

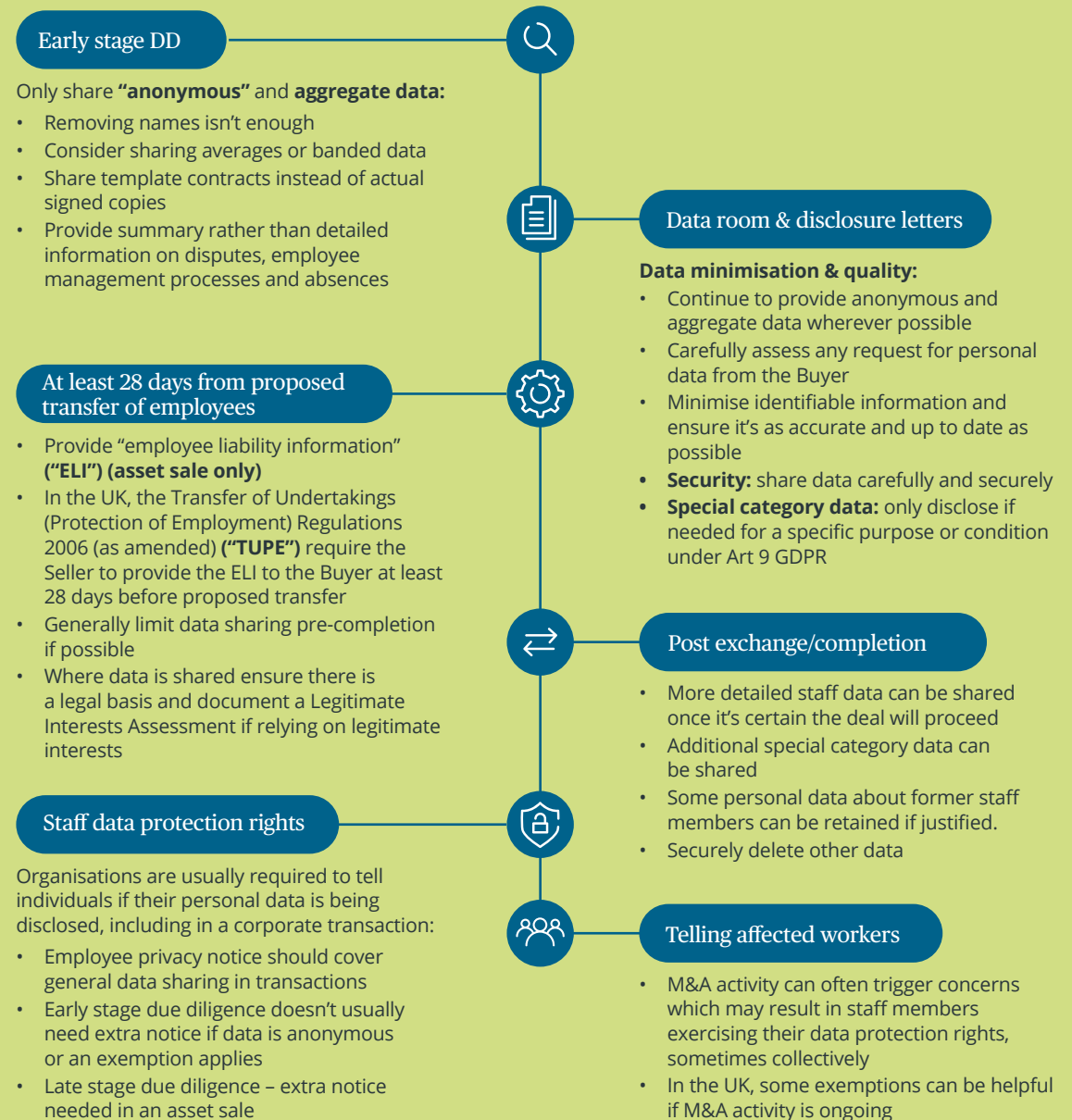
How to handle employee *data risks* in M&A transactions

M&A activities and corporate reorganisations are likely to entail the employer sharing staff personal data with other organisations such as the buyer, group companies, external counsel, accountants, and other advisors. Some of this data sharing is likely take place during due diligence, whereas other data sharing may be required by law (e.g. TUPE) or necessary to ensure a smooth transition post-completion.

GDPR will almost certainly apply when staff data is shared (as this is very likely to involve processing of personal data) and organisations need to be aware of their compliance obligations or risk large fines (up to €20/£17.5 million or up to 4% total worldwide annual turnover whichever is greater) and/or claims from affected individuals.

One firm.
Your firm.

GDPR does not stop disclosures of staff data by sellers during M&A activity provided they follow the steps below.



FAQs

? Do we need an agreement in place before the data can be disclosed?

Usually no, but it is a sensible precaution and recommended good practice by the ICO.

You should check if a confidentiality agreement is already in place as this may cover staff data. Otherwise you should consider putting such an agreement in place.

? What if the personal data is being transferred outside of the EEA/UK?

EU/UK data protection rules provide additional protection for personal data that is being sent outside of the EEA/UK.

Check with HR Legal if the Buyer is located in a country deemed by the EU Commission/UK Government to provide adequate data protection. If not, EU SCCs/UK Addendum to EU SCCs or other safeguards are needed. A transfer impact assessment or, other supplementary measures may also be needed.

? What is the role of the seller/buyer?

They may be joint controllers in the due diligence process in which case Article 26 GDPR applies and they will need to set out the allocation of their responsibilities in writing.

? Further ICO guidance

[Due diligence when sharing data following mergers and acquisitions | ICO](#)

See new Draft ICO Employment Guidance (open for consultation until 5 March) which looks at handling employment records during mergers and acquisitions and how to share workers' information under TUPE: [Using employment records | ICO](#). This is the first time that the ICO has revisited this topic since before GDPR.

? How can Bird & Bird help you?

Drafting staff communications, policies and notices, assessing proposed disclosures, assisting with Legitimate Interests Assessments, drafting Data Protection Impact Assessments, advising on data transfer arrangements, preparing agreements, helping to deal with bulk individual rights requests, and more!

? What resources are there?

Bird & Bird's [HR Data Essentials Hub](#) for all the latest information on the interplay between HR and data

Check out how Bird & Bird's can help you with [M&A post-completion data protection integration](#)



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