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## **SENDING CONTRACTS OFFSHORE**

Certain types of work suit a long-distance relationship better than others.

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When, if ever, does it make sense to have your contract-related legal services performed overseas?

It's no secret that company law departments are increasingly being held to the same standards of cost-effectiveness as other business departments. (For example, that was one of the themes of a speech that Mark Chandler, general counsel of Cisco Systems, recently gave at the Northwestern School of Law's Annual Securities Regulation Institute.) As a result, law departments are being expected to do more with static or shrinking budgets.

### ***Outsourcing and Offshoring***

Any business that's under pressure to perform is likely to ask itself whether it could save money (or at least avoid management distractions) yet maintain or even increase quality by getting someone else to perform some of its non-core functions—hence “outsourcing.” The shrinking world ushered in by developments in information technology have given rise to the variant “offshoring,” in which the work is performed outside the United States in locations that offer compelling cost advantages.

Both production and services can be offshored. Offshoring of services initially consisted only of what is referred to as “business process outsourcing” (BPO), involving outsourcing of business functions that involve high-volume, labor-intensive work that could be performed in a controlled environment. That's why your calls to Dell or American Express are likely to be answered by someone in India. Human resources, accounting, and payroll are other popular candidates for BPO.

Given the success of BPO, the BPO industry and its clients have turned to offshoring business processes that require specialized expertise, such as insurance underwriting, financial analysis, investment research, and, most importantly for present purposes, legal services. This is known as “knowledge process outsourcing” (KPO).

One can readily find enthusiastic estimates of the prospects for KPO of legal services. For example, in 2005 the National Association of Software and Service Companies (NASSCOM), an Indian trade group, estimated that about \$60 to \$80 million of U.S.-based legal work is outsourced annually and that \$3 to \$4 billion of legal services are outsourcable.

### ***Potential Benefits***

The potential benefits of offshoring are clear. Litigation-related expenses generally represent the largest expense item for corporate legal departments, but contract-related work nevertheless represents a significant commitment. It's no mystery that if your contract work is performed in a country where costs—particularly labor costs—are lower than they are in the U.S., you could conceivably have that work performed much more cheaply. But other potential benefits present themselves. If an organization is dedicated to performing your high-volume, lower-complexity contract work, it might be able to do so more efficiently and with greater consistency than you could, resulting in increased cost savings and faster turnaround times. And the morale of your lawyers could conceivably improve if they were freed of lower-value, repetitive tasks and were able to focus on higher-value ones.

### ***Captives and Vendors***

To get a better understanding of how this plays out in practice, one needs to consider how the work is actually performed. There are two basic models.

You could form a “captive” offshore affiliate to perform legal services. GE blazed this trail in 2001 by setting up an office in India and staffing it with a team of Indian lawyers charged with drafting and reviewing contracts. Alternatively, you could have legal services performed by an independent vendor.

To get a sense of a captive offshore organization that handles contract-related work, I spoke with Craig Guarente, vice-president of global contract services at Oracle USA, Inc. He described to me how two offshore centers handle Oracle's contracts. One, a recently established center in Romania, handles the more routine contracts of Oracle's operations in Asia, the Middle East, and Europe. Oracle chose to locate this center in Romania based on Oracle's good experience with its other Romania operations. They decided, however, that for purposes of handling contracts for Oracle's operations in the Americas, the time-zone difference with Romania was too inconvenient. This led Oracle to establish another center, in Costa Rica, to handle those contracts. Most work at both centers is administrative in nature and is handled by non-lawyers.

In addition to reducing its costs, Oracle wants to achieve greater consistency and is looking to free its contract managers from repetitive, low-value contract work. To increase efficiency, Oracle has implemented a document-assembly system that—in technical jargon—is integrated with the front office and the back office. In other words, the sales force and others involved with a particular contract don't have to compile, maintain, and consult separate databases, with all the duplication and possibility of error that that entails. Instead, the information is input once and is accessible company-wide.

### ***Pangea3 and UnitedLex***

As for offshore KPO vendors, there are now quite a few. I spoke with two of them, Pangea3 and UnitedLex.

