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As outsourcing across business functions and processes continues to receive widespread attention in the corporate community, in-house and outside counsel are taking a closer look to see how they may leverage legal process outsourcing to their organizations’ and clients’ benefit. In this article, Ashish S. Prasad and Ajay K. Mago focus on the changing role of outsourcing in the legal services industry and explore the advantages and disadvantages of outsourcing legal services. Readers are presented with a view on how organizations can leverage the benefits of developing a legal strategy that combines traditional ideas of delegation with the innovations that can result from outsourcing. The authors provide an overview of current trends, what to consider when outsourcing legal work and how to implement the process and get started using best practices. In particular, this publication is geared towards those corporations and law firms that are interested in: (i) understanding the potential paradigm shifts in the legal services industry; (ii) identifying opportunities in and advantages of legal outsourcing; (iii) moving beyond challenges and issues to managing the risks of outsourcing legal functions; and (iv) developing a cogent and achievable strategy. This report is based on secondary data as well as extensive interviews with key people at various legal process outsourcing companies in India.

Legal Process Outsourcing

Legal Process Outsourcing (LPO) is the industry to which in-house legal departments, law firms and other organizations are outsourcing legal work from geographic areas where it is costly to perform, such as the United States or Europe, to geographic areas where it can be performed at a significantly decreased cost, primarily India, Chile, Hong Kong, Australia, the Philippines and Sri Lanka. The work is typically performed by paralegals and attorneys licensed in the LPO provider’s locale. According to figures obtained by LPOs and consultants, Indian lawyers’ billings to US firms for in-house work ranged from US$5 million to US$15 million in 2004. The US$146 million LPO industry in India alone appears to be growing at a fast pace. A study conducted by the Indian outsourcing industry group, Nasscom, and an LPO, Evaluserve, predicts that revenue from corporate paralegal services alone could reach US$300 million by 2010.

Another study by ValueNotes places estimates even higher: that revenues in India from legal services outsourcing will grow to US$640 million and that the number of employees is expected to be 32,000 by 2010.1 While it is not clear whether these optimistic predictions are realistic, it does seem clear that LPO is destined to grow significantly in the coming years.

LPO Service Offerings

Today, the term “LPO” has evolved to encompass a diverse array of both higher-end and lower-end services, including:

- secretarial documentation;
- legal and litigation support services;
- legal research;
- legal drafting;
- intellectual property rights enforcement and registrations; and,
- various document processing activities (i.e., immigration visas, health insurance claims, etc.).

A closer look at each of the service categories demonstrates the inroads that the LPO industry has made into a variety of services in a relatively short amount of time.

Secretarial Documentation Services

Under this service offering, offshore teams provide assistance to clients in preparing minutes and agendas for board committee meetings, notices, memorandums and other corporate governance documents.

Legal/Litigation Support Services


1 ValueNotes, Offshoring Legal Services to India – An Update (July 2007), http://www.valuenotes.biz/bpo/legaloutsourcing.asp.
Even today, the bulk of western legal work being performed by outsourcing providers falls into the category of “lower-end” support services, such as document management, review and coding and review of documents for discovery/disclosure. These services frequently involve (i) locating, organizing and presenting voluminous documents and data, and carrying out electronic and other file reviews; (ii) conducting analysis regarding responsiveness, relevance and privilege in response to discovery requests, subpoenas, governmental requests, internal investigations and corporate due diligence; (iii) creating electronic files with documents searchable by subject, issue, author, recipient, date and document type, allowing clients to retrieve needed documents; (iv) undertaking data extraction projects, where the amount of data to be searched may be large and the guidelines may be complicated; and (v) searching and analyzing large numbers of agreements, creating spreadsheets or other databases presenting the relevant information.

**Legal Research Services**

Offshore legal research teams are typically comprised of trained legal researchers familiar with the global legal systems and proficient in delivering reports in the traditional issue-rule-analysis-conclusion, or IRAC, format for legal memoranda. The searches are conducted using databases such as Lexis Nexis, Westlaw and other offline sources.

**Legal Drafting Services**

Services may also include drafting of complaints motions, legal briefs and memoranda, discovery documents, appeals, summaries of witness statements and other litigation papers, as well as the creation of print, videotape and animation exhibits for trial.

**Intellectual Property Rights Enforcement and Registrations Services**

LPO providers now offer specialized patent services. The array of services offered varies from high-end patent drafting, patent illustration, prior art searches, patent mapping and landscaping services to generic services like patent proofreading. The disclosures prepared by the offshore teams are then reviewed by US/EU experts (either onshore or offshore) to ensure that the claims are directed at the invention and that the description passes the test of best mode and enablement.

