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Is Legal Process Outsourcing Right for Your Company?

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Many corporate legal departments and law firms in the United States are experimenting with legal process outsourcing (LPO) as a means of reducing costs and increasing efficiencies while maintaining acceptable quality of service (QoS). The momentum behind the current popularity of LPO is, in part, a reaction to steadily increasing US legal costs and to the negative economic impact of our faltering global economy.

Global LPO growth potential may directly correlate with the overall size and projected growth of the legal services market in the United States. According to the US Census Bureau, our domestic legal services industry generated US \$236 billion in revenue in 2006 and is expected to grow steadily at a rate of more than six percent per year for the next decade. This sizeable market offers a highly lucrative environment for LPO to take hold.

To meet the growing demand for LPO, innumerable providers have entered the marketplace, offering alternative service and promoting a distinct trend toward the outsourcing of certain legal tasks and procedures. As a result, the LPO model that, only a few years ago, was viewed with substantial skepticism and that raised questions of its own legality is now widely perceived as a feasible alternative means of addressing companies' legal needs.

That said, the framework required to properly regulate the LPO industry and to address the legal and ethical issues it is sure to raise is in a nascent — but rapidly evolving — stage. The US legal community has yet to take a definitive stance toward the viability of the LPO model. But the LPO industry appears eager to embrace some form of self regulation as a means of fully establishing itself.

In the context of an LPO initiative, a client company selectively delegates certain legal functions and services that are traditionally performed in the United States to an LPO provider based in an offshore location such as India. The provider offers the client a skilled or trainable workforce at costs that are significantly lower than those demanded by US counterparts. The basic value proposition of the LPO, then, holds that outsourced legal work will be performed offshore by trained, qualified and locally licensed lawyers and paralegal staff at a fraction of the cost of having the same work performed by US-based legal professionals.

Services subject to LPO agreements can range from tasks such as legal coding and legal transcription to more involved projects involving legal research, litigation support, document review, contract drafting and management, legal publishing and intellectual property-related services such as patent application preparation. In addition to significant cost considerations, LPO arrangements may also enhance home-base productivity by freeing a client legal department or law firm to focus on strategic, value-adding legal work and

to take advantage of time zone differences in offshore locations, thus enabling 24x7 operations.

The ability of an LPO arrangement to provide real benefit to a client company depends substantially on two central factors: (1) a sober assessment of the client's legal needs and requirements; and (2) a realistic determination of whether the relevant legal services and tasks can be outsourced without sacrificing important qualitative considerations. Quality degradation, after all, will inevitably be counterproductive, resulting in the added cost of home-base "re-do" and elevating client risk.

A comprehensive and meticulously performed initial assessment of the pros and cons of LPO — basically, a diligent LPO "gating analysis" — will do much to determine if and under what conditions a company may successfully deploy the LPO model to meet its legal needs consistent with its overall strategic business goals and objectives. Some of the fundamental questions that should be addressed in the course of a thoughtful LPO gating analysis include:

- What are the legal needs, services and requirements that may be suitable for an LPO?
- What — if any — dependencies will make a complete handoff of the legal tasks and services unfeasible or impossible?
- Are the services needed on a recurring basis (e.g., patent application preparation), a non-recurring basis (e.g., unique litigation involving facts peculiar to a large contract) or an intermittently recurring basis (e.g., periodic product liability claims or certain due diligence tasks associated with transactions or filings)?
- Do the services at issue relate to core or non-core business functionalities?
- Does the customer assume additional risk related to the source of need for the legal services by engaging in an LPO? If so, how much risk is generated, and is it acceptable?
- How important is cost savings vis-à-vis QoS? How do the prospective outsourced services support or fit with the client's overall strategic business goals and objectives?

As part of the LPO gating analysis, potential LPO clients must carefully assess the generally applicable risks, ramifications and ethical concerns that are inherent in offshoring legal work and that accompany — and may outweigh — the benefits of LPO. Some key risks and ethical considerations peculiar to an LPO arrangement include:

- risk of unauthorized disclosure of confidential information;
- liability concerns related to the unauthorized practice of law;
- unintended or inadvertent waiver of the attorney-client privilege, including assessment of if and when the privilege will apply;
- possible lack of robust procedures to identify and resolve conflicts of interest;
- recognition, when applicable, of the need for client consent;
- fee-sharing arrangements and client disclosure; and
- compliance with export control laws with respect to offshoring information regarding US-originated inventions for patent drafting services.

Most LPO demand in the United States currently involves low-value, labor-intensive legal services, such as legal transcription, document conversion, legal coding and indexing and legal data entry. For the most part, these services are supplied by India-based LPO providers. As the LPO industry matures, however, the nature of outsourced legal work is expected to ascend the value chain.

Researchers at ValueNotes, for example, estimate that in 2006, India's LPO industry generated US \$146 million in revenue. They project industry revenue to grow to US \$640 million by 2010, at which time LPO firms in India are expected to employ over 32,000 India-based professionals. Another research company, Evalueserve, is more conservative in its LPO projections; but the fact that LPO is likely to become a sizable mainstay in the US legal services market is increasingly difficult to question.

India's emerging prominence in LPO is not surprising, given the nation's remarkable success as a global supplier of information technology outsourcing (ITO) and business process outsourcing (BPO). More recently, many US companies have engaged in what are known as knowledge process outsourcing (KPO) transactions, which leverage India's vast pool of highly skilled, well-educated workers to perform knowledge-driven or "high end" processes that require specialized domain expertise. Legal process outsourcing is actually a specialized form of KPO.

Its enormous reservoir of well-qualified, English-speaking lawyers and paralegals helps to explain why India is a strikingly successful source of LPO. From a cost — as well as a quality — perspective, Indian legal professionals are extremely competitive. Typically, for example, they command salaries that are 80 percent to 90 percent less than those of their US counterparts. And India's professional labor pool shows no sign of shrinking. Approximately 80,000 new Indian lawyers graduate each year from law schools. These graduates are particularly well-suited to service US-based legal needs because, like the United States and the United Kingdom, India's legal system follows the common law model. The nation's rapidly modernizing legal and regulatory environment, too, is based on the US/UK model of jurisprudence.

Currently, LPO demand in India is primarily met by two service delivery models. These models include captive centers operated by US corporations and law firms (such as those established by GE, Cisco, Oracle, DuPont and Bickel & Brewer); and third-party LPO firms that provide legal services to US corporations and law firms (for example, niche firms such as Pangea3, Qusilex, and Lexadigm that only provide legal services, and multi-service firms such as Infosys and WNS that provide legal services in addition to other BPO offerings). Variations of these models will emerge as the Indian LPO industry matures and evolves to better service its customers.

Each of the two LPO models has specific advantages and risks that must be evaluated relative to a particular LPO strategy. LPO customers should be prepared to adopt different delivery models, taking into account numerous variables such as the nature and scope of the activities to be offshored; previous offshoring experience; a qualitative due-diligence review of potential providers' work; issues regarding security and control of confidential or privileged information; risk tolerance; and tax considerations and budgetary constraints.

Clearly, LPO can present a viable alternative to companies seeking to reduce their legal costs. Successful LPO implementation, however, demands thorough consideration and careful accounting of the engagement's circumstances and needs. A company considering an LPO must objectively evaluate the potential initiative's unique gating issues, especially those relating to its specific value proposition, the generally applicable risks of any LPO, the offshore location and the provider involved, and the type of LPO model best suited to the customer's needs.