

Outsourcing and the strategy of organizations in Mexico

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Abstract

Outsourcing has been a very commonly used strategy to increase productivity in a variety of organizations. In Mexico, it can be said that it has had a positive impact on employment rate. Nevertheless, there is a “dark side” in this strategy, since it has been used as a way to avoid direct hiring of employees and to evade fiscal and social security regulations. This document aims to analyze outsourcing from a regulatory and contractual approach, as well as its role as a way to increase the employment rate, and from a managerial perspective. As a result of this analysis, it was found that in our country outsourcing has been a successfully used strategy by many organizations of different sizes, but at the same time, the lack of an appropriate legislation has originated a series of unethical practices. In Mexico, in 2021 a new legal framework that tries to balance the relationship between firms and employees was approved. This paper ends with a reflection of the possible impacts of this new legislation.

Keywords: outsourcing, strategy, México, organizations, employment, contractual, regulatory.

Introduction

Undoubtedly, as years go by, new forms to increase efficiency and efficacy of organizations are arising. From the beginning of last century to date, the advanced Administrative Sciences have undergone a visible change, starting from the mechanistic approach of Scientific Administration to reach a situational paradigm where the way to consolidate ends and means is a function that depends on the characteristics of the organization, as well as the particular context where the latter is inserted. This way, in the evolution of Modern Administration, tools that seek to

assist in the achievement of the organization objectives have been cumulatively added.

Within the context of human talent management, several tools have emerged in the search of a more successful operation in the organizations, outstanding in later years the figure of outsourcing. Evidently, there are elements that reflect a dual character, since on one side this modality allows to divest the corporation of non-essential activities, but on the other side, it has been used to reduce the corporation obligations towards its workers, with important impacts on both labor and tax obligations.

The objective of this work is focused on analyzing outsourcing from the perspective of its contractual nature, the form it is regulated, its repercussion as far as job absorption is concerned, as well as its role within the range of strategies available to organizations.

Contractual elements of outsourcing

As a way to hire people it shows several advantages for organizations. Big corporations began to use it since the seventies of last century. Twenty years later it is also intensively assimilated in informatics companies.

Legally this contractual mode belongs to a commercial field, specifically to a mercantile contract for business management (obligations to give and to do). Distinctly to what is generally believed, its nature is neither labor nor civil.

Different from a subcontractor contract, in an outsourcing one there is no labor relation. It is similar to a contract for externalizing activities, although with an emphasis on the financial rather than the legal features. Compared with a subcontracting contract, it is much more open. Different from a consortium contract, outsourcing does not contemplate any participation in corporative profits.

According to the regulatory circular of the Federal Banking Commission of Switzerland, externalization involves delegating within a long-term period some of the corporation activities (called client corporation) to the control of another company (called outsourcer), so that the first one may focus on its main operations (Echaiz, 2008). In the specific event of delegating activities outside the original country, this figure receives the name of offshoring.

Among the main rights of the client corporation are: definition of the objective, supervision, intellectual ownership, requirement of exclusivity and confidentiality, strategic coordination, ownership of goods being transported, and accountability. On the other side, its main obligations are: magnitude of authority delegation, providing information, supervision of compliance and payment of agreed compensations.

Concerning the rights inherent to the outsourcer, these include: autonomy, no subordination, possibility of additional businesses within the exclusivity limits, requirements for information, payment for the service. As far as its obligations, these

refer to: having human resources sufficiently trained, liability concerning assets and documentation of the Client Corporation, providing periodic information, efficacy, as well as respecting intellectual property, exclusivity and confidentiality.

Other specific characteristics are: it is considered of organizational nature (due to its impact on an administrative structure), of long-term (5 to 10 years as average), costly, that will provide certain results, that entails the parties without subordination, as well as that it provides benefits for both parties.

Among the derivations of outsourcing, it may be observed: co-sourcing (shared risk), multi-sourcing (merging efforts of diverse transactions), temporary outsourcing (between 5 and 10 years), and insourcing (reversion of outsourcing), as well as trans-sourcing (creative reinforcement), among other (Viega, 2002).

Other features of this figure are, as has been shown, its eminently financial-administrative origin, it is used for goods or services, mainly as support of non-essential activities of the client corporation. It may be temporary or for indefinite duration.

There is no standard that identifies one unique concept to name the figure, in Spanish it is usually referred to with the term “externalización”, and less frequently as “subcontratación” (subcontracting). Beyond these semantic considerations, briefly, what is sought by the client corporation, as an increase in efficiency and competitiveness, as a result of specialization on its substantive activities (Silva, 2010).

