Fourth Edition | Chapter 5

MAKING IT WORK

BEST PRACTICES FOR A CROSS-BORDER HONEYMOON

BEST PRACTICES OF THE BEST DEALMAKERS

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Introduction by

David Fergusson | Editor

"For me, the first sign of a good integration is the announcement to employees and their initial reaction. A strong reaction gives you an idea of how the deal is going down, good or bad. If the leadership team is transparent and open and willing to take the answer 'no' when you can't always deliver what you're asking for, you're going to have a smooth transition."

– Shari Yocum, Co-Founder and Managing Partner, Tasman Consulting LLC

BEST PRACTICES OF THE BEST DEALMAKERS

Drawing on the experience and expertise of the "best in class" dealmakers, The M&A Advisor (http://www.maadvisor.com), together with the leading provider of virtual deal management services, Merrill DataSite® (http://www.datasite.com), publishes the quintessential dealmakers' guide series – *Best Practices of the Best Dealmakers*. Profiling the proven strategies and unique experiences of the leading M&A practitioners, this series is distributed in regular installments for M&A industry professionals in both print and interactive electronic media. Previously published features and chapters are also available in the online libraries of Merrill DataSite and The M&A Advisor. We are pleased to present **Making It Work: Best Practices for a Cross-Border Honeymoon**. This installment examines the phase after the closing of the deal, including the integration of the management teams, risks and red flags that may indicate post-closing difficulties, balance sheet adjustments and cultural/jurisdictional issues, particularly in cross-border deals, that may delay or cause a reassessment of the entire transaction. Our contributors, by the way, say most transitions go smoothly, but there are outliers. On the following pages, you'll find helpful observations provided by candid interviews with leading dealmakers, including buyers, sellers and advisors, as well as timely insights into the most current trends.

INTRODUCTION

Opera aficionados know when the show is coming to a close. It's not quite like that in mergers and acquisitions, where the final curtain doesn't fall until well after the closing documents are signed and a new company emerges. In this chapter of *Best Practices of the Best Dealmakers*, 4th Edition, we draw on the deep experience and insight of some of the world's best dealmakers and advisors to examine the challenges and risks that arise during the post-merger integration phase. Rarely is there not an issue to be resolved, or a financial statement adjusted, but as we will see most transitions go rather smoothly. And in cross-border M&A, which we have studied closely in this edition, post-closing issues can be compounded by cultural, political and regional differences.

I would like to thank our distinguished M&A Advisory Faculty who shared their knowledge and advice this phase of the M&A process. They are: **James Bergeron**, founder and Managing Partner of 108 Partners LLC, a Silicon Valley-based CEO and M&A advisory firm serving middle-market companies; **Margaret Isa Butler**, shareholder in the New York law firm Greenberg Traurig focusing on mergers, acquisitions and joint ventures, including real estate, asset management and cross-border transactions; **Beat Dolder**, the Managing Partner of DOLDER Corporate Finance in Zurich, Switzerland who has almost 20 years of experience in corporate finance and turnaround management; **Gary Gauba**, President of CenturyLink Cognilytics, the company's Big Data and Advanced Analytics division with a mission to monetize data as a strategic asset; **Tosh Kojima**, Managing Director, responsible for Asia-Europe deals at London-based DC Advisory, a mid-market corporate finance adviser with specific expertise in cross-border transactions; **Chris Heckert**, Managing Director and Supervising Principal of Generational Capital Markets Inc. in Houston, Texas; **Niki Lee**, managing partner of Tasman Consulting LLC, a strategic M&A human capital advisory based in Silicon Valley; **Dhruv Sarda**, a Senior Director with Alvarez & Marsal in London and leader of the Corporate M&A Strategy and Post-Merger Integration practice in Europe; **Simon Tilley**, Head of the European Financial Sponsors Group for the aforementioned DC Advisory, and **Shari Yocum**, Co-Founder and Managing Partner of the aforementioned Tasman Consulting LLC.

We at The M&A Advisor and Merrill Corporation are gratified by the interest in the *Best Practices or the Best Dealmakers* series. This chapter concludes this edition. As always, we invite our readers to share their thoughts and observations on these topics with us for future editions.

David A. Fergusson
Editor
Best Practices of the Best Dealmakers

Making it Work
Best Practices for a Cross-Border Honeymoon

Part I: Buyer and Seller Post-Close: A New World of Relationships

"You know a transition is going well when the teams are collaborating. You can usually tell in two to eight weeks, it's pretty quick. That's at the executive level but it's equally important at the total employee level." – James Bergeron, Managing Partner, 108 Partners LLC

If M&A is truly akin to a courtship leading to union, then the post-closing period can be likened to a honeymoon – though not always. If the buyers and sellers have been honest and transparent during the previous phases of the deal – strategy, origination, LOI, due diligence, purchase agreement and closing – the first 100 days after the closing should be a relatively smooth process of integrating the new company's management teams and early achievement of the business goals of the deal. But if issues that were not disclosed or addressed pre-closing arise – if key management players quit, if stakeholder communications are botched, if key customers defect or suppliers disappear – those are signs of trouble that could lead to, in the worst cases, arbitration or litigation. In cross-border M&A, the risk of post-closing issues arising is compounded by different cultural, regional, and regulatory environments; these have been discussed at length in previous chapters of *Best Practices of the Best Dealmakers*.

