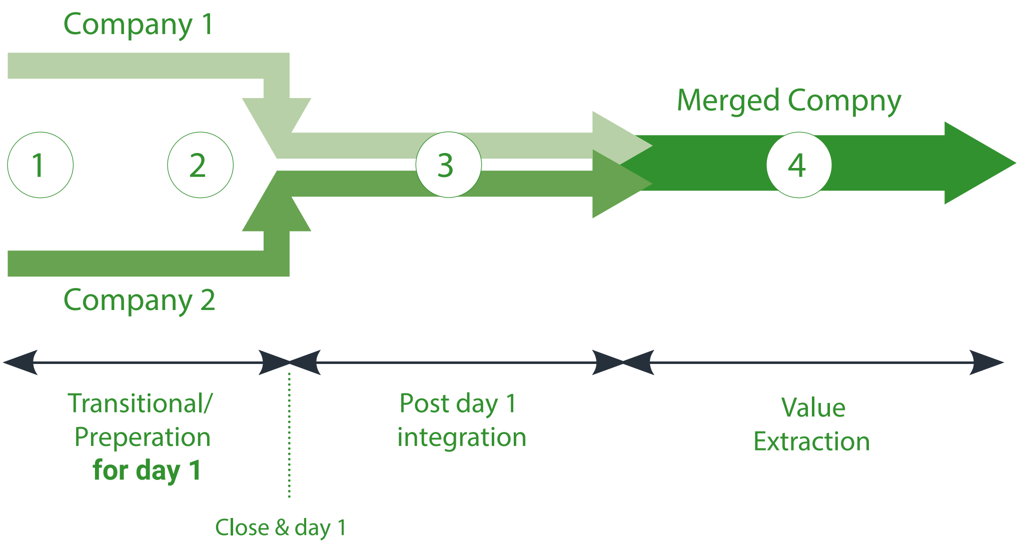
Integration / Implementation

- Establish M&A integration mgt office(s)
- Communicate M&A integration plan
- Integrate customers, markets, products, IT infrastructure, data, and systems
- Integrate the organisations, workforce, functions, operations, locations, and facilities

By clearly defining HR's role throughout the M&A purchase or deal life cycle, this guide demonstrates that the HR team must operate as a strategic partner within the purchase making context. HR's involvement mitigates risk and helps to achieve commercial objectives whilst contributing towards a maximised purchase value that respects and understands the contribution of the people. This structured guide can help both new and experienced members of an HR M&A team understand the role they play and enables them to quickly start working through deal-specific issues.



As the diagram demonstrates – focusing on non HR contribution is commonplace and it is the teams that involve HR early and in a collaborative way that are seeing more success **post purchase and during integration**. By engaging HR too late, companies are taking on unnecessary risk that could materially impact the purchase outcome, integration strategy and timelines and could even result in a "no-go" decision or reduced synergies. Common HR issues uncovered during due diligence include Golden handshakes and restricted exit terms in executive agreements, high-cost severance commitments, retention risks, significant cultural gaps, underfunded defined benefit pensions, and compensation and employee benefit plan compliance issues.



High-performing HR M&A teams utilise a phase-by-phase HR playbook that has an established and proven methodology across each of the stages.

