

Analysis: British law may hurt Indian outsourcers

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A law introduced in Britain last week to protect the rights of workers laid off by offshoring and outsourcing could not only potentially leave Indian business process outsourcing (BPO) service providers with huge liabilities but could also aid in protectionism taking root in a country that was so far considered open to outsourcing.

The revised Transfer of Undertakings (Protection of Employment) Regulations (TUPE) made effective in the United Kingdom on April 6 mandates that a company transferring part of its business to another company must also transfer the contracts of employment of the employees concerned to the new employer. According to experts, this slaps overseas contractors with legal and financial responsibility for the British workers, and "could result in serious adverse economic impact for Indian contractors accepting outsourcing contracts from British companies."

Lawrence Graham LLP, a London-based legal firm specializing in outsourcing, said Indian BPO vendors could now be forced to negotiate an indemnity against legal challenges by British workers who lost their livelihood when jobs were transferred overseas, that could lead to "millions of pounds in liabilities."

The new law could also inflate outsourcing costs for British companies since Indian firm would now need to factor the risk of being sued by a British court into its pricing.

TUPE has been in existence since 1981 and was designed to provide employment rights to employees when their employer changes as a result of a transfer of an undertaking. Earlier the regulations applied to manufacturing companies but now they have been amended to include outsourcing of services including outsourcing by high technology sectors like telecom and Information Technology.

The revised TUPE means that for most purposes, the employee is treated as if the contract with the old employer continues with the new employer - therefore, the company transferring part of its business to another company must also transfer the contracts of employment of the employees concerned, to the new employer.

Either that or the original employer has to offer the employee, similar work within the organization, or a redundancy package.

Which is why Martyn Hart of Britain's National Outsourcing Association sees the new TUPE creating "a contractual environment ridden with minefields and can be tricky to implement."

The new regulations could even be particularly unfortunate for legal outsourcing. According to the Law Society's magazine, The Law Gazette, law firms might be forced to employ teams of lawyers when taking over contracts.

Under the new rules, if a client decides to source their legal work from a different provider, the legal team from the old provider would be entitled to transfer to the new provider under the same terms and conditions as before; if the new provider were to object, the new employees would be entitled to sue for unfair dismissal.

"If you had an organized grouping of solicitors at a law firm devoted to one client, and that client said 'I do not want this law firm, I will appoint

law firm X,' then TUPE 2006 could apply so that--contrary to what the client is expecting -- it may find that the lawyers would have the right to turn up at the newly appointed law firm," said John McMullen, an expert on TUPE. "The definition of 'organized group' can be just one person."

But according to the National Association of Software Services Companies (NASSCOM) -- the country's software and BPO industry lobby -- this overhaul, the biggest since TUPE's introduction, also signals a change in Britain's attitude to outsourcing.

While the backlash against outsourcing raged in the United States since 2004, the British government, politicians and the corporate sector preferred to stick to the argument that offshoring is good for United Kingdom's economic health.

But the recent overhaul of TUPE, says NASSCOM, clearly indicates that the BPO backlash is gaining voice in UK as well, helping protectionism to take root in that country.

"It is a small step by the (British) government to regulate and control its labor," said Kiran Karnik, president of NASSCOM, "but it is a matter of concern (for Indian BPO sector) because Britain so far has been quite open to outsourcing- the revision is a sign of protectionism taking root in that country."

Indeed the TUPE's revision comes at a time when, feel some experts, Europeans are turning far more hostile than Americans when it comes to outsourcing jobs to India.

According to Paul Hermelin, chief executive officer, Capgemini, the global IT consulting firm, Europeans are turning "very concerned about their jobs and are not ready anymore to embrace outsourcing as easily as the USA did."

NASSCOM says, its members -- consisting of software and BPO service providers -- are leading investors in the United Kingdom, with more than 200 companies contributing to the country's economy and partnering with U.K. businesses to enable them to enhance their global competitiveness and improve service for their customers.

India's IT services and BPO exports to the Kingdom are growing at around 30 percent a year and at \$2.5 billion in financial year 2004-05, it contributes 14 percent to India's total IT and BPO exports.

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