

# Seamless integration

In the UAE alone, foreign employees make up approximately 85 per cent of the local workforce. Karin Luzolo of Fragomen talks about how organisations can effectively manage employees through mergers and acquisitions.

**W**ith economic advancements at full speed ahead of Expo 2020 and Vision 2021, the UAE has successfully revamped its position as a hub for investment in the region. According to the 2017 Mergers & Acquisitions (M&A) Predictor report released by KPMG, the UAE was number one for mergers in financial services globally following the USD14.8 billion merger resulting in the formation of First Abu Dhabi Bank (FAB). With reports from Mergermarket indicating a stable M&A market and stabilising economic conditions in the Middle East, such M&A's are expected to continue.

A key obstacle in M&A activities that is often overlooked in the UAE is the management of foreign employees who make up approximately 85 percent of the local workforce. To ensure a seamless M&A process from an immigration standpoint a number of immigration regulations and protocols should be accounted for.

## DUE DILIGENCE MEASURES

One of the first steps of an M&A process is conducting due diligence on legal, financial and business matters. From an immigration standpoint, it is crucial that an acquiring company ensures the company to be acquired adheres to immigration and employment regulations applicable to the jurisdiction it operates in. This must be done before the completion of the M&A to prevent liability of any immigration non-compliance.

## M&A AGREEMENTS INVOLVING NAME CHANGE OR PHYSICAL RELOCATION

In the event that M&A activities affect the company name, the acquired company must make amendments to its business license, and the new name must be reflected in employee visas. In cases where M&A's entail a move of employees to a different entity, there must be sufficient visa quotas under the business license of the acquiring company meaning the new entity must have premises large enough to accommodate the relocating staff. Transitional arrangements with authorities must also be discussed especially for companies relocating a large number of employees into Mainland where visa quota in bulk may be essential and likely to be adjudicated on a discretionary basis.

If liquidating the legacy entity, trade licenses must be de-registered and all employee work permits must be cancelled and / or transferred to the new entity. Employees will usually not be allowed to work during this transitional phase.

Whether visas must be canceled and reissued or transferred from one company to another depends on the jurisdiction of both entities. For instance, if the acquiring company operates in Mainland and the acquired company in a Free zone, visas will need to be cancelled and re-applied with the new sponsoring authority. This entails longer processing times and a broader list of required documentations. If both companies operate in a Free Zone within the same Emirate, a more straightforward visa transfer can be applicable with lower processing times and less document requirements. The simplest visa transfer applies where both companies are operating in the same Free zone.

## M&A AGREEMENTS NOT INVOLVING NAME CHANGE OR PHYSICAL RELOCATION

When both companies involved in an M&A preserve their pre-M&A name and do not require a change of employing entities for



their staff, which is usually the case in share sales, no changes will need to be made to employee visas. However, challenges may arise when temporarily assigning staff between the two parties if they operate in different zones. For example, the Ministry of Human Resources and Emiratization does not facilitate temporary work permits for employees sponsored by companies in free zones, although discretionary exceptions can be made.

### BE PREPARED FOR IMMIGRATION CHECKS

Ideally, all employee work permits and visas must reflect the new company name and/or sponsoring authority on the day of the transition; however, this is not always possible as the processing of new visas takes time and can only be initiated once all the necessary corporate documents have been updated. To minimise business disruption as a result of non-compliant work permits, businesses should carefully plan and manage transitions by engaging with and notifying the relevant immigration and labour authorities of the M&A activity at an early stage.

### FURTHER HR CONSIDERATIONS

- » All employee documents must be checked for eligibility before any visa changes are initiated in case of updated immigration requirements.
- » Employees should be informed of M&A discussions at a preliminary stage, especially in the event of an asset sale where a change of employer is involved. This will allow early discussions to enable document preparation and review of employment offers with the new entity.
- » New employment contracts may need to clarify how end of service gratuity and other compensations and benefits will be handled. In practice, these entitlements are often rolled over into the new employment contract unless employees insist on receiving accrued entitlements.
- » Signatories within both companies must be available to arrange necessary signatures. This is especially important when authorised signatories reside abroad.
- » It may be necessary to inform staff that business and personal travel plans will be restricted during the transitional phase.
- » If the acquired workforce includes Emirati or GCC citizens, registration in the General Pension and Social Security

Authority (GPSSA) may be required.

- » Depending on the jurisdiction of the new entity, registration in the Wages Protection System may be required after visas are processed.

### MANAGING EMPLOYEE DEPENDENTS

Where the employment residence permit must be cancelled as a result of the M&A, any dependent visas will have to be cancelled before the principal visa is submitted for cancellation. However, subject to the approval of immigration authorities, it is possible to hold dependents' residence permits while employee permits are cancelled and reissued which can be more cost-effective and less cumbersome than cancelling visas.

If a physical relocation to a different emirate is involved in the M&A activity, employees retain the right to reside in the initial emirate however, complications may incur on dependents when relocations to Abu Dhabi are involved. Recent policy changes to immigration requirements for employees sponsored in Abu Dhabi are resulting in stricter enforcement of the requirement for tenancy agreements of the sponsor (i.e. the employee) to be registered in Abu Dhabi for dependent residency visas to be processed in the emirate.

### NAVIGATING THE M&A LANDSCAPE

Despite the practical obstacles involved in M&A activities, which are inevitable regardless of where they occur in the world, the UAE offers a friendly business environment and attracts business investment on a global level with M&A's continuing to be a growing trend.

However, M&A activities require thorough planning in many different aspects from legal to business and logistical considerations. To ensure a seamless process, it is therefore essential to involve expert advisors of different fields at an early stage who will help avoid pitfalls during the transition. 📌



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