

## Legal Process out Sourcing Trends, Challenges and Best Practices

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### Abstract

The rapid growth of off-shoring and outsourcing has transformed the way corporate world had been functioning across the globe. This has given way to benefits as well as challenges. One of the domains affected by the outsourcing trends has been the legal functioning across the globe. This article is an attempt to understand the basic drivers behind off shoring and outsourcing of legal processes, market trends. It is also an attempt to map the difficulties in establishing the paradigm for legal process outsourcing and how have players across the globe have been able to meet these challenges.

**Keywords** - Off shoring, Legal process outsourcing

### Background

Outsourcing or business process sourcing has been accepted as a regular business feature since the late 1990's. With the advent of the meteorological growth of information and communication technology, the outsourcing of business processes has become a profitable strategic option. This leaves them to fortify and maintain the process that gives the firm the much needed competitive advantage.

International outsourcing has found inroads in legal profession also, the need to examine the elements on both the sides of the outsourcing process influence the success or failure of a globalised world. What differentiates legal process outsourcing from other outsourcing decisions, is the fact that legal process outsourcing is not a mere replacement of domestic legal resources with a low cost alternative elsewhere; instead it is a move that can change the course of the litigation completely.

The above phenomenon was conspicuously visible in the libel case of 2010. The dismissal of this case might seem a usual course but what makes it an interesting piece of instance is the involvement of cross- continent firms. A libel case was filed against US artist SB Cohen because of his portrayal of the character " Ali G" in the television show "Da Ali G show" in California, USA. Instead of going in for a nuisance settlement or defending the claim, the defendant outsourced its defense to an Indian firm associated with a US counsel. The Indian firm drafted a motion for the summary judgment which was filed by an associated US attorney and ultimately granted by Los Angeles judge. The Indian firm also drafted briefs defending the decision on appeal and won a unanimous ruling sustaining the case's dismissal.

This particular instance is just a glimpse to how outsourcing is becoming a main stream business practice. This is one of the reasons that has resulted in the practice being institutionalized. The rise of new technologies combined with the renewed drive to cut costs in view of the global economic uncertainty, has compelled la firms and corporate legal departments to re-evaluate their performance and functioning. Legal Process Outsourcing commonly refers to a law firm or corporate legal department obtaining legal services from an external legal support services firm. The services for

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which an LPO might be engaged include:

1. Book Keeping, Billing
2. Contract Management
3. Data Analysis and Management
4. Document Drafting
5. General Litigation Support Services
6. e- Discovery
7. Intellectual Property Services
8. Legal Research
9. Legal Transcription.

In perspective, these services can be provided by three broad classifications of LPO providers:

1. Full BPO/KPO providers:-these firms provide LPO services in addition to other BPO, KPO related services, for e.g. Infosys, Wipro, Integreon.
2. Full spectrum LPO service provider-these firms specialize in providing a full range of LPO services, and tend to have a large and well established scale of operations.
3. Limited LPO providers- these firms provide limited legal support services and specialize in a domain. E- Intellectual property matters or legal secretarial work.

#### **Global Players**

As reported by UNCTAD, five countries (India, China, Canada, Ireland, and the Philippines) accounted for 95 percent of the total market for offshoring in 2004. By 2008, the share of these five countries has declined to 80 percent. The countries that have made some inroads in the market for BPO include Malaysia , Vietnam, Thailand and Singapore in Asia; Czech Republic, Hungary, Poland, Ukraine, and Romania in Europe

The following characteristics were found to be common among the top players of LPO sector

- Global Presence and headquarters based in USA
- They have a major delivery centre in India (helping in taking advantage of the demographic dividend)
- Have a service line diversity (that is they are a full service, one stop solution for legal processes)
- Have familiar delivery and certifications (breeding a sense of ease and comfort for the client)
- Client base includes a mix of law firms and legal departments of fortune 500 companies.

“Legal work is being offshored to a number of countries, including China, Philippines, and Sri Lanka, but India is found to be by far the most common destination. Indian revenue from legal process outsourcing (LPO) was valued at \$320 million in 2008, and expected to grow to \$640 million by 2015. 80% of this revenue comes from U.S. clients, while the remainder comes from other countries such as Australia and the U.K.” Work is performed by Indian attorneys who have graduated from the top law schools in India. The instruction mode here primarily is English. This makes it easier for them to deal in legal systems from English-speaking countries.

#### **Challenges**

The key success factors that are considered to be the greatest contributor in shaping the LPO industry include:

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1. The inherent ability to develop both onshore and offshore capabilities to ensure 50% cost saving and 98% accuracy rate in document review. This can be specially observed in projects requiring a high level of confidentiality and security.
2. There is strong need to provide skilled legal workforce to take more complex litigation, involving sensitive issues, as well as regulatory and compliance matters.
3. Availability and training of workforce with multilingual review skills.
4. Ability to develop strong networking to hold existing and penetrate new markets.
5. Develop compliance skills with effective regulatory mapping across the globe.
6. The growing need to use specialized Information technology.
7. Maintaining the sanctity of client privacy.

The above factors not only present a challenging scenario, but also an opportunity to utilize them as a stepping stone.

### **Operational Aspect**

The process of legal outsourcing makes good business sense as:

1. The cost savings are significant- a US based attorney, for customizing a residential lease may quote a tag of \$400,000; whereas the same document can be drafted by an Indian attorney for a figure of around \$45,000. The salary differential is huge and saves a lot for the client it may amount to 1/16<sup>th</sup> of the cost to hire an Indian attorney than what it takes to hire a US based lawyer. For higher level contract drafting and legal research, a London based law firm an charge anywhere from \$400 an hour, whereas it is \$50 per hour for a Gurugram based attorney.
2. Mechanical aspect: Majorly parties outsource in two ways. One would be to establish a “captive centre”, an offshore branch of the firm in a low cost location and employ a battery of lawyers to support the corporation’s legal work, like what General Electric did in 2005.

The second more common way is to hire a “third party LPO service provider.

### **Ethical Considerations**

Corporations who chose to send legal work offshore will not share their information publicly for the fear of a backlash from stakeholders who might be politically opposed to the idea of outsourcing in general. Other matters of consideration in the ethical realm are:

- There is an apparent risk of disclosure of confidential information, which is an inadvertent waiver of the lawyer-client privilege
- Individuals working for the LPO provider might not be licensed to practice law in the appropriate jurisdiction
- Legal experts worldwide are of the opinion that certain measures need to be followed assiduously.
- There has to be direct and meaningful supervision ensuring complete preservation of client information
- Conflict of interest has to be avoided at the time of talking up of the project.
- The client has to be kept informed about the outsourcing arrangements and consent to be taken, whenever and wherever applicable.
- The lawyer must follow due diligence to ensure that the non-lawyer is sufficiently competent and qualified to perform the outsourced task.

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To ensure reduction of the risk of possible dissatisfaction of the client, most LPO participants recommend outsourcing to be done on a small scale first. By adding additional levels of review, quality control can be fortified, thus reducing instances of customer dissatisfaction. Team integration and improved training programs can also help in setting up an efficient and established system.

### Conclusion

One theme which can summarize the above discussion is the fact that off shoring of legal process is dynamic and is still in the evolution stage. Legal outsourcing is here to stay, the participants though must find ways to ensure that the process does not flout the sanctity and privacy of the client's information. For legal outsourcing to prove as a sustainable action, a collaborative model has to be adopted by the client. Efforts should be focused on building relationship between both onshore and offshore partners, maintenance of reciprocal communication and managing cultural diversity. That way the company will be able to utilize the strengths of both, acknowledge contribution of each participant, and ensure successful completion of the projects.

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