

Commoditization of Legal Services in BigLaw: Myth or Reality?

Partners and senior lawyers in law firms often ponder the possibility of commoditizing legal services. This is not about services related to company registration or drafting charter documents for a company to be registered. The discussion centers on services with potentially high added value, such as preparing a joint venture agreement between two oil and gas giants, which may, amongst others, address:

- issues of initial and subsequent investments by the parties to the JVA;
- questions regarding the reimbursement of expenses in case one of the partners is unable or unwilling to invest their agreed share in exploration – this requires calculating the internal rate of return to compensate the investing partner for its risk and expenditures until the moment the other partner resumes investing;
- issues of project management of the JV by the parties;
- questions related to structuring the project from legal, managerial, and tax perspectives (even considering the current decline in the importance of double tax treaties);
- procedures for exiting the project earlier than the term specified by the JVA or before the expiration of the license for the respective deposit;
- processes for dispute resolution, etc.

These agreements are extensive, often comprising 100 to 200 pages or more. And what if they also need to be drafted in a foreign language and ensure the utmost consistency of terminology and the substantive part of the document in each language? Mamma mia.

So, can a law firm commoditize the drafting of such contract? When clients approach external consultants with such contract review requests they receive very “hefty” estimates. Why? It’s not even about the consultant’s time or manpower, although those are also important grounds for a client not to engage external counsel, of course. The issue is that clients may ... for example, decide not to agree on the essential terms of the project in a term sheet – why spend time on another document when everyone can start drafting a contract itself? As a result, the positions of party A and party B remain essentially uncoordinated, and consultants have to painstakingly extract acceptable commercial agreements from the client (and the opposing counsel, from their own client). No term sheet, no problem – the consultant receives a larger fee.

It is fair to say that the top management of companies needs to focus on current operational activities, and time for new projects, especially for term sheets, is scarce. We have witnessed the painful birth and documentation of projects many times — for example, a client — an oil company that discovered ethane in the crude oil it was extracting and decided to commercialize the ethane by separating it and subsequently pyrolyzing it to produce ethylene and then polyethylene. Awesome, n’est-ce pas, you might say. Well, let’s assume that it is (even though there are plenty of reasons why this shouldn’t be done and is not beneficial for either the company or the state, and “various” Goldman Sachs-es and JP Morgan-ses have said “well, it’s not worth it”). The first question is: are there any internal personnel in the company who know the new subject? If there are no such personnel then the project teams being created are formed from specialists who are busy

with existing projects, and there's no longer enough time to fulfill both current and new project job responsibilities.

In general, one could spend a long time describing why contracts can be difficult to draft and why it makes sense to engage an external consultant. Nevertheless, given the current economic climate, the "legal minimalism" advocated in Russia and elsewhere in the world, the required deadlines for the maximally rapid implementation of projects, and "budget savings," clients look for any reason not to hire external experts.

This approach is erroneous and could lead to adverse outcomes. To explain this, we'll ask you a question—what legal services are currently most in demand in the Russian market? Correct, litigation services. But why? Because the contracts that come to them for litigation are full of legal "holes," "gaps," inconsistencies, "hypotheses" of contract provisions have no "sanctions," etc. Let's give an example from a contract that has not undergone external review:

"In addition to the documents listed in the Contract, the Contractor provides the Customer with access to all applicable and available data on planning, scheduling, and measuring progress to ensure the accuracy of the data presented in the report. The Customer has the right at any time to request copies of reporting documents confirming the results of the work, to review, or to audit the results of the Contractor's work, its reporting, and other materials related to planning, scheduling, measuring progress, dynamics of volumes, detailed resource data.

Unless otherwise agreed by the Customer, Russian language will be used for all messages, correspondence, and documentation relating to the Contract. All activities and deadlines associated with translation are considered included in any stipulated time frames, rather than additional to them."

"To all applicable and available data?" – one might question: "and who are the judges?" How can one determine what is applicable and what is not? Shouldn't the contract specify that explicitly? Furthermore, "at any time" — what about providing an advance notice? Will the customer be sending its request at night, or could the parties perhaps agree to do so during business hours? The contract needs to spell that out. And how often does the customer have the right to make such a request — every hour, every day, every week, every month? Colleagues, think about it — the contractor has ongoing operations and has also a contract to fulfill. What should they do in such a case — hire 50 extra specialists to respond to inquiries? Additionally, in the second paragraph, the project deadlines include time for translation into a foreign language that may be required, "unless otherwise agreed with the Customer." What if the document in question is quite lengthy and the translation takes several days or weeks? There are many questions, and yet this passage is not the most substantial and illuminating, as you can see.

This short article is dedicated to commoditization of BigLaw legal services. We believe that such commoditization is generally impossible because each project, especially a large one, is unique in its own way.

Nevertheless, without delving into the issues of the practice of using external consultants on the Russian market or elsewhere, the logical need of obtaining legal expertise at the early stages of projects, the construction of the legal function of a company as a 'profit' center rather than a cost center — where such a function is geared towards evaluating documentation for potential risks in advance (and then one shouldn't count in terms of 'expenses' in terms of lawyers' salaries, but in terms of how much money lawyers helped save the company by avoiding litigation, payments of liquidated damages contemplated by the contract, etc.), we propose one service that, as we believe, can be commoditized:

WE ADVISE ENTRUSTING AN EXTERNAL CONSULTANT WITH THE REVIEW OF FINALIZED OR EXECUTED AGREEMENTS, AS WELL AS THE STANDARD DOCUMENT TEMPLATES USED BY COMPANIES, FOR A COMPREHENSIVE ASSESSMENT AND MITIGATION OF POTENTIAL RISKS.

No artificial intelligence (we respect AI, just so you know), no automation (document template generators, etc.) of document templates solves the problem of an initially poorly thought-out document.

The document review (audit) service we offer is not significantly expensive, allows for work to be completed within reasonable deadlines, but solves a key task for companies—reducing or eliminating the risks of disputes between companies, the cost of which can be comparable to the contract amount. Our company possesses extensive experience in the fields of M&A, corporate and project finance, EPC projects, private equity, and many other areas of law. Our company's advantage lies precisely in the fact that we have a sufficiently broad range of expertise, unique in the Russian market. Our experience includes more than 25 years of providing legal advice on Russian and foreign law governed transactions involving major Russian corporations, SMEs, private shareholders in the oil and gas sector, solid mineral extraction, infrastructure projects, FMCG, telecommunications and technology deals, manufacturing, and supply under foreign trade and domestic contracts, and many other sectors.

We acknowledge that this article is unconventional, and you might smile at the “emotion” in the text, but we sincerely regret witnessing clients inadvertently setting the stage for long-term risks that could undermine their development, endeavoring to hastily and expediently “patch up” and execute fundamentally incomplete documents. Legal minimalism costs money and nerves. Perhaps not immediately, but certainly in the future. We recommend that shareholders and managers motivated for long-term development eliminate such risks. Discussing an estimate with us over the phone or during a personal meeting costs nothing, and our assistance may turn out to be absolutely “tangible” in terms of money. The choice is yours.

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