Another service area is patent prosecution. Because of the need for scientists, engineers and doctors it is difficult for law firms – even those that specialize in patents – to always have those personnel on hand, and the industry has begun to see those firms outsourcing to specialists at LPO firms.

**Document Processing Services**

Under the category of document processing, providers will offer services that have traditionally fallen under the category of general business process outsourcing or knowledge process outsourcing, but may require more technical analysis at some stage during the process. This would include immigration visa and health insurance claims processing. Depending on a client’s request, these providers may either simply flag to the client items that require further analysis or, in some circumstances, undertake the analysis themselves by applying guidelines given to them by the client. The offshore teams typically involved in document processing services understand the importance of certain data or information and thus are tasked with vigilantly flagging issues that arise.

**LPO Delivery Models**

When it comes to the LPO delivery model, one size does not fit all. The LPO industry has seen entrants arrive from a variety of backgrounds. Indeed, the industry sector has almost no entry barriers. The Indian vendor space alone has over 100 service providers\(^2\) that can be categorized into at least five different categories. In particular, a LPO provider can generally be characterized as either:

- a captive center owned and managed by a western law firm offering dedicated service to that law firm, or what can be called a Captive Center of a Western Law Firm;
- a captive center owned and managed by a law firm in the LPO provider’s jurisdiction, or what can be called a Captive Center of a Local Entity;
- a captive center owned and managed by a western corporation offering dedicated service

to that corporation, which can be thought of as a Captive LPO;

- a third-party vendor focused solely on providing LPO services, or a Third-Party Stand Alone LPO; or

- a third-party vendor expanding its existing business process outsourcing or knowledge process outsourcing business to include LPO functions, or a Third-Party Multiservice Provider.

At present, an average LPO firm employs less than a hundred people. One of the most recent LPO entrants, which comes from an IT and business process outsourcing background, is Infosys which states that it plans to grow its LPO service to over 1,000 employees and also start different practice areas within legal services. The entrance of large corporations like Infosys into the LPO industry is an indication of a maturing industry.

Each model has its own advantages and risks, and merits careful evaluation so as to identify and assess the relative pros and cons for a particular LPO strategy. In evaluating each model relative to a business’ particular needs, numerous variables must be taken into account, including the nature and scope of the activities to be outsourced, previous outsourcing experience, concerns about security and privilege, risk tolerance and budgetary constraints.

For example, a Third-Party Stand Alone LPO or a Third-Party Multiservice Provider can possibly offer shorter implementation time (and reduced capital costs) together with greater flexibility in access to talent, scalability and cost structure. At the same time, these structures may convey more day-to-day operational control to the third party and, thus, complicate the handling of sensitive information. By comparison, a captive center model (Captive Center of a Western Law Firm, Captive Center of a Local Entity or Captive LPO) may require more implementation time and expense and provides less flexibility, but may provide greater assurances for operational controls and for the security of sensitive information.

Accordingly, in shaping a comprehensive LPO strategy, the benefits of various LPO models must be weighed against the risks, and such risks should be carefully mitigated by using a combination of strategies in order to realize the full benefits of LPO.

The LPO Value Proposition

As The New York Times reported a few years ago:

The reason for the shift [to LPO] echoes the reason companies are sending other work abroad: they save substantial amounts of money. Some companies say they can reduce certain legal costs by as much as 50 percent, and receive work that rivals what they can obtain in the United States. According to Dennis Archer, the President of the American Bar Association, “The need to cut costs reaches across many departments, so it should be no surprise that it goes to the legal department as well.”… “There is no problem with off-shoring,” said Stephen Gillers, a professor at NYU School of Law and a legal ethics expert, “because even though the lawyer in India is not authorized by an American state to practice law, the review by American lawyers sanitizes the process.”


The reward of an appropriate and successfully implemented LPO strategy can be substantial. A number of US and European businesses have made successful forays into business process outsourcing, knowledge process outsourcing and LPO. Several international law firms and legal departments of large corporations are outsourcing their legal work to reduce costs and increase efficiencies. Specific examples of businesses that are outsourcing include American Express, GE, Microsoft, Morgan Stanley, Motorola and Oracle and specific examples of law firms that are outsourcing include Allen & Overy, Clifford Chance, Bickel & Brewer, Millbank Tweed, Orrick and Chadbourne Park.

