



Successful Strategies in Cross-Border Mergers & Acquisitions

Presented by:

**Francois G. Laugier
Ropers, Majeski, Kohn & Bentley**



INTRODUCTION

● Challenges of International Acquisitions

- Complexities of running international transaction
- Finding the right partners abroad
- Language, cultural barriers
- Already busy at home



INTRODUCTION (cont.)

- **Once acquisition is completed, will have to navigate a new legal, tax and accounting system, and understand:**
 - **Duties as employer in foreign country**
 - **Protection of IP**
 - **How to resolve logistical issues**
 - **How to deal with a foreign currency**
 - **Corruption?**



So why do it?

- Customers
- Competition
- Because you can!



DEAL PREPARATION

- Strategy / Team Communication
- Due diligence before due diligence
- Identify behaviors early
- Speed!
- Integration, Integration, Integration

Experienced CEOs say:

- Strategy – Ability to integrate – Ability to accelerate
- 100 days



ACQUISITION PROCESS

● Assets or Stock?

- **Assets:**
 - ◆ + Flexibility
 - ◆ – Transfers
 - ◆ – International
- **Stock:**
 - ◆ + Predictability
 - ◆ – Liabilities
 - ◆ – Preferences and privileges



LETTER OF INTENT

- **Confidentiality and Non-Disclosure Agreement (NDA)**
- **Not Binding**
- **Terms**
 - **Transaction structure (Stock, Assets, Acquisition, merger)**
 - **Purchase price consideration (adjustment)**
 - **Breakup fees**
 - **Employee stock options (single or double trigger)**
 - **Warrants**
 - **Treatment of key employees**



LETTER OF INTENT

● Terms (cont.)

- Confidentiality, non-compete, non-solicitation
- Indemnity, escrow, holdback (survival of reps and warranties, one year in general, plus statute of limitation, plus indefinite)
- Other ancillary agreements (needed at closing)
- Conditions to closing (buyer wants lots - "and such other matters as may arise during the due diligence process")
- Confidentiality of discussions including the existence of letter of intent
- Exclusivity (no shop, 60 to 90 days)



LETTER OF INTENT

● Terms (cont.)

- Due diligence
- Conduct of business (ordinary course, if outside ordinary course, consent)
- Expenses
- Choice of law – venue
- No binding (except for confidentiality and exclusivity)



DUE DILIGENCE (checklist)

- **Reduces odds of failure**
- **Clarifies strategy and motivations**
- **Areas**
 - **Legal (capital)**
 - **IP (rights assigned?)**
 - **HR (compensation, “independent contractors”)**
- **Odd laws or customs**



EARNOUT

- **Additional value paid to seller only if the acquired business meets some prescribed performance measures after closing**
 - **+ Deal insurance/acquisition financing**
 - **– Nest for disputes**
 - **Milestones measured over 1-5 years**
 - ◆ Net revenue
 - ◆ Net income
 - ◆ Cash Flow
 - ◆ Satisfactory product launch
 - ◆ EBIT
 - ◆ EBITDA
 - **“No fiduciary duty” provision**



EMPLOYMENT OF SELLER'S MANAGEMENT TEAM AND EMPLOYEES

● Employment Agreement

- Confidentiality
- Non-compete
- Non-solicitation

● Stock Options, RSPA

● International issues

- SOP
- Public Policy



REPRESENTATIONS AND WARRANTIES

- Paint picture of the company
- Exceptions in “Disclosure Schedules”
- Common representations and warranties
 - Organization (organize the license in good standing)
 - Capitalization
 - Authority relative to agreement
 - Consents and approvals, no violation of law
 - Financial statements true and correct



REPRESENTATIONS AND WARRANTIES

Common representations and warranties (cont.)

- Accounting system is reliable
- Company has no indebtedness
- No changes since _____
- No undisclosed liabilities
- Information supplied so far true and correct
- Not in default of company charter documents, any contract, debt, et cetera
- No litigation
- Compliance with laws
- Taxes



REPRESENTATIONS AND WARRANTIES

Common representations and warranties (cont.)

- Returns filed, taxes paid, no audit pending
- Employee benefits, nothing else than what is in the schedule
- No contracts subject to “change and control” provisions
- IP: company owns or has valid rights to use all IP it needs, no liens
- Contracts and commitments: there are no contracts obligating the company to pay more than \$__; and there are no contracts limiting the company to do business anywhere



REPRESENTATIONS AND WARRANTIES

● Common representations and warranties (cont.)

