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Out with the Old, In with the New? Acquihire Transactions

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Abstract

This article investigates the application and effect of silicon top start up acquisition as a part of their hiring strategy popularly termed as Acqui-Hiring. In comparison with the tradition acquisition that generally took place in the business. Using the recent happening and data from the Indian and United States census, it is concluded that acqui-hired being the master having ace over their work exhibits higher turnover compare to the regular recruitments. It has been seen that most of the employees lack the voice in the acquisition transaction which resultantly creates organizational mismatch and decrease the turnover. Along with that it has been learnt from the prior acquisitions in which way prior employees can be retained. The trend of buying new startups are the new age legal merger and acquisition development in the most of the technology-oriented business world. The moto such acquisitions are catching up the modern and updated human resources.

Keywords: *Merger and Acquisition, Hiring, Acquire to Hire, Start-up Companies, Talent Management.*

Introduction

Acqui-hire, is a new buzzword in the market. People are talking about this buzz, but a few portions of the mass only came to an understanding with respect to it and fewer amongst them holds the deeper understanding of taking the decision of acqui-hire or not, considering the risk and benefits attach to this. This article will provide a detailed analysis from all the four corners of the Acqui-hire that what it is, what are parties attach to it. Procedure and manner and position of different participants involved in it and more importantly what all caution one has to take before entering into this transaction. This is a type of acquisition which means Purchase of controlling interest in the share capital or assets and liabilities of the target company.

Acqui-Hire [Acquisition for hiring]

As the name Suggest Acqui-Hire transactions, it is not related to the 'aqua' world but is more around the companies and competition era.
'Acqui' is a portmanteau taken from 'Acquisition' which is known amongst many. Merger and Acquisition is a popular practice in the corporate field. Business, companies do merger into one another, amalgamate to make them one or take over, acquire other businesses. This transaction is also one amongst them.
'Hire', is another term associated with this. Hire as the general contextual meaning, taken for hiring, recruitment of employees, human assets and resources.
The entire transaction means to conduct an acquisition through which one can complete the hiring process or acquire the pre-hired employees of the targeted venture.

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Need for Acqui-Hire Transaction

In the increasing competitive market demand for highly sought-after talent is raising alarmingly. Because of having a limitation of available talented human resources, companies are opting for innovative pathways to hire them. On of the new innovative approach of hiring talent is "Acqui-hire" transactions.[2]

The need for an acqui-hire transaction arises from several key objectives. Firstly, it allows companies to swiftly and efficiently acquire specialized talent, often in competitive industries like technology, where hiring skilled individuals can be challenging. Acqui-hires also provide a means for companies to access new skills and expertise that align with their strategic goals, which can accelerate innovation and development. Additionally, in cases where a target company may be struggling financially or facing uncertain prospects, an acqui-hire can offer a viable exit strategy for both the company and its employees, ensuring continuity of employment while providing the acquiring company with fresh talent to drive its growth and innovation initiatives. Overall, acqui-hire transactions enable companies to strategically bolster their workforce and capabilities in a rapidly changing business landscape.

Difference between Acqui-hire and Ordinary Investment, Acquisition

Acqui-hire is a more specified and objectified transaction in the market. Here not the wholesome business is necessarily acquired or anything apart from this is done in entirety. It generally governs through a series of acquisition with limitation. Target of acqui-hire In an acqui-hire, the main target is the talent pool of the company being acquired. The acquiring company is interested in hiring the employees, often including key executives, engineers, designers, and other skilled individuals. Whereas the target company remains independent and continues its operations. The investor seeks to support the target company's growth, profitability, or other financial objectives.

While looking at the outcome of the transaction in ordinary transaction it comes down to the fact that acquired company's operations and products may be shut down or deprioritized. The primary goal is to assimilate the acquired talent into the acquiring company to boost its capabilities and innovation. Here in acquihire, the investor typically has a minority or majority ownership stake in the target company but may not have direct control over its operations. The goal is to benefit financially from the target company's success.