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5 Id.
6 Id.
7 Id.
8 Id.
LPO can yield cost savings and efficiency by leveraging a growing class of workers throughout the world that can perform skill and judgment-based legal services and functions. Legal process outsourcing gives onshore personnel the ability to spend more time on higher value-added activities as the offshore legal workforce takes care of the details. This bifurcation of duties and the ability of teams to work around the clock on matters can lead to real-time benefits for onshore attorneys and clients alike.

Businesses considering LPO must be aware, however, that LPO presents a number of risks that must be thoughtfully considered and addressed. These risks include, among other things, insufficient flexibility in the outsourcing relationship, poor implementation, risks inherent in any vendor selection process and the LPO provider’s capacity limitations. Such risks can be managed through thorough due diligence, careful assessment, strategic planning and comprehensive treatment of the issues discussed below.

**Best Practices in Selecting a LPO Provider**

The importance of conducting a reasonable process of due diligence in evaluating the many LPO providers available prior to selecting one cannot be underscored enough. The emergence of new operators makes independent verification and accreditation of LPOs all the more desirable, despite the sometimes significant costs. However, the numerous LPO provider options, the rising level of sophistication of these parties and the various parties that are available to assist in selection and set up of a LPO strategy, make considering a LPO strategy more plausible than ever before.

An appropriate approach is to prepare a detailed Request for Proposal (RFP) prior to contracting any LPO provider. The RFP should request detailed information on the LPO provider’s

- “first-timers” implementation process;
- security and privacy measures;
- financial stability;
- technical capabilities and infrastructure;
- procedures in place to keep apprised of technological developments and any related case law updates;
- customer references;
- personnel qualifications (i.e., educational background and on-the-job training);
- management qualifications and resumes;
- staffing policy and procedures (i.e., who will staff the project, whether the team will be dedicated to specific projects);
- quality control measures and standards (i.e., what the service level measures are for each specific project);
- employee training procedures and policies;
- transparency of the various protocols and procedures;
- costs; and,
- information about the facilities and the location of where the work will be conducted (including, if possible, site visits, whether the site is in a special economic zone and whether backup locations are ready and available).

**Steps and Considerations Prior to Outsourcing**

There are steps that any business considering LPO may take in order to maximize the likelihood of successful results. First, it is important the requirements of a project or process be well-documented. Many organizations have the mistaken belief that a process that is broken internally can be fixed by outsourcing. In order to effectively outsource a process, an organization must first understand the internal process and document the requirements carefully. If a process is not working internally, steps must be taken to remedy the problem before the process can be sent outside the organization.

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10 See Dr. John Sullivan, ere.net, *Don’t Outsource Recruiting Just Yet: A Checklist of Possible Issues* (December 9, 2002), http://www.ere.net/articles/db/BC4825CC6444A12B02B1D481ECC5BD0.asp.
Second, it is important to establish identifiable and specific quality control measures. This requires time lines for each project. The most successful outsourcing relationships have a balance between clearly specified deliverables and service levels, while still allowing for a healthy give-and-take as the exchange and processes are adjusted.

Finally, it is important to develop clear communication protocols, define responsibilities clearly and precisely and establish an issue-resolution process. In addition to the inherent difficulties in formalizing a relationship with any vendor, it is important to remain cognizant of the further challenges created by cultural differences and establishing a new relationship with an LPO provider many time zones apart.

**Compliance with Legal Obligations**

Prior to initiating a LPO project, there should be procedures in place to assure that the services rendered are in compliance with legal obligations of the client and counsel. Such efforts should be supplemented with the proper education and training of the LPO provider’s employees on the end-clients’ and counsels’ duties and legal obligations.

**The Unauthorized Practice of Law**

While at first blush the “unauthorized practice of law” consideration might seem to be quite a serious barrier to the outsourcing of legal processes, there are several commonplace analogous situations in modern day practice that demonstrate that the risk of unauthorized practice of law (in the context of outsourcing) may not be as serious as one might first expect. For the purpose of this discussion it is assumed that, from the outsourcing country’s perspective, the facility where work is being performed is not violating the unauthorized practice of law rules of that jurisdiction. It is commonplace today that lawyers assign work to non-lawyers; e.g., a summer associate, paralegal or secretary performs certain tasks for a lawyer. In these situations, such a person working on his or her own and not under the supervision of a lawyer might be guilty of unauthorized practice of law if he or she did the same work as alone. However, because the lawyer accepts responsibility for the work and because such work is performed under the supervision of a lawyer, that work is not unauthorized practice of law. The same principle would presumably hold true in the context of legal process outsourcing. A lawyer who outsources legal work is accepting (and must accept as a matter of competence and due diligence) responsibility for the work that is being outsourced. Such responsibility would presumably include the obligation to review work performed by a non-attorney to ensure that it complies with instructions, is being performed properly and that such person is properly trained for the task. Competence would presumably include evaluating carefully the facility chosen, investigating the quality of work, investigating the facility’s protocols, checking references, interviewing management and team members and being familiar with the site itself.