It's a testament to the novelty of the legal-services KPO industry that Pangea3 was formed in 2004 and UnitedLex even more recently. Both companies serve substantial clients. Their

operations share certain similarities: Each has offices in the U.S. and India; each has a management team composed of U.S. and Indian executives; and each has U.S. as well as Indian lawyers on its staff. David Perla, co-CEO of Pangea3, and Dan Reed, CEO of UnitedLex, both say that in order to sell and perform their services effectively, they need to demonstrate to their clients that they understand the needs of the law departments of U.S. companies.

### ***India as KPO Destination***

One thing to bear in mind is that for purposes of vendors of legal-services KPO, “offshore” in large measure means India. The reasons why India is such a popular destination for both BPO and KPO generally also make it attractive for legal-services KPO: India has the world’s fourth-largest economy, the second-largest population, and the second-largest pool of skilled English-speaking workers; English is the language of education; and India offers tax and financial incentives.

Some additional factors make India a particularly attractive destination for legal-services KPO. It has an independent judicial system that closely resembles the British common-law system. And according to NASSCOM, India’s law schools churn out over 200,000 law school graduates a year who are paid starting salaries equal to 20% to 30% of the salaries paid their U.S. counterparts. (Perla says that as regards Pangea3, 10% would be a more accurate figure.)

But not everyone is convinced that India is the premier KPO destination. Oracle, for example, considered India before opting for Romania.

### ***Range of Services***

Pangea3 lumps its contract-related work together with its work related to abstracting documents and assisting companies in moving data from one system to another. Together, those activities account for one-third of Pangea3’s business. It also performs patent-related and litigation-related services.

As for UnitedLex, contract-related work currently constitutes about 60% of its business, although Reed expects that percentage to decrease as UnitedLex provides more litigation-related services.

Perla characterizes Pangea3’s work as—referring to the contract life-cycle—“nearly cradle to grave.” The “nearly” serves to acknowledge that they don’t put together, or negotiate, the terms of a deal. But they do draft contracts from term sheets. They also revise template contracts to reflect new transactions, and they monitor contracts to ensure that a client keeps track of deadlines.

UnitedLex performs a similar range of services. They had previously limited themselves to revising template contracts to reflect new transactions, but due to client demand now they too draft contracts from term sheets. UnitedLex lawyers also “negotiate” contracts by following a script developed with the client. (They refer any unresolved issues to the client.)

## ***Range of Clients***

Pangea3 performs contract-related services for a broad range of clients. At the smaller end of the spectrum, some of their clients have one-lawyer law department, but Perla says that they are able to provide services more cost-effectively to clients with at least four or five busy lawyers. Its bigger clients include Fortune 50 companies.

As for UnitedLex, it focuses on larger clients; it too has Fortune 50 clients. Like Perla, Reed says that UnitedLex can offer greater efficiencies at higher volumes. He says that UnitedLex is best able to serve a given client if a team of at least four to five, and ideally ten, UnitedLex lawyers is kept busy doing its work. That level of workload might involve, for example, handling every day five or six equipment lease agreements for one client.

## ***Advantages***

In terms of what companies such as Pangea3 and UnitedLex can offer their clients, cost savings obviously loom large. But both companies don't simply offer an India-based version of business as usual. Instead, they emphasize their process-based approach. Reed and Perla each described to me how his company has systems in place to ensure optimal workflow and has invested in proprietary systems to handle tasks such as contract monitoring. As a result, the economies they offer aren't driven only by the lower salaries they pay their Indian lawyers. For example, UnitedLex tells its clients that they can expect that in addition to up-front savings of 25% to 40%, their costs will fall a further 5% per year. Reed is confident that UnitedLex's focus on technology and process will allow it to implement additional efficiencies on an ongoing basis.

Besides cost savings, the two companies also offer greater consistency and faster turn-around times. Given the different time zones, you could conceivably send a particular task to India at the end of one day in the U.S. and return in the morning to find the completed work waiting for you. But both Reed and Perla caution against anyone expecting 24-hour service: Indian lawyers, like lawyers anywhere, are not inclined to work the graveyard shift.

