

Opening The Doors Of Indian Boundaries For Foreign Law Firms: Co-relation With Legal Outsourcing



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Speaker



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Srinivas Kotni is the moving force behind the legal firm Corporate Lexport. Srinivas established the law firm in the year 2000. Srinivas has been handling a variety of legal, corporate and taxation issues for close to two decades. Srinivas has played the roles of both a litigator and advisor to many corporate sector entities on varied legal matters. Srinivas regularly appears before the Supreme Court of India, various High Courts, Tribunals, Quasi Judicial forums, Arbitral Tribunals, Adjudicating Authorities, Commissions etc. Srinivas Kotni has addressed many professional conferences and seminars on emerging legal issues. Srinivas is often quoted by the media on various legal issues.

INDIA – A LEGAL OVERVIEW

QUALIFICATIONS FOR PRACTICING LAW IN INDIA

- ❑ The Advocates Act, 1961 specifies that only 'advocates' as defined under the Act are entitled to practice the profession of law in India.
- ❑ An advocate is defined as a person who enters into the rolls of a State Bar Council under the provisions of the Act.

QUALIFICATIONS FOR PRACTICING LAW IN INDIA (contd...)

- ❑ In order to enroll with a State Bar, a person should be;
 - (i) a citizen of India;
 - (i) He/she should have completed 21 years of age; and
 - (i) He/she should have obtained a degree in law from any University in India recognized by the Bar Council of India (BCI) or such other foreign qualification in law as is recognized by the BCI to be an advocate.

QUALIFICATIONS FOR PRACTICING LAW IN INDIA (Contd...)

- ❑ Requirement of qualifying All India Bar exam introduced in the year 2010
 - (i) An advocate enrolled under section 24 of the Advocates Act, 1961 shall not be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such advocate successfully passes the All India Bar Examination conducted by the Bar Council of India;
 - (i) Bar Examination shall be mandatory for all law students graduating from academic year 2009-2010 onwards and enrolled as advocates under Section 24 of the Advocates Act, 1961

CONCEPT OF 'FOREIGN LAWYERS'

PRINCIPLE OF RECIPROCITY

- ❑ The Act also lays certain provisions on reciprocity:
 - ❑ Subject to the provisions of the Act, a national of any other country may be enrolled as an advocate with the State Bar Council, if duly qualified Indian citizens are permitted to practice law in that other country.
 - ❑ In case any country restricts Indian citizens from practicing the profession of law or the Indian citizens are prone to unfair discrimination in that country, then no person or national of that country shall be entitled to practice law in India.

CURRENT LEGAL POSITION

- ❑ Interim Order of the Supreme Court of India of 4th July 2012 in *Bar Council of India v. A.K. Balaji* [S.L.P. (CIVIL) NOS. 17150-17154 OF 2012]
 - ❑ Reserve Bank of India should not allow foreign law firms to open liaison offices in India
 - ❑ 'Practice of law' comprises of consultation, legal drafting, litigious and non-litigious matters
 - ❑ To practice non-litigious matters, foreign law firms to be bound by the provisions of the Advocates Act, 1961

CURRENT LEGAL POSITION (contd...)

- ❑ The Bar Council of India, the statutory body regulating the legal profession in India, has decided not to permit foreign lawyers into India subject to:
 - ❑ a more detailed and rational scrutiny in the light of opinions, and
 - ❑ points of view of different stakeholders
- ❑ Several issues related to the presence of foreign lawyers and law firms in India require clarity and hopefully the Supreme Court's final ruling will ponder on them

ENTRY OF FOREIGN LAW FIRMS IN INDIA: COMMERCIAL RESTRICTIONS

- ❑ FDI in legal services is not permitted
- ❑ International law firms are not allowed to establish offices in India
- ❑ Indian advocates are not permitted to enter into profit sharing arrangements with the persons other than Indian advocates