**Duty to Maintain Privilege**

As a general rule, privilege protects communications between a lawyer and a paralegal, expert witness, translator, economist or the like. Likewise, privilege needs to continue to exist in communications between a lawyer and an outsourcing facility. Recognizing that the privilege doctrine varies by jurisdiction, some jurisdictions may have stronger protections than others and as such the duty to maintain privilege should be observed and vetted on a case-by-case basis.

**Confidentiality**

Issues of confidentiality arise when a lawyer sends client information to a facility and that information is wholly or nearly wholly protected by the ethics rules relating to confidential information in the lawyer’s jurisdiction. As a practical matter, lawyers share clients’ confidential information with many people who help the lawyer do his or her job – from secretaries and paralegals to investigators and experts. However, in the context of legal process outsourcing, the circumstances are qualitatively different in that the lawyer has to ensure that the client understands that the information going to the facility is protected as confidential and should not lose its confidential quality. Further, the client should know the nature of the information being sent to the outsourcing facility.

**Obtaining Prior Consent from the Client**

Perhaps the single most important part of the ethical principles of LPO is the client’s informed consent. There are many things lawyers do by way of sending work outside their own offices where client consent is not required. Sending copying work to a copy shop is commonplace. Lawyers often would not ask a client for permission to do this. The same notions apply for the hiring of an outside company to handle voicemail and e-mail
systems. However, legal process outsourcing is not within the frame of reference of most clients and therefore, before a law firm sets upon that course of action, it should obtain client consent. Informed consent means explaining to the client what is involved, what the issues are, how the client will be protected and ensuring that the client has an appropriate comfort level with the decision. Clients may take the approach that if it is being suggested by a trusted law firm, it would be acceptable to them; however, experience has taught that the first time a law firm considers outsourcing, it must make sure the client understands the change. Once the client is comfortable with that first time, then possibly the second time the law firm can accept the delegation of authority to make the decision of what should be outsourced.

**Billing of Outsourced Work**

There have been American Bar Association and state bar opinions on billing for disbursements of any kind. The simplest way to deal with the billing issue as a law firm is to have a prior agreement regarding how disbursements will be billed; *i.e.*, at cost, cost plus (to reflect the additional work the law firm has to do to designate the facility and effectuate the outsourcing), or building such costs into the firm’s hourly rate. The key principle here is to discuss any arrangements in advance in order to avoid misunderstandings in the future. As a practical matter, firms may find it appropriate to bill for time working with the facility and certainly any direct costs. As a cautionary approach, it may be best, absent a prior understanding, to bill only for time and direct costs incurred in engaging a LPO provider.

**Conflicts of Interest**

Strict conflict rules govern the behavior of American lawyers; some would argue perhaps stricter than in nearly any other country in the world. What about the outsourcing facilities? Do the same conflict rules govern them? In a literal sense the answer may be no, as conflict rules govern only lawyers and not non-lawyers (*i.e.*, those not admitted to practice in the United States or elsewhere). Nonetheless, judgment comes into play where it is important to be certain that the facility doing the work for Client A is not also doing the work for the client’s adversary in a related matter, Client B. Even in situations where there may be a screen at the facility and even if different teams will be working on the matters for the two adversarial parties, the general presumption in practice has been that such a situation should be avoided. From a vendor selection perspective, appropriate procedures should be in place to ensure that conflicts of interest are avoided.

**The Future of Legal Process Outsourcing**

Many see limits on the growth of the LPO industry, citing the historical advantages that US and European firms have had in retaining sophisticated legal work. Clients often choose counsel not solely based on cost; they also take into consideration results, reputation and risk management, which seem to suggest that clients will be reluctant to use LPO. LPO, however, can be a means of streamlining legal functions and yield cost savings, increased efficiencies and improved service quality. As the industry continues to mature, increased competition is likely to lead to better results for the end-customer. Further, consolidation of existing LPOs and exit of the weaker players will likely lead to more comprehensive service offerings. With the entrance into the market of some of the major business process outsourcing companies, the LPO industry seems to be solidifying its staying power.