Ordinary Investment or Acquisition acquire the entire market of the target firm and not any specific portion to it. It subsumes the subsidiary company and gives it a new way.[3] Unlike the ordinary investment, acquisition which requires a Shareholders Subscription Agreement (SSA), Shareholders Purchase Agreement (SPA), Term sheets and other disclosure requirements. Acqui-hire is less formal in nature compare to this which doesn't generally require that lengthy system.

Deal Structure in the Acqui-Hire

In dealing relating to these following transactions are targeted.

1. Asset purchase of tech related assets in the target company including domain, websites.

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[2] Coyle & Polsky - SSRN Electronic Journal – 2012

[3] Talent Management: a Philippine State University Graduate School Experience Obliopas et al. - Indian Journal of Science and Technology – 2019

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2. Intellectual property, work is produced by the team which is to be acquired.
3. There may be joining bonus, ESOPs for the team as a mode of compensation.
4. There can be lumpsum amount paid to the promoters hence they are not getting much for the transactions and often employees are getting much in these transactions.
5. A number of employment contracts are being performed in this transaction. Such as non-compete clause, minimum period of employment other condition relating to bond or other.
6. There can be a cash deal or founders agree to run as a subsidiary to the big business houses.[4]

Therefore, we can come to an understanding of the deal structure that such deal structure of an acqui-hire typically involves the valuation and purchase of a target company based on its talent pool, with a focus on retaining key employees. It includes individual employment contracts, asset transfers (if necessary), non-compete and non-disclosure agreements, and a detailed transition plan for the smooth integration of talent into the acquiring company. Due diligence is conducted to assess skills, and legal compliance and clear communication are essential. The deal aims to acquire expertise rather than traditional assets, and the terms can vary depending on the specific companies and talent involved.

Companies suitable for Acqui -hire

This transaction is more popular among tech companies. Whether an established business leading company or a new tech start-up, almost all of them are using such techniques to get the best available in the market. Acqui-Hire transaction in essence is a Merger & Acquisition transaction with the prime objective to hire the core talented team of target startup or novice private company. Unlike the traditional objective of acquiring assets or business of new firm. This is a smart way to access the talent via an indirect generous acquisition offer for a purchase price. In such the support of investors and talent is required. Hence, it is in the interest of both the parties.[5]

It is a bundle of risk and reward, in a simple hiring decision. Presently such Merger and Acquisition Transactions are coupled with ample risk too as in this apart from a single objective of talent acquisition the entire transaction also attract other unattractive attributes, Liabilities, Obligations and other not so wanted asset class. This transaction inherently includes all what seller's business provides.

Examples of Acqui-hire

- Facebook giant acquired a payment service company 'China Space' which has specific skill to work using block technology. This acqui-hire aid in attaining the skilled staff.
- Year 2019 saw an acqui-hire transaction in the Indian Market between 'Swiggy' and 'Kinit.io' in which Kint.io received premium business ecosystem of swiggy and give swiggy entrepreneurial team which swiggy doesn't need to create from the scratch. Hence, this became a win-win situation for both the parties.

[4] Predictable Exodus: Startup Acquisitions and Employee Departures Kim - SSRN Electronic Journal – 2018

[5] The Status of Business History at the Stanford Graduate School of Business Coman - Business History Review – 1946

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- Google acqui-hired Superpod an startup built by its ex-employee for better accessibility to google assistant.

It can be assessed in all these acqui-hire transactions larger business enterprises are taking start-up or other comparatively small companies which lead them to acquire a lot of lacked specific skill set, in turn the startup gets the funding they require to their business and do the most equitable benefit to it's employees by landing them into the top brand in the market.[6]

'Buyer's' Risk Handbook

It is not only a all good to go transaction for a buyer. Even though he is the steering holder of the entire transaction most of the decision are taken by him. Though, at times even after a detailed analysis buyer has to buy a call even it is unfavourable to him to an extent.

Bundle of Assets & Liabilities

Acquisition is generally of the entire business of seller. Here in this transaction buyer after perusal targeted business buys it completely consisting of Rights, Assets, Resources, Employees and others but also consist of Obligation, liability, not so useful business operations and units.

