

NEW BILLING RATES FOR LEGAL EAGLES

Discounts Are Order of the Day On Street Legal Amid Scramble for Biz

Barring a few big guns, all other legal firms are said to be offering price cuts as competition, slowdown hurt

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A general slowdown and the emergence of competition from general counsels and legal officers employed by companies, further exacerbated by the unbridled expansion by law firms, have forced many firms to aggressively offer discounts in their bread and butter advisory services business. The undercutting or giving heavily-discounted fees are very common practices indulged by newly set-up law firms or firms with expertise in one practice area, but that are keen to diversify and build scale in new practice areas.

"The legal profession in India has become super commercial and cut-throat; as a result, lawyers willy-nilly undercut other fellow professionals," rued Neerav Merchant, partner, Majmudar & Partners. "All firms are to be blamed for taking this approach, directly or otherwise. However, often the larger firms do this as they have a battalion of lawyers to be kept busy and are volume-driven in their model. Similarly, small firms also do this because they have lower overheads."

According to RSG Consulting, a London-based research firm, a slowdown in big-ticket merger & acquisition deals and intense competition have pushed down rates since 2011. The report says that the average hourly rates currently paid for senior partners at Indian law firms had dropped 4% from \$374 to \$359. For junior partners, it fell 22% from an average of \$239 to \$186.

"Bargaining on pricing or undercutting by other law firms is rampant in transaction services and advisory work, but that's not the case with litigation practice," said Fereshte Sethna, senior partner of litigation and arbitration firm Dutt Menon Dunmorrsett. "However, when a matter affects persons across an industry, in such cases clients do ask for quoting competitive prices. Cases related to the mining sector have witnessed such price cutting."

While large reputed law firms generally stay away from a full-fledged price war, the trend is rampant these days. Confirming the trend, Berjis Desai, managing partner of J Sagar Associates, said that barring a few large firms, almost all firms are indulging in price cuts to get more business. "Billing rates are

being lowered universally; most large firms like us will not go beyond a threshold. Otherwise, there is a reputation and brand equity risk in doing cheap, shoddy, factory production work," said Desai.

"We are very strong in regulatory and litigation, but we are keen to enter into financial services such as transactions and fund-raising for which we don't mind getting just operational fees," said senior partner of Delhi-based law firm, who did not want to reveal the identity. "The revenue we earn from regulatory advisory is good enough to hedge against expense and wait for revenue generation from the transaction side."

On a different note, Rabindra Jhunjhunwala, senior partner of Khaitan & Co says those who find themselves with less work or lacking a key determining factor will resort to ridiculous pricing. "We have restrained from participating in some public sector mandates where we found ourselves competing with firms following this trend," says Jhunjhunwala.

The commercial Indian legal market in 2012 was \$1.075 billion, representing the total external legal spend of the ET 500 Indian companies. The figure represents a 43% increase over the past three years or an average of 13% growth each year — a modest rise compared with GDP growth and inflation over the same period.

Government undertakings such as Coal India (CIL), ONGC, Bharat Heavy Electricals (BHEL), NTPC, State Bank of India (SBI), and PSU oil major Indian Oil call for a bid in many centres for multiple legal work where law firms bid aggressively to get work and build long-term relations, a lawyer said, under conditions of anonymity. Also, many corporate law firms approach investment bankers and promoters with ridiculously low fees so that they can get the transaction work which they can boast of in various M&A league tables, the same lawyer said.

"Simply undercutting will not get you the work. Credentials, ability to handle the work, band width, reputation are other key determining factors to get a mandate. As a

Cutthroat Play

- ▶ Larger firms go for undercutting as they have a battalion of lawyers to be kept busy and are volume-driven
- ▶ Similarly, small firms also do this because they have lower overheads



- ▶ Lawyers at the top 15 law firms reported that they are asked to work on a fixed-fee basis
- ▶ For high value instructions, some Indian clients say they are still prepared to spend \$1,000-1,200 an hour for the senior partner

\$359

Hourly rates for seniors, drop of 4% since 2011

\$186

Hourly rates for juniors, a drop of 22% since 2011

\$1.075^b

The commercial Indian legal market in 2012

13%

Indian legal market's average growth each year

Key Determining Factors

Credentials | Ability to handle the work | Bandwidth | Reputation

firm we have always believed in flexibility with fees. Some smaller firms are able to provide very competitive billing, but not scale," says Jhunjhunwala.

Undercutting and quoting smaller amount are very common in government briefs where often the lowest bidder wins and, hence, many prominent firms have stopped participating in such works.

Criticising the process adopted by government-owned businesses, Nishith Desai, founder of Nishith Desai & Associates, argued that government should also ask for a bid when any senior minister goes on a heart surgery. "They don't invite bids from surgeons. We are professionals and in the profession of law and not in business. Hence, we are not comfortable bidding for legal projects."

According to Desai, the firm has a policy of charging 'Happiness billing', which means his firm asks clients to pay only if they are satisfied with its work and if they don't feel happy with the service client can choose not to pay. The firm has refused work from 13 clients in 2013, where the clients were insistent on reducing the price.

The RSG India report also says that many

lawyers at the top 15 law firms reported that they are increasingly asked to work on a fixed-fee basis. However, for high value instructions, some Indian clients say they are still prepared to spend as much as \$1,000-1,200 an hour for the senior or managing partner at a leading law firm.

According to Sethna, there are bound to be certain clients who may seek fee revisions, and law firms have to manage client's expectations, but at the end of the day they cannot discriminate between two clients, when the nature of work is equally complex, which warrants maintaining standard terms across the board. Another reason for price cutting is also cropping up of new and small firms feels Nishit Dhruva, managing partner of MDP & Partners. "It's an art to run the firm and lawyers need to know how to manage their costs if they are starting their own. Around 50% of small firm closes down within a year of their birth because they lack the skill and depends solely on smaller fees strategy."

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