

# Legal Process Outsourcing (LPO)

## What, Why and Where in Perspective



### 1. Introduction

The Legal Process Outsourcing industry has late emerged as a key factor in the growth of globalization catching the curiosity and attention of people and media worldwide. Right from its inception, speculations were adrift surrounding the growth and challenges arising due to the very nature of work outsourced. Law firms are globalizing their practice by merging across borders to cater to international companies and to be ready for the new era of legal internationalization.<sup>1</sup> This legal globalization,

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<sup>1</sup> In a way legal globalization, which witness the merger of various leading law firms throughout the globe, is not for cost savings but for attracting new business and for the

general standardization of commercial laws, cost effectiveness, availability of skilled professionals in the field of law across countries make it plausible for firms to tap into global talent wherever it is available at a reasonable low cost. Hence, offshore outsourcing has been a dimension that firms have used to expand markets as well as resource sourcing.

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transformation of legal services from local to global and the increased demand for such practices. Legal globalization brings about uniformity and commonly accepted standard principals of commercial laws across borders, which will further aid legal outsourcing. Legal outsourcing though aids legal globalizations, mainly focuses on cost savings.

This article discusses the legal outsourcing industry in context of its growth, hurdles and challenges faced with a good insight into addressing few key questions regarding this new way of working.

## **2. What is Legal Process Outsourcing?**

Legal process outsourcing in its generic definition would refer to a law firm availing legal support services from an outside law firm or from a legal support services company. While, the above definition in its descriptive nature mentions law firms, it would in its generic definition include companies, firms, individual practice lawyers, corporations, and any entity that would require legal support.

Under a typical Legal Outsourcing arrangement, a lawyer contracts, directly or through an intermediary, with an individual/firm domiciled abroad (foreign lawyer or lay person) to perform legal support services, such as conducting legal research, reviewing document productions, or drafting due diligence reports, pleadings, and memoranda of law for remuneration. The entity to which work is outsourced then gathers the required infrastructure, skill and expertise on the relevant area of outsourced work and caters to the work requirement.

## **3. Why legal process outsourcing? Is quality service at low cost available?**

Is it necessary for a firm to get assistance from an external legal support services for handling its legal work? Is it beneficial to outsource work? The recent trend of outsourcing legal work is advanced by firms and corporations that are realizing benefits of good quality work being done in lesser time and at lower costs as compared to existing delivery mechanisms. However, this new trend has to be understood not only for the strengths but also for the challenges that entail such an initiative.

Legal work usually emanates from the legal department of several companies (In-house legal department), legal research firms, law firms, legal publishing companies, and attorneys-at-law. Due to the bulk of legal work generated, it becomes incumbent to take outside assistance for a time based and efficient completion of work. This help can be contributed by services providers within the country or possibly, from overseas outsourcing vendors, who offer good quality work at a lower cost as compared to the former. The low cost

emanates primarily due to the fact that outsourcing companies invest substantially in infrastructure and in setting up the business to cater to the needs and requirements of a number of clients. These investments are distributed among a number of clients, which automatically reduces the risk and investment borne by the outsourcing companies. This along with the economic disparities of countries and differential wage arbitrage help these vendors offer efficient and high quality services at a very competitive cost.

Cost saving, though not solely, is definitely a propelling factor for growth of the legal outsourcing industry. With rates ranging from approximately \$20 an hour at the low end of the service spectrum to \$70 an hour at the high end, the savings can translate to as high as 60% percent for work traditionally handled by junior U.S. lawyers, who command rates close to \$200 an hour. This ratio lays emphasis on the fact that by offshoring, law firms and companies stand to cut costs by a substantial amount of more than 40%, even after incorporating the cost of managing outsourcing as well as productivity gaps that may exist between an offshore worker and an in-house member of the firm. Another key factor is that, with the law firm outsourcing quantitative low skilled legal work that consumed hours of input, the in-house counsels or



attorneys are now free to concentrate and focus on more qualitative, value added legal work, assisting clients with transactional negotiations and building a stronger client relationship. A typical example of saving costs and time on quantitative legal work will be outsourcing of litigation support services. By the very nature of its work, litigation is very complex and requires extensive research, documentation, data gathering and compilation. If this extensive documentation, part of the legal research and data compilation can be outsourced, it would save the law firm and the company time and money. The work product delivered by the outsourcing company can be analyzed by the local attorney making the final work product ready in quicker time with equivalent qualitative standards as before.