ENTRY OF FOREIGN LAW FIRMS IN INDIA: PROFESSIONAL RESTRICTIONS

- ❑ Advocates Act 1961 does not permit foreign law firms to operate in India
- ❑ Foreign Law firms are prohibited from giving any legal advice that could constitute practicing of Indian law under the Advocates Act 1961
- ❑ Foreign Law firms are barred from practicing domestic law due to barriers such as qualification requirements

INDIAN LAWYERS / LAW FIRMS: DOMESTIC RESTRICTIONS

- ❑ Partnerships are the only permitted model of practice for law firms in India
- ❑ Further modes of practice such as limited liability partnerships or Limited Liability Corporation are not yet permitted by the Bar Council of India despite the new Limited Liability Partnership Act 2008
- ❑ Limitation on the number of partners to 20 which limits the growth and size of Indian law firms. The new LLP Act allows for unlimited partners but is not yet applicable to law firms
- ❑ Ban on advertising, publicity through entries in law directories

INDIAN LAWYERS / LAW FIRMS: DOMESTIC RESTRICTIONS (contd...)

- ❑ Practice of law is treated as a profession and not an industry resulting in lack of finance for lawyers
- ❑ Multidisciplinary practicing firms not allowed
- ❑ Ban on contingent/success fees

WORLD TRADE ORGANISATION AND GENERAL AGREEMENT ON TRADE IN SERVICES

WTO PERSPECTIVE

- ❑ India is a member of the World Trade Organization and needs to fulfill its obligations under the General Agreement on Trade in Services (GATS) which includes a mandate to remove barriers to trade in legal services
- ❑ Indian government is unwilling to lose regulatory control over its legal services
- ❑ There is resistance from within the legal fraternity including large law firms on opening up the sector
- ❑ GATS could limit the scope of national policy as WTO has the powers to impose trade sanctions in case of non-compliance

MODES OF SUPPLY OF LEGAL SERVICES (COVERED BY GATS)

- ❑ **Cross-border supply**- Services rendered from territory of one country to that of another without movement of the service provider, e.g. legal plans sent by internet or wire or satellite, electronically provided legal advice, etc.
- ❑ **Consumption abroad**- Citizens of one country travel abroad to visit the supplier in order to consume a service (e.g. a foreigner comes to India to consume the services of a Indian lawyer or a law firm).
- ❑ **Movement of a natural person**- the temporary stay of natural persons travelling as individual professionals or as employees/partners of a foreign established law firm to do business.

MODES OF SUPPLY OF LEGAL SERVICES (COVERED BY GATS) (contd...)

- ❑ **Commercial presence** - foreign suppliers of service establish an operation in their market - any type of business or professional establishment, including branches and representative offices (e.g. law firm etc.)

TYPES OF LEGAL SERVICES (GATS SCHEDULES)

- Host country law (advisory/representation)
- Home country law and/or third country law (advisory/representation)
- International law (advisory/representation)
- Other legal documentation, certification, advisory, and information services.

MATRIX OF POSSIBILITIES & RESTRICTIONS UNDER INDIAN LAW

| Mode of supply of legal services (GATS) | Types of legal services (GATS schedules) | | |
|-----------------------------------------|------------------------------------------------------------------------------|---------------|---------------------|
| Cross-border Supply | Host country law | Advisory - NA | Representation - NA |
| | Home country law and/ or third country law | Advisory - A | Representation - A |
| | International law | Advisory - A | Representation - A |
| | Other legal documentation, certification, advisory, and information services | A | |
| Consumption Abroad | Host country law | Advisory - A | Representation - A |
| | Home country law and/or third country law | Advisory - A | Representation - A |
| | International law | Advisory - A | Representation - A |
| | Other legal documentation, certification, advisory, and information services | A | |

[A – ALLOWED; NA – NOT ALLOWED]

MATRIX OF POSSIBILITIES & RESTRICTIONS UNDER INDIAN LAW (contd...)

