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## Preparing for the Worst



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The outsourcing contract itself can be a major factor in determining how your company recovers from a disaster. A good outsourcing contract prepares for potential disasters and includes appropriate references to disaster recovery and BCPs, details processes in the event of various types of disasters, and sets rules for how often the plans should be tested.



"The best way to address these issues is during negotiations," says **Kevin Colangelo**, an associate at New York-based **Kramer Levin Naftalis & Frankel LLP**, which focuses on outsourcing and technology transactions. The first step, he says, is to make sure you have a copy of the due-diligence phase of the latest testing of both the disaster-recovery plan and BCP. Second, visit the delivery site; you'll have all the information you need to write a thorough contract that takes into account as many potential problems as possible, he notes.



While most contracts these days include a SLA, there's nothing automatic about a good BCP. SLAs typically measure the quality, timeliness, and availability of the provider's services, such as how fast workers are required to perform a certain task. But SLAs are not always the best way to implement a BCP, Colangelo says. If you know it will take a day to assess, a few days to come up with a workaround, and then weeks or months to fully repair it, an SLA gives you only a cause for breach of contract," he says. "But if you've done your contract right, you've already got a way out where you won't have to shoulder the burden."



Although no contract can prevent a disaster from occurring, the more flexibility the contract has in dealing with disasters, the better, notes Hirshman. Changes might be necessitated by a change in policy from the customer or a change in the law. "Data protection or privacy laws may dictate that particular data be dealt with in a certain way, and that might have implications not just for the main provision of services, but for whatever backups have been contracted for," Hirshman explains.

In some cases, such as a change in the political situation of the country, a change in the laws of both the home country and the country of the service provider, or a change in the business process, it can make sense to amend an SLA via a change order.

And when making any kind of change, Hirshman says it's prudent to analyze what implications those changes might have on business continuity and disaster recovery. "While the BCP and disaster-recovery plan that were in place when the parties signed the contract may have been appropriate and applicable, it may not be the case after there has been a change in the process," he notes.

An effective contract will have ironclad methods of dealing with immediate termination of service due to a disaster or other event. "If it's drastic, immediate termination, the contract should stipulate that the provider with the problem transition everything over to a substitute provider and offer all reasonable transition assistance at no cost immediately," Colangelo says. "The first priority is being operational."

### Advice From The Pros

To ensure that your company is adequately protected when outsourcing offshore, consider the following:

- When deciding how to structure your overseas outsourcing deal to circumvent disasters as quickly and effectively as possible, it pays to get help from experts in the field, such as outsourcing advisers or attorneys who specialize in this field. These firms specialize in creating a workable way for companies to farm out business-critical applications to other locales, focusing on strategy, managing vendors, and applying performance measures.
- Whether you use a global-delivery service provider or do it yourself, make sure you're creating both realistic and cost-effective BCPs and disaster-recovery plans by conducting a **Business Impact Analysis (BIA)** before moving forward, says **Mohamed Muhsin**, CIO of the **World Bank** in Washington, D.C. The World Bank currently

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### Sourcing

In preparing this report on business-continuity planning for offshore outsourcing, contributing editor Karen D. Schwartz interviewed several leading business-continuity plan (BCP) legal experts, and spoke to several outsourcing providers and a customer at the World Bank in Washington, D.C. By its very nature, a BCP isn't about internal processes, it concerns pressures or events brought by outside natural or unnatural forces. Unlike risk management, where the key is an assessment of the odds of a failure, BCP assumes that systems will fail and provides a path to recovery. In the world of Sarbanes-Oxley pressure and restrictions, it's increasingly unlikely that a company will go without a plan. The question is how to update and enhance it for offshore initiatives, especially those that entail business-process outsourcing (BPO).



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