



Business Process Outsourcing negotiation and contracting:

Combining commercial, operational and legal
expertise for better business outcomes

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Business Process Outsourcing (BPO) is a mature service delivery model, with businesses often in their fourth, fifth and later generation outsourcings. Whilst many BPO service providers have now systematised and commoditised the drafting and negotiation of their outsourcing contracts, outsourcing negotiation and contracting is typically not business-as-usual for many service recipients.

Instead, service recipients are often faced with high value, high profile, complex agreements which need to be negotiated for new outsourcings or renegotiated for existing outsourcings every few years, to take account of changing business requirements, market conditions and technology developments. In recent years we have seen this with the rising importance of environmental, social

and governance issues, high inflation and the increased utility of AI, each an issue which needs to be part of the commercial and legal negotiations and reflected in the contract. For many customers this poses a challenge for commercial, operational and legal teams who are already fully utilised supporting the business on an ongoing basis and may have limited exposure to evolving best practice.



The traditional approach to BPO outsourcing negotiation and contracting

The traditional solution is to separately engage commercial and/or operational specialist outsourcing consultants, negotiate the new or extended deal, and then bring in an external law firm to complete the negotiations and document the agreement. Even with high quality legal support, this approach can have significant downsides:

- The service recipient's legal and commercial teams often have to act as intermediaries between their third party advisors, to ensure the commercial and operational aspects of the deal are aligned and then appropriately captured by the legal advisors. This places a significant strain on already busy teams.
- Even in very well-run processes, legal support is commonly brought into negotiations and renegotiations late in the day, meaning legal challenges and risks are often identified near the end of a transaction. This can cause delays whilst the issues are resolved and mitigated.
- Much of the deal and contractual knowledge sits with the external advisors, with limited knowledge transfer following completion and often no plan in place for ongoing management of the contract by the service recipient.





Drive better business outcomes

When negotiating and renegotiating outsourcing deals, as well as looking to reduce the challenge of resourcing large scale projects using busy internal teams, the outcomes service recipients want to achieve by engaging with third party advisors often include:

- Wanting to ensure the commercial, operational and contractual terms reflect best market practice.
- Having an experienced “outside-in” validation or challenge of the provider’s commercial, operational and legal propositions which reflects knowledge of the market and the supplier and which can provide current, cutting-edge experience from industries pushing the boundaries of BPO.
- Ensuring the business will benefit from the latest technologies and methodologies, both as part of initial transformation and ongoing business and service improvement.
- Bringing all relevant stakeholders into the process and ensuring they are kept up to date throughout the outsourcing negotiation or renegotiation.
- Having robust legal terms which protect the service recipient and address key BPO legal risks, such as employment, cyber security, and personal data transfers.

Achieving these objectives requires effective collaboration between third party advisors, often creating the need for further coordination by the service recipient between the advisors.

A new joined up approach

An alternative approach, which is becoming increasingly popular with service recipients, is to engage a single professional services organisation which is able to provide all of the required commercial, operational and legal BPO negotiation and contracting support necessary for the service recipient to achieve its objectives.

Having a combined, experienced team of legal, commercial and operational specialists leading the project in a coordinated manner, and able to draw on all necessary subject matter experts from within the same organisation, minimises many of the frustrations service recipients face when engaging with external advisors. It removes the need for the internal teams to act as a go-between, with the third party instead providing a consistent and joined-up position.

Engaging a single provider which can deliver commercial, operational and legal support also has the advantage of meaning the right specialists can be brought in at the right phase of the project. Legal can be involved at appropriate points, right from the start of the project, and therefore be able to identify

legal challenges or risks on an ongoing basis, enabling them to be effectively addressed with minimal impact on timelines.

Coordination between the teams means reduced overlap and duplication between advisors, driving further efficiencies and cost savings. Better outcomes can be provided at a lower cost.

These combined capabilities also support better knowledge transfer at the end of the project - with a single organisation responsible, they are able to draw together all relevant information and prepare appropriate summaries and contract handover packs, or deliver an ongoing contract management service.



Deloitte's outsourcing negotiation and renegotiation end-to-end solution

Deloitte has built a combined team which provides service recipients with end-to-end BPO negotiation and contracting support. From tender, re-tender, down selection, negotiation and execution, Deloitte has the commercial, operational and legal expertise and experience to support the outcomes businesses need.

Distinguishing features of our team include:

- A broad range of capabilities - Our cross-functional team bring a range of skillsets to the table beyond those a law firm or consultancy can offer by themselves, combining legal capability with industry know-how, complemented by data analytics and consulting skills.
- BPO focus and expertise – Our team includes recognised leaders in both outsourcing advisory and shared services who can deliver cutting-edge knowledge whilst advising on approaches aligned to the latest market trends.
- Specialist outsourcing lawyers in our fully regulated law firm, Deloitte Legal. Our lawyers have extensive experience in BPO transactions and are experts on the regulatory landscape as it applies to outsourcing. Together our team has advised many leading BPO, technology and outsourcing suppliers and their customers. Legal 500 and Chambers have both recognised our team's excellence and members of the team co-author the chapter on outsourcing in Sweet & Maxwell's book, Practical Commercial Precedents.
- Use of near-shore contract specialists – Our lawyers work side by side with outsourcing contract specialists in our Deloitte Contracts Centre of Excellence in Poland to drive efficiencies, quality and turnaround speed. The Centre of Excellence also leads on the preparation of knowledge transfer and contract handover materials, and can provide ongoing contract management support during the life of an outsourcing, to minimise value leakage.
- A different perspective - Our cross functional team is highly experienced and brings with it a 360-degree view of the market (with real world client, supplier, and advisory perspectives). Having worked for both outsourcing customers and suppliers, we have a deep understanding of market positions.
- Full lifecycle experience - Our combined team has worked across the end-to-end outsourcing lifecycle (including contracting, transition, delivery, transformation and exit), and is committed to providing clients with a seamless, fully integrated commercial, operational and legal business solution.

- Our focus on collaboration - When Deloitte is engaged, clients do not have to act as an intermediary between their consultants and lawyers. The inclusion of legal at an early stage in the contract negotiation/renegotiation process is built into our approach. This enables us to identify legal issues up front and address them in parallel to any commercial challenges that present themselves.
- Our technology-enabled practice - we understand how technology can be leveraged to solve complex business problems at scale, to unlock data value and insights and to drive efficiencies.
- Our full-service law firm capabilities: our specialist outsourcing lawyers draw on the expertise of colleagues in other relevant practice areas who specialise in advising on some of the legal issues which typically arise in BPO contracting, such as data privacy, pensions, cybersecurity and TUPE.
- Our emphasis on sustainability: ESG is at the core of our business. We work with our clients to ensure the right ESG considerations are factored into their relationships with their third party outsourcing suppliers and incorporated into the agreement.

If you would like to discuss your BPO negotiation and contracting requirements, please do get in touch.



Business Process Outsourcing Negotiation and Contracting Key Contacts



Amiya Kagalwala,

UK Global Business Services & Business Process Outsourcing Leader

amkagalwala@deloitte.co.uk



Paul O'Hare,

Partner, Commercial Technology, Deloitte Legal UK

pohare@deloitte.co.uk



Louis Wihl,

Director, Commercial Technology, Deloitte Legal UK

lwihl@deloitte.co.uk



Elizabeth Lumb,

Associate Director, Commercial Technology, Deloitte Legal UK

elumb@deloitte.co.uk



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