| | | | |
|-------------------------------|------------------------------------------------------------------------------|---------------|---------------------|
| Movement of a natural persons | Host country law | Advisory - NA | Representation - NA |
| | Home country law and/or third country law | Advisory - A | Representation - NA |
| | International law | Advisory - A | Representation - NA |
| | Other legal documentation, certification, advisory, and information services | NA | |
| Commercial presence | Host country law | Advisory - NA | Representation - NA |
| | Home country law and/or third country law | Advisory - NA | Representation - NA |
| | International law | Advisory - NA | Representation - NA |
| | Other legal documentation, certification, advisory, and information services | NA | |

[A – ALLOWED; NA – NOT ALLOWED]

A VIEW FROM WITHIN

PROS AND CONS FOR THE INDIAN LEGAL PROFESSION

Pros –

- ❑ The Indian legal profession will have the following advantages:
 - ❑ Increase in competency, professionalism and expertise among the Indian lawyers/law firms
 - ❑ Improvement of the quality of the legal services
 - ❑ Increase in the employment avenues for the Indian lawyers
 - ❑ Impressive pay package and better work conditions/culture

PROS AND CONS FOR THE INDIAN LEGAL PROFESSION (contd...)

- ❑ Increase in the internship opportunities for the students
- ❑ Many corporate lawyers already welcome the idea of international law firms being allowed in
- ❑ Indian lawyers and law firms are already making their presence felt in international forums like WTO and foreign arbitrations

PROS AND CONS FOR THE INDIAN LEGAL PROFESSION (contd...)

Cons -

- ❑ Domestic restrictions have stunted development of legal profession in India
- ❑ Ability to compete effectively against foreign firms has been hindered due to the current restrictions
- ❑ Only a few firms in India having the expertise to handle commercial work for multinationals
- ❑ Indian legal education still needs to adapt to a global governance architecture
- ❑ Lawyers will have to acquire interdisciplinary legal learning and knowledge in the areas of comparative law, intellectual property, corporate governance, human rights, international trade and alternative dispute resolution.

LEGAL PROCESS OUTSOURCING (LPO)

LPO – AN OVERVIEW

- ❑ The term LPO is not defined under any statute in force in India
- ❑ In general parlance it refers to the practice of a law firm or any company/body obtaining legal support services from an outside law firm or legal support services company
- ❑ LPO provider is based in another country and practices law therein
- ❑ This practice entails, outsourcing any activity except where face to face conversation or personal appearance is required and necessary

LPO – AN OVERVIEW (contd...)

- ❑ Services provided by an LPO include but are not limited to the following:
 - ❑ Traditional Legal Activities
 - ❑ Litigation Services
 - ❑ Intellectual Property Services
 - ❑ Corporate Services
 - ❑ Compliance Services
 - ❑ Services Procurement
 - ❑ Employment Services
 - ❑ Property Service

LPO – AN OVERVIEW (contd...)

- ❑ Supporting Services
 - ❑ Resourcing
 - ❑ Consulting Services
 - ❑ Bundled services

OFFSHORING OPPORTUNITY: THE INDIA STORY

- ❑ India is emerging as a most favored destination for Legal Outsourcing
- ❑ The Indian LPO market comprised of more than 100 LPOs in 2010
- ❑ These LPO's exported legal services worth \$640 million in 2010 employing more than one million lawyers
- ❑ India's LPO market is expected to grow to \$4 billion by 2015.

MAJOR FACTORS FAVORING THE INDIAN LPO

- ❑ India is a major emerging economy and a major player in global governance and most parts of Europe
- ❑ Indian legal system is set on the common law legal system which is the same as in UK, US and Australia and other Commonwealth countries
- ❑ India has a significant source of qualified, English speaking lawyers
- ❑ Increasing numbers of foreign educated lawyers
- ❑ India has emerged from a successful experience of BPO and KPO services

LPO – THE FUTURE

LPO – A MARKET WATCH

- ❑ Like ITO and BPO, the initial driver of LPO has been lower costs available through labor arbitrage. If LPO follows a path similar to ITO and BPO growth, the LPO market will move up the value chain
- ❑ Client organizations will increasingly source work that has medium complexity and medium criticality (“red chip” work) to major law firms, to offshore LPO providers via major law firms, or to offshore LPO providers directly
- ❑ Client organizations will continue to use their own in-house counsel (insourcing) for high-value work that is highly complex and highly critical (“blue chip” work), but some clients will engage in strategic partnerships with major law firms or LPO providers to perform such work

LPO – A MARKET WATCH (contd...)

