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**How to Enter the U.S. Market from Offshore BPO:
Strategic Considerations across Deal Structures**

A White Paper for CEO's and Directors of Offshore BPO Service Providers

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How to Enter the U.S. Market from Offshore BPO: Strategic Considerations across Deal Structures

A White Paper for CEO's and Directors of Offshore BPO Service Providers

Executive Summary

The success of international outsourcing has filled the coffers of small to mid-sized service abroad. Certainly it helps to have publicly traded securities. Yet small to mid-sized offshore companies have emerged as credible investors in niche targets in business process outsourcing (“BPO”). The credibility of the BPO service provider in attracting American or European customers has sparked a new credibility for borrowing from foreign banks and foreign investors. Such debt can be deployed profitably for global expansion. Also, regulatory restrictions on outbound investments abroad have softened with the positive balance of trade in services internationally. Foreign BPO providers can proudly make acquisitions in America using their own internally generated strong capital base and sound fundamentals in operations and corporate finance.

As non-U.S. BPO providers look abroad, they need to focus both on the opportunities and risks, as well as achieving effective, efficient deal structures to support successful acquisition and business development strategies worldwide.

Introduction

Emerging foreign providers of business process outsourcing (“BPO”) services can no longer neglect the opportunities of establishing strategic alliances or acquisitions in their markets in North America and Europe. Such alliances have become an essential component of a “global services” business strategy.

But the same “wage rate arbitrage” pricing advantage that enticed such customers makes it onerous to pay the full price for major operations. From a business, financial and legal standpoint, creative solutions can be adopted to overcome this negative leverage. This white paper addresses several possible strategies and highlights some legal and operational consequences for the acquisition of assets or shares of U.S. privately owned companies. Given the complexity of the subject, the reader should consult with a U.S. attorney before taking action on any of these possible strategies.

1. Unique Environment for Offshore BPO Service Providers as Acquirers

1.1. Preliminary Considerations

1.1.1. GOALS

Any acquirer typically identifies several goals when considering strategic acquisitions: rapid growth, filling gaps in its business development plan, globalization, acquiring talent, customers and/or

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technologies that can be used as a platform to launch further organic growth, and even acquiring access to new markets through piggybacking onto the target's governmental authorizations in a regulated industry.

For offshore BPO services companies, the acquisition goals may also include creating sufficient "mass" to justify an IPO strategy (leading to further rapid growth through the use of publicly traded shares as currency for more acquisitions), training for offshore employees in foreign business methods.

For very small offshore companies, the "acquisition" strategy could include conversion of shares in the offshore company into a minority stake in a U.S. or European company that controls the customer base and provides a high level of on-site or near-site customer care, and whose shares might be registered in an IPO sooner than the offshore company's.

1.1.2. PRELIMINARY MARKET ASSESSMENT

Whatever the goals, the acquisition strategy requires careful analysis of the marketplace – customer profiles, competitor profiles, technology developments, regulatory evolution, employment issues and post-merger integration.

1.2. *Unique Operational Profile of Offshore BPO Service Providers*

BPO providers have a unique profile in the M&A environment. This raises special issues in planning.

1.2.1. PROJECT REVENUES VS. ANNUITY STREAM REVENUES

BPO services have a wide range:

- commodity services such as customer care;
- information technology and telecom services, including infrastructure support, remote data storage, security analysis, implementation of moves, adds and changes and software development;
- financial enterprise services support, including call-center support for credit cards, mortgage loan processing, mortgage brokerage and similar consumer financial services;
- health care support, including healthcare insurance claims processing;
- insurance industry, including call centers for establishing new accounts and claims adjudication up to a pre-set level;
- logistics industry support, including accounting, payment computations and related customer care operations;
- knowledge services, including engineering, drafting, market research, patentability analysis and support for professionals in accounting, law, finance and insurance.

