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Moving ERP Systems to the Cloud

Trends, Risks and Strategies for Successful Deals

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Agenda

1. **TRENDS** in ERP

2. **CLOUD ERP** contracts

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Part I

TRENDS IN ERP

Key Terms

- **ERP** (Enterprise Resource Planning) software is business process management software that allows an organization to use integrated applications to manage the business and automate functions

- **ON PREMISE** – refers to a business hosting and running ERP software on its own infrastructure or infrastructure managed by a third-party provider for the business – examples include SAP, Oracle, JD Edwards

- **CLOUD ERP** – ERP software made available on a "Software as a Service" basis, in which the ERP software provider hosts the software, manages the hosting environment and hosts most of the business's data – examples include SAP, Oracle, Microsoft, and newer SaaS providers, like Salesforce, Workday, and many others

- **HYBRID ERP** – a structure in which some ERP software modules are On Premise and others are hosted in the Cloud ERP

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ERP: On-Premise *versus* Cloud

TOPIC	ON PREMISE	CLOUD
Implementation Time	Lengthy	Less lengthy
Costs	High upfront costs; investment in expert resources and infrastructure	Lower upfront costs; less ongoing investment **Beware of hidden costs**
Compliance	Higher ability to manage compliance risks	Loss of some control over managing compliance risks
Customizations, Updates & Performance	Greater control and flexibility	Less (or no) control and flexibility

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Expected Growth in Cloud ERP Adoption

⬇ **By 2019:** 11% of organizations are pursuing a traditional On-Premise ERP strategy (⬇ **from 38%**)

⬆ **By 2020:** 40% of large organizations will have at least 60% of their ERP applications in the cloud

⬆ **By 2025:** 50% of large enterprises will implement a SaaS strategy to run their **core ERP** in the cloud

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Part II

CLOUD ERP CONTRACTS

On-Premise and Cloud ERP Issues: Use & Users

- Right to expand permitted users to broader company enterprise (third-party contractors, consultants, suppliers, customers)

- Rights to use ERP system for acquired and divested businesses or companies

- Consider indirect use

- Clear definitions of users and other metrics (e.g., reassignment, expansion, exchange rights)

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On-Premise and Cloud ERP Issues: Other

✓ Right to withhold disputed fees pending resolution

✓ Limitation of vendor's right to terminate agreement or services

✓ Continuation of rights during contested terminations

✓ Protection against disruptions upon any termination or expiration of ERP use rights (e.g., ramp down rights)

✓ Indemnities

✓ Limitations of Liability

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Cloud ERP Raises New Issues: Customer's Flexibility

- Customer's right to regular and frequent extraction of ERP data for use in other customer systems

- Customer's right to continue to use services during the disengagement period

- Customer's right to renew services – Vendor's right to not renew services (cloud terms tend to be shorter than on-premise license terms)

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Cloud ERP Raises New Issues: Updates

- Protections against vendor's right to unilaterally change terms of service ("floating terms")

    – Multiple layers of documentation make order of precedence very important

- Protection against disruptive changes

- Advance notification on changes to services

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Cloud ERP Raises New Issues: Performance

- Cloud agreement warranties tend to be weaker than those in on-premise software licenses

- Cloud providers frequently subcontract obligations (and may disclaim liability for third-party cloud platform providers)
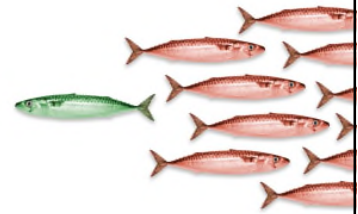
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Cloud ERP Raises New Issues: Performance

- Vendor service level commitments and penalties for failing to meet those commitments

- Vendor right to suspend delivery of services

- Contractual commitments of the provider regarding maintenance and support tend to be lighter for cloud, and support terms tend to be floating terms

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Cloud ERP Raises New Issues: Data Protection & Compliance

- Vendor commitments for security of company data and liability for data breaches
  - Customer's reliance on vendor's control audits and ISO certifications
- Vendor obligations to protect confidentiality of company and personal data
- Vendor data use for analytics or anonymously
- Restrictions on vendor locations for data processing and storage of customer data
- Vendor's compliance with law obligations for the cloud services

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Preparing for Cloud ERP Adoption

✓ Develop your own checklist of contractual requirements based on your company's risk, compliance, privacy and security requirements

✓ Develop standard contractual clauses that address these requirements, and fallback positions

✓ Use the checklist to evaluate the cloud ERP terms and to educate your business about gaps or shortfalls in a provider's ability to meet your requirements

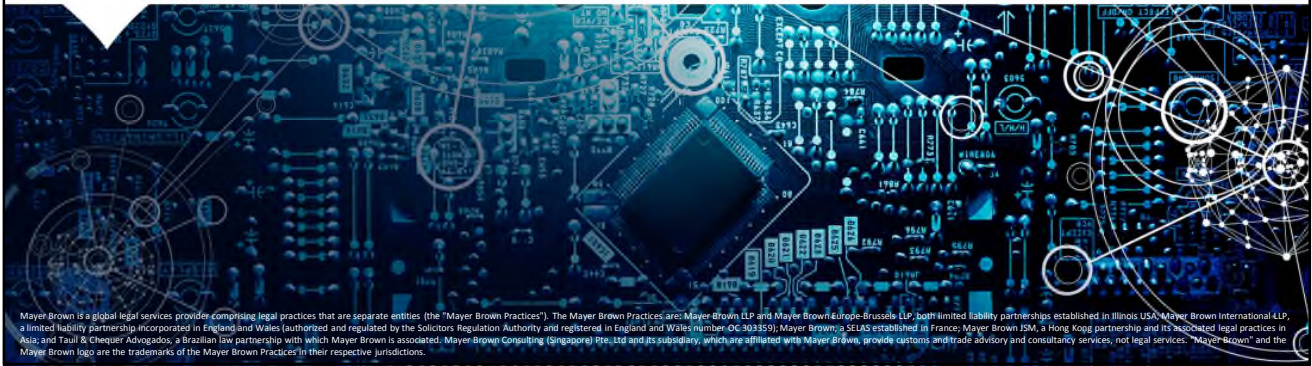✓ Determine an approach for mitigating risks around "floating terms"

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QUESTIONS?

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