Winding-Up obligations

After an acquisition it becomes the duty of a buyer to wind up or tackle the filtering process in order to avoid a burning hole in his pocket i.e., leakage cost which are not advantageous and buyer is ignorant about it. Therefore, it includes acquiring of certain operation or business that are continued in seller's business and buyer buys that with an obligation to wind down such operations or businesses.[7]

Filtering out Employees

This transaction also includes several other requisites too such as retrenchment of employees who are not becoming part of the new owner.

Open Contracts and Liabilities

Terminating or varying all the other third-party contracts, lease, licences etc. Therefore, here though the buyer's interest is limited to acquiring seller's employees it has to face difficulties relating to acquisition diligence and other involved in traditional M&A transactions etc.

Legal Consequences & Penalty

The acqui-hire transaction is more focused and seek only key employees consisting of core talent team, in such circumstances the buyer needs to analyse the separate obligations relating to termination of those employees who are not of buyer's interest after the closing this can add extra transaction cost to the buyer. This exists a risk to both the parties relating to wrongful termination or retrenchment subject to labour laws, employee's compensation acts and others.

Buyer's risks in an acqui-hire transaction include the potential loss of key talent post-acquisition, challenges in integrating employees from a different company, the risk

[6] What Do I Take With Me? The Mediating Effect of Spin-out Team Size and Tenure on the Founder–Firm Performance Relationship Agarwal et al. - Academy of Management Journal – 2016

[7] The Cost of a Bad Hire: On the Optimality of Pay to Quit Programs Foarta & Sugaya - SSRN Electronic Journal – 2018

of overvaluation, difficulties in enforcing non-compete agreements, negative impacts on employee morale and company culture, limited due diligence on acquired talent, uncertainty about achieving expected synergies, challenges in measuring post-acquisition performance, legal and regulatory compliance complexities, and the financial investment required, which may not yield the desired returns. Mitigating these risks requires thorough planning, due diligence, and ongoing management.

Seller's Caution to be taken

Control Takeover

Seller company in such transactions often deal with issues in the context of change-in-control. Since, this brings major up-down in the seller's business. It is not remained with all the availability as it holds earlier to tackle all the expected and unexpected problems.

Satisfaction of Different parties

During such transaction the satisfaction of all the parties are important mostly of 1) Seller's 2) Buyer's and 3) Seller's investors. This has to be made in a way which caters the interest of all the three above.

Dependency and Sustainability

Such transaction must be independently sustained and auto defensible and not remain simply a hiring tool through acquisition.[8]

In order to limit the buyer's exposure for liabilities and obligation, acqi-hire transactions are often structures in the form of assets purchase mechanism rather than purchase of stock. Such transaction gives advantage to buyers to take assists of interest and leave liabilities doesn't wish to take on and take only those which it is prepare to tackle.

Seller's risks in an acqui-hire transaction primarily revolve around the potential loss of control over their company and its assets, as well as uncertainties regarding the future direction and treatment of their employees by the acquiring company. There's a risk that the acquiring company may not honor retention agreements or employment terms, potentially leading to employee departures. Additionally, the seller's shareholders may not receive the expected financial return, and the overall success of the acquired talent in the new organization is uncertain. Seller's risks also include potential reputational damage if the transition is not smooth or if the acquiring company does not meet expectations.

Due Diligence in Acqui-Hire.

Tax on the Transaction

The other lookout is keeping this "Tax Free" or capital gain transaction. Both the parties, acquiring company and seller's investors wants to structure this transaction as to keep this away from tax regime. They consider the possibility of double taxation system and taxation coming with acquisitions of assets. Therefore, the seller prefers to acquire by way of merger or stock purchase.[9]

Liquidation

[8] Digital transformation of business: approaches and definitions Zaychenko et al. - Economics and Environmental Management – 2020

[9] Talent Management Practices and Absorptive Capacity of Russian Companies Latukha et al. - Russian Management Journal – 2019