There are many common denominators for BPO service providers:

- business focus on process design and the challenge of acquiring proprietary intellectual property while following detailed business processes that are proprietary to the BPO clients;
- absolute need to guarantee security in handling sensitive client data and personally identifiable information of the data of client customers;
- dependency on a small number of key personnel who understand and organize the firm's competitive strategies around the supply chain, process chain and the human capital life cycle;
- dependency on human resources in an environment of high level of routinization of job function, leading to high turnover and the need for ongoing recruitment, training, supervision, motivation and replacement;

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- dependency on telecommunications for service delivery;
- dependency on business development managers who must chose strategies that involve some combination of heavy travel (at high expense), networking with consultants and other intermediaries who influence the client's buying decision, or other, more haphazard, marketing practices; and
- a highly fragmented competitive global environment.

1.2.2. PROCESS-DRIVEN INTANGIBLE ASSETS

Generally, the assets of the business are all intangible, except for leased offices, computers and telecommunications. From a banker's standpoint, intangible assets do not provide sufficient security for a simple asset-backed loan. Accordingly, the offshore BPO provider is not able to obtain asset-based bank loans. This financial restriction forces the offshore BPO provider to seek strategic alliances with customers, suppliers and investors that reflect its financial and legal profile.

1.2.3. INFORMAL RELATIONSHIPS VS. METHODOICAL SEARCH

Entrepreneurial CEO's and founders of offshore BPO providers may be accustomed to meeting prospective business partners directly as such events as conferences, industry trade shows and membership organizations. Yet the pool of potential alliance candidates in North America and Europe is so large that such informal networking will not likely yield optimal results. The offshore BPO provider need legal and investment banking counsel who under stand their unique profiles in the design and implementation of a service delivery platform, in marketing and sales and eventually the development, negotiation and conclusion of BPO service agreements. Reliance on outside professionals may be difficult for the entrepreneur.

1.3. Unique Market Landscape for BPO Providers in the \$10 to \$50 Million Revenue Range

1.3.1. MARKET FRAGMENTATION

The universe of prospective U.S. strategic allies is large, fragmented, dynamic and entrepreneurial. To overcome this fragmentation, foreign BPO providers must be able to act quickly and competitively. Successful pursuit of a target may depend as much on personal relationships cultivated over a year or more to identifying strategic fit.

1.3.2. TRENDS

Foreign companies have been rapidly investing in Europe and the United States. According to a report issued by Knowledge@Wharton in December 2006, in the first nine months of 2006, Foreign companies announced 115 foreign acquisitions with a value totaling \$7.4 billion, citing *The Economist*. That is roughly a seven-fold increase from 2000. This spread roughly 50% in Europe and 24% in the United States. In 2005, information technology services accounted for the largest number of acquisitions, followed by pharmaceuticals, healthcare and biotech.

According to the Wharton website, one report, by Grant Thornton India, highlighted three significant trends in cross-border M&A activity by Indian firms in 2005.

- More than half the deals were cross-border: 58% of deal value, amounting to \$9.5 billion, and 56% of deal volume at 192 deals.
- Outbound deals (to acquire non-Indian companies) surpassed inbound deals (to acquire Indian companies) both in value and volume terms.

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- While the purpose of acquiring businesses overseas was initially to get an international footprint, most of these outbound deals have been lower volume deals, showing that Indian businesses are treading carefully and minimizing their risks through value buys.

The size of the outbound acquisition deals by foreign companies is not necessarily large, but the volumes are growing. Looking ahead, cross-border deals by foreign firms are projected to increase in number and change in nature. While the big deals attract the newspaper coverage, many small- and mid-sized opportunities are being closed in the \$20 million to \$60 million range. Also, other foreign sectors that benefit from globalization are seizing the opportunity to develop a global platform, such as in industrial products, automobile components and manufacturing.