"For me, you know a transition is going well when the teams are collaborating," says James Bergeron, a veteran dealmaker who founded and is Managing Partner of 108 Partners LLC, a Silicon Valley-based CEO and M&A advisory firm serving middle-market companies. "You can usually tell in two to eight weeks, it's pretty quick. That's at the executive level but it's equally important at the total employee level." Key customer wins with the first 90 days are another sign that things are going well, he says. Bergeron, like many M&A practitioners in Silicon Valley, engages in cross-border deals and says key signs of a good integration in those cases will be advancements and appointments of key executives of the acquired company, particularly in technology companies. "If the acquirer is a European-based multi-national, they may not have innovation as a core competency. So their strategy was to acquire a U.S. based team. When an executive is appointed within six months of the deal it really is a sign of a smooth transition. It doesn't happen often, but when it happens you know it's a super smooth transition."

"Deals that have gone really well are usually because of the personalities," says Chris Heckert of Generational Capital Markets in Houston, Texas. "The buyers come in understanding they don't know the 'secret sauce'. Some come in and try to lay down a rule book, and that doesn't go as well." Heckert, who has advised on dozens of successful closings, cited as an example of a smooth transition a Houston-based company that was bought by a large London-based insurance company. The seller's business was in outsourced administration for insurance companies, which was something that the acquiring company lacked. "The buyer didn't have the kind of relationships in the industry that the seller did, and recognized that as a big hole that the seller could help them with," he says. "Over the course of the deal, the principals developed a real level of camaraderie. It was one of the best transitions I've ever seen, and three years later the relationship is still fantastic."

Drawing on his 15 years of advising on M&A, Dhruv Sarda of Alvarez and Marsal says, "The successful transactions that come to mind have always had a robust plan for integration from the outset. The integration roadmap in each case was always linked to the deal objectives with a clear governance structure and regular communications from the deal announcement date up until several months post-closing. Synergies, where applicable, would also follow a robust process of identification and validation by the business leaders (and their teams) before implementation of restructuring initiatives. Most importantly, top leadership would be announced either on or soon after closing ensuring there was no distraction from the business."

Shari Yocum and Niki Lee of Tasman Consulting specialize in post-merger integrations, and these days almost all involve cross-border deals. Says Niki Lee: "For me, the first sign of a good integration is the announcement to employees and their initial reaction. A strong reaction gives you an idea of how the deal is going down, good or bad. If the leadership team is transparent and open – and willing to take the answer 'no' when you can't always deliver what you're asking for – you're going to have a smooth transition." Yocum adds that, in her experience, "When the leadership of the buying company is committed to the integration being successful, it will have a much stronger chance of success. Another good sign is in planning for the integration – it's articulating why you bought this company, and how you are going to execute the integration. The better the buying company can articulate that, the better."

At DC Advisory, an international M&A advisory firm in London, Simon Tilley and Tosh Kojima both advise in mid-market and cross-border deals. Having "reasonable assumptions" before closing the deal is critical for a smooth transition, Tilley says. "There are no prizes for overcooking the assumptions you make around integration or cost-saving synergies. Be reasonable about the time frames and be very very clear about who's responsible. And in terms of key decisions, take the bold decisions confidently." As an example of a successful deal, he cites a UK private equity firm acquiring a business from another private equity house: "The seller was incredibly nervous about having a PE buyer lead the process, because if they kick the tires for six weeks and then it doesn't go through, it can leak out. So we negotiated the deal before allowing them access to the target company, and then gave them access for half a day to the target's management team to have a conversation about cost-savings and synergies. We left them un-chaperoned for three hours. That was really good. Doing it at the right point in the process really gave them confidence. The buyer got confidence on the synergies and that alleviated the anxiety of the seller. They took bold decisions confidently and the exiting management team exited quickly so as not to impede a successful integration."

Adds Tosh Kojima: "In a bidding situation, what allows you to outprice others is synergies. One can pay 110, another 120; I can pay 130 because I can achieve synergies. But you're probably not going to get 100 percent of every synergy. You may be wishfully thinking too much. And you have all the expectations of your shareholders on you and you suddenly start feeling the pressure of everything going wrong."

Traditionally in most deals, 30 to 90 days after the closing, the buyer presents a closing day balance sheet to the seller. Depending on the purchase agreement terms, one of the parties may have to compensate the other for discrepancies. "Most transitions are smooth," says Margaret Isa Butler of New York law firm Greenberg Traurig, who works on many private equity and cross-border deals. "In most transactions, the parties expect some negotiations. Some time before the closing, the seller puts together a statement on working capital and the parties agree on a target number. They'll adjust the price for that before closing and that's the amount will be paid at closing. But usually the buyer has data prepared for a true-up about 60 days after the closing using actual data. And that will often differ from the seller's pre-closing statement. So you can imagine how that will lead to disagreement. Sometimes the buyer will pay more. Anything can happen, but not often because the seller wants to get the number right." In cross-border deals, she says, special financial issues like "trapped cash" can occur because of local tax or regulatory restrictions.

