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Companies must commit to compliance when pursuing mergers and acquisitions

By Azba Habib


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Many global enterprises and startups are growing exponentially and rapidly by expanding their geographic footprints. During 2020 in the United States alone, a Salesforce report showed more than 4.4 million new businesses opening,[1] which is the highest number on record and a 24.3% increase from 2019.

According to an EY report, global mergers and acquisitions (M&A) decreased by 9.7% in 2020, but by 2021, M&A activity was trending upward, particularly cross-border M&A activity. Accelerated vaccine administration, increased corporate confidence, and the consolidation of some large players helped fuel the acceleration, the report revealed.[2]

The outlook is even brighter now, with a separate EY report revealing 60% of US chief executive officers plan to actively pursue M&A in the coming 12 months.[3]

While operations teams focus on maintaining growth, other departments must stay focused on compliance issues, especially as they factor in disparate and evolving accounting standards, local laws, and reporting obligations across different countries. And while growing pains are challenging and part of the game, they are anything but insurmountable.

Here are five key areas that, done right, make M&A growth smoother for compliance teams.

Understand local laws, regulations, and employment practices

Companies expanding into markets for the first time can quickly attract attention, especially when disrupting the existing landscape and competition. When you're the new kid on the block, attention can build brand awareness, but it can also lead to customer complaints or regulatory scrutiny. Therefore, understanding and anticipating local legal and regulatory issues are important first steps in assessing the company's exposure in any new venture.

My organization has acquired 90-plus companies during its 21 years of business, and the compliance team has played a critical role in the due diligence process, integration planning, and execution. In my experience, it's well worth the effort to meet and greet the product/service regulators in your area of expansion so they have a clear understanding of your company's intentions. Or, if the local regulatory powers determine you cannot operate in their area, it's better to know sooner rather than later. Who wants to invest the money, effort, and time to be told you can't operate in a certain area?

Further, it's important for your team to know labor laws since they vary by country.[4] This includes practices around hiring and terminating employees, benefits, vacation pay, and even local holidays off. While many employees in the United States might receive eight paid holidays throughout the year, for example, workers in China might be accustomed to two weeks of paid leave annually to celebrate Chinese New Year.

Similarly, employees in some countries expect one month's pay as a bonus, even though it isn't legally required. As such, it's crucial to know labor and employment laws and norms before the deal is sealed.

This leads to the next important process: having knowledgeable employees on your side.

Employ the right people on your team

Your people unlock your company's potential. When you're an enterprise that grows through global M&A, your compliance team must understand local laws and regulations and how to apply them to your product or service, so they must have a deep understanding of the business and products suite. Subject matter expertise alone is not enough. Today's compliance team is expected to truly partner with the business to navigate through the black, white, and gray.

Having said that, it's a challenge to attract and retain good talent amid the Great Resignation.[5] Because of this, some organizations consider buying a company for its employees, a practice loosely termed "acqui-hires."[6] It's an interesting idea that, given the labor shortage, could gain ground.

Select the right tech tools

Finding great compliance tools isn't an easy feat. It takes time, plodding through request for proposals, demonstrations, implementing your choice, and paying for software maintenance. This can be a heavy lift.

But that's the cost of doing business, particularly when you venture into new countries, laws, regulations, and customs. This goes back to understanding your business and figuring out how it fits into a new geography/culture.

Here's the thing: I have spoken to compliance professionals at companies with little or no software budgets, making scaling impossible. Adequate compliance tools are necessary to get the M&A job done correctly, especially as companies keep marching forward toward digital transformation.

Use external advisors—the price you pay for M&A

Your subject matter expertise can only go so deep. Your team might understand how local laws and regulations apply to your product or services, but you might need outside expertise on cross-border sanctions, consumer compliance, operating frameworks, anti-money laundering regulations, and more.

For instance, when doing business in the United States and moving into Brazil, as my organization did, you're potentially dealing with a whole new situation. You might not have the budget to hire an expert from each geography you enter, so it can be wise to rely on outside help that knows a particular locality's regulation in regard to your M&A activity.

Expect the exceptions

Despite months and hours of preparation for M&A success, not all M&A activity will end how you expected it to or how you would have desired. To help prepare for worst-case scenarios, set aside contingency funds. Whether its regulatory approvals, operational challenges, or process gaps, you're likely to run across something that's an issue. So, have money set aside for delays, remediations, and go-forward fixes.

Stay vigilant

M&As provide exciting opportunities for expanding your company's global footprint and bringing new offerings, cultures, rules, regulations, expectations, and employees into the fold. They also bring challenges for compliance teams to tackle.

Warren Buffett once said, "It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently."

Noncompliance can result in permanent reputational damage to your company's name. And if you lose trust from your stakeholders, you can also lose customers, potential new business, and revenue. Global growth via M&A is complex, but having a solid compliance program can make the difference between failure and success.

Takeaways

- It's crucial to identify and understand local laws and employment norms as they relate to the products and services you plan to offer.
- Employ the right people in compliance who have subject matter expertise, as well as the business acumen and analytical skills to apply that expertise to your product suite.
- Your company should be willing to invest in compliance software solutions that help you see the complete M&A picture.
- Spend the extra money for outside counsel who understands the nuances of the geography you plan to expand into. Your team only knows so much.
- Expect the best but prepare for the worst by having contingency funds ready if something goes sideways.

1 Brett Grossfeld, "Entrepreneurs Started Businesses in Record Numbers During the Pandemic," Salesforce.com, June 29, 2021, https://sforce.co/3BlAI6K.
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3 Mitch Berlin, "The CEO Imperative: US executives recalibrate risk radar," EY, January 12, 2022, https://go.ey.com/3rPXRLq.
4 Globalization Partners, 7 *Compliance Challenges Companies Face When Growing Globally*, accessed March 2, 2022, https://bit.ly/3516GsL.
5 Bill Whitaker, "The Great Resignation: Why more Americans are quitting their jobs than ever before," CBS News, January 9, 2022, https://cbsn.ws/34NX6tw.
6 Vincent Ryan, "2022 M&A Outlook: Deal Market Expected to Continue Hot Pace," CFO, January 20, 2022, https://bit.ly/3JuL3jx.