1.3.3. DEAL EXAMPLES

Several foreign companies, flush with cash, confident in their ability to manage and targeting growth and a global footprint, have made acquisitions of U.S. companies. GHCL, Reliance Gateway Net, Scandent and VSNL are not well known globally, but they are acquirers of companies in Europe, the United States and Asia. The targets tend to be industry-niche technology-driven U.S. companies with a robust sales and process, and possibly even an offshore service delivery center. For example:

- In 2006, Firstsource Solutions (formerly ICICI OneSource) acquired BPM Inc., a Delaware-based healthcare claims outsourcing company, following its first acquisition, in September 2004, of Account Solutions Group, a specialized BPO provider.
- In July 2006, Nasdaq-listed EXL Holdings Inc., an foreign BPO, acquired U.S.-based Inductis, a strategy and analytics company serving the financial services and insurance industries. After the acquisition, EXL combined its own Research and Analytics business into Inductis as a wholly-owned, independently branded subsidiary. In 2005, Inductis had revenues of \$20 million, but was one of the largest BPO analytics providers with offices in Gurgaon, New York, New Jersey and Singapore. Inductis' founder, Sandeep Tyagi, expressed the typical rationale for such a transaction: "The Inductis and EXL combination will create a company equally strong in creating solutions and delivering them. This will allow the combined company to effectively compete with much larger companies in delivering value to our respective clients. For Inductis, we will now have the platform to grow faster and further invest in training and development of our people, client relationships, and intellectual property."
- Mumbai-based Plethico Pharmaceuticals is reportedly acquiring two US firms - a contract manufacturing company and a retail pharmacy chain. The retail chain that Plethico plans to acquire has around 50 outlets across the US with annual sales of \$45 million. The second contract manufacturer has sales of \$20 million.

1.3.4. LESSONS LEARNED FROM EARLY ADOPTERS

Early adopters have shown that smaller foreign companies can succeed in the challenges of international growth through acquisition. They have learned some key lessons:

- The "modern" foreign BPO acquirer seeks synergies both in the creation and delivery of solutions.
- The use of debt to leverage their equity position can enable them to shoot higher at the target group. Many banks are willing to lend aggressively for LBO's. According Prof. Jogmohan S. Raju, a Wharton professor of finance, foreign firms have found greater acceptance for their businesses as portfolio investments and as engines for raising their own cash for a growing M&A spree. U.S. capital markets have grown more secure in regarding foreign firms as eligible for

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equity and debt finance. Some banks are willing to lend amounts that are at least four to five times the EBITDA of the target company, according to one investment banker.

- Their “best of breed” focus on process quality and process management can be useful in achieving synergies more rapidly.
- Intellectual property and human capital serve a special role in justifying the acquisition, in supporting the financial structure and in succeeding in post-merger growth.

2. Pre-Acquisitions: Commercial “Hookups”

2.1. Strategic Marketing Agreements.

2.1.1. SECTOR-BASED MARKETING ALLIANCE

A sector-based marketing alliance resembles a “field of use” patent license. The “licensee” (or marketing ally in the U.S.) would be authorized to market the offshore BPO provider’s services in a particular industry segment, such as insurance, finance, retail and consumer, healthcare, manufacturing or energy. This business model is a means to get acquainted with a prospective U.S. target, particularly where the target is much smaller than the offshore BPO provider. It is especially useful in making acquisitions across different industry segments, assuming “channel conflict” can be adequately controlled.

2.1.2. PROJECT-BASED MARKETING ALLIANCE

A project-based marketing alliance can be useful to companies bidding for work that neither could hope to win on its own. The two parties agree to approach a target customer (or perhaps named target customers) for purposes of soliciting and responding to a request for proposals. The project-based marketing agreement identifies all of the essential hypothetical situations where the two parties will work together, how they will bid and respond, but leaves open the actual subcontract relationship till the prime contractor and the subcontractor are identified during the RFP response process.

This relationship can be useful where each party offers something uniquely different. However, it fails when both parties have the same target customers for the same types of services in the same territory. It also requires heavy investment of management time in the design of the joint marketing approach and in implementing a contractor-subcontractor agreement. Further, subcontracts generally get sucked into litigation when one of the parties fails to perform in accordance with the main agreement with the client. As a result, project-based marketing alliances are inherently unstable and do not develop long-term value for either party unless they are willing to move to a more strategic level in a prompt manner with measurable goals and deadlines.

