



Industry Focus LPOs: out and out June 2009 - Philip Hoult



INDUSTRY FOCUS

Attitudes among general counsel to legal process outsourcing are changing – but only gradually – as the cost of legal advice rises up the agenda.

Great things have been predicted for legal process outsourcing (LPO) over the years – it was once claimed that 80,000 US legal jobs would move to India by 2015 – but the reality has not matched the hype. With the downturn biting and businesses looking to slash costs, could it be an idea whose time has finally come?

Mixed picture

You might think so, but three recent studies produce a mixed picture. The first – a survey of 115 general counsel conducted by management consultancy Altman Weil in November 2008 – found that three-quarters of respondents were facing budget cuts. When they were asked to identify how they would deliver savings, the most frequently mentioned strategies were to bring more work in-house, reduce training and use lower-priced counsel. LPO came 13th – out of 13.

On the flipside, the finding that 12.6 per cent of companies would turn to LPO this year is still noteworthy, given that the respondents were all major corporations – two-thirds enjoyed revenues of more than US\$2 billion.

December 2008 saw the publication of a survey of 143 general counsel members of networking site Legal OnRamp. This study found equal percentages of respondents – 16 per cent – predicting that 1–6 per cent, 6–10 per cent and more than 10 per cent extra of their spend would be offshored in five years' time. Almost half predicted no change. 'Based on this data, the offshore wave is ebbing out to sea', concluded the authors.

The research has nevertheless been interpreted in some quarters as showing that US law departments will spend about US\$2 billion on LPO by 2013. Although no such figure was included in the study, one of the authors – management consultant Rees Morrison – agrees the amount 'is likely near the mark or at least plausible'.

Finally, a survey by the *Law Society Gazette* saw the vast majority of the 52 heads of legal surveyed insist that the downturn was not pushing them either into outsourcing or into getting their law firms to turn to outsourcing to cut costs. However, when asked how they thought legal offshoring would progress in the future, 23 said they thought

‘international firms will set up their own units’ and 16 thought that ‘most large corporations will offshore’.

The research is therefore inconclusive. Arguably the most that can be said is that the use of LPO will grow, just not at the pace that might have been expected in such a severe downturn and when there has been a change in emphasis away from the value of legal advice towards its pure cost.

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Bruce Macmillan
Dell EMEA

Shifting attitudes

The various studies point to continued resistance among a large swathe of general counsel, but management consultants and providers believe attitudes are shifting. ‘We are noticing that LPO, certainly in the UK, is being driven by the corporates’, says Andrew Loach, vice-president at provider CPA Global. ‘They are now dictating its use.’

Pam Woldow, principal at Altman Weil and former general counsel at the Pennsylvania Department of Insurance, points out that many global corporations – including DuPont and Microsoft – have overcome their initial reservations. She believes others will follow suit. ‘When your budget is cut and you still have to cover the same ground, you have to consider your options’, she adds. ‘It’s new and different, and general counsel are understandably concerned. But many are now getting religion.’

One major corporation that is already a supporter is Sun Microsystems. According to Connie Brenton, associate general counsel, the motivation behind introducing LPO in 2005 was a drive for efficiency. Even taking fully into account the time needed to train its provider and manage projects, Sun has made ‘substantial’ cost savings, she says.

Dell trial

A more recent convert is the EMEA legal team at Dell, which has been trialling LPO since summer 2008. ‘Cost, speed and resource are the reasons’, says Bruce Macmillan, senior legal counsel. ‘We also wanted to demonstrate to our colleagues that we are very proactive in trying to find ways of optimising our costs. That visual optic internally is an important part of it.’

The Dell trial – which is handled by an existing external adviser, Eversheds, and provider Mindcrest – has focused on largescale, standard form contracts and involves reviewing changes proposed by other parties. In time Mindcrest will outline how Dell has dealt with such points previously, suggest possible ways forward and build a precedent bank for

each clause. ‘Based on our experiences so far, I can see that it has the potential to work.’
says Macmillan.

Dell is also examining other areas where LPO could be used, such as reviews of routine advertising material – to ensure compliance with different countries’ regulations – and the administration of some of its internal legal databases.

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Tony Williams
Jomati

Advantages

While most general counsel might be attracted to LPO because of the 30–70 per cent cost savings achievable by using Indian lawyers at much lower rates, there are other advantages too, according to Brenton. For example, providers will handle efficiently ‘and with superior quality’ work that in-house lawyers in the United States or United Kingdom are unenthusiastic about.

This can increase the job satisfaction of those lawyers. ‘It takes the mundane tasks off their desks, leaving them more time to handle more interesting and challenging work’, she adds. It also frees them up to engage with the business, horizon scan and focus on prevention. There are a number of challenges that must be overcome if LPO is to deliver these benefits, however.

One early task is to identify the type and amount of work that would be appropriate to send out. Until now, LPO has mostly been used for routine, lower-level legal work such as contract and document reviews, legal research and litigation support.

Brenton argues the most appropriate project you can send out is repeatable work that you can create a process around. ‘Providers are exceptionally good at creating and following a process flow’, she says. ‘They are good at capturing metrics and using those metrics to ensure continuous improvement.’ That said, Sun has expanded its use of LPO recently to include projects that require judgment.