Few other factors that facilitate the flow of legal outsourcing work are:

- a. The successfully demonstrated past offshoring activities
- b. Access to skilled managerial and technical resources at a significant wage differential.
- c. Operational costs saved
- d. Minimal training or managing manpower required
- e. Overhead costs and office maintenance costs saved
- f. Offload non-core functions like back-office work and data management.
- g. Improves speed and service
- h. Increase customer/client approval and satisfaction.
- i. Gain a more extensive research at a fixed cost.
- j. Professional efficiency with timely output
- k. Access to precisely and methodically arranged data files.
- l. Provider's expertise in solving problems for a variety of clients with similar challenges.
- m. Taking lead in a convergent economy.

#### 4. Why is India attractive for Legal Outsourcing?

India has over the years been a favorite, reliable and successfully tested option for various offshore works, namely, in areas relating to Information Technology, call centers, finance backoffice etc. Because of the past proven success in offshoring, India is once again a preferred destination for legal outsourcing by foreign countries like U.S.A., Canada and U.K..

The availability of 1.8 million lawyers as skilled manpower, adequate infrastructure, proficiency in English, proven track record in outsourcing, time

zone advantage enabling 24 x 7 operations is what gives India a competitive edge in outsourcing. Today Indian LPO vendors cater to the need of a number of law firms/in-house counsels/individual practitioners in U.S. and U.K. by rendering services in areas ranging from litigation support, document review, corporate maintenance, real estate among others. The growing trend of legal offshore outsourcing indicates a tremendous growth in the ambit of nature and scope of legal services offered by India in the coming years.

India is viewed as a potential and evident place for outsourcing legal services mainly because of the availability of English speaking lawyers trained in common law system. . British colonization resulted in spread of western education in India and also parliamentary form of government in India. Indian legal system is broadly based in British tradition of common law systems. It can be emphatically stated that due to the common law systems prevalent in India, U.S.A. and U.K., the Indian law graduates who are trained in English are well equipped to understand the U.S. legal system and provide able legal support.

The time zone difference of 12 hours between India and U.S.A. gives the attorneys in U.S.A. the advantage of getting trained lawyers working throughout the night to prepare a complete, high quality work product by the next morning. This ensures that the attorneys now have more time to concentrate in developing client relationships and improving revenue streams.

Another key factor for choosing India as an ultimate outsourcing destination can be attributed to the remarkable measures taken by the Indian government towards liberalization and



deregulation. Recent reforms have visibly reduced licensing requirements, and made foreign investments simpler and more attractive. The Indian government has collaborated with NASSCOM (India's nodal body that is benchmarking best practices across the IT and IT enabled services industry) to ensure that India's data privacy legislation is aligned with those of the U.S.A.. All these factors attract and maintain a steady inflow of legal outsourcing work to India.

Establishment of a national body of legal services vendors in the form of National Association of Legal Process Offshoring Companies (NALPOC) has been a key step in establishing best practices and benchmarks in delivery, ethics, promotion and collective initiatives to align the industry with the needs of the firms outsourcing. Among its charter is an effort to standardize training procedures for lawyers who intend to join LPO companies, which would definitely assist in maintaining minimum deliverable standards for legal services delivered to international clients.

## 5. Evolution of the legal outsourcing industry

As observers and media debate on the future of the industry, one sees a remarkable growth in the industry, which is currently estimated to be a \$30-50 million market, and it is further expected to grow \$5 billion by 2015, a 100-fold expansion in the next 8 years.