2.1.3. FULL PRODUCT LINE MARKETING ALLIANCE

A marketing alliance that covers the BPO providers’ full product line can take many forms.

- A « value added reseller agreement » could be used where the BPO provider has developed software that it wants to license, and the U.S. personnel would provide on-site consulting and installation. This business model is not the BPO provider model, but is often the way towards a BPO model.
- A « sales agency » could reward the U.S. sales force of the U.S. marketing ally. Without some form of exclusivity, this strategy would be self-defeating.

The same issues found in « relationship governance » under project-based marketing alliances apply to full-product marketing alliances. However, the exit strategy (such as a potential acquisition) should be

identified as part of the life-cycle planning for this business model. Since marketing and production are closely interwoven, this leads to consideration of a possible joint venture.

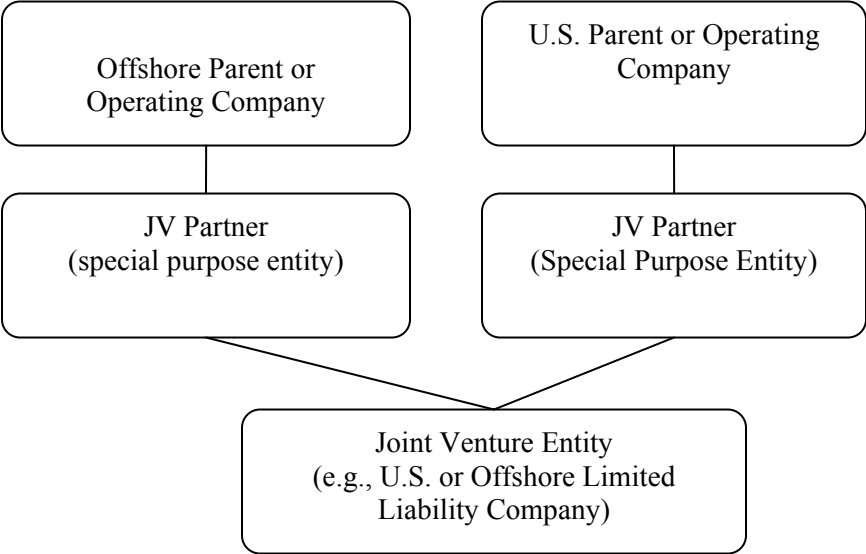
2.2. Joint Venture for Marketing and Production

A joint enables the offshore service provider to develop a pre-marital relationship with an American counterpart to share costs and risks of prospecting for business. The U.S. party provides the “front end” for business development while the offshore party delivers the agreed service in accordance with a contract signed by the U.S. party and probably the offshore party.

2.2.1. FORM OF JV: CONTRACT VS. ENTITY

Joint ventures come in different sizes and shapes. An “entity-type” joint venture is simpler than a “contract-type” joint venture because the entity can follow externally defined rules of corporate formation, accounting, governance and dissolution. In a contract-type joint venture, the parties must negotiate everything, including accounting rules that are used to define success or failure. And a contract-type joint venture does not have limited liability, but exposes both parties to the risks of possible claims from operations. As a result, most joint ventures are cast in the form of a new entity. Exhibit 1 shows a typical entity-type joint venture.

Table 1, Entity-Type Joint Venture



2.2.2. ACHIEVING SATISFACTORY GOVERNANCE STRUCTURE

The creation of a joint venture demands an inordinate amount of time, effort and money compared to a straight acquisition. Sharing control of a business requires a extensive discussions and agreement on the value and nature of capital contributions (cash, services, licenses, contracts with customers and other forms of property or rights), veto rights, control of management decisions, accounting principles and procedures, marketing strategy, sales procedures, staffing and human resources management, service delivery requirements, process integration to achieve effective collaboration, contingency planning, exclusivity and related exit planning requirements. This list is well known to those providing BPO services, but unlike a BPO service agreement, a joint venture prevents the offshore service provider from seeking other U.S. business relationships (the “anti-promiscuity” clause, as the exclusivity provisions are sometimes viewed).

