

In-House or Outsourced? The Future of Corporate Counsel

With more multinationals keen to cut in-house legal costs, corporate counsel may well be the next victims of India's offshoring juggernaut. However, experts agree that a number of major obstacles will have to be addressed before such outsourcing becomes widespread. By **George W. Russell**.

When Philip Mathew works on a major case, his clients are likely to be sleeping soundly thousands of kilometres away in America. The Kochi-based head of Philip's & Co is just one of dozens of lawyers in firms across India labouring to ensure that US company executives arrive at work to find answers to legal problems emailed or couriered to their desks.

However, multinational corporations are slowly discovering that India has more advantages than just time zones. The country's abundance of educated English-speaking (and modestly paid) lawyers familiar with common law is beginning to attract the attention of foreign companies seeking to reduce in-house legal costs.

"Corporate counsel are now aware that options exist for them to lower the cost of legal operations," says Sumeet Nath, vice-president of business development at New York-based Lawwave, one of several legal processing outsourcing (LPO) providers that hire Indian lawyers to work for mainly US companies.

While Indian lawyers and, more recently, LPOs, have long serviced foreign law firms, few have catered to corporate legal departments. That changed in 2001, when General Electric (GE) became the first foreign conglomerate to offshore its in-house legal work to India. Its GE Plastics unit hired a lawyer to work in Gurgaon, outside Delhi, to write and review contracts with vendors. GE executives say the India team saved the company US\$500,000 in 2001 and US\$700,000 in 2002. Another unit, GE Consumer Finance, also used an Indian legal team.

Although GE's offshoring experiment came to an end in 2003, Janine Dascenzo, the company's US managing

counsel for legal operations, said the experience was a success and that GE would "continue to look for appropriate opportunities to use outsourcing to India". Meanwhile, Microsoft has outsourced patent work to attorneys in Bangalore, while the in-house legal department at American Express has also teamed up with Indian lawyers.

Most recently, investment bank Morgan Stanley decided to offshore some of its legal operations to India. "We have outsourced the checking of documents for compliance with various requirements, such as netting [a technique used in aggregating financial settlements]," says Greg Terry, Morgan Stanley's Asia-Pacific managing director and general counsel in Singapore.

Offshoring: a new trend?

Both Indian and foreign experts caution that corporate legal operations will not be moving wholesale from New York to New Delhi anytime soon. "Indian lawyers need to have more exposure to US and international litigation," says B.C. Thiruvengadam, a partner in Bangalore firm Thiru & Thiru, which has carried out patent work that has been offshored by US law firms since 1996.

Indeed, many corporate counsel doubt that offshore lawyers can fit the bill when it comes to replicating in-house work. "There are a number of tasks that outside counsel, wherever they are located, can't really take on, usually either due to a lack of understanding of the client's business and the people involved, or an inability to do the work on a cost-effective basis," says Michael J. Scown, Hong Kong-based regional counsel for Intel Capital, the US chipmaker's strategic investment unit.



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David Graham, Asia-Pacific general counsel at UBS, points to the difficulties of working with a third jurisdiction. “There may be some functions relating to, for example, monitoring and surveillance, and registrations, which could be performed on an outsourced basis,” he says. “However, I do not think that the current trend is to outsource activities such as this to India or elsewhere, but to ‘hub’ them in-house in the office where the majority of the compliance personnel exist in a particular region.”

Other corporations see no need to offshore in-house legal work. “I do not anticipate any impact in the near or medium term [from outsourcing],” says Kenneth Ng, head of legal and compliance at HSBC in Hong Kong.

More crucially, there are a number of regulatory obstacles to offshoring further up the value chain, at least in the US “I do think offshoring has potential but in any kind of outsourcing there are issues,” observes Neil Hirshman, a partner at Kirkland & Ellis in Chicago and a leading authority on outsourcing. “It is too early to tell the extent to which some of these risks may be overwhelming for at least some companies and firms looking to outsource legal services.”

Hirshman cites worries over issues related to confidential information and attorney-client privilege. “A number of people have expressed concern that if someone who’s not a part of your company or law firm, particularly a non-lawyer, has access to certain types of information, that it not only could be very difficult to protect the confidentiality of that information but that there could be a waiver of the attorney-client privilege. It remains to be seen if that will be the case,” he says.

Despite such concerns, LPOs say Indian lawyers are already working on a variety of tasks for in-house law departments. Intellevate, another LPO, says it provides paralegal, docketing,

technical research, proofreading and bookkeeping functions for the legal departments of two Fortune 100 companies that executives decline to name. Some LPOs operate on the fringes of legal services - Seaview Support Systems, in Thiruvananthapuram, processes witness statements for the US-based Allstate Insurance - while others are trying to move up the value chain to more complex tasks.

