

OFFSHORE LEGAL SERVICES: THE DRIVE FOR PRODUCTIVITY



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In recent decades, companies have lowered costs, increased profits and added shareholder value through offshore outsourcing of mission-critical business processes. Legal services are on the verge of becoming a part of this already high-growth trend.

Quality, speed, and cost are the key objectives.

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INTRODUCTION

The Productivity Equation

Quality, speed, and cost – these are the productivity variables that drive sourcing of professional services in today’s marketplace. The importance of quality is, of course, obvious: How reliable will a service provider be, and how well will they perform? Will the process be both sustainable and improve over time? Once quality is established, speed and cost are the focus: How can services be performed faster, for less?


Value Revolution - Offshoring

The cost/value optimization imperative has led to a revolution in the sourcing of key services to the corporation. The first phase of this revolution involved the domestic outsourcing of non-core business tasks associated with information technology, human resources, accounting, marketing support, professional services and other non-core functions. The second phase, still underway and growing rapidly, has seen the offshoring of these outsourced functions, as the costs of communication infrastructure have dropped to the point where low wage rates and high worker productivity have made sourcing from countries such as India, China, Eastern Europe, and Russia increasingly attractive.

The Delivery of Legal Services: Offshoring

This paper investigates the offshoring phenomenon in relation to the legal services industry – i.e., to what extent we may see the current trend toward use of domestic outsourcing extended to lower-cost offshore alternatives. The attraction of offshoring for today’s general counsel is obvious: Higher departmental workloads confront tightened budgets, while fees charged by outside counsel continue to rise. At the same time, the pressure to control spending while delivering greater levels of service grows more intense.

Solutions that provide quality at reduced cost will command increasing attention from the offices of both general counsel and CEO. Lower cost does more than keep the law department on budget. It can mean, for example, being able to use higher-cost lawyers where appropriate, while at the same time, having more resources on hand for staying power during discovery.



Law firms are hardly immune to these pressures. Pushed by clients to reduce fees, and challenged with a very difficult recruitment and retention environment, law firms have every incentive to consider alternatives to the status quo.


Lower cost is the obvious driver of interest in the offshoring of legal services. That interest has traditionally been tempered, however, by questions of quality and speed: What will the quality of the work product be, and how long will it take to get it?

To be sure, general counsels can take some solace in the reality that the offshoring of other high-impact services is by now routine. And it is also true that there are law firms and corporate legal departments that are already using offshore professionals for low-complexity tasks such as litigation-related document management and form creation/review. On the other hand, indexing documents or manning a support desk is one thing; the performance of legal service tasks is quite another. The question is, will an offshore environment, where to date the “code farm” and the call center have flourished, prove relevant to the conduct of legal work now currently performed by law firms in the United States?

Approach

Our specific focus is the world’s largest and most developed offshore service market, India. The perspective we offer reflects intensive (and on-the-ground) research into the Indian offshoring marketplace, focused through the critical lens of a decade’s experience in providing alternative legal service solutions to corporations and law firms.

- ■ **Quality:** What can general counsels and managing partners expect from the Indian workforce, given its educational and cultural foundations?
- ■ **Speed:** what can an offshoring solution deliver in terms of timing and service level?

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- ■ **Cost:** Does the low hourly wage environment in India present a true opportunity for “expense arbitrage” on a total cost basis?

With its large pool of highly-educated, English-speaking, and career oriented professionals, India presents unique potential for the legal services industry. Though there are certainly challenges to leveraging this potential, corporations cannot afford to ignore the opportunities. India has consistently succeeded in delivering value across a variety of industry sectors.

We believe that the time for legal service offshoring there is fast approaching; the time to prepare is now.

BACKGROUND

Business Process Outsourcing (BPO)

Traditional BPO: Repetition, Low Complexity

Now a familiar phenomenon in the continuous corporate drive to reduce cost and increase efficiency, BPO simply means giving a third-party full responsibility for what would otherwise be an internal function. In the offshore context, BPO has traditionally meant using foreign labor for tasks such as data entry, medical transcription, scripted call center services, coding/indexing and simple rule-based transaction processing. Such tasks have proven fairly easy to transition offshore because they involve little complexity and can be sent and received in discrete packages of work units.

Today's BPO: Moving up the Value Chain

The movement offshore of customer service and data entry functions is by now routine. What is interesting now, however, is that many organizations are applying BPO solutions to fairly complex areas of business activity.

