The Law and Practice of Legal Process Outsourcing
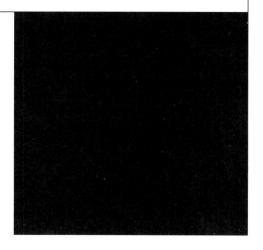
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First Print, 2009

The Law and Practice of Legal Process Outsourcing

Preface

Legal Process Outsourcing is passing through infancy but delivery made by service providers India so far has led to many companies being attracted to this land of the 'snake charmers'.

Codified procedures and formal protocols are still not so much clear, and in the process of developing.

To engage a fleet of committed lawyers in India does involve infrastructure costs on the outsourcing companies comprising office space, computers, and in some cases U.S.-trained lawyers working in both India and the United States to supervise the work of Indian staff or client development teams to market services to U.S. companies.

Established LPOs give to the Indian lawyers a new dimension in the profession tapped by technology supported work environment and work culture.

LPO companies are gearing up to addresse clients concerns about quality and security although there are still no industry standards to deal with errors and malpractice. Same is the position on questions involving adherence to rules or ethics across different jurisdictions.

The present maiden edition on a subject, so fertile and embryonic, is a humble effort to attempt to explore the domain of outsourcing in the legal and paralegal zone, have a preview of the current standards of practice and scope of the expanding industry, as envisaged by the peers in this field and provide the readers with an threshold insight.

10 November 2008   Shashi Shekhar Pandey
Delhi

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Chapter 1　　　　　　History of Outsourcing

Overview

Outsourcing is said to have emerged a few thousand years ago. When people started living together in villages, as opposed to smaller family groups, they also started producing food and goods. Initially, these items were traded within their home communities first, and over time the practice expanded to include trading with other villages, regions, and countries. Since people weren't able to produce all the items alone, they starred exchanging it with one another. In effect it can be said that each member or group was outsourcing some activities to others. They needed to survive for themselves, you could consider this trading as being an early form of outsourcing.

¶1-010 Outsourcing in the 19th and Early 20th Centuries

If we look to the business practices in the 19th and early 20th century, companies did not use outsourcing as a business practice. They were vertically integrated organisations, taking care of their own production, mining and manufacturing from raw materials and then ship those finished products at their own retail outlets.

¶1-020 Industrial Revolution

The Industrial Revolution changed the way companies did business. During this period, company owners started to outsource some services, as opposed to keeping them in house. Independent architecture, engineering and insurance companies started opening their doors to

serve multiple clients. With the development in industrial sector companies hired the expertise they needed to work in-house, including legal, insurance, and accounting professionals. If the company had the resources, the organisation also employed workers to design and construct company factories and warehouses.

The history of outsourcing shows that due to the advancement in industrial sector specialising contract became more popular particularly in the service industry. This in turn led to the first wave of outsourcing during the industrial revolution pushing the large-scale growth of services such as insurance services, architecture and engineering services, among many others. In this period the companies doing the outsourced work were more often located in the same country, in most of the cases in the same city. The political set up had changed considerably during this period. Many countries in Asia become free and outsourcing was a welcome development because infrastructure development was at its infant stage and the outsourcing benefited the developing economies by increasing employment and income levels with in all parameters.

The outsourcing history demonstrates that manufacturing was the first activity that began to move to offshore destinations in a quest for lower costs. By the passage of time manufacturing companies realized that they could outsource the production of consumer goods, such as clothing items, shoes, and toys to other lower cost labour countries. By the 1970s, many consumer electronics products were manufactured overseas. Companies looked to workers in foreign countries to work in factories due to cheap labour. Once company owners discovered that they can outsource their manufacturing work to low cost countries destination, more of them decided to outsource this portion of their business to other countries.

Today the trend of outsourcing has moved away from the earlier ones. now it's a world of Information technology data transcription and call center operations data transcription and call center operations

Studies on the history of outsourcing conclude that outsourcing is clearly not just about payrolls and call centers. The outsourcing sector increased its tentacles not only in the field of insurance, accounting, customer services, medical transcription but they have also entered in

knowledge process industries and the recent example is Legal Process Outsourcing(LPO).

