



Podcast Transcript

The Build-Operate-Transfer (BOT) Model: Careful Consideration

Date: May 22, 2024

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Run Time: 9:15

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Lee: The build, operate, and transfer model for IT and business process outsourcing continues to be of great interest to companies, courtesy of its cost-saving structure, access to bigger talent pool, opportunities for resource and financial control, and security. Our attorneys have been assisting clients with navigating and addressing many critical issues to be considered for successful BOT structure, including intellectual property, tax, labor and employment, export compliance, privacy, and data security. In addition, our attorneys provide unique value by helping clients understand and navigate business and social-cultural issues, geopolitical risk, and cross-border dispute resolution processes. In BakerHostetler's inaugural IP Perspectives thought leadership piece, the Intellectual Property Practice Group highlights myriad IP-related topics that are at the forefront of industry developments, inspired by client wins and current challenges and trends. I'm Leeann Lee, and you're listening to BakerHosts.

To provide us with insight into this topic, we have Monica Verma, a partner in the Intellectual Property Group at BakerHostetler. Monica is the co-leader of the firm's Technology and IP Transactions and Outsourcing team. She has more than 20 years of experience in negotiating technology contracts, including technology and IT, business process outsourcing, and BOT transactions. She advises clients through every step of outsourcing and BOT transactions, from strategy development and the RFP process to contract negotiation and ongoing management. Welcome to the show, Monica.

Verma: Thank you, Leeann. Happy to be here.

Lee: So, to start us off, what is the build-operate-transfer model, and can you outline the various stages of the model?

Verma: Yes. In a BOT model, a company usually enters into a contractual relations arrangement with a service provider to optimize and run IT or business process service delivery center. The intent here is that the service provider will transfer the entire operation of that delivery center after a period of time to the company. So, there are generally three stages to the BOT model. The first stage is build stage, and during this stage, the service provider leases or purchases a space and then sets up the infrastructure, including the network and equipment that is needed for the space. And it is during this stage the provider starts the process of hiring and onboarding of resources.

Then comes the operate stage. At this stage, the center is fully operational to provide services to the company, meeting the various service levels, performance standards, and other metrics that are agreed by the parties. The service provider usually stabilizes the operation during this stage, and it takes about two to four years.

And the last stage is the transfer stage. The service provider turns over the transfer of the operation to the company, including the resources, processes, infrastructure, and the office space.

Lee: So, how is the BOT model different than the traditional outsourcing model?

Verma: In the outsourcing model, there is a service contract between customer and service provider, and customer pays a recurring or fixed service fee to the service provider during the term of the contract. The obligation to provide services terminate upon termination of the contract. Now with the BOT model, it is a long-term financial investment, and there is higher visibility as to the costs involved in setting up and running the operation. And the BOT model usually has a defined project life cycle with a goal of transferring the ownership of the operation to the customer.

Lee: Great. And so what are some of the high-level issues to consider?

Verma: So, for the BOT model to be successful, it is important that the initial solution is developed by customer and service provider, keeping some of the issues that I'm going to outline in mind. First is choosing the location of the delivery center, as this impacts availability and access to infrastructure and availability of skilled talent pool. The selection of the facility is as important to make sure it fits the security requirements and meets the short-term and long-term expansion goals.

It is also important to have clarity on financial terms, and specifically, setting up and managing budgets for all three stages of the BOT model and to develop a comprehensive risk-sharing plan to address potential cost overruns. Ownership and use of intellectual property should be clearly addressed and of course, draft a contract that clearly outlines roles and responsibilities of each party,

milestones, performance expectations, including service levels, and the buyout terms.

Lee: Now, what are some of the benefits of the BOT model?

Verma: Some of the main benefits of this model are that in the BOT model, the setup time for the operation is usually shorter, as companies use knowledgeable and experienced service providers to help them set up the center. With this model, companies do not need to divert substantial attention and time in setting up back-end operation, and the company can continue to focus on its core business. Another benefit of this model is that the service provider carries the heavy load and is responsible for the operation of the center and for all compliance relating to the build and operation stage. Also, the service provider has the obligation for project execution deadlines and for setting up quality and stable operations for providing the services.

And most importantly, this model provides access to large and skilled talent pool and cost savings. Since most of the BOT centers for providing IT services are located overseas and even today, just by comparison as an example, the cost of hiring resource is comparatively cheaper in India than in the U.S., and that results in significant cost savings for the company.

Lee: Great. I just have one more question for you. Can you give us some of the challenges or potential cons that companies should be aware of while establishing captive centers overseas?

Verma: Sure, Leeann. I think there are some changes and issues that companies should be aware of. The company has limited control over the operations during the build and operate stage, and company heavily relies on the service provider to provide quality service and make sure the operation is run in compliance with laws. So, selection of a provider is a key consideration, and it is important to vet the provider thoroughly, including by conducting reference checks.

Employee retention is a challenge and especially in countries in Asia, and it will be critical to plan ahead for the buyout stage to put measures in place for the retention of the employees so that the operation of the center can be run smoothly and without interruption.

The legal and tax landscape of each country is different, and the BOT model requires compliance with local regulations laws, including tax, employment, and privacy laws, and transfer processes. So, navigating the complexities of foreign laws drives home the importance of having staff and lawyers on the team that are familiar with local practices, laws, and bureaucratic procedures.

And finally, the cultural differences pose a challenge if not handled with care and understanding. If the center will be set up overseas, there will definitely be cultural differences, and it will be important to make sure that the teams are sufficiently informed and trained and have a good understanding of each other's cultures to create a respectful and inclusive working environment.

Now I did list some challenges, but they can definitely be addressed by choosing the right provider and having on your team counsel to provide guidance with understanding of geopolitical and cultural issues and compliance with local laws and regulations.

Lee: Well, this has been a great conversation. Thank you so much for your time, Monica.

Verma: Thank you, Leeann.

Lee: If you have any questions for Monica, her contact information is in the show notes. For more information on BakerHostetler's inaugural IP Perspectives piece, we encourage you to download the document on bakerlaw.com. As always, thanks for listening to BakerHosts.

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