2.2.3. PERILS OF THE “50-50” DEAL

Many small business owners believe that “two are stronger than one,” and that they can successfully share control in a “50-50” cohabitation. The notion of a “50-50” deal is inherently hard to structure due to changes in leverage and risk for each of the parties as the venture is launched and goes through stages of capitalization, recruitment and staffing, marketing launch, investment in sales, contract negotiation and signing, transition to customer service delivery, account management, contract renegotiation and termination or re-bidding.

3. Acquisition Strategies and Timing

3.1. Acquisition of U.S. Business

3.1.1. CASH PURCHASE OF ENTIRE BUSINESS

Typically the small offshore acquirer lacks sufficient cash to acquire 100% of the target. As a result, the offshore “acquirer” may be putting itself into “play” (as a possible target of a foreign acquisition) if it seeks to invest in a foreign company and rumor spreads that it wants to get “engaged” in international alliances.

3.1.2. CASH PURCHASE OF A MAJORITY CONTROL

Acquiring control can substitute for acquiring 100% ownership if the acquirer seeks operational assets – people, process, technology, and/or customers -- that will build the business.

3.1.3. CASH PURCHASE OF A MINORITY STAKE

Buying a minority stake in a foreign alliance may satisfy the goals of acquiring access to foreign operational assets. However, without control, the minority investor becomes the pawn of the majority, unless there are explicit conditions permitting a later acquisition of control. As an alternative, commercial “hookups” are probably better suited: distribution and agency agreements, commission sales agreements, teaming agreements for joint approaches to target customers.

3.1.4. ISSUANCE OF SECURITIES IN EXCHANGE FOR STOCK OR ASSETS

Tax planning, and strategic business planning may involve the establishment of special-purpose holding companies or other acquisition entities. The acquirer issuing securities to the U.S. sellers must comply with applicable state and federal securities laws.

3.2. Valuation

3.2.1. STANDARD ANALYTICAL APPROACHES

Business appraisers have the choice of adopting one or more of four broad and generally accepted valuation methodologies: (1) asset-based valuation, (2) comparable transactions analysis, (3) comparable public company method and (4) discounted cash flow analysis. Each of these approaches looks at numbers measured today and into the future. Traditionally, valuation professionals have compared and contrasted the outcomes of these different methods for purposes of achieving a proxy for the market. Increasingly, however, the unique profile of small to mid-sized BPO providers has opened the door for practical solutions, beyond traditional valuation analysis, to leverage and structure cross-border acquisitions involving BPO providers as both acquirers and targets.

3.2.2. CROSS-BORDER DIFFERENCES

The markets for acquisitions in Asia and North America experience different valuation factors. For example, foreign acquirers tend not to place as much value on intellectual property assets as American buyers. Also, differences in accounting methods and reporting may skew the valuation process, thus preventing a clear picture from the standpoint of the acquirer. But the key element is that global capital markets, global investors and global businesses are all willing to invest or lend in well-run foreign companies in support of outbound acquisitions.

3.2.3. CREATIVE SOLUTIONS

Buoyed by increased cash on hand, BPO providers and other foreign companies are contemplating acquiring companies globally that are many times their size. This requires creative solutions in valuation, capital structuring, suitability and fit of the target, coordination of strategy across several territories, integration and uses of customers and suppliers to help fund either the acquisition or post-acquisition growth. Non-traditional valuation may include new “funny” money to cobble together a deal structure that is sound both in the context of acquisition financing but also for growth.

3.3. *Valuation and Uses of Funny Money: Assets having Value for Acquisitions*

With cash being tight, potential acquirers should consider innovative alternatives.

3.3.1. SERVICES AS CAPITAL

Generally, U.S. corporation statutes enable corporate founders and investors to acquire shares by making a contribution of services. The corporation’s board of directors would need to approve and place a value for financial accounting. Shares for services may be treated as ordinary income, taxable in the U.S. if relating to services performed in the U.S. Other complications may result, depending on whether the shares are issued to an employee or a third party. While cash is easier to use, services might be used to some degree in lieu of cash.