The prospect of higher-value work has fuelled a surge in the number of Indian firms eager to take on corporate outsourcing. Larger firms, such as the Delhi-headquartered Kochhar & Co, have created specialized outsourcing departments. In Kochi, where Mathew undertakes offshored legal work for several US companies from his small partnership, the boom has yet to begin. “The Indian legal market is not fully exploited by the overseas law firms to their advantage,” he says. “We find that the yearly increase in out-services is only 15%, which is not commensurate with its potential.”

However, there is little hard data available to quantify the legal offshoring industry. According to figures obtained from LPOs and consultants, Indian lawyers’ billings to US firms for in-house work ranged from US\$5 million to US\$15 million in 2004. A study by the Indian outsourcing industry group Nasscom and Evalueserve, another LPO, predicts that revenue from corporate paralegal services alone could reach US\$300 million by 2010.

The trend is, admittedly, a slowly gestating one. In 2004, the Washington-based Association of Corporate Counsel (ACC) conducted a survey of 167 US chief legal officers and found that only 1.8% of respondents said they were offshoring work. “Another 8% of respondents expressed an interest in offshoring in the future,” notes Ronald W. Peppe II, the ACC’s vice-president of law and technology and a former general counsel to Quebec City-based Canam Steel Corp.

Ram Vasudevan, chief executive officer (CEO) of QuisLex, a Mumbai LPO, acknowledges that in-house offshoring is “very much in the early stages,” but he predicts that “within a couple of years, one or two other big corporations will join”. That, he concludes, could have a powerful snowballing effect on corporate America.

Some US corporate counsel do acknowledge the inevitability of offshoring. "Although outsourcing is not a new concept, where I believe the trend lies is that [previously] US law firms and lawyers did not have to compete as aggressively against lawyers and legal service providers from other nations to get the work," says Veta Richardson, executive director of the Minority Corporate Counsel Association in Washington. "These days, the world is truly global, and talented multinationals stand more readily capable of serving corporate clients than ever before."

Offshoring also appeals to markets other than America. The Mumbai-based ALMT Legal was established in 2003 to provide research, document review and drafting for major British companies. Meanwhile, Australian companies are also negotiating with Indian outsourcing providers. "I understand that discussions have taken place with some of the bigger organizations," says Peter Turner, CEO and general counsel at the Australian Corporate Lawyers Association. "I can see no reason why such services would not work in the in-house context."

Indeed, India's legal outsourcing providers are upbeat about the future. "We are definitely seeing an increased tendency by corporate legal departments to use third-party service providers," says Jason Brennan, director of legal services for OfficeTiger, a New York-based offshore services provider with operations in India. "Corporations are being forced to streamline operations and cut costs in order to maintain profitability." Another LPO, Lexadigm Solutions, based in Grand Rapids, Michigan, expects to double its attorney roster at its office in Gurgaon to 14 by the end of 2005.



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Even some US investors are taking a bullish view of offshore corporate legal services suppliers. "We're certainly looking at this from an investment standpoint," says Tej Mariyappa, a Los Angeles-based venture capitalist. Mariyappa, who is opening a Bangalore office this year, says he expects corporate LPOs to be making significant returns within three years.

A supplementary role

LPO providers point out that their firms seek to supplement, not supplant, the functions of in-house counsel. "Not only would offshoring free up corporate counsel to focus on core high-end strategic tasks, it would also result in a unique partnership between in-house legal counsel and the offshore unit," predicts Shamnad Basheer, marketing director at Delhi-based LPO Verist Legal Research and a consultant at law firm Anand and Anand. "The new relationship would be a symbiotic one, with corporate counsel assuming more of a managerial role over the tasks performed by the offshore unit."

Critics, however, say that Indian lawyers can fulfil only the functions of American and British paralegals and very junior associates. Other observers have even harsher verdicts. "I see it as largely an issue of substituting offshore for domestic clerical work; at the most, work done by summer law students," says Rob Hyndman, a former general counsel to Hotline Communications and now head of Hyndman Law, a Toronto technology practice.

The offshore providers argue that such criticism misses the point. "Within a team of lawyers in a legal department or law firm in the UK or US, many tasks might be performed by paralegals, but in India we use highly qualified and fully trained lawyers," points out Matthew Banks, CEO of ALMT Legal. "This can produce a better quality and consistency of work."

OfficeTiger also sees no limit to the value that Indian legal personnel can provide. "In the beginning, most of the work that a client outsources will be relatively low-value work because they first need to become comfortable with the process and the



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quality of the product,” says Brennan. “As this comfort level increases, clients have a natural tendency to test your capabilities on higher-value work.”

A few providers are already targeting what they consider the high-end sector. Rocky Dhir, who founded Dallas-based Atlas Legal Research, says his company has been carrying out what he calls ‘legal rocket science’ since 2001. “Our India team does the type of work that highly placed attorneys at top law firms would do,” he says. “These tasks include legal research on complex cases, drafting legal memos to be used by lawyers and corporate legal departments, and drafting legal briefs that often appear before judges in the US.”