While global awareness of the potential of offshore legal outsourcing is increasing, it is not a recent phenomenon. The first legal outsourcing to India started back in 1995, when the 34-lawyer Dallas-based litigation firm of Bickel & Brewer opened an office in Hyderabad. The next thing to trigger an impetus to the industry was when General Electric, in 2001, added a legal division to their currently existing base of operations in India. This legal cell was specifically started to handle legal compliance and research for GE plastics and GE consumer finance (Divisions of GE capital). Thereafter, the industry witnessed a steady upswing in demand for outsourced legal services from India. Today, in 2007, the estimated number of people serving this industry is around 6,000 but is projected to increase to 40,000 within the next 3 years.

The U.S. legal industry, according to government data, is a \$184 billion behemoth with roughly a million trained attorneys and about 800,000 support personnel such as paralegals and legal assistants. U.S. firms outsourced an estimated \$5 billion in litigation support in 2006. According to Forrester Research, a Cambridge, Mass.-based

market research firm, this year 12,000 legal jobs moved offshore -- less than one percent of the total jobs that will be eventually offshored. This clearly outlines the percentage of untapped potential of the legal market. Forrester estimates this number to triple by 2010, and further double by 2015, thus leading to more than 80,000 jobs added in India by 2015 to support the U.S. legal industry alone.

Many of the leading law firms abroad have displayed confidence and comfort in offshoring their work. For example, the world's largest firm Clifford Chance has begun outsourcing much of its administrative work to India, in what will be the biggest move offshore ever undertaken in the legal profession. This decision will factor in more than \$18m (9.5 m) in annual savings for the law firm.<sup>2</sup>

## 6. Nature of legal work outsourced

The very nature and expertise skills required for transacting legal work indicates that there has to be selective screening of work that can be outsourced. Legal services can successfully be provided in quantitative low skilled work as well as areas of high skilled qualitative works. One can outsource work depending upon the clients requirements and nature of legal services required.

Quantitative or low skilled work includes:

- a. Data management
- b. Word Processing
- c. Data creation and file maintenance
- d. Litigation support
- e. Book-keeping and reconciliations

Qualitative work would includes:

- a. Document review
- b. Summary preparation
- c. Due diligence reports research
- d. Corporate transactions
- e. Patent and trademark research
- f. Drafting motions, contracts, pleadings, briefs
- g. Reviewing litigation documents and agreements
- h. Fifty state surveys

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<sup>2</sup> The Guardian on October 28<sup>th</sup> 2006 reported that Clifford Chance, the world's largest law firm, would outsource much of its administration work to India, in what will be the biggest move offshore ever undertaken in the legal profession. The proposal is expected to yield more than \$18m (£9.5m) in annual savings.

The services provided by the outsourcing vendors are only to assist the attorney, and are not final or independent work. The work done by the outsourcing companies gains credibility only after the attorney reviews the work. An interesting development here to note is that few LPO vendors have U.S. attorneys onboard so that they can contribute high value work.

The more complex the activities outsourced, the more intense the legal training and skilled documentation that is required. Such work that requires minute surveillance by locally trained lawyers is best outsourced if it is supervised by an U.S. attorney at the vendor site.

Legal Outsourcing today does not clearly demarcate the type, nature or extent of work offshored. Each firm based on the nature, skill required for the work and comfort level decides on the work that could be outsourced. The law firm or the in-house counsel assumes a managerial position over the offshoring initiatives whilst being free to tackle core complex high quality strategic legal issues and client meetings.



## 7. Some Questions

Legal services traditionally demand high-level accuracy, high-level proficiency and intricate knowledge of the laws that would safeguard the interest of the client. The legal industry demands a high level of professional conduct, confidentiality, suitable application of mind and professional moral ethics to be maintained.