3.3.2. PURCHASE ORDERS AS CAPITAL

Conversely, a U.S. corporation that is the customer of the offshore BPO provider might try to use a rapid growth in purchase orders as a cash equivalent for purposes of acquiring shares in the offshore provider. Such an arrangement would turn the tables, making the offshore provider a target of acquisition. But such a “reverse” strategy could be warranted by accelerating growth and permitting the owners of the offshore provider to become shareholders of the U.S. customer. This approach may apply to cases where the offshore BPO provider does not have the financial strength to make its acquisition and its owners prefer to be minority part of a larger U.S. entity.

3.3.3. INTELLECTUAL PROPERTY

BPO service providers frequently evolve from software developers to service providers. In each case, they normally develop their own proprietary BPO software to enable the scalability, cost-effectiveness and universal accessibility (via the Internet) of their services. Intellectual property can be used for purposes of licensing or as a cash equivalent.

3.3.4. HUMAN RESOURCE MANAGEMENT

In a universe where the turnover of human resources bleeds a company’s knowledge, a BPO provider’s ability to attract, manage, train, deploy and supervise its human resources can have value as a cash equivalent.

3.3.5. BRAND VALUE

Specialty brand management consulting firms exist to assist BPO providers in gaining mindshare with their target customers. Similarly, such branding can have value at the bargaining table, provided it is supported by corresponding financial statements.

3.4. Timing

3.4.1. INITIAL ENTRY STRATEGY: ONE STEP VS. TWO STEPS

If the buyer has adequate cash, a one-step acquisition generally is the simplest solution. However, if the buyer needs to grow before pursuing an acquisition strategy, it could bundle its plan into multiple steps. This requires planning and discipline, as well as appropriate enforceable agreements.

3.4.2. CONTINGENCY STRATEGY: USE OF OPTIONS (PUTS AND CALLS)

Markets change dynamically. An offshore BPO provider should carefully analyze its goals, markets and strategies and establish conditions for contingencies such as a change in basic market assumptions (“material adverse changes,” for example) or a need to share corporate governance in an acquisition involving shared ownership after the transaction. Based on such contingencies, the buyer’s use of contractual rights to buy or sell the shares of a target or one’s own is an essential element of planning.

3.5. Exit Strategies

The planning for an acquisition should consider the eventual exit strategy. The acquirer should identify possible short-term and long-term business development and exit strategies such as an IPO, a sale to a strategic acquirer, organic growth, assembly of a group of related companies to feed each other and possible spinoffs of unnecessary divisions of the target. Professional advice can help guide his decision process.

3.5.1. IPO

An IPO, or initial public offering, is accomplished through the registration and sale of the offshore BPO provider’s equity securities to the public. Various countries, including the U.S., members of the European Union, Asian nations and emerging market nations, have active trading markets through which an offshore BPO may be able to offer its securities. An IPO can generate a significant amount of cash for the offeror, but at the price of surrendering some level of economic interests and possibly control... Depending upon the securities market chosen, substantial post-offering regulation may be imposed, as for example, in the U.S. detailed periodic financial and ownership disclosure, as well as detailed descriptions of transactions between the offeror and its affiliates.

3.5.2. STRATEGIC ACQUIRER

A strategic acquirer or partner may enable the offshore BPO to expand its activities through the private acquisition of new financing or access to expanded operations. This can be accomplished through the sale of the offshore BPO to an acquirer or formation of a joint venture with a strategic partner with ability to direct to or finance new business opportunities for the BPO.