- ❑ Forward-looking General Counsels are starting to build ‘legal ecosystems’ drawing in law firms, LPO providers and technology suppliers to create an efficient and responsive organization
- ❑ The law firms are having to adjust their own business models to fit in with these new frameworks, developing their own unique relationships with service providers

[Source: “*The Outsourcing Unit Working Research Paper Series: Legal Process Outsourcing: LPO Provider Landscape*” by Professor Mary Lacity, University of Missouri-St. Louis & Professor Leslie Willcocks, The Outsourcing Unit, The London School of Economics, & Orbys (2012)]

LEGAL PROCESS OUTSOURCING VS LEGAL SERVICES OUTSOURCING

The Legal Services Outsourcing (LSO) is a new legal services model which envisages shift from the tactical outsourcing of one or more legal processes by an LPO, to long-term outsourcing of a full end-to-end legal service, with risk passed to the legal firm

LEGAL PROCESS OUTSOURCING VS LEGAL SERVICES OUTSOURCING (CONTD...)

| Legal Process Outsourcing (LPO) | Legal Services Outsourcing (LSO) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">✓ Outsourcing of individual legal or paralegal processes or activities✓ Suited to highly transactional or standardised processes✓ Relatively small contracts✓ Primary drivers are usually labour arbitrage and process efficiency | <ul style="list-style-type: none">✓ Outsourcing of a full legal end-to-end process✓ Involves significant consolidation from ad-hoc relationships with multiple law firms into a strategic relationship with one✓ Covers all legal work for a particular organization or practice area |

LEGAL PROCESS OUTSOURCING VS LEGAL SERVICES OUTSOURCING (CONTD...)

| Legal Process Outsourcing (LPO) | Legal Services Outsourcing (LSO) |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">✓ Typically offshore mostly India at present✓ Ad-hoc project or long-term relationship✓ Risk remains with the client | <ul style="list-style-type: none">✓ Based on the same principles as outsourcing of other centralised functions such as IT, F&A, HR✓ Guaranteed work volumes in return for significant unit cost reductions✓ May involve fresh outsourcing and transfer of staff✓ Risk is passed to the legal firm. |

[Source: <http://www.orbys.com/2011/09/forget-lpo-the-future-is-lso/>]

TAPPING INTO THE LPO SPACE FOR QUALITY WORK

- ❑ The LPO experience in India has matured fostering trust, quality and better strategies and is ready to move up the value chain for providing end-to-end legal solutions.
- ❑ Strategic partnerships between organizations/law firms in source countries and service providers in India would be the order of the day on similar terms of incentives and shared risks which will fill the uncertainty gap concerning entry of foreign law firms in India. This has already occurred in the IT, Finance and HR areas.
- ❑ Indian law firms may even enter into a subcontracting model that places management oversight with a major law firm in the source country.

TAPPING INTO THE LPO SPACE FOR QUALITY WORK (contd...)

- ❑ Indian law firms already have the capabilities to manage offshore LPO providers and could easily improve upon it by engaging with multiple providers.
- ❑ Indian law firms / lawyers have already shown their prowess in international forums, like WTO and international arbitrations.
- ❑ Ideal compromise would be to allow foreign law firms into India to practice both international law and Indian law through qualified Indian lawyers.

Questions From the Audiences



For queries, email at info@connect-goal.com, +1-(562)-366-4706, Website: www.connect-goal.com

Webinar: "Expert Panel Discussion: Outsourcing and Offshoring - Trends and Strategies for 2013"

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Kagu9, Inc., USA



Tanya Vasilevs
Senior Legal Manager,
Cisco Systems, Inc., USA



Paul Graham
Partner,
Dundas & Wilson LLP, UK



Peter Lowes
Principal and Global Head of Shared
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