

viewpoint

THE GUY IN MUMBAI?

In Britain and the US, the use of external providers to carry out routine legal work has become the norm. It's time for Ireland to catch up, argues **Dan Fox**



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As the legal sector looks to the future, the identification and delivery of innovative legal services is becoming increasingly important. However, the provision of such legal services has yet to be embraced in Ireland in the same manner as in Britain and the United States, where the use of external legal providers to carry out routine legal work has become the norm. The outsourcing of process-driven legal work – such as the review of documentation relating to the discovery process – is often referred to as ‘legal process outsourcing’ (LPO).

The idea of outsourcing legal work gained significant ground in the early 2000s, when Hogan Lovells and British American Tobacco used the model to manage their discovery obligations during ‘big tobacco’ litigation. After this, and the corresponding emergence of LPO providers, the drive to find alternative ways to reduce legal spend for process-driven work accelerated rapidly.

LPO includes both on-shore and off-shore outsourcing. Onshore LPO involves the outsourcing of legal work to providers based within the same country, and provides for lawyers being seconded to organisations and law firms to carry out process-related review work.

Off-shore outsourcing involves the

outsourcing of legal work to providers based in other jurisdictions. While the latter is used by some firms in the US and Britain as a highly cost-effective alternative, some may be reticent to engage with off-shore LPO, having regard to the loss of full supervisory control, and language and time-zone barriers.

LPO may be further broken down to include:

- Direct contact – where firms requiring legal services directly approach the provider of outsourcing services,
- Managed outsourcing – where the firm engages a legal process outsourcing vendor and retains a traditional law firm to coordinate the vendor's activities and ensure quality control,
- Required outsourcing – where the firm mandates a certain level of outsourcing in the legal process, either to reduce costs or to fulfill statutory requirements, and
- Multi-sourcing – which involves segregating the work assigned to LPO providers in order to reduce risk and

take advantage of different providers' strengths, having regard to their jurisdiction and capability/capacity.

The LPO off-shore market is well established in India (largely because of its common law system) and is growing in Argentina, Australia, China, France, the Philippines, Singapore, South Korea and Ireland.

Uncharted territory

While Ireland has yet to embrace LPO in the same way as other jurisdictions, clients and firms find themselves faced

with the same challenges as their international counterparts. Lending institutions, law firms, and large corporates are seeking ways of tackling the headaches associated with due-diligence related work, discovery review and data-related compliance obligations.

Ireland is still recovering from the property crash in 2008, with banks and NAMA selling off Irish property portfolios to foreign investors. Loan portfolio sales are process driven and labour intensive and can cover a wide spectrum of work, from having lawyers sifting through deeds and security documents, to tracking and locating deeds held by various borrowers. Loan portfolio sales can vary in size and magnitude, and law firms and organisations can find themselves under-resourced to deal with the more extensive sales processes.

Data protection

The need to safeguard data has taken centre stage in light of the *Schrems* decision (Case C-362/154, 6 October 2015), where the CJEU held that the ‘safe harbour’ mechanism that facilitated the transfer of data between the EU and the US was invalid.