Current environment of outsourcing in México

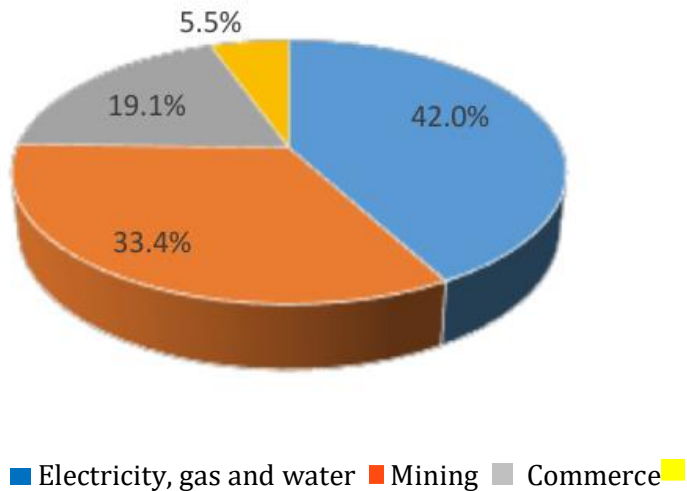
At the end of 2018 in México, the personnel hired and provided by a different company, and the personnel working for fees or commissions without any basic salary, that are considered within subcontracted personnel, showed a considerable increase in number.

It should be noted that among the most used services under the figure of outsourcing, are the informatics and accounting ones, tele marketing, graphic design, and investigation. By 2019, the personnel not dependent of the company grew to nearly 4.7 million people, with an average yearly increase rate of 5.5% during the most recent decade (Inegi, 2020b). In 2019 the participation of this modality within the total number of hired personnel was 17.3%, 0.7 percentage points higher than the previous year. Whereas the above growth is significant, it is also very inferior to the average yearly growth rate of 14.3% observed in the period 2004-2009 (Inegi, 2020a).

The sectors where this figure has had a higher relative participation in 2019, were: electricity, gas and water (42.0%), mining (33.4%) and commerce (19.1%) (See Graph 1). The sectors with the highest accumulated growth within this modality, for the period 2013-2018 are: electricity, gas and water (1,132.6%), fishing and

aquaculture (45.7%), services (41.5%) and mining (39.4%). The total accumulated growth for the same analysis period was 30.9%. The states with a bigger proportion of personnel hired with this figure were: Quintana Roo (35.4%), Baja California Sur (27.8%), Mexico City (25.0%), Nuevo León (22.0%) and Querétaro (21.4%) (Inegi, 2020a).

Graph 1. Outsourcing by economic activity sectors in Mexico, 2019. Percentages as a proportion of the total.



Other

Source- Own draft, based on INEGI, 2020a

Regulatory aspects of outsourcing: The case of Mexico

As mentioned above, outsourcing is mostly used for reorganizational purposes, particularly by big companies, with the objective of concentrating their efforts on their main activity or core business. Other features of this figure in Mexico are its similarity with a job lease contract, that it is considered atypical, linked with a company, periodically implemented, and also involving a fee payment, and a partial transference to a third party (Viega, 2002).

In Mexico, in April 2021, it was approved an Outsourcing Reform that forbids outsourcing, though it allows providing “specialized services”, or the implementation of “specialized activities” that are not part of the social aim or of the core economic activity of the beneficiary (whether by external companies or by related entities). In order to provide these services, outsourcing companies have to register themselves

in Secretaría del Trabajo y Previsión Social (Labor and Social Security Ministry) (Rendón de Chevez, 2021).

Corporation strategies regarding outsourcing

Around three fourths of the manufacturing production have been involved with outsourcing. This modality of hiring has been an essential part of globalization, impacting on the structure and function of many corporations. These ones, when trying to consolidate all activities in their processes, fell into inefficiencies arising from deviating from their core abilities. Therefore, they were increasingly demanding a supply of support activities provided by companies specialized in such activities.

The origins of outsourcing were in India, as well as the Philippines and Indonesia, due to their relatively lower wages levels, 24 hours service and personnel with higher education levels.

The benefits provided by outsourcing may be operative and/or strategic. According to the results obtained by the companies, its role continues showing high demand. This has a higher weight when re-engineering is part of an organizational strategic process aimed to identify substantive processes, as well as adjective processes, in order to concentrate their efforts in their core business.