As noted in Chapter 4, the trend toward using the "locked box mechanism" – particularly among private equity deals originating in the UK and Europe – provides some certainty to the post-closing environment by locking in the financial terms and conditions at the close. "Until about five or six years ago, pretty much all deals were done on completion accounts," says Tosh Kojima. "The private equity community in the UK invented locked boxes. Now it is quite common in Europe. The Americans are learning about it and Asians are too." Kojima says the locked box mechanism alleviates sellers from "the nervousness of having unfamiliar bidders. You have to have good analysis and assumptions up front – as an example, the working capital cycles throughout the year. So imagine if you're doing a deal at Christmas or in middle of summer; your balance sheet is going to look different during each period. But now this has become a commonly shared language between buyers and sellers."

Tilley adds that sellers like the locked box mechanism because it gives them certainty that the deal won't be adjusted after the close. And, he says, "Private equity likes it because once the deal is done and closed they can pay back their investors without holding anything back for indemnities."

A sure sign of a smooth transition is "if there is no letter from the other side's legal team," jokes Beat Dolder of DOLDER Corporate Finance in Zurich, Switzerland. He has almost 20 years of experience in corporate finance and turnaround management. "The smoothest transactions are usually share deals – selling a whole company with shares. If your transaction has carve-outs or asset sales, there's potential for issues later on. That's why one tries to avoid asset deals or carve outs. More issues arise over closing documents. That's why PE firms like locked box deals. Purchase price adjustments are the biggest problems in my view that one encounters. Locked box is just much easier." Dolder adds that, in the structure of purchase price adjustment deals, "Most issues are about what is the size of the normalized working capital. You can spend weeks calculating that. Most of the M&A advisors prefer locked box. Lawyers don't mind having a purchase price adjustment deal."

II. Signs of Trouble in the Post-Merger Environment

"The buyers said all the right things, but when they came in post-close, they were heavy handed and a lot of the goodwill in the deal got lost in the integration... The last time I checked, the business was doing well, but the seller wasn't happy."
– Chris Heckert, Generational Capital Markets

Of course, not all post-closing transitions are smooth, so M&A professionals are adept at recognizing the "red flags" that signal problems and risks. Personality difference, culture clashes, oversized egos lead to just as much unhappiness as do the loss of key management, customers or suppliers. As an example of a bad transition, Chris Heckert cites a case in which a large US private equity firm bought a Canadian business. "The buyers said all the right things but when they came in post-close, they were heavy handed and a lot of the goodwill in the deal got lost in the integration. The buyers came in with the attitude [of] 'we're going to make it better.' The last time I checked, the business was doing well, but the seller wasn't happy. A lot of times in the lower mid-market, it's the culture that makes it work. You have to be gentle and have to be flexible."

Heckert says he has seen cases where the highly educated buyers clash with sellers who are not as formally educated but are very smart at business. "A lot of times on $10 to $30 million deals, the seller is a close-knit, informal, family business. And when you get someone coming in trying to make it formal right of the bat it doesn't work. Sometimes, less is more. The best ones I've seen are the seller and buyer standing arm-in-arm, being informal, having a conversation rather than a monologue with the employees. That's especially important in cross-border deals." Another good example, Heckert noted, was a Canadian company sold to a Texas buyer. "The seller was liberal, the Texan conservative. But they built a good relationship and could get around those cultural differences. It usually comes down to personalities and how you treat people."

"Private equity is going to be hands-on," says Margaret Butler. "They need to succeed in getting the business to grow very quickly, and they have a real need for performance reporting. That's how the management works in that environment." She adds: "It's so exhausting for management to sell the company. The transaction closes, and now they have to start running again. Private equity is becoming more cognizant of this, and the buyers are letting more and more sellers take a vacation after the closing."

"Apart from slow progress with integration and falling behind synergy targets, there are a number of other early-warning signs," says Dhruv Sarda. "For example, the unplanned loss of leadership and critical talent in the first 100 days might suggest organizational and cultural challenges with integration. On a cross-border transaction, this issue tends to be particularly prevalent, as cultural due diligence can sometimes not be performed as a discrete exercise during the pre-deal stages, and any issues therefore don't become apparent until after the deal has closed. The loss of market share and key customers can also signal potential issues in the post-closing period."

Beat Dolder says to look out for delays in implementing closing agreements. "One of the early signs is if you feel that things are going too slowly. If everyone is working at the same speed, that's fine." Cross-border deals are all unique, Dolder says. "The ways of doing a deal is different in every country. So what you need it to have a local expert who tells you, 'Yes, that's usual here,' so that there's no suspicions around. There will be misunderstandings – sometimes in certain countries, they don't talk about certain things. It's very important from a communication point of view that you're talking together. Misunderstandings on what needs to be done can lead to a lot of confusion and frustration."