- ■ Wall Street's top investment houses have established offshore centers to perform equity research and construct financial models.
- ■ Engineering firms now look to India for critical project support services.
- ■ Hospitals are experimenting with telemedicine, using high-speed networks and teams of radiologists in countries like India, Australia and Israel to read and analyze images.
- ■ Fortune 500 pharmaceutical companies - e.g., AstraZeneca, Pfizer and GSK - are leveraging low-cost, offshore labor to support clinical research and drug discovery.

It is estimated that knowledge-based activities, including legal services, will account for almost two-thirds of total BPO revenue by 2010.



India – BPO Differentiators

India's leadership in offshore BPO is both growing and undisputed. A recent study from the research firm Gartner Dataquest estimates that India's revenue from BPO will grow from slightly under \$1 billion in 2002 to \$13.8 billion in 2007, representing 57 percent of the offshore BPO market. The key to India's success in this regard is its ability to deliver on all three value fronts: quality, speed and cost.

Quality

The available Indian labor pool is both well-educated and steeped in quality fundamentals. With over 221 universities graduating over 3.3 million students annually, the Indian educational system today is a global leader in such professional disciplines as science, management and engineering. Acceptance at the leading Indian engineering colleges is statistically more difficult than admittance to law school at Harvard or Yale. Academic excellence is accorded rare prestige. Valedictorians at an American university are given the yawning acknowledgement of a speaking part at commencement; in India, they are – quite literally – Gold Medalists, achieving the kind of recognition here reserved for the athlete or the heiress socialite.

This academic ambition and drive for excellence extends into the Indian corporate arena as well. Indian firms have developed global leadership in the strict process quality domains of Six Sigma, ISO 9002, and Carnegie Mellon's Capability Maturity Model, giving them significant competitive advantage in performing knowledge process tasks.

Speed

For tasks that involve collaboration with US-based teams, the time zone differential – India is 9-12 hours ahead of the US – translates into a potential doubling of work output per day, as the on-shore and offshore teams work sequentially on a shift basis to complete projects.


Cost

The direct cost of labor in India is a fraction of that in the US, translating to total cost savings on the order of 50% relative to an equivalent American offering. That total cost, moreover, is decreasing over time, as logistics, communication, and training inputs become less expensive. Significantly, the Indian government contributes to this positive cost environment through tax incentives and infrastructure development.

Quality, capacity, speed, cost – the Indian BPO marketplace has delivered much and will deliver more. We now turn to consideration of this reality as it applies to the delivery of legal services.

INDIA: THE LEGAL SERVICES OPPORTUNITY

Current Activity

To be clear, companies already have found that what makes India work in more developed “knowledge BPO” sectors works for law as well. Examples include, but are hardly limited to:


- ■ Microsoft Corporation using Indian professionals to search for prior written information about an invention in preparation for filing patent applications
- ■ General Electric leveraging an eight-lawyer, nine-paralegal team in India to scan, code, index, and abstract documents to support their lawyer teams throughout the world
- ■ Cisco Systems directing an outside firm to use Indian professionals to perform technical writing for patent applications

In tandem with this trend, general BPO provider companies are broadening their focus on knowledge-based tasks to include legal services. High-end legal services offered include everything from document intensive, subjective legal review (e.g., support of large-scale litigation cases, contract review, M&A due diligence) to legal research and patent filing.

Market Potential: The Indian Lawyer

Forrester Research predicts that 40,400 lawyer positions, or the equivalent of \$4.3 billion in US wages, will be outsourced overseas by the year 2015. If one includes paralegals and legal assistants, the number grows to 79,000 jobs, or \$5.8 billion in wages. The accuracy of these predictions depends in large part on the actual ability of Indian resources to deliver quality legal services effectively.

Estimates of the number of Indians with legal training vary widely, ranging from 1.5 million to as many as 6 million. What is clear is that Indians share with their



American counterparts a common business language (English) and the heritage of British common law. As in the US, judicial decisions in India are based on tradition, custom, and precedent. Conducted entirely in English, legal education in India follows a structure similar to that in the US, typically involving a two or three year graduate program. Based on our estimates, India today has over 500 law schools, 6 million attorneys and 40,000 new law students graduating every year.


It is important to note that lawyers educated in the Indian system are not eligible to take the American Bar Exam and are thus unable to practice law in the US. This means that they must be supervised and have their work product reviewed by a lawyer licensed to do so. That said, they do have the potential to perform substantive legal tasks, if the tasks are selected appropriately and proper supervision, structure and training are provided.