¶ 1-030 History of outsourcing in INDIA

The growth of outsourcing Industry in India is one of exceptional growth in a very short span of time. The idea of outsourcing has its roots in the 'competitive advantage' theory propagated by Adam Smith in his book 'The Wealth of Nations' which was published in 1776. Over the years, the meaning of the term 'outsourcing' has undergone a paradigm change when the human civilization was infant stage, outsourcing was limited to exchange of essential commodities with in the group then inter groups thereafter to villages then it come to outsourcing between different countries. But now What started off as the shifting of manufacturing to countries providing cheap labour during the Industrial Revolution, has taken on a new concept in today's scenario. In a world where IT has become the backbone of businesses worldwide, 'outsourcing' is the process through which one company hands over part of its work to another company, making it in charge for the design and implementation of the business process under strict guidelines regarding requirements and specifications from the outsourcing company. The process is advantageous for both the Offshore Outsourcing firm and the service buyer, as it enables the offshore service buyer to decrease costs & increase quality for non core areas of business by utilizing the expertise with competencies for the maximum. And now one can see the real benefit to the service organizations in India as the time of they matures, prosper of building core capabilities beyond possibilities by the Offshore Software Outsourcing companies

Since the onset of globalisation in India during the early 1990s, successive Indian governments have pursued programs of economic reform committed to liberalisation and privatization. Although the IT and Software Outsourcing industry in India has existed since the early years of 1980s, but with the mid 1990s it saw the emergence of real outsourcing work. One of the 1st services that outsourced was medical transcription, but business process outsourcing such as data processing, billing, and customer support began at the end of the era 1990.

The ITES or BPO industry is a young and budding sector in India and has been in existence for a little more than five seven years. Despite its recent arrival on the Indian scene, the industry has grown astoundingly and has now become a major part of the export-oriented IT service providing sector. The ITES/BPO market expanded its base with the entry of Indian IT companies and the ITES market of the present day is characterised by the existence of these IT giants who are able to influence their broad skill-sets and global clientele to offer a wide spectrum of services. The range of services offered by Indian companies has evolved substantially from its modest beginnings. Today, Indian companies are offering a variety of outsourced services ranging from customer care, transcription, billing services and database marketing, to Web sales/marketing, accounting, tax processing, transaction, legal drafting, document analysis, document management, telesales/telemarketing, HR hiring and biotech research, etc.

Looking at the success of India's IT/software industry, the central government identified ITES/BPO as a major contributor to economic growth prioritised the attraction of FDI in this segment by establishing 'Software Technology Parks' and 'Export Enterprise Zones'. Benefits like tax-holidays generally enjoyed by the software industry were also made available to the ITES/BPO sector. The National Telecom Policy (NTP) introduced in 1999 and the deregulation of the telecom industry opened up national, long distance, and international connectivity to competition. The governments of various states also provide assistance to companies to overcome the recruitment, retention, and training challenges in order to attract investments to their region. The National Association of Software and Service Companies (NASSCOM) has created platforms for the dissemination of knowledge and research in the industry through its survey and conferences. NASSCOM acts as an 'advisor, consultant and coordinating body' for the ITES/BPO industry and liaisons between the central and State government committees and the industry. The ardent advocacy of the ITES/BPO industry has led to the inclusion of call centers in the 'Business Auxiliary Services' segment, thereby ensuring exemption from service tax under the Finance Bill of 2003.

These measures have led to a steady inflow of investments by large foreign companies such as Reuters, for establishing large captive ITES/BPO facilities across India.

The availability of technically trained and skilled manpower in India is making companies across the world look at the country as a profitable base to shift their high-end support services. The availability of skilled and trained manpower and India's ability to keep in step with the latest technological advances in the industry is prompting foreign studios to consider India as a base to shift other high-end animation work like storyboarding and developing original content for animated films ad TV series. Legal outsourcing is the next segment that holds great promise, mainly due to the due to the high skilled work force availability in India and its large English speaking population this sector is getting momentum day by day due to the quality work performed by the highly skilled and methodologically trained employees. Legal process outsourcing future in India is seen as bright and a promising career option for bright young lads.

