

OUTSOURCING

In today's intensely competitive world, companies find that it makes business sense to focus their internal resources on those activities that provide them a unique competitive advantage – their core competencies. Other critical business processes and functions that are not the client's core competencies can, with the use of proven technologies, be profitably and efficiently outsourced.

At Sheppard Mullin our experienced outsourcing lawyers assist clients in structuring, negotiating and documenting outsourcing and managed-services arrangements across all industry sectors. Our team has experience in manufacturing outsourcing, outsourcing information technology operations (such as data center operations, client server hosting, and desktop application development and maintenance), as well as the outsourcing of business processes, including human resources, employee benefits, procurement, logistics, document handling, financial services, and property management.

We understand that every client, corporate culture, and outsourcing relationship is different. And it is in these differences that opportunity exists. The best outsourcing relationships are flexible, long-term partnerships between the client and the service provider that are based on a solid contractual foundation. We work with our clients and their advisors to create an outsourcing relationship that reflects the clients business objectives, keeps the client in control, allows for adapt to changing business realities and technologies, and does so within a pricing framework that meets the client's needs.

Because outsourcing relationships evolve over time, we seek to use the client's initial leverage to obtain appropriate long-term protections with respect to items such as pricing, service level monitoring and process enhancement. At the same time, we recognize the importance of preserving a harmonious working relationship and a "win-win" spirit between the principals on both sides. In the months and years after the initial outsourcing documents are executed, we also help clients manage the evolution of the outsourcing relationship by negotiating and documenting amendments and change orders.

We achieve better outcomes if we are involved during every phase of the acquisition process—from the creation of the RFP, through the meetings with potential service providers, to contract negotiations. This way, we gain an understanding of the client's business goals and work these goals into the relationship and ultimately into the contract. The resulting contract forms the basis of a productive outsourcing relationship.

We have negotiated the full range of strategic transactions, that include:

Information Technology Outsourcing (ITO)

The corporate world is increasingly choosing to entrust this critical function to outsourcing providers, including infrastructure management, applications development and maintenance (ADM), desktop outsourcing, and managed network services. Our team acts as a driving force for structuring and delivering high-value, strategic outsourcing relationships.

Business Process Outsourcing (BPO)

BPO takes a non-core, but often mission-critical, business process that has historically been performed inside the corporation, and entrusts it to a third party. The power of BPO is its ability to bring about tremendous financial and performance advantages. BPO ranges from routine services arrangements for commodity functions to transformative partnerships that have the power to fundamentally change the way business is done with its customers, its service providers and employees. We focus the contracting process on the truly make-or-break issues, resulting in equitable and sustainable outsourcing agreements.

Finance and Accounting Outsourcing (FAO)

Finance and accounting outsourcing is a sub-set of BPO. CFOs and controllers who strategically leverage lower costs and streamline their business processes emerge the winners in their industry. However, this must be balanced with ensuring compliance with the Sarbanes-Oxley Act and Generally Accepted Accounting Principles, and the continued satisfaction of the audit committee. We combine our corporate securities and intellectual property expertise to provide comprehensive end-to end advice in structuring complex financial outsourcing arrangements.

Manufacturing Outsourcing

Manufacturing outsourcing is one of the oldest types of outsourcing and manufacturing, and OEM agreements are typically simpler than other types of outsourcing. However, with today's multiple supplier and "just-in-time" delivery framework, there are still contractual challenges to be worked through. For example, when we represent manufacturers who need to push down to their service providers the terms that are imposed on them by their customers, we find ourselves in the middle of a multi-tiered negotiation process that we coordinate carefully.

Human Resources Outsourcing (HRO)

With human resource outsourcing (HRO) there is often a highly customized information technology component. Like most outsourcings, special attention must be paid to customer-facing services, however, the "customers" here are employees and require extra care. Getting an HRO right requires teamwork, clearly defined business objectives, a well-developed base case, and a good understanding of the service providers' offering. There are substantial legal considerations, and at the heart of a human resources outsourcing is the production input that the business cares most about: its employees.

Build-Operate-Transfer Outsourcing (BOT)

In this model, a third-party vendor builds the offshore facility, hires the employees, gets the operation running, and then hands over the operations to the client after an agreed period. A BOT agreement is the most complex of all outsourcing agreements and must take into consideration the legal aspects such as corporate, employment and labor, real estate, intellectual property and taxation issues.

We have extensive experience in onshore outsourcing (often in situations where the client's employees are hired by the service provider), nearshore outsourcing and offshore outsourcing involving India, China, the Middle East, South America, Australia and East Asia. We have structured offshore relationships with most of the major Indian service providers as well as with major multi-national service providers. Although these transactions are typically governed by U.S. law, we are able to leverage our extensive network of local counsel to ensure that our client does not fall into traps for the unwary that might be inherent in the local legal regime.