Macmillan at Dell is sceptical about using LPO for anything that requires a high level of briefing per activity. ‘The more nontransactional it is, the higher the investment cost in getting it briefed up in the first place and the more checking and validation you need to do to make sure you have got comfort that it’s being done properly’, he argues.

There is no doubt, however, that providers would like to secure a larger share of their clients’ legal spend and move up the value chain. ‘One of the growing trends is for LPOs to develop integrated services’, says Matthew Banks, senior vice-president for legal services at Integreon. The focus is now on offering end-to-end solutions, rather than simply handling a defined part of a project.

Woldow, who has herself successfully used LPO in the past, meanwhile warns general counsel to resist the temptation to ‘lift and shift’ a whole area of work. ‘Some general counsel phone me and say they would like to lift out their whole IP group and send all that work to India’, she says. ‘That’s going to be a disaster. You need to start in a discreet way and build your relationship with the provider, so that they acquire knowledge of the way you do things in-house.’

Choosing the right supplier

Another key task is to choose the right supplier out of the hundreds of businesses offering LPO services. Brenton recommends general counsel select a provider with a track record in legal services – they should not assume business process outsourcing providers are equally as competent in the LPO arena.

She also advises general counsel to take up references and conduct a site visit. ‘Although the top ten are all competent, secure and impressive with respect to the work product that is delivered, each has their own culture’, she says. ‘You should spend time upfront choosing a partner that will integrate well with your team and culture.’

Another consideration is whether to choose a business that has a significant onshore as well as offshore presence. Integreon – which has offices across the United States and the United Kingdom as well as in Mumbai, New Delhi and Manila – is one provider that thinks ‘dual-shoring’ is the way forward. ‘One of the trends we see in LPO is globalisation’, says Banks. ‘We feel quite strongly that there’s a global footprint needed.’

It is essential meanwhile that the company is itself ready to run the project smoothly – someone should be appointed as the primary contact, and given responsibility for managing the relationship and the time to make it work. Good communication is vital.

Other key issues to examine include: the length of the trial period; the make-up of the team the provider proposes will handle the work; and the processes and IT systems through which the work will be handled, checked for quality and delivered. General counsel will also want to check the provider’s security arrangements and insurance cover.

Many of these issues can be dealt with in a suitable service level agreement – providers’ standard contracts are now pretty comprehensive, says Woldow – and by creating clear protocols.

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Pam Woldow
Altman Weil

Great opportunity

One of the big questions is where this leaves external counsel in the United States and United Kingdom. Part of the reason why general counsel have been forced to mandate the use of LPO is that, save for some notable exceptions, most firms have shown little interest. Indeed, the reaction has largely been to view it as a major threat.

This is the wrong approach, says management consultant Tony Williams of Jomati. ‘LPO is a great opportunity for UK and US firms if they get their acts together’, he suggests, arguing that there are two significant advantages in handling outsourcing through external advisers. ‘First, you can protect legal professional privilege and secondly, you can cover the work with the existing professional indemnity cover’, he says. ‘If the Clifford Chances are taking this seriously, then other firms should too.’

Macmillan says the better firms understand that clients such as Dell are global and what they need is cost-effective global support. ‘They are going to focus on embracing this and building in well-managed BPO-type operations into their offering’, he predicts.

This will have implications for firm staffing levels, and senior management will have to consider whether it means having a smaller junior lawyer pool in their main offices or paying partners and lawyers less. But Macmillan is adamant they will have to work through this conundrum. ‘Frankly, why should I pay £200 an hour for a three-year qualified UK lawyer if the quality of what they are doing is not significantly better than a seven-year qualified lawyer in India who I am paying at £40 an hour?’

However, he believes that UK and US firms do have a role to play – particularly when it comes to spotting non-routine issues, and establishing quality control and reliability. ‘These are things that are barriers to entry for general counsel’, he says. ‘[By helping overcome them], firms can add value and make it happen.’

Loach points out that CPA is increasingly involved in joint pitches and argues that LPO should be seen as another weapon in a firm’s armoury. It will not fundamentally change traditional operating models, he says, as firms will still nurture junior lawyers – but perhaps not in such large numbers.

LPO may also allow firms to make a margin on work that previously they would have considered insufficiently profitable, and boost client relations at a difficult time. ‘If I were a law firm, I would want to be the lawyer going to my client and saying “I can help you get your problem solved more efficiently”’, Woldow says.

Confident

With or without UK or US firms’ involvement, the LPO providers have such confidence in the market that they are investing significant sums to develop their offerings. CPA, for example, is putting in US\$50 million over the next four years, and plans to increase its headcount from 600 to 2,500 over the next 18 months. Integreon meanwhile struck a £50 million, seven-year deal with UK firm Osborne Clarke in February 2009, which saw 75

business services employees transfer and establish a UK onshore centre in Bristol for the provider.

Such investment programmes demonstrate their belief that, when and if the global downturn ends, general counsel and other clients will not simply bring the work back to the United Kingdom or United States. This seems a natural assumption to make. After all, if they can deliver the requisite quality, would you go back to paying the old rates?



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