Chapter 2   Genesis of Legal Process Outsourcing

Introduction

¶ 2-010 What is outsourcing?

Outsourcing involves the transfer of the management and/or day-to-day execution of an entire business function to an external service provider outsourcing and offshoring are used interchangeably in public discourse despite important technical differences. Outsourcing involves contracting with a supplier, which may or may not involve some degree of offshoring. Offshoring is the transfer of an organisational function to another country, regardless of whether the work is outsourced or stays within the same corporation/company.

¶ 2-020 What is Business Process Outsourcing (BPO)?

BPO is a sort of business relation between the buyer of a service and its supplier in which the supplier is told what to do and how to do. The skill and labour is required to be put by supplier and is asked to produce the end result for which the buyer would pay appropriate fee. The method of bringing about the desired outcomes is left to the supplier. Thus there is delegation of 'control over the process' which implies that the supplier becomes the 'owner of the business processes'. The responsibility of day-to-day back office operations is transferred to an outsourcing partner who is expected to get the job done at a cheaper price without affecting the quality. This methodology ease the workload of the

company or firm which enables the company to focus more efficiently on the core business. In fact less cost, standard quality and productivity are the three reasons as to why the concept has attracted the corporate world. It is to be noted that under this phenomenon only those services are off shored that can be carried out regardless of geographical location (for instance call centers and back office work, credit card companies and, bad debt retrieval by insurance, patent drafting and filing of new inventions etc). The services that require physical presence or interaction cannot be off shored (*eg*, emergency medical services, management, sale executives, hotels, etc.) Recently outsourcing has become a way of life in business world. There are certain factors that seem to have dragged the phenomenon out of its dormancy leading to its volcanic eruption to engulf the entire world. The most important ideological factor behind BPO revolution is the concept of globalisation and free market economy which in recent past has gained universal acceptance and in which consumer is in driver's seat.

Consumers want lower prices and free choice. No governments can force them to buy only homemade products. The theory of free market economy favours access to the best goods and services at the most competitive prices. Another reason for rise of this phenomenon is the compulsive impact of TINOA (There is no other alternative) factor. The logic and the pressure of the market says that either you do it (outsourcing) or lose your competitive edge and go out of business. Any wise businessman running a company knows that if his competitor begins using low-cost labor offshore, whether it is manufacturing or talent, he will have to do the same to remain competitive. The sector witnessed considerable growth during 2003–04, various multinational companies including Indian as well as foreign both stepped up hiring the services of BPO. The domestic BPO market, catalyzed by demand from the telecommunications and BFSI segments, matched the growth of BPO exports. The market experienced maturity and consolidation, a result of numerous mergers and acquisitions taking place within the sector. There were around 500 companies operating within the Indian BPO space, including captive units (of both MNCs and Indian companies) and third-party services providers. The key enabler for this has been cheaper

bandwidth leading to low telecom costs for leased lines and availability of educated English speaking workforce in India.

The Indian BPO industry is in its infant stage and remains on a growth path in the coming years, emerging as one of the key investment markets in the country.

NASSCOM is a Chamber of Commerce that represents this body and lobbies for it, as well as creates a platform for members to take up common issues. NASSCOM services both the Indian Software and the Indian BPO industry.

Market size of BPO industry

The industry has been growing rapidly. It grew at a rate of 36% over 2005. For the financial year 2006 the projections is of US$7.6 billion worth of services provided by this industry. The base in terms of headcount being roughly 350,000 people directly employed in this Industry. The global BPO Industry is estimated to be worth 100-150 billion dollars, of this the offshore BPO is estimated to be some US$12.4 billion. India thus has some 6-7% share of the total Industry, but a commanding 62% share of the offshore component. The U.S $7.6 billion also represents some 20% of the IT and BPO Industry which is in total expected to have revenues worth US$37 billion for 2006. The headcount at 350,000 is some 40% of the approximate one million workers estimated to be directly employees in the IT and BPO Sector.