Lexadigm founder Puneet Mohey concurs, but cautions that India will take time to develop its value-added offshoring business. “The supply for high-end legal work is growing slowly because training Indian attorneys to perform such tasks can be time-consuming and costly,” he says.

Political issues

Nevertheless, offshoring remains a political hot potato, leading to an often-secretive culture. Indian outsourcing firms are wary of revealing their corporate clients, while US firms are reluctant to name their Indian offshoring partners. Companies like Hewlett-Packard and Deutsche Bank will not comment on whether they offshore legal work.

Many in the industry recall the shrill debate over offshoring that developed during the 2004 US presidential election campaign. “With such emotional issues, there will always be political debate,” says Vasudevan at QuisLex. “But ultimately, I don’t think it will be an issue. If done properly it won’t result in lawyers losing jobs, it will simply make the process more efficient.”

Such political issues are likely to be eventually sidelined by an overwhelming desire to cut costs. “Clients are saying to law firms that they won’t pay US\$200 an hour for simple work,” says Ganesh Natarajan, founder of the Chicago-based LPO Mindcrest. That attitude incenses some American lawyers. “You don’t even need to outsource to India,” argues Bruce MacEwen, a former in-house counsel at Morgan Stanley in New York who now heads a strategic consultancy to law firms. “Try going about one time zone away, to



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the mid-west or southwest, for hungry low-overhead law firms.”

To be sure, domestic outsourcing has existed in the US almost as long as there have been law firms. It was given a boost in 1992 when one of America’s largest industrial corporations, E.I. du Pont de Nemours & Co. launched the DuPont Legal Model, designed to slash costs by seeking outside partners to share the work. “Strategic partnering is the model’s cornerstone,” says Thomas L. Sager, DuPont’s vice-president and assistant general counsel. But DuPont’s model remains strictly onshore.

Other countries have also benefited from American offshoring. US companies have long outsourced work to cheaper Canadian attorneys, while Accenture has an in-house team in Mauritius. General Mills sends patent work to Australia and Andrew Corp., a manufacturer of communications equipment, outsources intellectual-property documentation to New Zealand. Yet the cost savings associated with such outsourcing pale in comparison with those available in India.

Limits to growth

Some consultants see the problems associated with offshoring as more than just financial. “The limits to offshoring are illustrated by the virtual lock that top US firms have on many high-stakes outsourced matters,” notes Ron Friedmann, president of Prism Legal Consulting in Arlington, Virginia. “Smaller and regional US firms and New York offices of large UK firms typically cannot break the lock, so it is improbable that lawyers in India could. It’s often not about cost - it’s about results, reputation and risk management.”

Offshoring could also pose a long-term threat to the traditional on-the-job training system. "Traditionally, the routine jobs are given to lawyers when starting out," says Michael M. Cohen, of counsel at Nicoletti Hornig Campise & Sweeney in New York. "Firms could find that while they are saving money outsourcing, their young lawyers are not getting properly trained."

Some corporate counsel see their strengths in specialization, leaving them immune from offshoring. "The majority of legal tasks performed by our legal department could not be outsourced to India or indeed any foreign country," insists Wes Nobelius, deputy general counsel at Qantas Airways in Sydney. "Aviation legal needs are specialist in nature and more often than not require a knowledge of extremely sensitive corporate strategic information and plans," he says.

In-house lawyers in other industries agree: "I don't see any advantage for us to do such a thing," says the general counsel of a global energy corporation. "Perhaps it works for high-volume repetitive legalistic work which we don't do or need in our industry."

Recruiters say that fears over such high-volume repetitive work has kept offshoring from achieving its potential. Many Indian lawyers

would rather work on complex domestic cases than simple and dull foreign ones. "I do believe there is a justified apprehension that Indian lawyers will be and, in fact, are used primarily for low-end work," says Dhir of Atlas Legal Services, while on a recruitment trip to southern India. "Candidates feared routine mind-numbing work. They were relieved and encouraged to see the level of work we do."

Top-tier Indian law firms have largely shunned offshoring contracts. One of the nation's largest partnerships, Amarchand & Mangaldas & Suresh A. Shroff & Co, says it won't be tempted until high-value services can engage its interest. "Until now the outsourced work has been in the low- to mid-value range," says Partner V.C. Umakanth. Should that change, Amarchand Mangaldas would certainly put offshoring "under contemplation," he says.

Doubts remain over where the ceiling is placed for Indian lawyers working with corporate America. "The limit to their aspirations, however, will arrive when they bump up against the core reality of human nature that, magical as technology is, with issues of any gravity, there is no substitute for face-to-face dealings," says MacEwen in New York. "For the same reason, by the way, the outsized role of cities such as New York, London and Hong Kong is assured well down the road." **asiaLaw**