James Bergeron says that evidence of financial underperformance within the first 90 days is a "key sign that something is amiss. There's a big difference between marginal or even moderate underperformance and one that is material – where you're coming up very quickly against covenant thresholds with banks and you're using debt." Another early warning sign is the unexpected attrition of key management or employees. "They don't either believe in the future or feel they are not a particularly good fit," he adds.

Product integration issues also can point to trouble, says Bergeron. "You can do all the due diligence in the world – but in diligence you're in a very time-constrained environment so you are never going to be able to mitigate all the risks. If you bought a key product for your company and all of a sudden you realize that it's going to take so much longer to get it to market – or if it just doesn't fit – that's a big issue." He adds that culture clashes or cultural mismatches can upend the transition, particularly in cross-border M&A. "It might be the difference between the C-suite and all of the soldiers in the business, which are the employees. The key executives may have gotten along, *"I'm a firm believer in Darwin's theory: adapt, evolve and thrive. I have sold three of my own firms now and I know what I know. The first one I did not. There were a lot of complexities that I didn't know about. Experience helps." – Gary Gauba, President, CenturyLink Cognilytics*

but if there are real cultural issues – how employees are incentivized, the work ethic, the sense of urgency – all of these can become big issues in cross-border deals.

The very first sign of a problem in a cross-border transition are cultural issues, says Niki Lee. "It happens when a US company buys an Asian company the first time out. If it's a Japanese company, from a cultural perspective they're very nice, not outspoken, and very hierarchical. The employees communicate through management. It often takes a while for concerns to bubble to the surface. That's very different from Europe where they're more straightforward. In India, in some companies, something like a caste system may still be in place. If you're not familiar with the unique aspects of the culture, you can be setting yourself up for problems."

She adds that, in a post-closing environment, "It's like fixing the plane when you're flying it. From our perspective it's important to get the employees ramped up as quickly as possible." In addition, she says, managers need to protect the company's reputation, particularly with social media. "With websites like Glassdoor.com, you can see how former employees have rated the company. The availability of information on the Internet can have an impact on how well a company handles its transition. We do research to see if there's any merit to what's out there. If you see a hundred reviews and most are not favorable it helps to frame how you give advice and guidance to the management."

Lee's colleague Shari Yocum adds: "One thing I find interesting is in early days of acquisition, you're always showing the best side – and both sides claim to be completely aligned. But the way companies go to market is the way their culture is. Some are risk-takers – they will put a product on the market, like it or not. Others are more conservative. When those values are misaligned, you may go to market in the wrong way. Sometimes the real value is not what you thought it was. If you find can value in other ways, it helps save the deals. But good companies can make bad deals."

Tosh Kojima, who specializes in cross-border deals in Asia, says another cultural difference to look at is remuneration. “The place of the corporation in society is different in Asia than in the West,” he says. “It’s a social utility and not shareholder facing. There are reasons why these cultures are not necessarily going to see increasing shareholder value as the most important thing…Often failures occur because of a clash of philosophy and the inability to retain key talent. So you need to make sure the chemistry is in place, the vision is aligned before you do the deal. Quite often companies like to buy market share. Europe and the US are sometimes seen by Asian companies as closed clubs, so they’re trying to buy time by buying a company with built-in customer relationship. Sometimes Asian bidders underestimate that their product cannot be sold on an existing foreign platform. If the philosophy of sales and types of products are different, you should proceed with great caution.” As an example of a cultural underestimation, Kojima cites a US company that bought a UK-based company. “You would have expected the US company to at least send a divisional president to the UK to oversee the transition. Instead, they sent a health and safety officer with a 500-page manual and said, “From now on, this is the way you’re going to do your business.”

Gary Gauba of CenturyLink Cognilytics has more than 20 years of experience as a senior management executive and advisor, and he has sold three companies that he founded. “I’m a firm believer in Darwin’s theory: adapt, evolve and thrive,” Gauba says. The post-closing period after his first company was acquired taught him lessons that he applied to the next two deals, he says. “I’ve done three transactions now and I know what I know. The first one I did not. There were a lot of complexities that I didn’t know about. Experience helps.”

Gauba adds: “When issues arise, it’s usually about people. It boils down to dealing with psychology, and that gets to the kind of work each person is doing. Then there’s compensation. You need to be clear what the new rules are. Being part of a larger organization, there might be two or three people working on the same thing – you need to decide and be clear on who does what. Then there are the customers – what does this really mean to them? In some of these situations if you are taking talent or products from the new company and integration is not properly done it can cause some fear. Communication must be done properly.”