Among the most relevant advantages are cost reduction in a long term, increase of productivity of manpower, economic access to technology, as well as positive effects for the corporative image. On the other side, the drawbacks of this figure are the wrong identification of essential activities and the economy of scale that is sought, reduction in corporative control, errors in cost consideration, as well as lack of efficient support of the outsourcer (Lankford and Parsa, 1999).

Thus, previously to the use of this figure, organizations must accurately know the core business of the company, the costs and benefits, as well as the flexibility of the available options. Thus, the net result in costs must be studied carefully for each option, as well as its quality, creativity and degree of vulnerability, the latter concerning the dependence on third parties.

Furthermore, the different offers must be evaluated considering offered services, reversibility, trustworthiness, among other factors. From a strategic perspective, the decision should be taken placing balancing all the factors impacting on the acquisition of long-range competitive advantage (Lankford y Parsa, 1999).

The main barriers to the use of this modality are: fear of losing control, trade union reactions, communication problems, distrust of remoteness. The main operating risks are integration risk, loss of control, loss of know-how generated by the organization, changes in the business as well as contractual changes (Corbett, 2004).

Key elements to make the decision of implementing outsourcing

Attention should be focused on processes, not on departments, according to the Business Process Outsourcing (BPO). In addition, this decision must be taken considering the concept of supply chains and within a holistic perspective of the organization (Lankford y Parsa, 1999).

In order to evaluate the benefits of outsourcing, tools such as the Balance Score Card, that provides a deeper assessment than financial statements, should be used. Also, it must be taken into consideration the utilization of value chain analysis. Especially relevant is the role of the team leader of the project.

The existence of a market of first-rate service vendors is an important requirement to make a decision. Furthermore, the analysis must cover all the aspects of a joint venture characterized by highly interdependency, with pre-qualification mechanisms that verify success indicators of prospectus, that analyses current costs, the expected benefits, as well as other related intangible factors.

A successful outsourcing decision requires transparency, mutual cooperation, and clearness of the expected benefits for each party, always under a win-win negotiation. Also, the benefits of outsourcing must be considered in such a way that they do not negatively impact on the welfare of the workers. A good communication, empathy and the role of the human resources areas are very important. All these elements must be contemplated within a framework of a mutual interdependence environment (Corbett, 2004).

Expected impact of the regulatory Reform of Outsourcing in México

It is foreseen that this Reform will have a positive impact regarding workers, that have to be directly hired by the firms that require their services and it will be mandatory for these companies to fulfill social security and tax regulations. As a matter of fact, the Labor and Social Security Ministry has estimated that around 300 thousand workers that had been hired through outsourcing, up to the end of April, had been transferred as direct employees of the firms (Sáenz, 2021). On the other hand, it is expected that there will be a reduction in the number of outsourcing companies.

The figure of outsourcing shall be formalized under a written contract. Furthermore, Labor and Social Security Ministry will supervise the registration of companies providing specialized services, as well as the fulfillment of the newly approved regulations. The corresponding fines may go as far as 4 million pesos (El Financiero, 2021).

Regarding the economic impact of the regulations, at the end of the third quarter of 2021, Inegi (2021) reports that the Gross Domestic Product (GDP) underwent a loss of -0.2% in relation to the prior quarter. This was caused by the quarterly reduction of -0.6% observed in the service sector. Alejandro Valerio, from Frontier View, indicates that business support sector fell -48.1% on an annual basis, which

according to this source is a result of the legal modifications to outsourcing (El Economista, 2021).

Final remarks

In México, during the first decades of this century, outsourcing as a managerial tool has gained a high degree of importance due to its impact on employment rates and because it is a valuable element to increase productivity and efficacy in the organizations. However, from a contractual perspective, due to its atypical character, sometimes it was misused, even in an illegal way, with negative consequences regarding labor rights of the workers.

As it has been said, outsourcing as a management strategy allows corporations to focus on their core business, making more flexible the management of human talent. However, in Mexico, misleading practices, led to the need of reviewing and modifying the corresponding legislation. This has conducted to the enactment of the Outsourcing Reform, whose effects at the level of organizational strategy, as well as on employment rates and welfare of workers, have yet to be evaluated. In the meantime these changes are a starting point to achieve a greater degree of balance between the parties: the organizations demanding the service, those that provide it and the workers.

According to Piedra et al (2021) “The most important is to generate a balance that allows corporations to use this modality to increase their productivity and make investments more attractive; and on the other side, guarantee the rights of the workers, without falling into simulation...” (p. 8).