Phase 1
M&A Strategy - High Level Planning

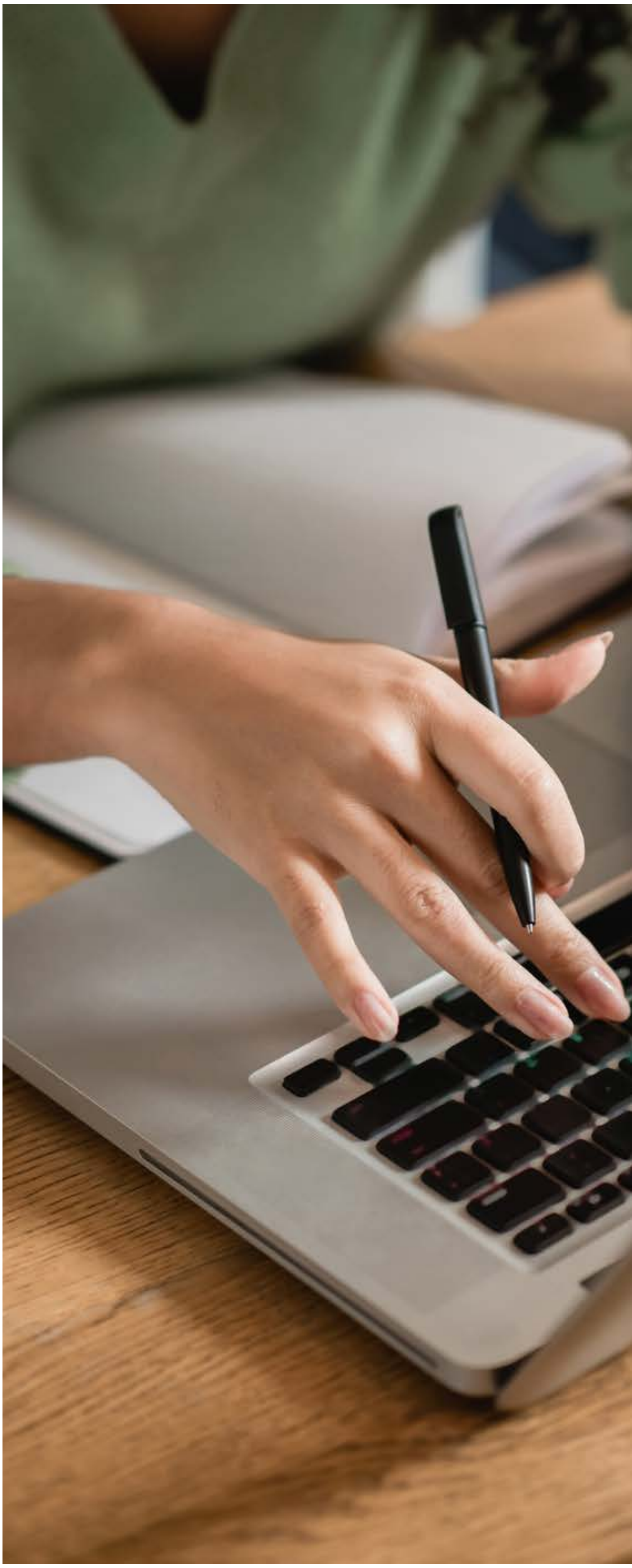
The first step in an M&A integration is to achieve agreement among the executive team on strategy, the integration's direction, targets, risks, priorities, success metrics, assumptions, end states, non-negotiables, and to what extent the target company will be integrated. Integration matters more in some types of acquisitions than others, and it matters more in some functions than others, depending on the rationale behind the deal. When M&A integration teams rush into planning without clarity from senior management, they are likely to make the wrong assumptions and take the program in the wrong direction. Before the project gets going, clear objectives should be set to ensure effective plans can be developed and planned.

Senior executives should agree a set of acquisition integration guiding principles that will serve as basis for decision-making and ensure integration teams act in alignment within the agreed governance structure.

Phase 2

Target Business Screening – The Options

Strategic buyers are constantly looking for potential opportunities. Acquirers utilise quantitative & qualitative data to rank opportunities based on financial, market and technology criteria. Initial discussions are usually managed by a third party who can manage the non-disclosure agreements and facilitate the conversations regarding the mutually advantageous transaction. A buyer's primary objective at this stage is to identify strategically compatible acquisition targets.



Phase 3
Due Diligence & Employee Liability Data (ELI)

Due Diligence Checklist

The aim of due diligence is to ensure that any decision taken regarding the company in question is an informed one, maximising opportunity to add value in an M&A transaction and is probably the most important stage for the HR team. Analysing and understanding the HR structure of any business provides both a holistic and granular view of the target company and its employees. The knowledge gleaned from HR Due Diligence can significantly support the integration of cultures and policies post-merger.

Due Diligence Data

The Data Room provides valuable information and helps preparing for the integration, however having the correct data is essential. Performing forensic and detailed HR due diligence at this stage will help to clarify that the target company isn't cutting corners - the cost of non-compliance can be steep.