From a PricewaterhouseCoopers survey

Global BPO Market by Industry

Industry	Percentage (%)
Information Technology	44
Financial Services	16
Communication (Telecom)	13

Consumer Goods/Services	17
Manufacturing	9

BPO Market worldwide

Country	Percentage (%)
United States	56
Europe	28
Asia-Pacific (incl. Japan)	9
Rest of the World	7

Size of Global Outsourcing Market

Year	Size (USD Bn)
2000	117
2005	234
2008 (est.)	Above 325

Size and Growth of BPO in India

Year	Size (US$ Bn)	Growth Rate (%)
2003	2.9	58
2004	3.8	44.3
2005	5.6	43.4

Currently the Indian BPO Industry employs in excess of 245,100 people and another 94,500 jobs are expected to be added during the current financial year (2007-2008)

Table 5: per Employee cos in call centert

Country	Cost (USD/yr)
USA	18,000
Australia	16,000
Philippines	9,000
India	7,000

It is also referred as Information Technology Enabled Services or ITES, and high end work with specialisation is referred to as Knowledge Process Outsourcing or KPO. The need for capacity, pooled with intellect and workforce flexibility has led the Knowledge Process Outsourcing (KPO) market to grow rapidly in the past two to three years to around $3bn spending in 2006. Success in this sector has also led to the more recent, but rapidly growing trend of Legal Process Outsourcing (LPO).

¶ 2-030 Legal Process Outsourcing

LPO refers to the offshoring of different elements in the legal process by law-firms, corporations and house councils (mainly in the US and UK) to offshore centers (like India, China and the Philippines, etc). On the more conservative side, a report released in January 2006 by a research and outsourcing company, estimated lower statistics and projected more moderate growth. The current number of employees providing legal services to the US from India is only 1,200, and it will grow by 5,000 in December 2010, and 17,000 by December 2015. It projects that revenue of approximately $56 million is estimated in year 2005, and expected to be increase to $300 million by 2010, and $960 million till 2015.

The series of statistics represent the hazy picture about the growth of the emerging industry and leaves the truth most likely located somewhere in the middle. Despite the inequality in numbers, the overarching trend of projected growth demonstrates legal process outsourcing has become an established sector and will continue to grow in the future.

What is being outsourced in LPO? (nature of work)

Legal outsourcing refers to the practice of a law firm obtaining legal support services from an outside law firm or legal support services company. When the outsourced entity is based in another country the practice is sometimes called Offshoring.

While discussing outsourcing in legal field, ethics is the often asked query along with 'What is being outsourced?' The answer ranges from simple legal coding to exceptionally technical patent applications. The wide range of activities has implications for LPO in terms of the level of training required, efficiency and value of the processes, liability and security concerns, and may raise issues regarding specific legal restrictions.

Legally, anyone who is not a registered lawyer in the U.S. cannot give legal advice nor do anything that would constitute 'practicing law'. This has typically restricted LPO firms from supplying 'core' functions such as legal opinions, judgments, or crucial communications with clients. LPO firms, however, do perform a variety of non-core, manpower intensive functions such as legal transcription, document conversion, legal data entry, legal coding and indexing.

Within 'non-core' functions, there still exists a great range of processes LPO firms may offer. As a starting point, these basic LPO services can be categorized as "low-value" work. These categories can be divided into various types of services:

- Document Review in the context of litigation, investigations or antitrust (Second Request).

- Organization and analysis of both hard and soft data (software aswell as dbase system).

- Contract review and summarizing, including the population of contracts databases

- Legal Research services include research methodology and domain expertise required to provide practice legal research.

- Examples of research

    (i) Multi-jurisdictional surveys of state and local case laws, statutes, ordinances and regulations.

¶ 2-030