From another perspective, outsourcing has responded to an approach where both the worker and the employer have relaxed their links, in such a way, that they may become so flexible that the dimension of the true rights of the workers is lost during the search of a reduction of related costs (Ruíz and García, 2016).

Fairly fulfilling labor rights, as well as the aspects related to tax contributions, the corporations that use this modality may achieve higher levels of productivity, focusing organizational efforts on the core activities of their operation.

References

- [1] Corbett, M. (2004). *The Outsourcing Revolution*. Dearborn Trade Publishing. https://studydaddy.com/attachment/106269/The_Outsourcing_Revolution.pdf
- [2] Echaiz, D. (2008). El contrato de outsourcing. *Boletín Mexicano de Derecho Comparado*, 1 (122). <https://revistas.juridicas.unam.mx/index.php/derecho-comparado/article/view/3990/5075>

- [3] El Financiero. (September 1st, 2021). ¿Cómo quedó el outsourcing 2021 en México? Economía. Redacción. Con información de Zenyazen Flores <https://www.elfinanciero.com.mx/economia/2021/09/01/como-quedo-el-outsourcing-2021-en-mexico/>
- [4] El Economista. (November 25th, 2021). La primera contracción desde la reapertura de la economía. Revisión del PIB muestra caída de 0.43% en el tercer trimestre, mayor a lo esperado. Economía. Yolanda Morales. <https://www.economista.com.mx/economia/Revision-del-PIB-muestra-caida-de-0.43-en-III-Trim.-mayor-a-lo-esperado-20211125-0146.html>
- [5] Inegi. (2020a). Censos Económicos 2019. Personal ocupado subcontratado en las unidades económicas. Outsourcing. https://www.inegi.org.mx/contenido/productos/prod_serv/contenidos/esp_anol/bvinegi/productos/nueva_estruc/702825198671.pdf
- [6] Inegi. (2020b). Economic Census 2019. Definitive Results. Press conference, July 16th, 2020.
- [7] https://www.inegi.org.mx/contenidos/programas/ce/2019/doc/pprd_ce19.pdf
- [8] Inegi. (2021). PIB y cuentas nacionales. Estimación Oportuna del PIB trimestral. Cifras desestacionalizadas. <https://www.inegi.org.mx/temas/pibo/>
- [9] Lankford, W. y Parsa, F. (1999) "Outsourcing: a primer ", Management Decision, Vol. 37 No. 4, pp. 310-316. <https://doi.org/10.1108/00251749910269357>
- [10] Piedra Mayorga, V. M., Vázquez-Alamilla, M. A., Granillo-Macias, R., & Rodríguez-Moreno, R. (2021). El Outsourcing, ¿una alternativa de ahorro o perjuicio laboral en México? Ingenio Y Conciencia Boletín Científico De La Escuela Superior Ciudad Sahagún, 8(16), 1-8. <https://doi.org/10.29057/escs.v8i16.7036>
- [11] Rendón de Chevez, R. (29 de 06 de 2021). ITR. <https://www.internationaltaxreview.com/article/b1sgqcv0rw1>
- [12] [tp7/reforma-laboral-y-fiscal-en-m233xico-implicaciones-colaterales-en-pt](https://www.inegi.org.mx/contenidos/productos/prod_serv/contenidos/esp_anol/bvinegi/productos/nueva_estruc/702825198671.pdf)
- [13] Ruíz, E. & García, J. (2016). Outsourcing en México: Transformación de la relación laboral en las nuevas generaciones Tlamati Sabiduría, Volume 7 Special Issue 2. <http://tlamati.uagro.mx/t7e2/517.pdf>
- [14] Sáenz, C. (26 de 04 de 2021). Capital 21. <https://www.capital21.cdmx.gob.mx/noticias/?p=18691>
- [15] Silva, J. (2010). ¿Cómo se regula el outsourcing en México? Cuestiones Constitucionales Revista Mexicana de Derecho Constitucional, 1 (22). Doi: <http://dx.doi.org/10.22201/ijj.24481e.2010.22.5917> <https://revistas.juridicas.unam.mx/index.php/cuestiones-constitucionales/article/view/5917>

- [16] Viega, M. (September 2002). Análisis de un contrato complejo: El Outsourcing. (ponencia) II World Congress of Informatics Law. Spain. <https://docplayer.es/8005871-Dra-esc-maria-jose-viega-2.html>