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In case of Assets Sale, selling company remains in existence after the closing of deal, and Seller is responsible for formal liquidation as per the procedure prescribed under companies act and other status. This task includes getting trustees to look after creditors and others claims after the liquidation.
Indemnification and completion of residue operations.
Complexity in such transaction exists as the Seller require to kept the investors distribution at hold, as seller require to make a contingency liabilities reserve, also to discharge other claims after the sale. Whereas the buyer requires the seller to remain in existence as to be answerable to indemnify, claims by the buyer. Such tussle may 'lock up' the proceeds of sale and keep investors return at hold. In other mode of Merger and Acquisition the Seller in its entirety absorbed and becomes a subsidiary to the potential buyer.[10]
Uncertainty of Human Resources.
Acqui-hire transactions buyer also remain with the risk in the inherent acquisition such as talent does not stay or shifts to other company, send a resignation or does not work as hoped, expected output not arise which in the end render the entire transaction more expensive and turn out to be a poor hiring decision.

Fiduciary issues
In such transaction the seller is involved in getting acqui-hire transaction done and management of seller is under obligation to examine the offered sale and whether it is in the best interest of the stakeholders also along with the talent. In these change in control scenario board need to carefully analyse all possible transaction consisting with fiduciary duties. Here significant consideration can be paid to employees then company's investors or shareholders. Board must analyse that. Care must be taken in order to avoid possible conflicts exists or could possibly come into picture.
Possibility of conflict between director, investors and other management can also play significant role. Interested directors may also navigate carefully through the conflict zone. Interest of management and investors is also sufficient it may cause companies to rescue itself in the deliberations. For avoiding such circumstances, one is advised to take assistance of skilled counsel and other advisers. Board of seller is required to carefully go through the potential area of conflicts. Such sale requires approvals and clarifications from the investors and shareholders

Things to take care while completing Hiring Process
This transaction generally tends to underplay the utility of intellectual property specifically the patents. Patent facilitate organising team production, including by way of increasing the cost of leaving member of the team. Comparatively larger firms cannot acquire patent related intellectual rights by simply hire it's talent, instead they have to buy the start-up itself. Patent law is a partial driver of the choice to pursue an acquihire since it enable the buyer to obtain assets.
Buyer, prior acquiring new talent examine whether to bring the resource inside the firm or access aid externally. This would be choice between focusing on the individual or the firms. This distinction is even when firm is seeking internalize new talent. Buyer generally works with talent to put in place a post-sale retention of bonus,

[10] Internal Vs External Markets: How the Assembly of Initial Spin-Out Teams Impacts Spin-Out Survival
Ganco et al. - Academy of Management Proceedings – 2016

incentive, compensation plans. There are similar to the transaction takes place in the Merger and Amalgamation process, Acqui-Hire ensure a significant percentage of the total payment is made by the buyer.

Selling company may have tension relating to the distribution of the proceeds or allocation of the total deal. Talent may be employed with the buyer for such time which may raise tax and issues relating to books.[11]

Advise

It is advisable that seller's board acts in the best interest of the company, investors and shareholders thus after timely consideration, fair analysis he has to determine what is best in the interest of all the stakeholders. Seller generally asks its Legal Counsel to do a" market check" to consider potential buying, selling opportunities and consider favourable alternatives to a sale.

Goal of transaction

Goal of acqui-hire is not only focuses over the talent group but it should also work in the structure available in their mind. It must be attractive enough to assure the interest of buyer, seller and other parties attach to it. Not only focus on the Employees but also of the investors.[12] It should be a win-win game for both of them.

Employees Call

There may be a situation in which the talent can choose to not move forward with the transaction and join the buyer in any event and leave the seller at a risk of losing its important assets.

A Corporate acquisition there can be complex structure presenting more risk than simple hiring. Acqui-hire should be carefully constructed and executed with guidance and advices to maximize the expected beneficial outcome.

