

Legal Process Outsourcing – Need of Hour

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Abstract

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. The legal industry across the globe is gradually turning towards outsourcing for gaining efficiencies and staying profitable in a highly competitive marketplace. Recognition of the fact that legal companies need to focus on their core competencies and leave back office processes to the hands of competent outsourcers for outsourcing non-core processes. The availability of outsourcing ventures with world-class resources and expertise is also boosting the growth of outsourcing by legal entities. Legal Process Outsourcing is a lucrative route to reduce cost and increase efficiency by outsourcing legal works to India. Most independent observers are in consensus that LPO is on the rise. However, greater insight beyond this overly simplistic fact is difficult to come out. One of the challenges in gauging the rate of uptake for LPO has been reluctance on the part of many law firms and legal departments to publicly acknowledge their LPO relationships. Another fact regarding this is that all major LPOs are all still privately held, makes it more difficult to verify LPO adoption, industry revenue and headcount figures. This paper attempts to identify the different aspects of legal process outsourcing. It will focus light on the definition of LPO, its importance, challenges and future trend in LPO industry. As LPO industry is one of the fastest growing industries in the world, So Indian economy also shows its interest in this new prospect of business. The present paper focuses on different types of legal process outsourcing and the factors which need to be considered before a company goes for LPO.

Keywords: Business prospective, Legal Process Outsourcing, Need, Strategic Introduction

Introduction

Legal outsourcing, also known as legal process outsourcing (LPO) refers to the practice of a law firm or corporation obtaining legal support services from an outside law firm or legal support services company (LPO provider). When the LPO provider is based in another country the practice is called off shoring and involves the practice of outsourcing any activity except those where personal presence or contact is required e.g. appearances in court and face-to-face negotiations. When the LPO provider is based in the same country the practice of outsourcing includes agency work and other services requiring a physical presence such as court appearances. This process is one of the incidents of the larger movement towards outsourcing. The most commonly offered services have been agency work, document review, legal research and writing, drafting of pleadings and briefs, and patent services.

Legal Process Outsourcing covers the following services in general:

- Legal Research
- Document drafting like standard contracts, agreements, letters to the clients, patent applications etc.
- Legal Billing activities like preparation of invoices, collation of time sheets etc.
- Intellectual Property research--substantive and administrative
- Paralegal Services
- Administrative and secretarial activities like following up with clients, etc.

Back in 2005, the LPO market comprised just 15 companies, but this figure has now reached more than 20 and, although LPO currently accounts for only about 2 per cent of the global legal industry, forecasts suggest that its eventual market share is likely to reach 10 per cent or more. It's surprisingly difficult to make a precise definition of the term, since it is applied to many different services; and, as new areas of legal services become capable of being outsourced, so too will the types of LPO service provider expand.

Types of Services provided by LPO Service Provider

- **Electronic Document Management Services:** These include the services of providing expertise management solution for Word processing, creative design, legal transcription, legal coding, data digitization, key word, XML tagging, and archiving services Research, tagging, and summarization services for updating legal databases (e.g., Lexis-Nexis, Westlaw)
- **Electronic Document Discovery Services:** These include collecting, filtering, processing, and reviewing electronic records and scanned or OCRed (Optical Character Recognition) versions of printed records) etc., for potential discovery in litigation.
- **Intellectual Property Services:** These include the services of Higher-end (associate level) services including prior art searching, freedom-to-operate studies, overlap and evidence of use analysis, and landscaping with respect to patents and trademarks; Paralegal services in IP, e.g., proofreading, and docketing & maintenance of patents, etc
- **Associate Level LPO Services:** These include the services of Using templates to produce preliminary drafting of pleadings, employee contracts, non-disclosure agreements, licensing agreements, supplier agreements, lease agreements, vendor agreements, and distributor agreements, etc.