Considering employee or human capital risks early in the discussions and negotiations in a clear and methodical way is fundamental to delivering value in M&A transactions. Examples of people risks that can severely undermine deals and destroy value are poorly executed integrations, failure to consider culture and organisational fit, inability to retain top talent, and lack of clarity in employee communications

What to Request

- Employee Data & Demographics : title, position, salary, age, location, tenure, gender, skills
- Benefits Plans
- Salaries & Compensation Plans : understanding disparity at this stage enables planning and considerations for managing different expectations and agreements
- Employment Contracts
- Collective Bargaining & Union Agreements
- Organisational Structures
- HR Compliance Risks
- Pending or expected employee disputes or complaints
- Employee attrition & Turnover and Length of service
- HRIS & Technology systems
- HR Policies and Employee handbook Compliance
- Cultural Values
- Leadership & Management practices
- Performance Management schedule and structure

What to Consider / Look For

- Assets
- Liabilities, Expenses & People Costs
- Cost Saving opportunities
- Potential headcount synergies
- Substation of financial records
- Organisational compatibility
- Cultural Norms and Values
- Technology
- HR capabilities
- Depth of management talent
- Talent retention
- Management team mindset and motivations
- Employment Relations Issues
- Integration Strategy Compatibility
- Employment Tribunal Risks
- Performance Issues & Management capability concerns
- Inherited HR Contractual Limitations
- Non Compete, Confidentiality and Non Solicit Terms

Compliance

HR departments are usually responsible for ensuring that the company is compliant with current legislation. Performing your due diligence here will ensure that the target company isn't cutting corners.

Phase 4
Post Transaction Planning

The HR M&A playbook should at this stage be used to define, contribute, and support the planning of the integration approach post-merger or acquisition– what happens on Day 1 of the new combined organisation? The outcomes required by each individual workstream (as detailed in Phase 5) within the governance of a project management framework will be vital. Setting milestones and success criteria with clearly documented key activities, roles and responsibilities and dependencies will support the successful integration when Integration Day 1 arrives.

Each workstream will require a sperate activity list template as a central component of the project management approach. Using project management tools effectively will ensure that key steps are taken, and results tracked throughout the process.

Phase 5
Integration /Implementation

HR's preferred integration approach should be considered as early as Phase 2 as targeting similarly aligned businesses can make the integration synergies more simplistic, however every deal is different and exceptions are common.

The integration approach recommended and planned in Phase 4 needs to carefully support the business strategy, the target operating models for the future and address all the complexities of all the people related aspects of the combined new business.

The integration approach should achieve a set of clear objectives:

- A clearly articulated future operating model and organisational structure
- A company culture statement for future business objectives
- A talent retention plan
- A talent attraction plan
- Clear and consistently defined roles, responsibilities, and decision rights across the new combined organisation
- A unified, consistent and people focus communication plan
- Employee onboarding, training, and acclimatisation
- Provision of fundamentals such as payroll, welfare, benefits, communication and compassion

When integrating businesses, the most common people issues fit into the following four groups:

1. Talent & Employee Retention	3. Combined Leadership Conflict
2. Cultural Compatibility	4. Compensation & Benefits Alignment

All 4 of these issues can be proactively addressed by clear and appropriate communication. Many of these risks and concerns can be minimized by considering the likely challenges, the questions that will be asked and how to listen, consider and resolve the potential conflicts. Planning and delivering tailored and meaningful communications for all types of employees, Stakeholders and process contributors is effort well spent.

Key Employee Retention Plan

Retaining important employees is a critical part of the process and should be considered during the early phases of the deal negotiation. Considerations for this plan should include:

- Employees that are critical/ important due to their knowledge and discreet skills sets, or influence on delivery/ quality
- Retention on a transitional or long term basis for specific employees (or groups of employees) should be identified with established timelines
- Financial and non financial motivators to encourage "you are critical" employees to remain and be committed

As the process moves through the phases the ideal integration outcomes are defined by each **workstream (as detailed in M&A Workstreams)** so that there is clear understanding of timings, budget and resource requirements to achieve the preferred approach with clear methods for managing exceptions and or deviations.

The HR workstreams will be running alongside the overall integration work streams covering typically, Finance, IT, Legal, Marketing , Sales and Product/Service Provision. Each of these workstreams will have a lead reporting into the Governance structure of the overall project.