3.5.3. PORTFOLIO ASSEMBLY

In the case of portfolio assembly, the offshore BPO with sufficient means can acquire a group of service providers strategically placed geographically or commercially to expand the parent BPO provider’s global business on a consolidated basis. Under this scenario, the offshore BPO becomes a strategic acquirer. The advantages of portfolio assembly are that the parent BPO can achieve a level of insulation from market forces in any one industry or country and acquire existing entities with areas of expertise that the parent BPO otherwise would have to develop in house. Another key advantage of portfolio assembly is

the expansion of the price-earnings multiples that the acquiring company can generate for its founders and investors. However, portfolio assembly is be time-consuming and often requires substantial outlays of money.

3.5.4. SPINOFFS

Once an offshore BPO has reached a certain critical mass, it can evaluate its overall performance, future plans, industry trends and projected market conditions. Depending upon those factors, the BPO may wish to sell or spin off one or more of its operations for cash to finance continuing operations or directed expansion.

3.5.5. VARIATIONS

The various strategies outlined above also may be used as parts of an overall strategy. For example, an IPO or strategic relationship could be used to fund a portfolio assembly plan that later leads to spinoffs or component parts of the BPO as those parts mature or no longer fit with the BPO provider's strategic objectives.

4. Acquisition Financing

4.1. Self-Financed Organic Growth

Self-financed organic growth is a conservative tool dependent wholly on the BPO provider's ability to generate substantial funds that are not needed for continuing operations. This model presupposes a patient growth strategy until the BPO has reached a critical mass that allows it to devote ever larger sums, in terms of available cash rather than as a percentage of available cash, to finance its growth plan.

4.2. Private Equity Funding

Private equity funding of any scale requires access to substantial pools of money, including, among others, venture capital funds, hedge funds, strategic partners and institutional investors such as insurance companies and the financing subsidiaries of large multinational corporations. Global private equity pools have discovered India and China as targets for emerging market investments, and acquisitions by Asian portfolio companies could be funded to achieve rapid growth.

4.2.1. THE "MERRY GO ROUNDS"

Equity investment is thus the most "expensive" and entangling source of capital. The notion of investment cycles is an essential framework for approaching equity investment. Venture capital and private equity investments in emerging and growth companies have been compared to a "merry go round." Every time your horse comes around for a funding, it's another round. Unlike the arcade version, in each private equity round, the dilution of ownership and expectations for accelerated growth become compounded, with an increased focus on achieving growth targets. As the goals increase, so do the consequences of failure to reach them. The "high cost" of private equity may be seen in how, for example, in July 2006, WNS went public on the New York Stock Exchange while its venture capitalist Warburg, Pincus still controls a majority of shares. Of course, private equity may well bring "high value," too.

4.2.2. DIFFERENTIATION FACTORS FOR SELECTING THE RIGHT PRIVATE INVESTOR(S)

Among the factors to consider is deciding which private funding vehicle to use are the conditions that the fund provider will impose. These conditions could include enhanced operations reporting requirements to the fund provider, a requirement that a representative of the fund provider either act as an observer or become a member of the BPO provider's board of directors or other governing body, whether the fund provider's return on equity includes receiving "bonus" shares if the BPO PROVIDER does not achieve

agreed upon performance goals, the fund provider's experience in the BPO provider's industry or the geographic areas of its operations and the fund provider's history with other entities in which it has invested. This latter point can be particularly important in situations where corporate and social cultural differences may exist.

4.3. Leverage through Debt

If it has sufficient assets to support bank financing, an offshore BPO provider may decide to pursue traditional bank financing, either through its established banking connections or new ones in areas where the BPO provider plans expansion, or issue its debt securities in a public market. In each case, the conditions of the debt facility must be carefully analyzed to ensure that the BPO provider will be able to meet the covenants and other undertakings typically required of large debt facilities, including not just debt repayment, but periodic reporting obligations, grants of security interests in the BPO provider's assets, maintaining various financial ratios such as debt to equity and levels of operating funds, limitations on distributions to equity holders and other limits on affiliate compensation. Bank debt financing is limited by the balance sheet of the borrower and particular markets place limits on the amount of debt that a lender can make to a specific borrower.

5. Navigational Tools for Fitting into Compliance Frameworks

Any acquisition must pass various hurdles before being declared as success.