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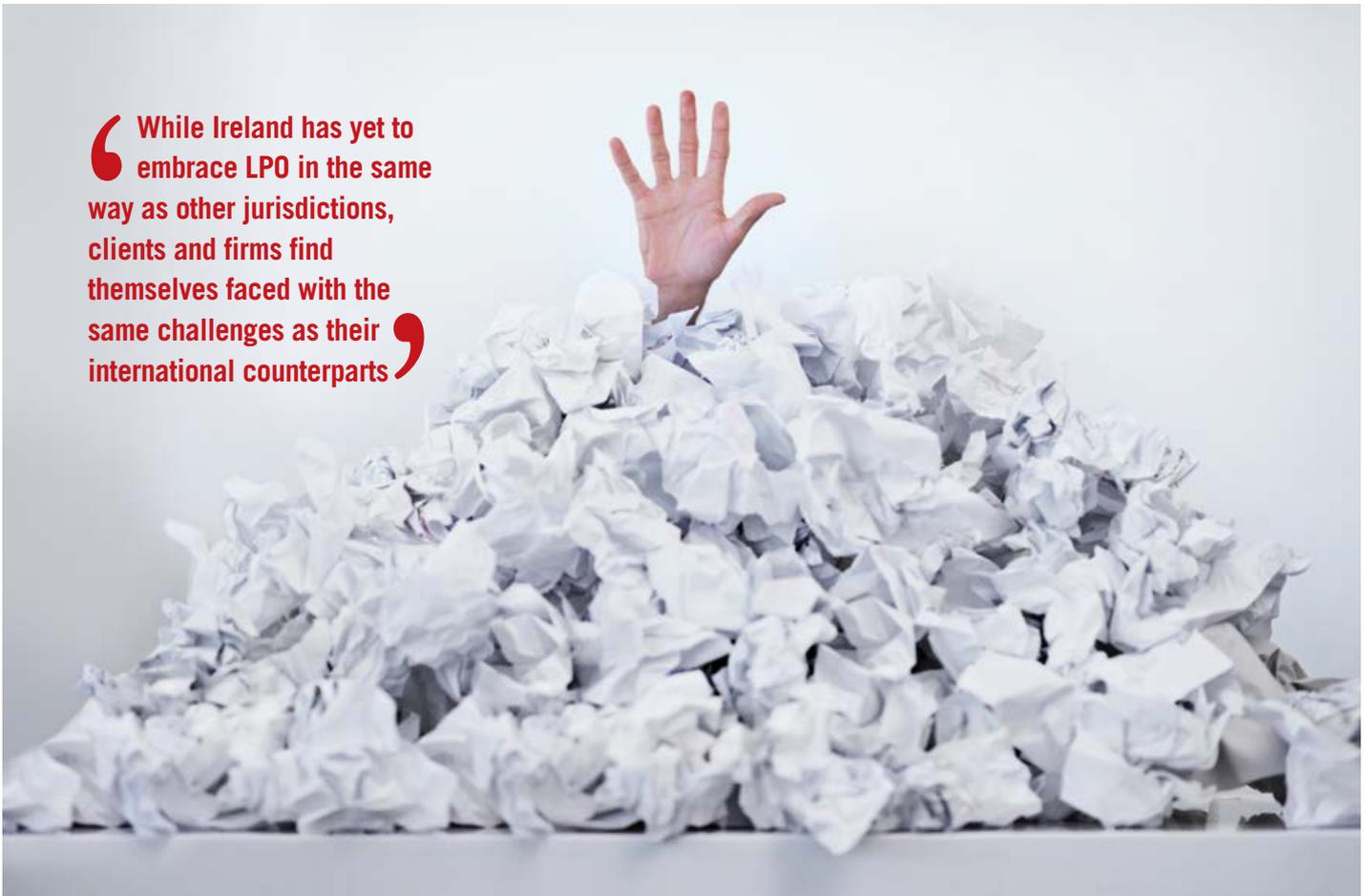
FOCAL POINT

what is lpo?

In its simplest terms, LPO is the practice whereby a law firm obtains support services from designated legal outsourcing providers. By shifting routine legal work to LPO providers who can process documentation in a more cost-effective and efficient way, clients can allocate their own internal resources to high value tasks. Typically, LPO is used to combat costly, time-consuming, process-driven legal work such as discovery, due diligence, compliance, and large-scale document reviews.

The growth of LPO has coincided with the advancement of the digital age. The industry is mainly driven by a rise in the need to process data for the purposes of civil litigation and as a result of increased regulatory scrutiny. Managing process-driven legal work can be onerous, complex and expensive. The existence of an alternative that allows firms and organisations to outsource certain legal work, as and when the need arises, enables a more effective allocation of resources.

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The Office of the Data Protection Commissioner (ODPC) has seen a 50% increase in resources allocated to its office in the 2016 budget, which indicates that companies, and in particular global companies with offices based in Ireland, will come under further scrutiny in the form of data protection audits. Organisations must ensure that there are appropriate safeguards in place so that data is handled in accordance with the *Data Protection Acts 1988-2003* and *Directive 95/46/EC*.

Restoring balance

Access to LPO providers is a helping to restore competitive balance to the litigation process. In the past, larger firms have been accused of using discovery as a tool to beat smaller players into submission. Traditionally, smaller firms simply

did not have access to the human resources that would allow them to deal with large-scale discovery orders. LPO now means that discovery and document review are more manageable. In any event, the courts are increasingly viewing discovery orders through the prism of proportionality.

Relocation of British firms?

With many big law firms in Britain enjoying extensive competition law practices, it is likely that the onset of Brexit could adversely affect growth in this area. If Britain does leave the EU, Ireland would be the last remaining common law jurisdiction in Europe and could therefore be viewed as an attractive base for relocation in order to ensure that these global firms can maintain a presence within the EU.

There has been a trend for international law firms and organisations based in Britain to outsource their routine legal work to data centres in Belfast. Invest Northern Ireland has provided circa £6.9 million to a number of major international law firms to support their decision to set up these specialist data review facilities in Belfast. Cost savings, in tandem with access to highly qualified legal personnel, is the driving force behind the relocation of this routine work product. In turn, Belfast has benefited greatly from the growth in the legal industry. As the implications of Brexit unfold over the coming weeks and months, it remains to be seen whether LPO within the Republic of Ireland might experience growth. With the prospective arrival of large international law

firms and multinationals that have experienced the benefits of such services, it seems likely that alternative ways of carrying out legal services might be required.

Big challenges

Big data means big challenges. LPO is likely to be attractive to law firms and organisations that may find it preferable to outsource or delegate process-driven legal work. While LPO is still a relatively new concept within Ireland, many firms and organisations here have started to see the benefits of outsourcing certain legal work, particularly work relating to discovery and loan sales processes. Innovation is the driving force behind today's global economy, and the adoption of legal outsourcing will help to streamline legal efficiencies while helping to reduce costs. 