Planning the structure of the new entity and how it will be governed should not be underestimated. Determining how the board of the new entity will be created is key and deciding on optimal size, committee structures, regulatory restraints and future decision making will influence the post integration framework and future work plans of the new organisation.

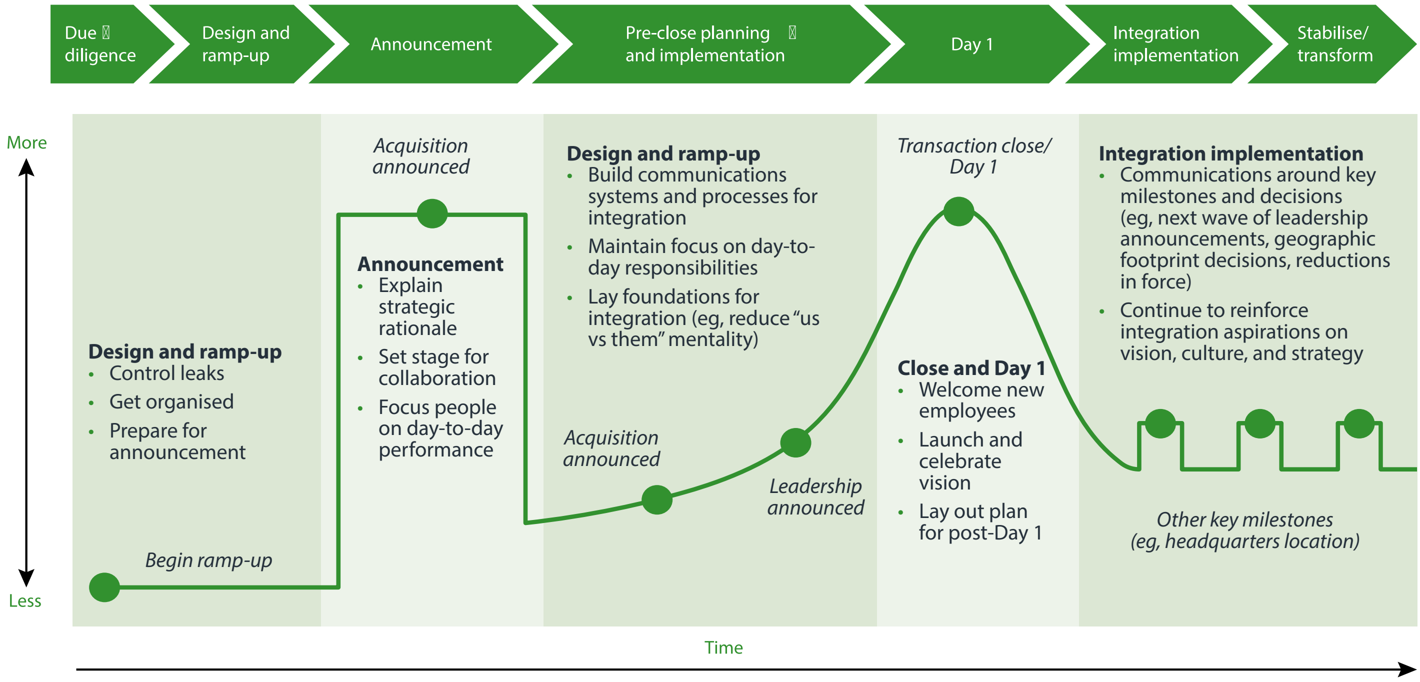
Communication Workstream
Pre & Post Integration

Planned and structured communications are the most critical element of a merger as they essentially provide the collective voice and glue that holds the whole process together. Communication at the beginning of the relationship between two companies that are combining sets the scene for the future relationship and dialogue. This key workstreams goes live from the very beginning of Phase 1 and will play an integral part of the overall process.

A strongly defined and project planned communication strategy will help deliver continuity of message and business strategy through out the entire process. Ensuring that the right messages are delivered in a timely considered and transparent way will help to alleviate the anxiety of the employees whilst boosting morale and assisting with talent retention. Constructive and well thought out communication helps to demonstrate the future company's vision and underlines the approach to strategy and culture to all the stakeholders. Whether internal or external, customers, suppliers, vendors, regulators and employees all hear and see the intention of the new regime which helps to build momentum and support. Clear transparent messaging helps to alleviate rumours, misinformation and myth about what might happen in the future.