DEAL NOTES

Seven Key Steps to a Successful Post-Merger Integration

At the fifth annual Mergermarket European Corporate M&A Forum in London in June 2015, Dhruv Sarda of Alvarez & Marsal joined M&A executives from IBM, Cisco, as well as the Editor-at-Large of MergerMarket Group to discuss proven integration strategies that companies can adopt to ensure a successful post-merger integration. In an interview MergerMarket conducted with Dhruv prior to the discussion he was asked to outline the key steps to a successful integration. Dhruv identified these seven:

1. Start with developing clear integration objectives. It sounds simple, but it is important to remember why you are doing the deal and be conscious of alternative integration approaches that could deliver better benefits.

2. These objectives will help define the approach and overall integration roadmap. It is important to spend sufficient time planning the integration effort early on to ensure the integration proceeds effectively and efficiently. This starts with developing detailed integration blueprints by business area and function, identifying areas that you wish to retain from either the target or acquirer, as well as identifying quick wins and medium to long-term synergies.

3. Establish robust governance around the transformation effort with adequate resources to support both sides. Identify the Chief Integration Officer and fill key Integration Office roles as early as possible. This includes experienced project managers, someone to track synergies, a change management and communications specialist and HR roles.

4. Recognize that culture matters and sits at the heart of the target operating model. Ensure you have paid sufficient attention to understand the similarities and differences between both organisations.

5. Communicate at every step of the integration process. Share success stories and keep all stakeholders informed of future plans.

6. Use the integration as an opportunity to execute other transformational initiatives that you may have put on the back burner. This will minimize future disruption to the business and potentially deliver benefits over and above the initial targets set by the business.

7. Track synergies. It is important to have a relentless focus on synergies by initially identifying what they should be and implementing ongoing tracking mechanisms that enable the CFO and Chief Integration Officer to measure progress.

III: Integration in a Cross-Border Environment

"In cross-border deals there more variables – special factors like trapped cash issues can arise. That's where there's money trapped in one jurisdiction that can't be moved because of tax restrictions." – Margaret Isa Butler, Shareholder, Greenberg Traurig

Professionals interviewed for this edition of *Best Practices of the Best Dealmakers* have repeatedly cited cultural differences as among the biggest challenges in cross-border M&A. Culture affects not only personal behavior but informs politics, policies and regulations. The first 100 days after closing tests whether the parties who negotiated the cross-border deal fully recognized the post-merger risks.

Dhruv Sarda says that going into the integration process in a cross-border deal "It's always good to look back at the strategic rationale and underlying business case for the transaction. This serves as a good starting point for assessing integration progress and identifying potential issues." From the buyer's perspective, Sarda says, surprises may include "the absence of quick wins such as the sales pipeline not materializing early enough to deliver the financial plan." Red herrings that were not identified during due diligence could materialize: "The buyer will need to act swiftly to address these issues and ensure there is minimal impact to integration and the business overall," he notes.

The seller, particularly in smaller bolt-on transactions, could be impacted by corporate allocations on the profit and loss statements. "They may be significantly higher than anticipated, thereby making it more difficult to achieve earn-out targets," Sarda says. "The seller may also find integration to be too slow, or indeed a 'David versus Goliath' scenario whereby they have been subsumed into the buyer's organization without any due regard to the strengths and benefits they may bring to the combined organization. This can often result in low morale amongst employees and eventually their departure from the organization."

Most parties in cross-border M&A expect some post-closing negotiations, says Margaret Butler. "Some time before the closing, the seller will put together a statement on working capital and the parties agree on target number," she says. "They'll adjust the price for that before closing and that's the amount will be paid at closing. But usually the buyer has data prepared for a 'true-up' about

60 days after the closing, using actual data. And that will often differ from the closing statement. So you can imagine how that will lead to disagreements. Is it likely that buyer will pay more? Anything can happen, but it doesn't happen that often because the seller usually wants to get the number right."

Butler has seen disputes result in litigation, but says it's rare. "In cross-border deals, there [are] more variables – special factors like trapped cash issues can arise. That's where there's money trapped in one jurisdiction that can't be moved because of tax restrictions. Another area of potential issues is earn-outs. The buyer is supposed to make additional conditional post-closing payments. It is just hard to predict all factors that will affect business performance. If thresholds are not met, seller not getting payments, or buyer loaded up business with expenses. You can expect disagreements. How it will play out may depend on whether the sellers are still working for the business." Indemnities and escrows also present post-merger issues, Butler says. "The parties are likely to disagree with respect to size of claims and expected payouts. From a practical perspective, the potential for disagreements is largest when a portion of the purchase price is escrowed for long period – sometimes a couple of years. The buyer has concern that there's nobody to go against if the money isn't escrowed. That creates an incentive for the seller to settle the claim – so they can get the proceeds released sooner rather than later."

Gary Gauba says that in his experience, the number one issue post-closing in any deal is earn-outs. "Make them iron clad or they will just cause unnecessary issues." In cross-border deals, he says, be on the lookout for customer issues that involve a lot of process and delay. "The third issue is just educating people about the goals and needs of the new company."

