

# Boston Business Journal

June 8-14, 2007 Vol. 27, No. 19

## | DOING BUSINESS OVERSEAS |

### 'Informed boldness' is needed for international M&As

Cross-border merger and acquisition deals can be like climbing a mountain — exciting, challenging and dangerous, yet with potentially magnificent rewards. By all means, be bold and embrace those international opportunities. Just be sure you take along a guide to prevent stumbles.

Last year proved a record breaker for M&A worldwide, with deals totaling a stunning \$3.8 trillion. Every indication is that 2007 will shatter more records.

Not so long ago, international transactions were the province of only the very mightiest corporations, the General Electrics and Sonys of the world. That is no longer true.

Emboldened by the expanding global economy, U.S. firms and investors of all sizes are finding opportunities from Ireland to Israel to India, and everywhere in between.

What they are finding is that there are very real risks to foreign investment, just as there are risks in any form of business growth. But these American firms recognize that they would be foolish not to embrace globalization and international opportunities.

With so much opportunity and competitive pressure at play, newcomers to international transactions can find themselves in over their heads. The key to survival and success is informed boldness.

A typical domestic M&A transaction requires the basics of lead time, diligence and blocking and tackling. With an international transaction, you need all of these basics — in spades — plus the skill set and temperament to handle some unique hurdles, including language barriers, local sensitivities, differing time zones and, most



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important, varying business styles.

International M&A comes in two flavors, each with its own challenges: inbound deals, where investors abroad buy American assets; and outbound deals, where American businesses strive to replicate their domestic successes on foreign soil.

Massachusetts is witnessing an inbound influx of real estate and technology investors, especially from Ireland, Israel and India. One prominent recent example: the purchase of the venerable Ritz-Carlton in Boston by Taj Hotels Resorts and Palaces, one of the largest hotel groups in Asia.

A successful inbound deal typically requires patient counseling for the foreign investor new to the U.S. marketplace. U.S. corporate, real estate, labor and antitrust laws are often more flexible and permissive than their foreign counterparts; conversely, U.S. tax and environmental laws may be more arcane and are certainly more daunting. All this contributes to a deal pace that is faster and more intense than what foreign investors are accustomed to in their home countries.

Thus, what may seem like foot-dragging in the midst of a deal negotiation may simply be a foreign investor overwhelmed by U.S. commercial and legal norms. In these circumstances, the best counsel is dollops of patience for the U.S. party and education for the non-U.S. party.

For U.S. investors and businesses looking

outward, particularly in emerging markets, one must go beyond patience for another country's way of doing business and come to accept new norms.

Take, for example, one of our clients: a group of American real estate investors buying into a real estate project in India. Their leap of faith came over title insurance — or, rather, lack of it. In India, there is of course a title search process, often involving a tangled web buried in a pre-computerized deed registry, but no title insurance to back it all up.

Or this other client: a U.S. hotel group entering a Caribbean jurisdiction. The hoteliers need a local income tax exemption to make their investment work. But the local government won't issue the tax exemption unless and until the investment has closed. Our client has to put its money in first -- and then maybe it'll get the tax exemption. Or maybe not.

The lesson here? If you can't get used to the way another nation does things, then you should be looking elsewhere.

There are horror stories aplenty of American concerns that failed miserably when venturing overseas. They didn't file the correct papers. They didn't create the proper entities. They paid double taxes. They got hit with hefty fines. Preparation is key.

International M&A provides an opportunity to really make some music. Depending upon the orchestration, though, it's an opportunity for cacophony or euphony.

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