- Employment and labor
- Environmental
- Insurance: in effect, all policies in schedule
- Title to property
- Leases
- Brokers/finders fees
- Books and records
- Full disclosure

● Covenants

- Preserve business intact
- Press release



INDEMNIFICATION

- Triggered by breach of representations and warranties, covenants, unforeseen liabilities;
- Representations and warranties survive closing 12-24 months;
- Longer (SOL) for IP, intentional acts or fraud.



ESCROW AND HOLD BACK

- **For issues uncovered after closing**
- **10 – 20% of purchase price, over 1-3 years**
- **Cap on remedies**
 - **Intellectual Property**
 - **Intentional acts or fraud**
 - **Environmental**
- **Escrow Agreement – Escrow/Payment Agent**



SIGNING AND CLOSING

- **Signing is a start**
- **Fulfill conditions to closing (buyer wants many)**
- **Typical conditions**
 - **MAC-MAE's (Shift risks regarding: business, assets, properties, liabilities, etc.)**
 - **R&Ws true and correct as of signing and closing**
 - **Consents and approvals from 3rd parties (include HSR)**
 - **Legal opinion**
 - **Assignment of IP rights to target**
 - **Execution of Employment (etc.) agreements**
- **Champagne?**



INTEGRATION

- **Key to success**
- **Red Carpet: Employment Agr., equity, honor benefits**
- **Do it:**
 - **Start Early (Latest: LOI)**
 - **Do it fast (remember: 100 days rule)**
 - **Leader in charge**
 - **Communicate, Communicate, Communicate!**
 - **Understand and mesh cultures**
 - **Integration areas: IT, legal compliance, accounting, products and services, marketing and sales, HR**



BEYOND ACQUISITION

● **LEARN. FAST.**

● **MANAGE**

● **GROW**

- Incorporate (questionnaire)
- Protect IP (checklist)

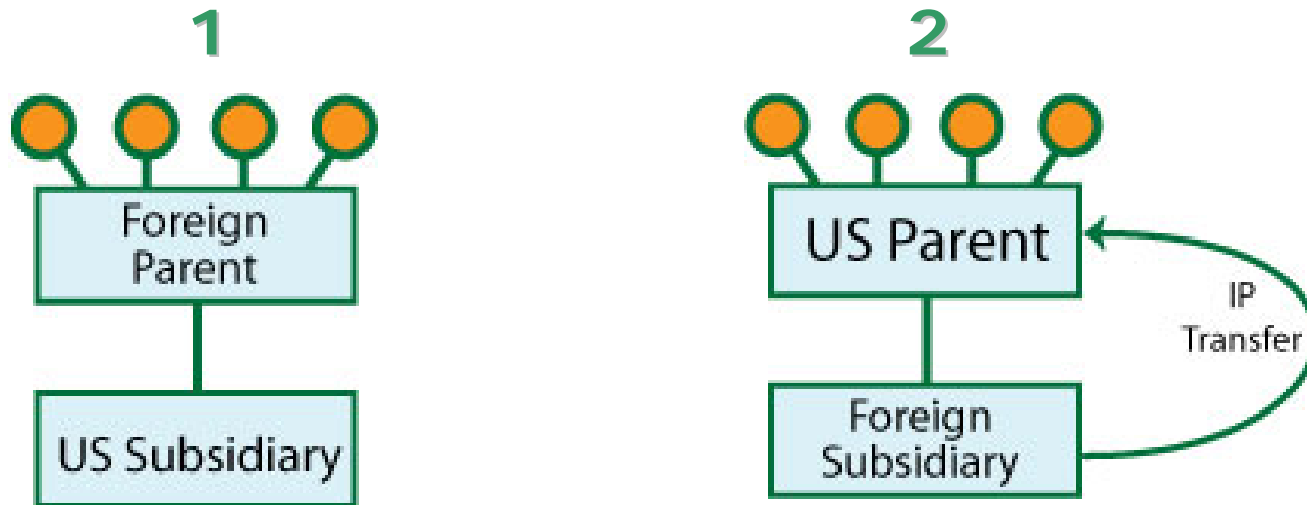
● **Flip company**

- Get US financing at better value
- Simplify company operations
- Answer needs, gain confidence of US clients
- Become a more attractive mergers and acquisitions target
- Become a more effective mergers and acquisitions buyer
- IPO



BEYOND ACQUISITION

How?



Issues: Tax, IP, Company benefits



Questions?



THANK YOU!

**Francois G. Laugier
Ropers, Majeski, Kohn & Bentley
1001 Marshall Street, Suite 300
Redwood City, CA 94062
1.650.364.8200
françois@rmkb.com**



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