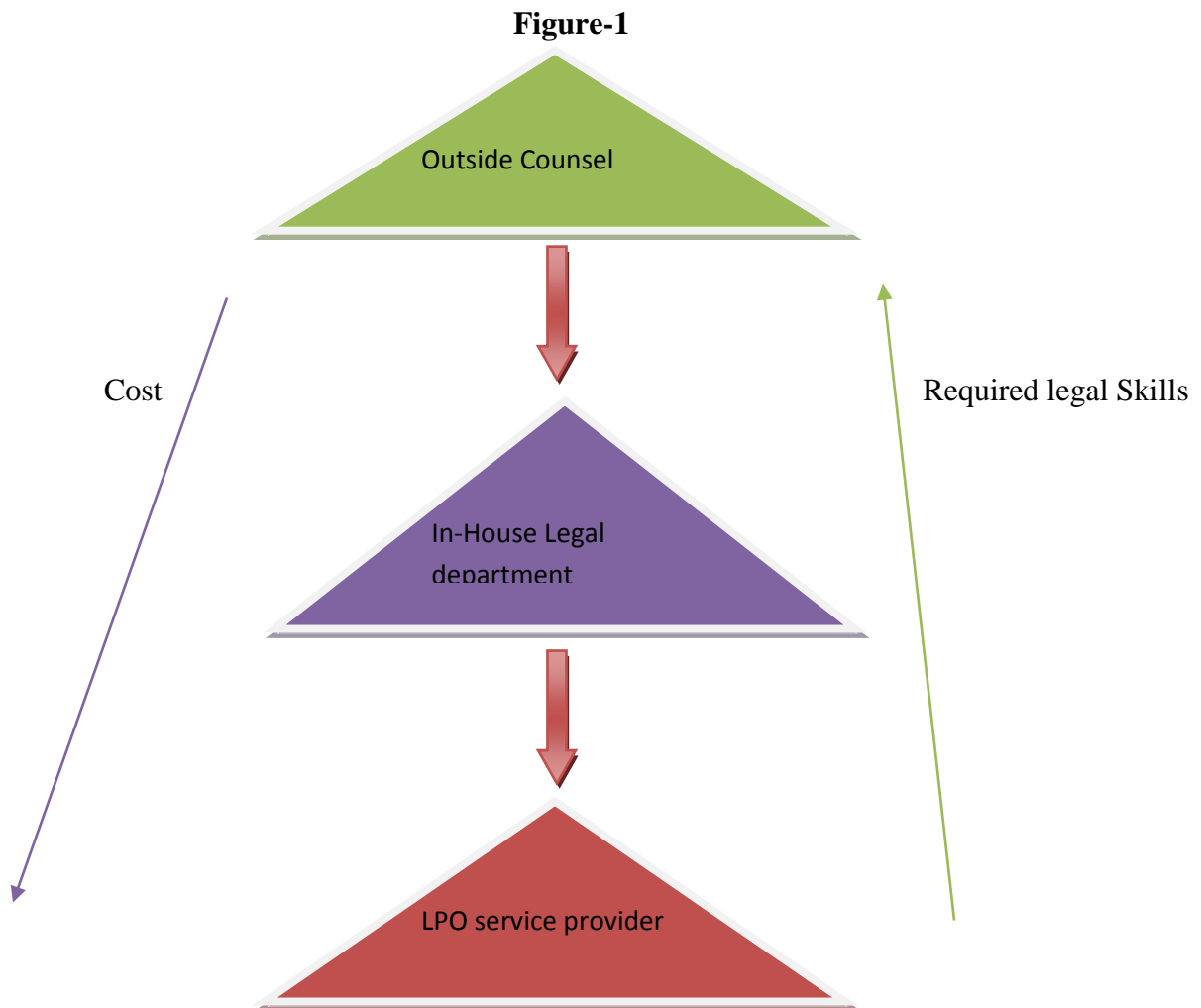
LPO business model

To adopt an effective LPO strategy, corporate legal departments should first understand the new business model the LPO market is promoting. With respect to the offshoring of legal services, the following five models seem to be emerging:

- ❖ Pure-play Providers
- ❖ Broad-based KPO and BPO Providers
- ❖ Captives of Corporate firms
- ❖ Captives of Law firms Joint
- ❖ Ventures between firms

In the LPO business model, outside counsel is used only for legal tasks requiring the most significant level of specialized legal knowledge and experience (e.g., legal opinions). Less specialized work that requires a moderate level of legal knowledge and experience (e.g., contract

review) is pushed down to in-house legal resources, some of whom may be organized under a shared services model to deliver services required by multiple business units. Finally, repeatable legal tasks requiring relatively little specialized knowledge and experience are sourced to LPO providers. Examples of such tasks include routine and/or transactional activities such as e-discovery, legal secretarial/billing services, patent services, legal research, and contract management. It can be understood with the help of figure 1, which shows a business model for LPO



Source- <http://www.deloitte.com>

Effective use of this new business model can give companies the opportunity to realize cost savings as more work moves to lower-cost providers, with LPO providers providing significant savings over the use of outside counsel.