Like Guarente of Oracle, Reed and Perla both note that the morale of a company's contract personnel will improve if they are freed of lower-value, repetitive tasks.

## ***Possible Concerns***

The notion of having legal services performed in India might raise concerns in the mind of any general counsel. One such concern might relate to the quality of the lawyers who'd be doing the work. Both Perla and Reed say they've been very impressed by the caliber of the lawyers they've been able to recruit. I have no reason to doubt them: the Indian workforce has apparently proved its worth in a broad range of industries.

Being an effective lawyer involves a range of qualities, such as creativity and determination, that can be difficult to quantify, so retaining lawyers always involves a leap into the unknown. Given that UnitedLex's and Pangea3's lawyers would seem to operate in an environment where detailed parameters are set, performance is tracked, and client feedback is solicited at every step, one could reasonably conclude that risks relating to the human element are less of a factor than they would be in retaining a U.S. law firm.

Another concern is security. Each of UnitedLex and Pangea3 is quick to cite security measures it has in place. UnitedLex mentioned, among other things, the absence of hard drives in computers, so as to prevent unauthorized copying of client information. Pangea3 mentioned, among other things, its use of security guards and biometric locks. To help ensure confidentiality, each company organizes its personnel into teams dedicated to serving a single client. Perla suggested to me that the security measures implemented by Pangea3 are by any measure more rigorous than those of many U.S. law firms.

Offshoring is a sensitive issue, as it's generally assumed that it results in job losses in the U.S. If you hire a legal-services KPO vendor, your U.S. legal staff may well wonder how secure their jobs are. You might want to tread carefully.

### ***Whether to Use a Captive or a Vendor***

What factors come into play in deciding whether you should use a captive or a vendor?

The main advantage to using a captive is that you retain day-to-day control over your work. To use Oracle as an example, Guarente suggests that the work performed by Oracle's offshore centers is too vital to hand over to a vendor. But Reed of UnitedLex points out that it's now routine for major companies to outsource even vital parts of their operations if the benefits are sufficiently compelling.

But operating a captive can present challenges. A captive performs an ancillary rather than core function of its parent and so can end up being neglected, to the detriment of the quality of services it provides. And a captive might not have access to the sorts of economies of scale available to a vendor that performs services for numerous clients. As a result, a vendor might be able to perform the captive's work more efficiently and cheaply, and it might be able to offer higher compensation and thereby attract better-qualified employees.

It's difficult to assess what proportion of legal-services KPO is performed by captives and what proportion is performed by vendors. But the fact that UnitedLex and Pangea3 both handle a significant amount of the contract work for major companies indicates that retaining a vendor is squarely in the mainstream.

Ultimately, which decision a company makes may depend on factors particular to its business. For example, its experience operating in Romania made it easier for Oracle to elect to establish a KPO operation there.

### ***Right Mix for Offshoring***

So here's my take on offshoring for purposes of contract-related work: I wouldn't want to treat an offshore KPO organization, whether a captive or a vendor, as an offshore law firm. For example, having an offshoring organization draft a template contract wouldn't play to its strengths, as offshoring organizations would most likely be subject to the problems of quality and process that generally arise when law firms serve this function.

Instead, offshoring seems best suited to high-volume work of limited complexity. Such work can readily be put on the sort of legal-services production-line that the best offshoring vendors excel

at implementing. And such work can also take advantage of efficiencies offered by developments in information technology. One example is the contract-monitoring software that both Pangea3 and UnitedLex have developed. And any company that elects to have its contracts drafted using document-assembly software might want to consider enhancing the efficiencies by having the process managed offshore. Oracle, for one, has implemented a mix of offshoring and document assembly.

Offshoring can be a viable option for companies looking to do their contract work more efficiently and at lower cost. But deciding whether it's viable for your company, whether you should establish a captive or use a vendor, and, if the latter, which vendor you should use would all require that you examine closely the nature and scale of the legal services involved, the offshore capabilities, and what concerns are most important to your company.

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