Several questions that spring up to a firm that is evaluating legal outsourcing as an option would include;

- i. Whether it is ethical and professional of the American lawyers to rely on non-lawyer legal support services.
- ii. The accuracy and high level proficiency the nature of legal work demands
- iii. Time Zone differences.
- iv. Quality Assurance
- v. Renunciation of responsibility.

One of the major concerns about legal outsourcing opined by both legal experts and media is whether professional conduct, ethics and the right of client's secrecy and confidentiality could be maintained. This has been an issue of debate and discussion from the time legal outsourcing started and recorded a phenomenal growth. The Los Angeles County Bar Association (June 2006), The New York bar of professional conduct and ethics and the San Diego Bar Association<sup>3</sup> have in length considered, and given their views on the outsourcing industry. The San Diego Bar Association bar has opined that while outsourcing is permitted, it does not dilute the attorney's professional responsibilities. It is necessary that Californian attorneys should have sufficient knowledge to supervise the outsourced work. It is obligatory on the attorney to ensure that there would be no compromise on the quality, confidentiality or in observing any other duties towards the clients.<sup>4</sup> The New York Bar and the Los Angeles Bar while considering this issue have concluded that outsourcing is ethical, if certain precautions and limitations are taken into consideration.

These considerations include:

<sup>3</sup> <http://www.nycbar.org/Ethics/eth2006.htm>

<sup>4</sup> The san Diego country Bar association has considered the professional ethics by emphasizing that the California Attorney has a duty under the applicable law and rules to act loyally and carefully at all times. Outsourcing does not alter the Attorney's obligations to the client; even though outsourcing may help the Attorney discharge those obligations at lower cost. (<http://www.sdcba.org/ethics/ethicsopinion07-1.htm>.)

## I. Client Attorney confidentiality

While working on a matter, an attorney is privy to almost all-confidential information of his client and hence it is of utmost importance that the Client-Attorney relation is kept private and confidential. The main question that would arise here is whether such information can be passed to a non-lawyer or to a third party and if that would breach the confidentiality agreement.

Entering into confidentiality agreements, and providing limited access to client information, to the outsourced company, can easily overcome this. In addition, the attorney can also first assure herself about the genuineness and good will of the company to which the work is proposed to be outsourced.

## II. Is it ethical for a lawyer to outsource his work to a non/ foreign lawyer?

One immutable obstacle is the guild-like nature of the U.S. legal profession. Government regulations mandate that only lawyers who are licensed in the U.S. can give legal advice on American law. That effectively means Indian trained lawyers who are not registered to practice anywhere in the U.S. are severely restricted in the types of legal work they can perform. The code describes both a foreign lawyer not admitted to U.S. jurisdiction and a layperson as a non-lawyer.<sup>5</sup> The major ethical question that would arise here would be whether outsourcing to non-lawyers leads to unauthorized practice of law by the U.S. lawyer and whether it attracts the provisions under DR 3-101(A) and Article 478 of judiciary law.<sup>6</sup>

In U.S.A., it is common practice for attorneys to delegate their work to paralegals. A lawyer often delegates tasks to clerks, secretaries and other laypersons. Such delegation is proper if the lawyer

<sup>5</sup> The California Supreme Court has refined the scope of the unauthorized practice of law to include legal work by New York Attorneys in connection with prospective private arbitration in California. (Birbower, Montalbano, Condon & Frank, PC v. Superior Court (1998) 17 Cal.4th 119 (“Birbower”). California Business and Professions Code section 6125, part of the State Bar Act, states: “No person shall practice law in California unless the person is an active member of the State Bar.

<sup>6</sup> DR 3-101(A), “[a] lawyer shall not aid a non-lawyer in the unauthorized practice of law.” Judiciary Law § 478 makes it “unlawful for any natural person to practice or appear as an Attorney-at-law . . . without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state and without having taken the constitutional oath.”

supervises and reviews the work and is responsible for the end product. Though paralegals do not give legal advice, they do many of the duties traditionally performed by lawyers.

