



OBSERVATIONS ON INDIA BUSINESS AND LEGAL PROCESS OUTSOURCING

**Presented at the Legal Issues Meeting
of the Mortgage Bankers Association
New Orleans, Louisiana
May 8, 2007**



Speaker

ANDREA LEE NEGRONI, ESQ.

OF COUNSEL

BUCKLEY KOLAR, LLP

alnegroni@buckleykolar.com

202-349-8032

Evolution of the Outsource Industry in India

- Initially, industry focused on software development (solving the one-time Y2K problem)
- Later, focused on voice-related tasks (call centers)
- Now, focused on “value-added” work such as processing functions (data capture, information processing, decision-making)
- Moving in direction of greater intellectual activity (design, investment analysis, financial analysis, medical, legal, architectural services) and process re-engineering

Why Is Intellectual Work Moving to India?

- Higher number of university graduates in India than in US or Europe (India graduates 5X annual number of US engineering graduates)
- More university graduates are studying sciences, technology, mathematics, and computers
 - Indian BPO companies demand employees with university degrees
 - Some BPO companies offer post-graduate education benefits to their employees (as a retention device and an additional employee benefit)
- Lower wages and cost structures than US equivalents
 - The \$5-6,000 Indian BPO employee is a US \$30K + processing employee
 - Annual salary for an LPO lawyer (full-time) approximates \$10K per year
 - Indian software programmer wages are 1/6 of US wages (Source: MSN Money Report, "Outsourcing actually creates U.S. jobs.")
 - Some types of legal tasks are particularly susceptible to cost savings. For example, patent filings average \$2,000 per application vs. \$8-12,000 in legal fees if prepared by a US patent law firm. (Source: "India's Legal Process Outsourcing Business To Grow 7% By 2010," May 15, 2006 [Indlaw Communications Pvt. Limited]).
- Common language (English)
- Work can be done "at night" which leads to 24-hour workday if work is started in the US and completed in India

Revenue & Economic Effects of BPO and LPO

- National Association of Software and Services Companies (NASSCOM), the Indian chamber of commerce interface to the Indian software and BPO industries, predicts offshoring of legal services to India will soon account for \$3-4 billion US annually.
- 79,000 lawyer jobs may move from the US to countries like India by 2015, and India could capture 70% of the KPO business worldwide.^[1]
- Other (non-legal) offshored BPO is estimated to be worth over \$120 billion; India accounts for much of this market. BPO and technology outsourcing may now account for 5-7% of the total Indian GDP.
- The IT-ITES sector (information technology and IT-enabled services) provides direct employment to 1.3 million people in India, creating employment for 5.2 million more. Thus, for each person employed in the IT-ITES sector, about 4 people are employed in the rest of the economy.^[2]

[1] Source: “*Evolution of Knowledge Processing*,” by KPO Experts India (<http://www.kpoexperts.com/kpo-india/evolution-of-kpo.htm> viewed 3/9/07).

[2] Source: NASSCOM.

What Kind of Work is Outsourced? BPO, KPO AND LPO

Process-oriented tasks (call centers, customer service tasks such as order fulfillment, applying frequent flyer miles to airline accounts, taking applications for credit cards) – this is called BUSINESS PROCESS OUTSOURCING or BPO

KNOWLEDGE PROCESS OUTSOURCING (KPO)

KPO involves higher level tasks such as financial analysis, decision-making (*e.g.*, loan underwriting), design projects (*e.g.*, animation, creation of computer games) and medical services (*e.g.*, diagnosis of disease).

Legal Process Outsourcing (LPO) is the Next Wave

LPO is an enhancement of KPO.

It requires specific types of knowledge (aka the learned professions), focuses on analytical rather than repetitive tasks, and requires highly trained specialists. Burdens and obligations involved with LPO (client confidentiality, ethical and professional concerns) are correspondingly higher.

Who is Using BPO Services in India?