Benefits of Legal Process Outsourcing

- ❖ Cost: Using an offshore professional support lawyer is 30-55% cheaper than using or hiring the services of a USA or UK based legal staff.
- ❖ Time: Time zone difference work in favour of time bound zone.
- ❖ Language: There can never be communication gap on account of difference in language as Indian lawyers are well versed in English as all courts in India work in English.
- ❖ Quality: The Indian intellect and intelligence is known to the world.
- ❖ Resource accessibility and elasticity: The ability to ramp up and down to meet short-term requirement without compromising on quality.
- ❖ Relation of legal system between India and the USA and UK: Indian laws share an apparent similarity with UK because both follow the common law system. As far as the USA laws are concerned Indian have an in-depth knowledge of their laws too.

Risks of LPO

Of course, risks are inherent in any outsourcing arrangement, and LPO is no exception. Effective project management and careful attention to detail are essential if these risks are to be mitigated, and it is important to incorporate consideration of the following factors, among others, during the planning process.

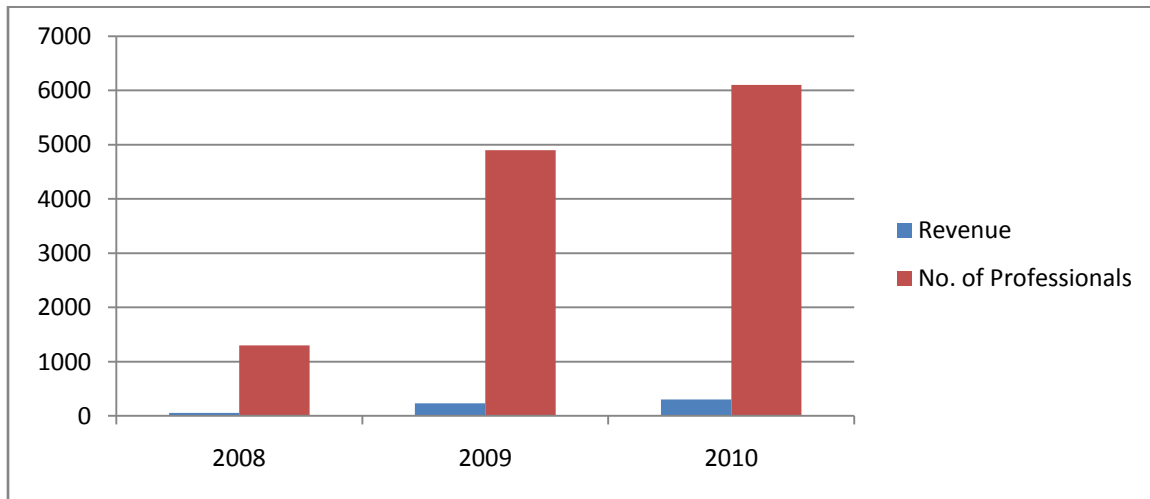
- ❖ Distance, time zone differences, cultural and language barriers can hinder communication, and teams don't always gel.
- ❖ LPO lawyers sometimes lack key capabilities and training can still be patchy, so there can be a steep learning curve until work is truly productive.
- ❖ Information security can be problematic, because there are numerous opportunities for failure and because breaches could violate attorney client privilege – meaning that it is essential to verify security credentials and, in some cases, conduct security audits.
- ❖ Implementation and transition can require significant initial investment.
- ❖ If not managed well, working with an LPO firm can strain the relationship between a company and external counsel, since law firms may view work being allocated to an LPO provider as work being taken away from their associates and paralegals.

- ❖ Law firms considering outsourcing often argue that it can make it difficult for them to train associates.
- ❖ Redundancies in the traditional resource pool may affect law firm/legal department morale.
- ❖ While improvements have been made, political and regulatory issues are still a factor – such that, for example, LPO lawyers cannot give legal advice, must be supervised by a US/ UK lawyer and cannot testify in court.

India Emerging as New Central Hub for LPO

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 back office 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.

Figure-2
Growth of LPO industry in India



Source: Evalueserve Research

The Figure 2 shows the trend of LPO in India for period 2008-2010, it indicates that the revenue of LPO industry is keep on rising and the no. of LPO professionals are also increasing. The various factors that favour Indian attorneys are:-

- Availability of English speaking attorneys
- Time zone advantages
- Indians are familiar with common law doctrines
- Availability of well qualified attorney's meeting US/UK qualifications
- Quality and speedy work done by the Indian attorney's
- Cost saving advantage: It costs up to 80 percent outsourcing the legal process to India than to US firms
- LPO's in India working 24/7

Indian legal professionals are good interpreting the laws analytically. Indians are familiar with the common English laws. 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. 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.