A review of the present nature of work outsourced indicates that work outsourced as of now, is mainly work done by paralegals and hence can be outsourced by an Attorney by supervision and by taking proper care to ensure that the clients’ interests are well protected. A reasoned and debated view on this issue by the New York, San Diego and Los Angeles bars underlines that lawyers can ethically outsource work to foreign lawyers without violating the code of professional responsibilities, provided they follow certain ethical considerations. The ethical considerations that an attorney is recommended to observe while outsourcing work are:

### a. Supervise and represent a Client competently

In N.Y. State Opinion 721 (1999), the committee has opined that a New York lawyer can ethically use a research firm if the lawyer exercises proper supervision. Without proper supervision by a New York lawyer, the legal research firm would be engaging in unauthorized practice of law.<sup>7</sup> The supervisory responsibilities of law firms and lawyers are set forth in DR 1-102 (C) and (D) 1-104 9 (C).<sup>8</sup>

The San Diego County Bar Association in its Ethics Opinion 2007-1 quoted that some legal ethics experts, like Stephen Gillers, believe, “[t]here is no problem with offshoring, 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.” (Ellen Rosen, Corporate America Sending More Legal Work to Bombay, NY Times, March 14, 2004.)

<sup>7</sup> Orange County Bar Formal Opinion No. 94-002 (1994) opined that a paralegal who does work of a preparatory nature, such as drafting initial estate planning documents, is not engaged in the unauthorized practice of law where the Attorney supervising the paralegal maintains a “direct relationship” with the client.

<sup>8</sup> DR 1-104(C) A law firm shall adequately supervise, as appropriate, the work of partners, associates and non-lawyers who work at the firm. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter. DR 1-04(D) articulates the supervisory responsibilities of a lawyer for a violation of the Disciplinary Rules by another lawyer and for the conduct of a non-lawyer “employed or retained by or associated with the lawyer”.

An attorney needs to adequately supervise the work and take responsibility to ensure that the foreign lawyer or any person employed or retained by or associated with the lawyer does not violate the disciplinary rules. It is necessary that the attorney has full control over the representation of the client and has exercised independent judgment in reviewing the draft work performed by any legal help she has resorted to. Her fiduciary duties and potential liability to her corporate client for all of the legal work that was performed were undiluted by the assistance she obtained from legal works. Further, the attorney should also ensure that the foreign lawyer is capable of discharging the duties assigned to him. She can judge the capability of the foreign lawyers by interviewing in advance to ascertain the ability of the lawyer/firm to do the work. She can conduct reference checks and constantly supervise and review the work assignments done by the non-lawyer.

b. The duty to preserve the client's confidence and secrets

DR 4-101 imposes a duty on a lawyer to preserve the confidence and secrets of the clients. This duty can be observed by obtaining clients prior consent in disclosing confidences and secrets. The clients must also be made aware of the difference in confidentiality rules in foreign lands. In India, lawyers and law firms maintain the attorney client confidentiality rigorously.<sup>9</sup> Professional conduct and ethics of advocates in India also profess maintaining client confidentiality. Hence, attorneys can also rely on these rules of conduct of Indian advocates while outsourcing work to such firms.

Attorneys may preserve client confidentiality by providing limited access to client confidences and secrets, entering into confidentiality agreements, contractual provisions addressing confidentiality

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<sup>9</sup> Section 126 of the Indian Evidence Act defines Professional communications - No barrister, Attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, Attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment or to disclose any advice given by him to his client in the course and for the purpose of such employment. Provided that nothing in this section shall protect from disclosure –

1. Any communication made in furtherance of any illegal purpose,
2. Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.