Full-time Employees in the Indian BPO Industry: Financial Service Providers

■ Genpact	22,000
■ IBM	20,000
■ Wipro BPO	14,000
■ ICICI Onesource	8,000
■ HSBC	11,000
■ Citigroup Global Services Ltd.	8,500
■ JP Morgan Chase	9,500
■ American Express	6,000
■ Standard Chartered	6,000
■ Fidelity	5,000
■ Bank of America	4,000
■ Prudential (UK)	3,000

Source: Citigroup Global Services Ltd (Mumbai, India). Information as of Feb. 2007.

Can Compliance Be Outsourced?

- Overseas service providers trained in law can offer regulatory compliance services and compliance assurances at lower costs than if compliance is isolated from production
- BPOs and LPOs are increasingly involved in training personnel on regulatory and legal requirements (clients are demanding it)
- Subject matter experts are emerging because specialized expertise gives the vendors a marketing advantage over BPO and KPO generalists
- Audits of BPOs are occurring (client audits and regulatory audits, e.g., OCC) and these are more and more likely to involve a company's offshore vendors

Outsourcing and Data Security

- **NASSCOM tied up with the Indian national securities depository to create a national registry of IT and BPO employees, to include background checks, and help reduce risk of criminal activity.**
- **Pinkerton has entered India in conjunction with a leading attorney – offering security investigations, background screening, corporate investigations, cyber surveillance and computer forensics.**
- **Administrative, technical and physical security measures are greater in Indian BPOs and LPOs than in most US work places, even those where confidential information is handled**
- **Reputable LPOs maintain extensive databases for use in checking conflicts and checking prior work assignments of attorneys engaged**

Physical Security Safeguards in Indian BPOs

- ❑ No media, CDs, pin drives, personal computers, cameras or cell phones in the workspace
- ❑ No personal possessions (including purses, backpacks) in the workspace (lockers provided)
- ❑ “Wanding” of employees and guests upon entry and departure
- ❑ No access to Internet by BPO workers
- ❑ Thin client server, no access by workers to client database
- ❑ No paper leaves the confined workspace
- ❑ Surprise sweeps of computers
- ❑ Cameras installed overhead in work and public areas
- ❑ Physical examination of purses, backpacks by guards
- ❑ Examination of trunk and engine compartment of cars entering company campus
- ❑ Personal escort of guests through the campus
- ❑ Outside audits; internal and external QC reviews

Some of the Reasons LPO Will Succeed

- US accounts for \$170B (nearly 70%) of \$250B worldwide spending on legal services
- \$16B merger of SBC Communications & AT&T involved 600 contract lawyers in Washington + hundreds more in Chicago
- Majority of US firms surveyed used contract attorneys (legal temps) in 2006
- Document discovery surged since 2001 (corporations started saving email)
- Increased M&A activity since 1995 generated massive document review (antitrust issues)

More Reasons LPO Will Succeed...

- Growth in US legal staffing industry from \$800MM in 2000 to \$1.5B in 2006
- ABA opinion OK's law firms triple-billing the rate paid to the staffing agency for temporary lawyers; the staffing agency charges the firm 80% more than it pays the temp lawyer; the temp lawyers earn \$35+ per hour, which is at least triple the lawyer's rate in India for relatively low-level work
- US contract attorneys don't like temp work, working conditions, pay rate, or perceived lack of prestige

Sources: Forrester Research (worldwide legal spending); *American Lawyer*, September 2006, "Temporary Attorney," (other bullet points).

Indian Lawyers are Ready, Willing, and Able to Work & LPO Employment is Highly Desirable



But Working with LPOs Involves Uncertainty...

- ❑ How do US privacy laws apply when personal information is handled or compromised overseas?
- ❑ Can realistic supervision be provided when the lawyers are half a world away?
- ❑ Does US-issued professional liability insurance cover LPO work?
- ❑ Will the cost advantages continue in the face of double digit annual pay increases in the Indian knowledge industry?
- ❑ Can employees be retained long enough to develop enterprise expertise when demand for services creates virtually constant mobility in the labor pool?
- ❑ Do Indian LPOs appreciate and accept conflict of interest constraints of when trying to build their businesses?

And the Ethical Issues are Unsettled...