Issues involving earn-outs, says James Bergeron, can become contentious when "one camp is doing everything possible to adhere to its obligations, financial and legal. But the other camp – fortunately not all that often – is looking for every reason not to meet its legal obligations. If you end up with the latter, it can become the antithesis of a smooth transition." Bergeron adds: "Knock on wood, I have not had any deals fraught with post-closing issues. I am a limited partner in several private equity funds and certainly that there have been deals where the seller hid material issues. Is that fraud? It's hard to know or to prove." Balance sheet true-ups present another area for issues, and sometimes just human error can come into play. Citing a cross-border deal he worked on, he says, "There was a material issue – a calculation error, a big

"Think about what you need to do post-close, who's the right person for it. You need a thoughtful process around this and that means bringing in the leadership team." – Shari Yocum, Co-Founder and Managing Partner, Tasman Consulting

one on the spreadsheets. There was a highly competent CFO involved who was going through the birth of a child when the deal was closed. Human errors happen."

"People who remain on the seller's side know what has been agreed to," says Beat Dolder, and advises that buyers make sure of that. "The buyers need to know the reps and warranties. They need to check from time to time that everything has been fulfilled. You really need somebody to be responsible for the whole process. If nobody is responsible, sometimes there are issues that can arise for years after. So you need to find someone who can be responsible on both sides."

"Working capital can always cause heartache on both sides," says Chris Heckert. "Try to figure it out at the LOI so no big surprises [arise] later on. The same with earn-outs – if there are no surprises, it's a lot better for the deal." In cross-border M&A, Heckert says, employee and customer transitions are crucial to post-merger success. "The buyer will be concerned if he's spending millions of dollars and doesn't want key customers and employees walking out the next day. The buyer's solution is to communicate with customers and employees early on, but the seller doesn't usually want to do that until the deal is done. You can figure out very quickly what can become critical issues – they are similar on most deals. That's why you should try to identify and settle them pre-closing."

Shari Yocum agrees that companies that "commit to tough decisions early" have a better chance of avoiding post-merger risks. "Think about what you need to do post-close, who's the right person for it. You need a thoughtful process around this and that means bringing in the leadership team."

Her colleague Niki Lee adds: "I've had one deal in the past year where the company that was buying a firm hit financial issues so they had to go back and re-negotiate." Lee has also seen HR issues come up, like a major pension underfunding that was not uncovered during due diligence. Activist shareholders can also arise post-merger, she says. "I've seen a case where activists rallied the shareholders and the parties had to re-do the deal. The shareholders ended up getting another $500 million."

IV. The Exit: When is a Deal Complete?

"If you think that's your culture and that's our culture and we just choose one of them, it doesn't work. An acquired or merged company needs to agree on a merged culture. It's not yours or ours. It's how we're working together."
– Beat Dolder, Managing Partner, DOLDER

No deal is truly complete until the new business is making steady progress, from both a financial and integration standpoint. And a key to this is leadership. The best dealmakers interviewed for this chapter agreed that successful post-merger periods usually involve the supervision of a strong leader or leadership team that has the flexibility to change and evolve in the new environment. They also agree that oversized egos are toxic in post-closing situations.

"This has really varied by industry and as one would expect the personalities of the individuals involved in a transaction are critical," says Dhruv Sarda. "It goes without saying that the CEOs and management teams need to get along for integration to be more seamless, and the chances of this happening are higher if roles in the post-close period are clearly defined from the outset." Businesses find bringing in third parties to be particularly beneficial to helping integration teams identify all the options before decisions, Sarda adds. "Our fact-based approach ensures objectivity throughout the integration process, with executive egos parked on the side…we often play a facilitative role where there may be differences in executive opinion. The ultimate decision-making authority will clearly be the CEO of the future business, but we've also found the heads of business units or functions can easily make some decisions if you have a clearly communicated decision and escalation matrix, and an integration director who is empowered to act on behalf of the CEO on integration matters."

Sarda says that he has observed executive egos coming into play more often in the profession services industries. "They are people businesses. In these situations, executive egos can indeed impact the speed of integration – topics covering who is best placed to perform a role, compensation, approaches to client and practice management can often require decision by committee in professional services organizations."

In James Bergeron's opinion, "Deals are a microcosm of human behavior. If one side has a bigger ego than the other, you're typically going to see more attrition. If the egos are on the seller's side they're probably going to get fired." But Bergeron says ego issues crop up in less than 20 percent of deals that has been involved in. "Most people are trying to do the best thing for the combined entity. If an ego issue surfaces in the pre-purchase phase the acquirer hopefully knew that and was prepared for that. That's why management presentations, dinners, spending time with each other are important. Question becomes that for the core business and product are the benefits greater than potential risks of a big ego?" Leaders in the new company "have no choice but to modify their leadership roles," he adds. "This is even more critical in cross-border, because it's not only the newness in executive roles and new people trying to fit into new organization, but trying to figure out cultural and political environment."