and remedies in the event of breach, and periodic reminders regarding confidentiality.<sup>10</sup>

c. Duty to check conflicts

DR 5-105 (E) requires a law firm to maintain contemporary records of prior engagements and to have a system proposed engagements against current and prior engagements. An attorney before outsourcing work should get adequate information on whether the non-lawyer has performed or is performing any activities adverse to the interest of the clients. There can also be a written reminder about the need for the non-lawyer to maintain client confidentiality and to safeguard secrets of both, current and former clients. As a threshold matter, the outsourcing lawyer should ask the intermediary, which employs or engages the overseas non-lawyer about its conflict checking procedures and about how it tracks work performed for other clients.

d. Duty to bill appropriately

By definition, the non-lawyer performing legal support is not performing legal tasks, but support tasks only and hence the charging on the clients account should therefore be proportional. It cannot be charged as the legal fees of an attorney. Further DR 3-102 (A) prohibits a lawyer from sharing legal fees with a non-lawyer. Further, The Model Rules of Professional Conduct emphasizes that a lawyer must disclose to a client the basis on which the client is to be billed for both professional time and any other charges<sup>11</sup>. Hence, an attorney can charge the client for the actual cost incurred for outsourcing and plus a reasonable allocable sum attributed to overhead charges incurred while availing this service.

a. Duty to obtain client's consent in advance

The "reasonable expectation" of the client is that the attorney retained by the client, using the

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<sup>10</sup> Under DR 4-101, a "confidence" is "information protected by the Attorney-client privilege under applicable law," and a "secret" is "other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." In N.Y. City Formal Opinion 1995-11, this Committee addressed a lawyer's supervisory obligations regarding a non-lawyer's maintaining client confidences and secrets. This Committee noted, "the transient nature of lay personnel is cause for heightened attention to the maintenance of confidentiality. Lawyers should be attentive to these issues and should sensitize their non-lawyer staff to the pitfalls, developing mechanisms for prompt detection of . . . breach of confidentiality problems."

<sup>11</sup> ABA formal opinion 93-379, December 6 1993

resources within the attorney's firm will perform the work required to develop the legal theories and arguments to be presented to the trial court, and that the attorney will have a significant role in preparing correspondence and court filings. The outsourcing attorney may take the consent of their clients if they are outsourcing strategic and any other work, which client would expect any senior lawyer of the firm to perform.

f. Taking responsibility of end product.

The attorney outsourcing the work should take total responsibility for the end work product. The attorney should ensure that the end work product conforms to legal standards and to the expectations of clients. It has to be clearly understood that responsibility cannot be outsourced. The work done by the outsourcing company gains authority and recognition only after the attorney outsourcing the work reviews and ratifies the end work product.

## 8. Conclusion

Legal outsourcing has been prevalent, and of late offshoring has been an additional dimension added to this. The offshore legal outsourcing has recorded an exponential growth in the past 3 years. The reason mainly attributed to the fact that the overseas attorneys get timely and efficient legal work executed at low costs. Moreover, the issue surrounding the ethics of outsourcing is settled by the well-reasoned view, "A lawyer may ethically outsource legal support services to a non-lawyer if the ethical principal considerations such as supervision, responsibility and client confidentiality are maintained." That 'work will go where the worker is' has been facilitated by

advances in technology that make the functioning of teams split across the globe seamless.

The LPO industry started with low-end activities but has quickly ramped up to support law firms and in-house counsels across a wide variety of activities right from research, drafting and analysis to word processing and litigation support. It is upto the firms to see the benefits and the inevitability of this phenomenon of a global delivery model. It is for them to adapt change within their firms to suitably integrate legal outsourcing to not only build better efficiency, but also propel growth by redeploying organization capital and resources to the most productive avenues in the firm.

### Note

This paper puts in perspective the facts on the ground with a view to inform the reader on the nuances of legal outsourcing and does not obviate the need for caution and diligence in such initiatives.

### About the Author

*This perspective paper has been authored by Kshama N., Corporate Attorney at Manthan Services. Manthan Services is the leading Legal Outsourcing vendor based in Bangalore, India. We work with over 85 U.S. law firm clients delivering legal, paralegal and secretarial services.*

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