5.1. Beachheads

Many foreign BPO providers set up their own U.S. marketing subsidiary to as a first stage in the business development strategy for rapid growth. Local subsidiaries can be thinly staffed, but their personnel can be help represent the foreign BPO provider not only in sales to customers, but in strategic acquisitions. Such subsidiaries can also be used as vehicles for holding companies or for tax planning in the acquisition process.

5.2. Choosing the Right Advisers

The offshore culture is built upon personal relationships of trust across a homogenous social stratum with a common language, even if offshore historically has been divided by caste, region, language and local culture. In contrast, the American culture is built upon the rule of law to define the basis for a legally enforceable personal relationship. This cultural dissonance is reflected in the inclination of many offshore entrepreneurs to use their social and business networks to identify prospective acquisition targets and to deal on a personal basis with the target's owners and CEO. This exposes the acquirer to many risks that lead to failures. Prospective acquirers can achieve a better fit for the funding and the post-merger integration by selecting the right cross-border advisers to distinguish among prospective private equity investors and U.S. business owners according to investment strategies, stages of development and managerial profile.

5.3. Corporate Finance

Corporate finance defines the financial structure of the enterprise before and after the acquisition. The availability of debt may be limited, so creative financial structures are essential for small to mid-sized acquirers. Global private equity capital is increasingly targeted towards funding cross-border acquisitions by foreign BPO providers as a tool for expanding rapidly, increasing valuation multiples and pre-ITO growth.

5.4. Regulations

As a federal country, the U.S. is governed by laws of federal Congress and the states. For BPO providers, the key regulations are those relating to controlling the exportation of certain U.S. technologies, immigration, taxation, securities registration and exemptions, foreign direct investment (particularly for larger acquisitions having an impact on national security or antitrust policy), employment (including employment agreements and employee benefits plans), intellectual property.

Several U.S. laws restrict the foreign activities of acquired U.S. businesses. The U.S. Foreign Corrupt Practices Act prohibits employees or agents of U.S. companies from corruptly paying bribes to foreign government officials. The federal anti-boycott law prohibits participation in certain secondary boycotts.

5.5. Threats to the Business Deal

Protecting the acquisition, and the transitional steps leading to a multi-step acquisition, requires negotiation of essential deal terms at the early stages. These relate to exclusivity, “no shop” and “best efforts” clauses, lockup agreements, break-up fees and dealing with large shareholders.

5.6. Post-merger Integration.

Critics complain that much of the value in acquisitions is frequently lost due to ineffectual post-merger integration. Effective integration depends on scheduling of the closing to ensure timely protection of rights of the acquirer in the target or its assets. Starting from the first discussions, executives and shareholders of foreign BPO providers need to plan to invest their time in ensuring that the integration is well planned.

6. Your Team

6.1. The Acquisition Team

Cross-border acquisitions involve the laws and markets of at least two countries. In addition to senior executives of the acquirer, your acquisition team should include an investment banker, a U.S. lawyer and a foreign lawyer, a certified public accountant, an insurance broker and a corporate banker. Additional personnel may be required after review of the basic plan.

6.2. Qualities of Your Team Members

You should consider what qualities are most important, beyond the basics of experience and availability. We collaborate with financial experts, foreign law firms, insurance brokers, accountants and others in supporting international M&A in BPO services.

6.3. Bierce & Kenerson, P.C.

As a law firm, we at Bierce & Kenerson, P.C. believe that our value is not that of a large law firm driven by generating lots of hours for all levels of associates and partners. Rather, our culture is to focus on business priorities, optimal business processes, foreseeable deal ambiguities, problems, impacts of emerging/future technologies and creative ways to collaborate with our clients. We have demonstrated this in working with foreign acquirers and foreign company founders obtaining U.S. venture capital. We edit the website www.outsourcing-law.com and a related newsletter read by thousands each month.

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- advice delivered on time and, subject to mutual agreement, on budget;
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- regular progress updates; and
- the person who pitched for the business.