Forrester is right: there is no reason to believe that what has worked for software, complex finance, and medical research won't work for the law.

The Business Opportunity: Litigation Document Review

As we have seen, the legal industry already is beginning to follow other sectors with the outsourcing of low-complexity tasks in order to validate the BPO concept and secure early wins. Low-complexity tasks in a legal context include scanning and indexing of evidence in litigation cases, word processing, database maintenance, legal coding and legal transcription. Cost savings are easily realized and training times are minimal.

Moving up the value curve, the next promising area of opportunity is litigation-related document review. This activity represents both a significant cost component and strategy lever for the corporate client. Discovery devours hours. Being able to review a document set more cost-effectively allows a general




counsel to either keep expenses low or extend his budget to do more. Opposing counsel, if burdened with a high-cost legal services structure, is at a significant disadvantage.

Here lawyers (and, importantly, paralegals) do more than index evidence; rather, they contribute substantively to the discovery process, reviewing documents to determine whether they are responsive and/or privileged. Document review requires more training than legal coding, but it represents a strong potential fit for the educated and motivated Indian lawyer. Critically, these tasks typically do not require attorneys and, in many cases, the offshore resource needs very little legal background. Tasks are repetitive, rule-based and process-intensive; amenable to performance by educated business professionals, as long as the process and work product are reviewed by a licensed attorney.

Execution: Right Provider, Best Methods

Selecting the right offshore service provider can pose significant challenges. India has over 500 established BPO providers, all with varying capabilities and offerings. Many Indian BPO companies have roots in call center services and have evolved to become the stereotypical “jack of all trades.” Many of these firms claim capabilities in legal services, but often have questionable credentials and very little relevant experience. Typically their competence lies in the provision of back-office or clerical functions to law firms, and not in the performance of actual legal service tasks.

An alternative approach is to work with a Pivotal Provider that already has experience offering domestic outsourcing solutions, and is leveraging that track record to deliver global solutions to US clients. These Pivotal Providers are typically aligned with pure-play offshore firms through strategic partnerships, equity share arrangements or joint ventures. Once the offshore service firm has been selected, the Pivotal Provider will invest jointly with the new partner to



build robust delivery processes, training programs and governance mechanisms to unify the two organizations and offer a seamless onshore/offshore solution to customers.

Pivotal Providers represent a strong option for US companies looking to reduce risk and leapfrog the offshore learning curve. There are also important additional benefits to working with a qualified Pivotal Provider:

- ■ Service levels are owned and monitored by a US firm
- ■ Onshore/offshore collaborative teams are readily assembled and deployed
- ■ Offshore service providers are pre-screened and qualified
- ■ Accountability rests with onshore managers in a US time zone
- ■ Offshore training and recruiting are subject to domestic standards

CONCLUSION

We have seen that legal departments and law firms are already benefiting from sourcing legal services and talent from abroad. More important, it is likely that this trend will expand in both scope and relevance in coming years. In assessing how best to leverage offshore solutions to drive productivity, it is helpful to focus on the following themes:

- ■ Going forward, India will likely remain the first choice for knowledge-based offshoring initiatives.
- ■ With litigation and regulatory review at the top of corporate counsel's worry list, document review should become an increasing area of offshore focus.
- ■ An effective offshore program, structured and supervised according to appropriate compliance standards, can deliver significant value and flexibility to both corporations and their law firms.
- ■ The selection of an appropriate Pivotal Provider is critical to proper execution and risk management.

Offshoring is not a panacea. Risks and uncertainties remain. But there can be no doubt that corporate emphasis on quality, speed and cost will only intensify in years to come. Corporations and law firms that seize the moment stand to gain a compelling competitive edge.

There is no magic formula for offshoring success. However, the opportunities are real and the time to act is at hand.



About the Author

David J. Galbenski, Esq. is CEO of Contract Counsel, a leading Royal Oak, Michigan-based provider of direct hire and contingent staffing services for the legal industry. Over the past decade, Galbenski has pioneered domestic outsourcing solutions for corporate clients and law firms, and guided development of one of the industry's most innovative database-driven human resources systems. His insights into legal services offshore outsourcing are the product of personal experience, highlighted by recent visits to India and Sri Lanka, where he consulted with key government officials and legal services firms.

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