"If you think that's your culture and that's our culture and we just choose one of them, it doesn't work," observes Beat Dolder. "An acquired or merged company needs to agree on a merged culture. It's not yours or ours. It's how we're working together." Dolder says the first exercise he does in any post-merger integration is to set up meetings between senior management staff. "If an American company is buying a French company, we ask the French management, 'What do you think of the American culture?' And vice versa. There are going to be some prejudices and some real differences. It's a very important exercise. It works best if you can get to know them and can accept that others do it a bit differently than you do."

Dolder agrees that outsized executive egos are dangerous, especially in cross-border deals where the other side is not familiar with idiosyncratic cultural characteristics. "Just get rid of those guys, because it doesn't work," he says, citing this example: "One American firm had a guy on its executive committee [that] just had another way of communicating with his colleagues in America involving cursing and swearing. It just didn't work anymore in the new company. They had to get rid of him."

Niki Lee bemusedly recounts the case of a top executive. "[He] scarred me for life. He often compared himself to Steve Jobs. He only cared about himself,

"Having been the boss for 30 years, it can be very hard to start taking orders from somebody else. Entrepreneurs just aren't built that way. That's something you've got to manage."
– Chris Heckert, Managing Director and Supervising Principal, Generational Capital

not the team or the company. Unfortunately, he took on a very senior role in the newly formed company and basically wreaked havoc for 18 months. The company finally had to fire him and give him a big severance package. He had a serious detrimental impact, destroying any profitability potential. The company never actually achieved the goals of the merger."

Her colleague Shari Yocum draws a distinction between an outsized ego and a gift of true talent. "Sometimes it depends on the maturity of the buying company, where you are in your life cycle and whether you can accept that ego," she says. "They could change the direction – and it could be a good thing. In cross-border this gets hard because it depends on the culture in the headquarters of the company. Management from Brazil may not feel comfortable in a US headquarters."

Lee adds that cross-border transactions often result in leadership changes because of in-country requirements. "In 80 percent of our deals, the leadership team is developed and set up in advance of announcing the deal. So you try and resolve that early on. In some cases, immediately post-close you may need to make some changes, but you do that as quickly as possible. A few times we've seen it get shaken up is when a key player decided to leave. That can throw a monkey wrench into any deal."

Changing leadership roles can be "one of the most difficult things for the seller to manage," says Chris Heckert. "Having been the boss for 30 years, it can be very hard to start taking orders from somebody else. Entrepreneurs just aren't built that way. That's something you've got to manage. No matter how good the relationship, is it's going to change, and it takes time for it to sink in. A lot of it comes in having the right mentality for doing a deal."

Heckert again cites the deal involving the insurance services outsourcing company from Houston that was acquired by a large London insurance underwriter. "The reason my client sold wasn't because they didn't want to work anymore. Their view was, 'Look, we're really good at these three things, but everything else just is killing us.' So for them, even though they now had somebody to report to, they loved it. If you're just going into it for the money you're probably not going to have the same sense of accomplishment post-close as pre-close. But if you wanting to stop managing, spend more time with your family – those reasons go really well. If your quality of life is higher, reporting to somebody else may not be that big of a deal. So managers certainly need to rethink their leadership roles."

As far as ego issues, Heckert says, "The ego of the participants can make or break a deal. Sometimes you see big egos in private equity or venture groups. Advisors too – we're not short for egos. Nobody's right 100 percent of the time. The best dealmakers – the best buyers and sellers – and the best deals are the ones where they say, 'We don't know all the answers but we can figure it out.' Guessing or imposing an answer – you can be wrong." Heckert also cautions: "People with big egos like to talk and don't like to listen. If you want to retain people, the best thing you can do is make sure they're being heard. You don't always have to agree, but at least hear them out."

"I just sold my company and I've not lost a single leader," notes Gary Gauba, who agrees with the other dealmakers on the importance of leadership evolving. "We have beaten our numbers. We are leveraging the various partnerships. People are getting into expanded roles. It really again boils down to understanding the bigger company, who's who and who works on what and how your leadership team can create value.

"Ego has no real place. My philosophy is: Start at ground zero. No matter what I've done before now means much to people who have been at this company for twenty-plus years. I know who I am and what I can do, but I need to ensure I can work in the new environment. Your actions will cause results. Any CEO of a company being acquired needs to understand the culture of the acquiring company and not be afraid of what needs to be changed. In a way, you're after consensus and not letting your own ego kick in. You may be the smartest guy in the room – that's pretty much the kiss of death. You can't get arrogant, and you've got to understand the strength of people around you."

V. The Importance of Ongoing Stakeholder Communication

"In my experience you may think you have this great communication plan for human resources and it works at a broad level about 80 percent of time, but the rest of the time you need a much more common, human touch customized to

customers or other stakeholders. That's why it's key to retain key people in those first 90-180 days." – James Bergeron, Founder and Managing Partner, 108 Partners

M&A professionals know how important first impressions are stoking the chemistry of a deal. It's no surprise that serial dealmakers and their advisors recognize the value of corporate communications and public relations, particularly at the time that a deal is announced. But equally important throughout the period after the deal is closed is ongoing stakeholder communication – especially with investors, employees, customers, suppliers and other key constituents.