The communication plan is a tool that can be used to influence and inform all the potential stakeholders ahead of each phase and ahead of the new Day 1 regime. The interactions and intensity of the communications will fluctuate throughout the whole process and the workstream will flex up and down during critical peaks of announcement and PR.

Level of communication during integration timeline



The list of HR communication tasks and outputs included in this workstream varies from project to project but there needs to be an aligned and consistent message and tone across key deliverables such as:

- ✓ Announcement scripts
- ✓ Press releases
- ✓ Strategic rationale scripts
- ✓ Employee Changes
- ✓ Welcome Letter to new employees
- ✓ Outline the hiring process for new employees
- ✓ Communicate changes to existing employees
- ✓ Retention Bonuses – how why and when?

- ✓ Culture & Vision
- ✓ FAQ's
- ✓ Day 1 Plan
- ✓ Post Day 1 Plan
- ✓ Redundancy & Severance Policy & Process * how to manage redundancy guide
- ✓ Onboarding for New Employees

Creating a comprehensive communication matrix that details all communication types, methods and cascade delivery approached will ensure all workstreams are connected on what the messaging needs to be and when it will take place.

HR Project Management Tools

Clearly delineated tasks and established decision-making parameters within an M&A process will provide confidence to all involved team members and ensure HR alignment with other business teams, including finance, legal and IT. Throughout the transaction, structured collaboration across the organisation is vital to prevent teams from making crucial decisions in isolation.

With a clear project plan and workstreams in place, HR can execute faster and provide crucial information about the people dynamics and risks — which is the ultimate goal.

If HR is engaged late in the transaction (just before or at close), they are prevented from conducting thorough HR due diligence and influencing the approach for people integration.

With an HR M&A approach and playbook outlined, when an opportunity or deal is being considered each workstream can be desktop reviewed , and provide determination on how to proceed and if the standard process can be adopted or if exceptions are required. This will significantly accelerate the deal execution and contribute to the ultimate synergy realisation. The integration strategy must be designed to achieve the results articulated in the deal proposition. While the M&A vision often belongs to the CEO, HR owns the execution from a people perspective.

As demonstrated throughout this guide, the preferred HR integration approach should be rooted in the business strategy and address all people-related aspects of the deal.
To assist with the integration planning and roll out of onboarding the HR team should ascertain clear direction and feedback from the business on the following:

What is the vision & ambition for the merger?	This will inform the guiding principles of how the merger should be approached ,what the priorities will be and what obligations need to be met along the process.
How will the new combined entity be structured?	Will one of the businesses need to dissolve? Which company will prevail? Is it necessary to form an entirely new organisation? Is there any existing brand and reputation to consider for leverage in the future?
How will the new organisation be governed and managed?	Which members of the respective boards will remain and participate in the newly formed board? What is the optimal governance structure and size? Is there any need for regulatory support or committees for the new future organisation?
How long will the merger and integration take?	Dictated by the complexity of the 2 organisations, the joint committees required, the communication plan and the target completion date. Project plan contingency should be included for unexpected delays and provision of managing virtual processes due to COVID
How much will the merger cost?	Costs will be influenced by employee numbers, complexity and capacity of employees and leadership team vs BAU. TIME and therefore COST is impacted during an M&A process by: PR, technology integration, Finance, facilities management, admin, restructure costs e.g. Compromise and Redundancy Payments, and professional fees

A well-executed M&A transaction keeps the most valuable asset — people — at the centre of the process. Given the significant people risks associated with deals, HR M&A readiness is a business imperative, and that begins with the ability to inform and orchestrate value-driven change.

Anticipating deals, preparing for them early, building internal systems and leaning on external expertise equips the HR team to significantly contribute to the deal team.

By investing in an agile M&A play book, companies can position their HR team to effectively support the business in all future transactions, engage the workforce and help deliver business results for both the short and long term.

How we can help

NFP are the people and change experts. We are passionate, pragmatic, flexible and agile. We love working with organisations to improve their performance through their people.

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