A lawyer outsourcing legal services must:

- **Preserve client confidences**
 - Limit contract lawyer's access to confidential information
 - Provide close and meaningful supervision of the contract lawyer's work
 - Use contractual provisions with the LPO to ensure confidentiality
 - Train the contract lawyers on US attorney/client privilege and work product issues
- **Sometimes, obtain client consent**
- **Supervise the service provider to ensure quality work**
 - The contracting lawyer is responsible for the outsourcer's work
 - The contracting lawyer should be the person in direct contact with the client
 - The contracting lawyer is not "practicing law" or held out as associated with the lawyer's firm
- **Avoid conflicts and ensure the service provider avoids conflicts**
 - Even contract lawyers must avoid conflicts, which involves keeping records of matters and clients he/she worked on
 - Contract and LPO lawyers should be carefully screened
 - Restrict contract lawyer's access to matters in which he/she is not involved

And there are other possible surprises, too...

- Is telecom and electrical infrastructure reliable?
- Potential disruption from terrorism, labor strikes, weather, acts of God
- Restrictions (present and future) on technology imports/exports
- Trade and tax issues
- What is mechanism and venue for resolving contract disputes?
- Geopolitical risks
- Time zone differences
- Potential conflicts about ownership of intellectual property and work products
- Currency fluctuations
- Availability and applicability of professional liability insurance coverage
- Unknown acceptance of LPO use by clients
- Possibility that LPO will subcontract tasks to other (unknown) LPOs
- BPO or LPO may go out of business (many new entrants, some untried)
- Managerial experience may be in shorter supply than technical and intellectual skills
- Public sector corruption exists

Billing Considerations

- Direct expense for LPO services + reasonable overhead
- Project-based billing
- Hourly billing
- Inclusion of LPO services in the bill to the client for the services of its attorney (ethical rules permit this if the attorney vouches for the service provider's work as if it was his own)
- Other specialized billing arrangements

Cultural Adjustments Will be Necessary

- A common language (English) is not the equivalent of a common culture (food, dress, PDA, alcohol, cows & monkeys)
- India is diverse – the north and south are vastly different, there are 24-28 non-English languages and many ethnic and religious groups, each with unique cultures and ways of life
- Indians may communicate indirectly and avoid contradiction or be verbose or flowery in writing
- Indian law firms cannot advertise on the Internet, making them difficult to identify/ investigate
- Some LPOs are affiliated with law firms or their owners are practicing lawyers, so referring attorneys need assurances about client “poaching”
- From a distance, you might not understand what is happening in the Indian LPO but travel to India can be difficult (long flight, inoculations and medications, crowds can be intimidating to the less-traveled)
- Rising wages and booming real estate prices in major cities (Mumbai, Delhi, Bangalore) are pushing jobs into smaller cities with poor infrastructure.

Domestic Political and Economic Effects

- **Forrester Research projects the US loss of 3.3 million service jobs to outsourcing between 2000 and 2015.** (*Wall Street Journal Classroom Edition*, “Special Coverage: Understanding Outsourcing.”)
- **About 86% of 182 US companies surveyed will increase the use of offshore firms, per Chicago-based consulting firm DiamondCluster International.** (Canadian firms surveyed are much less likely to report willingness to outsource, e.g., less than half.)
- **Job loss from outsourcing may be compensated for by US productivity gains or the ability to provide 24/7 coverage.**
- **Outsourcing lower level jobs led to increased domestic payroll for Microsoft and Oracle.** (Weidenbaum Center on the Economy, Government and Public Policy, 6/24/04.)

Where To Go From Here?

- Use of skilled, trained attorneys abroad can increase productivity of in-house and law firm attorneys, while simultaneously lowering costs
- Precise identification of LPO role is required with detailed service contract containing enforceable US venue and choice of law provisions
- At start-up phase, consider using LPOs with US presence, US-trained attorneys, sufficient capitalization and prior experience and verifiable references
- Start outsourcing with low-risk projects
- Use Request for Proposal (RFP) process to “vet” potential vendors

FURTHER SOURCES ON LPO

- Website:
www.legalprocessoutsourcingnetwork.com
- LPO Network (monthly, free electronic newsletter on the LPO industry) – sign up at info@corpriskadvisors.com or give me your card