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.¹⁰ 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. 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.

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**

It is common 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 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.

➤ **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.. However, in the case 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. 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. 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**

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**

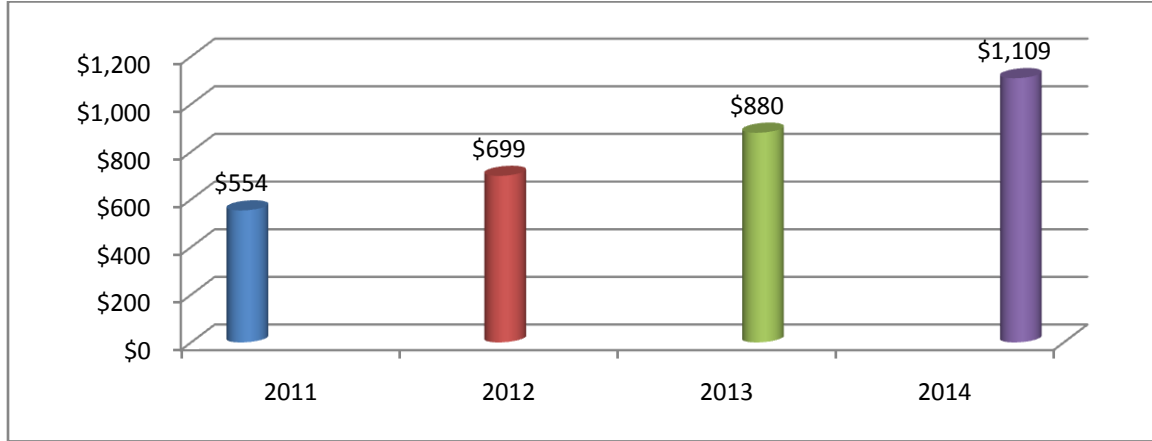
This judgment comes into play where it is important to be certain that the facility doing the work for Client A is not also doing the work for the client's adversary in a related matter, Client B. Even in situations where there may be a screen at the facility and even if different teams will be working 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.

Current trend in LPO Industry in India

US-based research firm Forester finds "legal process outsourcing can bring \$4 billion and 79,000 jobs in India in ten years and boost Knowledge Process Outsourcing." On the other side, the National Association of Software and Service Companies (NASSCOM) projected that legal processing outsourcing providers in India will soon rise up to \$3 billion. In 2004-05, India earned \$6.7 billion by providing services in software, technology and manufacturing outsourcing. In view of US associate lawyers' price tag between \$225 and \$450 per hour, India becomes a natural choice and already five of the 20-odd domestic KPO firms have established themselves and are tapping skilled legal professionals to handle the outsourced work. In another report 'Off shoring Legal Services to India', Value Notes, a leading provider of intelligence and research services, estimated that the sector employs around 1,800 professionals and expects this to grow to 24,000 by 2012.

Figure-3

LPO market size and projected growth



Source- <http://www.deloitte.com>

The Figure 3 shows the projected growth in LPO sector in India along with the current situation prevailing in the country. It was \$554 crore in 2011, which rose to \$699 crore in 2012 and expected to grow by 79% in the year 2013 & 2014. These trend indicates that the future of LPO industry is very much bright in India for next few years.

Conclusion

Legal Process Outsourcing, if utilized in a careful, well-planned manner can efficiently utilize firm and client resources. Small and sole practitioners stand to greatly benefit from outsourcing arrangements because they allow access to quality legal services and experts at a fraction of the cost, thereby leveling the playing field between clients with disparate funds to contribute to dispute resolution. Most firms already outsource some segment of back office activities, and large, global firms have gradually embraced LPO in their continuing efforts to cut costs, streamline operations, and dedicate employee activities to core functions. Outsourcing of legal processes has not yet occurred in our nation’s judiciary, but as public monies are restricted and courts are forced to look toward new cost-cutting avenues, LPO may become a more attractive option. However, whether entered into by public or private entities, there are many considerations to be assessed prior to achieving a successful LPO relationship. Due diligence

should ensure that firms, no matter what the size, are able to take advantage of the benefits LPO has to offer.

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 up to the firms to see the benefits and the inevitability of this phenomenon of a global delivery model. Many law firms have already started implementing new models for pricing, designing and managing better legal work processes, modifying and re-using existing work products and templates, partnering with other legal service providers to provide the entire array of services, and beginning to offshore functions such as marketing and sales, accounting, Information Technology, clerical, paralegal, and knowledge management.

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