Process of getting Acqui-hired

If you are owning a startup in order to retain high talent there can be various exit strategies which can be wind down for unfavourable outcomes. It can be proceeded in the following way-

1. Create a list of target companies.
2. Trim by focusing on the most promising targets.
3. Build a pitch and reach out to check the waters.
4. Get approvals done with the Directors and Board.
5. Clear out all the liabilities and outstanding's.
6. Be personalised for each hire.

Contracts to be considered:

- Relating to financials books and accounts.
- Legal documentation of the young firm.
- Debt, corporate structure and compliance situation.
- Checking existing employment agreements.

Although it is limited as not the entire company is acquired the deal only hire, the employee of the target firm.

[11] Relationship between Team Learning Process and Team Performance with Mediating Effect of Relationship Conflict Dixit et al. - IIMS Journal of Management Science – 2017

12 The management of talent: Optimal contracting for selection and incentives Foarta & Sugaya - The RAND Journal of Economics – 2021

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Advantages

All such transactions carry a bundle of benefits for them. The Major one is not having requirement to train the resources as they are already well-equipped and trained in their field. This prepared resource provides them a humongous benefit with respect to cost which acquirer saves upon. Certain core advantages of the acqui-hire transaction can be understood as part of the above-

- Skilled Talents are acquired.
- No need to conduct training.
- Well-versed with the latest technology to work on.
- Ready to add value to company.
- Gets the Market intelligence and IP created.

There are other benefits too that comes along with it. Some of them are acquisition of the market intelligence and the IP created by the young startup which can be a game changer in the long run. Also, this helps in reducing the time taken to develop a product or run the market.

The Advantage for the target company is having the benefit as they are getting the access to the resource and the capital required for the initiation the business. In terms of the Entrepreneurs, it gives them a safe exit to lookout for the other opportunities to seek better things. This will give them boost as providing them capital for the future startups or ventures.[13]

Case Study: Online food industry and acquihire.

1) **Swiggy & Kint.io**

India has witnessed a great acqui hire transaction between Swiggy and Kint.io. These are two broadly based food delivery; the startup has raised $ 1 billion in this transaction by raising the funding. The Swiggy has received AI platform which enable convenience to the clients. Historically, Swiggy have been hiring professionals to develop the AI platform in their area. This leads to giving them an edge to each other in their area.

Position Holders Pavitra and Jagannathan stated in a press

"We were impressed by the team's razor-focused mindset to bring ingenious solutions for problems unique to India."

This shows the uniqueness of such blended system in this field. There are other peoples also who help each other in giving them edge over one another.

Resultant to this transaction last year Swiggy as well as Zomato has received growth results from the acquired company.

2) **Zomato & TechEagle Innovations**

Unicorn Zomato entered into an acquihire transaction with TecbEagle Innovation to upskill their assets and increase the market arena available. Attraction of this acquisition is the requirement of Zomato to enable itself to work on drones' technology, which can cater itself for hub-to-hub deliveries.

[13] Top management team (TMT) tenure diversity and firm performance Tanikawa & Jung - International Journal of Organizational Analysis - 2016

Deepinder Goyal, CEO Zomato stated they are the new future of using drone to deliver online food. This technology will enhance the skillset and delivery system available in the country.
In these two case studies the prime motive of acquisition, benefit of the parties, proper utilisation of the talent, access of credit to the entrepreneurs can be seen. This new age concept of acqui-hire serves what is best in the market. This work with a view to enable reach of resources to the most suitable one.

Conclusion

Acqui-hire from the frame of a start-up we need to look around the deal by understanding the importance of partial acquisition. It is noted in this transaction that one of such transaction is required in India by considering the most available option for the acquisition. Understanding the other available option acqui-hire is new, trending and best fit for this purpose. Even after much changes and prevalence of this practice in the world market. Indian start-up arena believe itself to be on the more sophisticated side. Not much integration has happened. Many of the acqui-hired firms are preventing losing their teams and keeping to accommodate the least. There were instances in Indian start-up arena where such integration is found hard and happened at a bare minimum level. Lawyers now need to learn how to structure these deals to raise the most efficient results in these transactions. There is a requirement of efficiency in this field. Which includes networking and interviewing the demands and make efficient use of the given technology.