"We always advise our clients to communicate regularly and communicate even when there is nothing to communicate," says Dhruv Sarda. "Stakeholders can make or break a deal. From the external community – regulators, customers, suppliers, trade unions – to internal stakeholders such as employees, it's important to have a plan for each group. We've found internal communications to be of particular importance during the actual integration process."

Sarda also finds regularly issued integration newsletters and blogs helpful. "[They] can give clarity to the organization in a period of uncertainty where all decisions may not be made at the time of closing. By reporting progress and decisions as they're made, potential employee concerns can be appropriately managed with the entire organization feeling a part of the integration, even if some individuals may not be personally involved in the actual implementation. On cross-border transactions in particular, we've found newsletters and other communication methods such as intranet postings in many languages to be well received by the organization."

"[There are] always going to be key customers who need a little more hand-holding, whether a phone call or a visit post-closing," says James Bergeron. "In my experience, you may think you have this great communication plan for human resources and it works at a broad level about 80 percent of time, but the rest of the time you need a much more common, human touch customized to customers or other stakeholders. That's why it key to retain key people in those first 90-180 days. You need the two teams to collaborate and communicate why things will work and explain why something might have gotten overseen. A collaborative team effort is omni-important."

In any deal, cross-border or not, the three more important issues are "communications, communications and communications," quips Beat Dolder. "There are always going to be a lot of questions… 'What will happen to me, what will happen to my job, what will happen to my colleagues?' On the first day that the deal is announced, management must have prepared communications for stakeholders – so that each stakeholder knows what's at stake for them. That [also] goes for employees, customers and suppliers."

Gary Gauba agrees that post-merger stakeholder communication is very critical. "I can't emphasize enough the importance of communication so they all can understand why the deal has been done, what it means to the employees, what it means to customers. You need to keep your eyes and ears open for signals that people are not comfortable. Sometimes people get incorrect information and get bent out of shape. You need to read those signals. Especially during the first 30 days before and after the close."

Stakeholder communication is probably the most important element of the human resources piece of the integration, says Shari Yocum. "It's a big part of whether you succeed or fail. It's about working with the employees and making them comfortable. The quicker we can get them comfortable and back focused on work the better. I struggle working with companies that don't believe in communicating. And it does change in different cultures. Japan communications are culturally very different from American forms of communication."

Her colleague Niki Lee adds: "We've seen it time and time again when clients don't put an emphasis on communications because it's just not in their DNA. Winning the team over – getting their trust, getting them ramped up to be productive in the new environment – is really critical and we've seen it hit the bottom line. You start to lose talent and there's not the commitment you had before the deal was announced."

"What I usually tell client is first day you close deal is that you need to stand up, arm-in-arm, and say 'I'm sticking around, you're sticking around, and nobody's getting lower pay or benefits," says Chris Heckert. "Everybody takes a huge breath and they start listening. Start with that." Then, he says, "talk about the strategy and synergies. Be upfront, direct and straight to the point. Sellers can tend to overtalk and get apologetic about the sale. They don't need to do that. Put the stakeholders at ease first. Let them ask questions. Take them out for a beer if you can. A one-on-one meeting with a key stakeholder allows them to open up and be more honest with you. The last thing you want is for one guy to feel he's gotten treated unfairly – it will fester and infect the whole process. Also, walk the floor more than you used to." Heckert adds that customer communications can be particularly challenging. "If possible, do a pre-close visit with key customers. You want to walk in arm-in-arm with the buyer, be upfront and direct. Pitch them on why it's a good deal and why you are sticking around. Assure them it's not a fire sale, that the other company is buying us because we do something well – and the buyers can help us do even more. It's better if this is done pre-close so they can get used to seeing new faces – and see the continuity of your care for them."

Conclusion

The M&A Advisor is proud to have presented *Best Practices of the Best Dealmakers* for a fourth edition focused on cross-border transactions. The art of dealmaking continues to evolve, and as we saw in 2014 and 2015, increasingly extends to new regions around the world, adding value to the global economy. This chapter examined the issues that can arise after the close of the transaction, including balance sheet discrepancies, management issues, earn-out expectations and computations, and cultural differences – with both positive and negative post-closing outcomes. We had best practice advice from professionals on stakeholder communication and its criticality. We invite our readers to send us thoughts and comments for further development of *Best Practices of the Best Dealmakers.*

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Shari Yocum is Co-Founder and Managing Partner of Silicon Valley-based Tasman Consulting, a Human Resources Mergers & Acquisitions advisory founded in 2011. She is also Co-Founder of STELR, a Software as a Service (SaaS) startup focused on social network analysis for the enterprise. Ms. Yocum has more than twenty years of experience working at global firms, becoming an industry leader in HR, M&A, change management, and process re-engineering. She has held various HR executive and consulting roles at Cisco, PricewaterhouseCoopers, Nortel, and MSA. She holds a Master of Business Administration from Duke University's Fuqua School of Business.

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