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No big merger would ever be completed without a comprehensive due diligence analysis. Yet while prudent deal makers will always conduct a thorough financial analysis of a prospective merger partner, an issue that has become very important in today's global economy often gets little pre-merger consideration: immigration compliance.

● The lack of adequate immigration due diligence can have serious repercussions for any major corporate restructuring, whether it occurs by way of a merger, acquisition, asset sale, stock sale, joint venture or spin-off. If immigration considerations are not assessed in advance, key employees who are crucial to the company's success could suddenly discover that the change in corporate structure has invalidated their authorization to continue legally working in the United States.

Even if they qualify for reauthorization, this still can be highly disruptive. Out-of-status aliens are not permitted to change their visa status in the United States, so they will have to leave the country and apply at a U.S. consulate abroad for a new visa.

Such problems can be addressed in advance, but mainly if they are discovered before the merger takes effect. A thorough immigration review as part of the initial risk assessment can go a long way toward preserving the status of essential foreign employees and easing the integration of the two companies' employees.

Immigration complications can arise in a surprising number of ways following a merger. Consider, for example, the case of a U.S. subsidiary of a French company, headed by a French national who was working to the United States on an E-2 investor visa. If a U.S. company acquired the French subsidiary company, the company president's E-2 visa, issued because the petitioning entity was French-owned and the president was French, would no longer be valid after the merger.

Also consider the case of a vice-president of a U.S. subsidiary of a foreign company working in the United States on an L-1A visa, granted to an intra-company transferee. After an acquisition by a U.S. company, the company structure would be transformed and the vice-president's U.S. employer would no longer be a subsidiary. As a result, the L-1A visa would not be valid and the vice-president would be an unauthorized worker in the eyes of U.S. immigration.

The major disruptions that occur when key employees lose their work authorization is only one consequence of the lack of advance planning on immigration issues. Individuals who find themselves, even through no fault of their own, out of compliance with immigration laws could face repercussions for years to come.

For the company, the failure to undertake immigration planning as part of a merger, leading to violations of immigration laws, could expose the organization to sanctions under federal immigration regulations,

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including the Immigration Reform and Control Act. The due diligence review of immigration compliance must include ownership and structure of the company. Even seemingly minor differences, such as company tax ID number changes, revised job descriptions, or geographic relocations of employees, can immediately invalidate foreign workers' employment authorization.

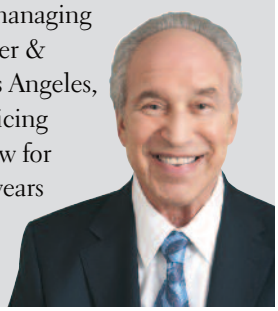
To resolve immigration problems that emerge in a corporate restructuring, each affected employee must be considered on a case-by-case basis. The solution will depend on the nature of the restructuring as well as the visa category of the alien worker. Non-immigrant temporary work visas, for example, are always "employer-specific." In other words, work authorization is allowed only with the sponsoring company, and generally most changes of employer require a new or amended petition. However, minor exceptions exist under a few categories.

Corporate reorganizations may also adversely affect a foreign executive's pending application for permanent residency by either delaying the process or considering the application for a Green Card invalid. The permanent residency process can be protracted, even without such complications. Any change that would require an entirely new application could involve delays for many years.

In today's globalized economy, buyers are likely to find that their target acquisition employs a substantial number of foreign nationals in jobs ranging from scientists and engineers to chief executives. The loss of any of these key personnel because of immigration problems that arise after a merger or corporate reorganization could have serious and far-reaching effects on vital aspects of the enterprise, including operations, management, and research and development. Sanctions, fines and loss of legal status can occur for violations of federal immigration regulations.

During the due diligence process that precedes a merger, immigration issues often get short shrift, if they get much consideration at all. In light of the high impact of immigration violations once they occur, acquisition minded companies must accomplish compliance with immigration laws far in advance of closing a transaction.

Uncovering and resolving visa and work permission problems of corporate executives and key workers before they arise can help assure a solid foundation for the newly formed company.



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