

Law firms move to fixed pricing for transaction work



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MUMBAI: Indian law firms are deviating from hourly billing to a fixed pricing model for undertaking transaction work such as drawing up deal documents, a transition that will give clients a better estimate on the legal cost and help reduce the possibility of fee disputes.

According to lawyers, the concept that has been evolving for some years is now being formalised.

"We have recently formalised what we call happiness billing," said Nishith Desai, managing partner of a law firm by his name. The firm now charges a fixed fee for transactions, with a variable portion in case the deal scope is expanded. "The client is free not to pay the additional amount if he is not happy with the work we did," Desai said.

The logic Desai gives is that in the hourly billing process, there is no pressure on the firm to optimise its service. Clients agree, though some are sceptical about the new method.

"There was a firm that sent my document across three associates and two partners for proofreading and charged me for time of all five," said the chief legal officer at an India-based multinational company, asking not to be named. He said even in the first instance itself he expects flawless drafts from the law firm and any checking should not be on his account.

The chief legal officer at a global investment bank said he referred work to a firm that raised queries, then involved another team within the firm, but finally the query turned out banal. The bank was billed for the time spent on the contract by all the people.

"This way (fixed pricing), we are sure lawyers are not asking extraneous questions that they will then answer and bill us for it," he said.

However, some aspects of the new billing mechanism aren't client friendly. It usually has caveats built-in, including a cap on the number of hours the firm would be spending, the deadline by which the transaction must close, and the scope of work.

Should any of these overshoot, the surcharge on the fixed price is not directly correlated with hours spent. "If the bond is delayed by five days, it is not as though the lawyers did any additional work, but the surcharge can be phenomenal," said Mukesh Bhavnani, group general counsel, Bharti Enterprises, the New Delhi-based conglomerate that has business interests in telecom to insurance and retail.

"I think it depends upon the assignment and the relationship with the client," said Cyril Shroff, managing partner of Amarchand & Mangaldas & Suresh Shroff. "I think it does help to have fixed billing or at least

estimates agreed in advance with assumptions so that there is no dispute on scope, time spent." Bhavnani said the charge under the fixed-price model is the "prime value" of all the work done, and since it is a larger organisation, Bharti is well placed for greater negotiation. But for smaller companies, fixed pricing can be a double-edged sword, he said.

"A fixed price helps me budget for a deal a little better," said the legal officer from the bank cited earlier. Yet, if it overshoots, explaining the expenses in the fixed contract can be very challenging. "In hourly billing, I can show a time sheet for the lawyers, in a fixed contract how do I explain to whom or why so much money was given?" A clutch of clients, particularly in the public sector financial services, therefore are sceptical of new billing methods. "There are different clients who like different methodologies — some like fixed fee, some like hourly rates and some like lump sum with assumption," said Shroff.