Newsletter

Sharp View

February 2023

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FEBRUARY 2023

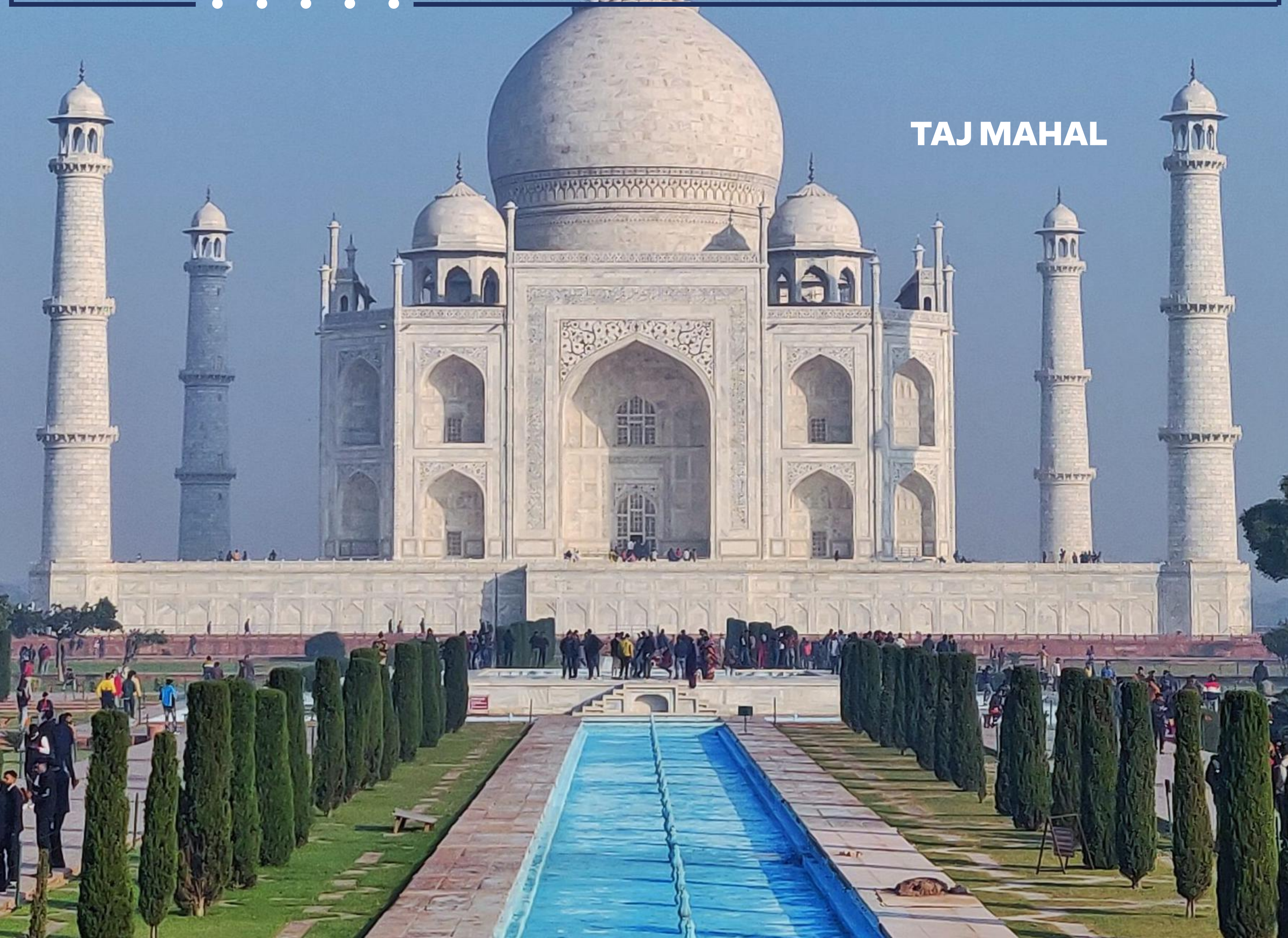
February is the last winter month but an ideal time for tourism in India.

India is one of the most popular travel destinations globally having immense attraction for domestic as well as foreign tourists. The Indian tourism industry has emerged as one of the key drivers of growth among the various other service sectors. India's tourism industry has a large potential to bring in foreign exchange to the Country. The sector also holds holds huge opportunities for jobs and entrepreneurship for the youth.

Considering the huge potential of this sector, the recently announced Union Budget 2023 has planned an integrated and innovative approach to tap its potential. To enhance the tourism services, they will be made available on an 'App' which will consolidate the services like physical connectivity, tourist guides, availability of high standard food streets and tourist security. Each destination will be developed as a 'package' under the 'Swadesh Darshan' scheme focusing domestic as well as foreign tourists.

Some interesting facts

- Ministry of Tourism has given an in-principle approval for inclusion of 28 new tourism air routes in 2022.
- Utsav Portal launched to showcase festivals, events and live darshans across India to promote different regions of the country as popular tourist destinations worldwide.
- Ministry of Tourism initiated establishing of 'YUVA Tourism Clubs' as part of the 'Azadi ka Amrit Mahotsav' celebrations.
- Out of the total INR 2,400 crore allocated to Ministry of Tourism, major portion of the outlay amounting to INR 1,742 crore is allocated for development of tourism infrastructure and INR 242 crore for promotion and branding.

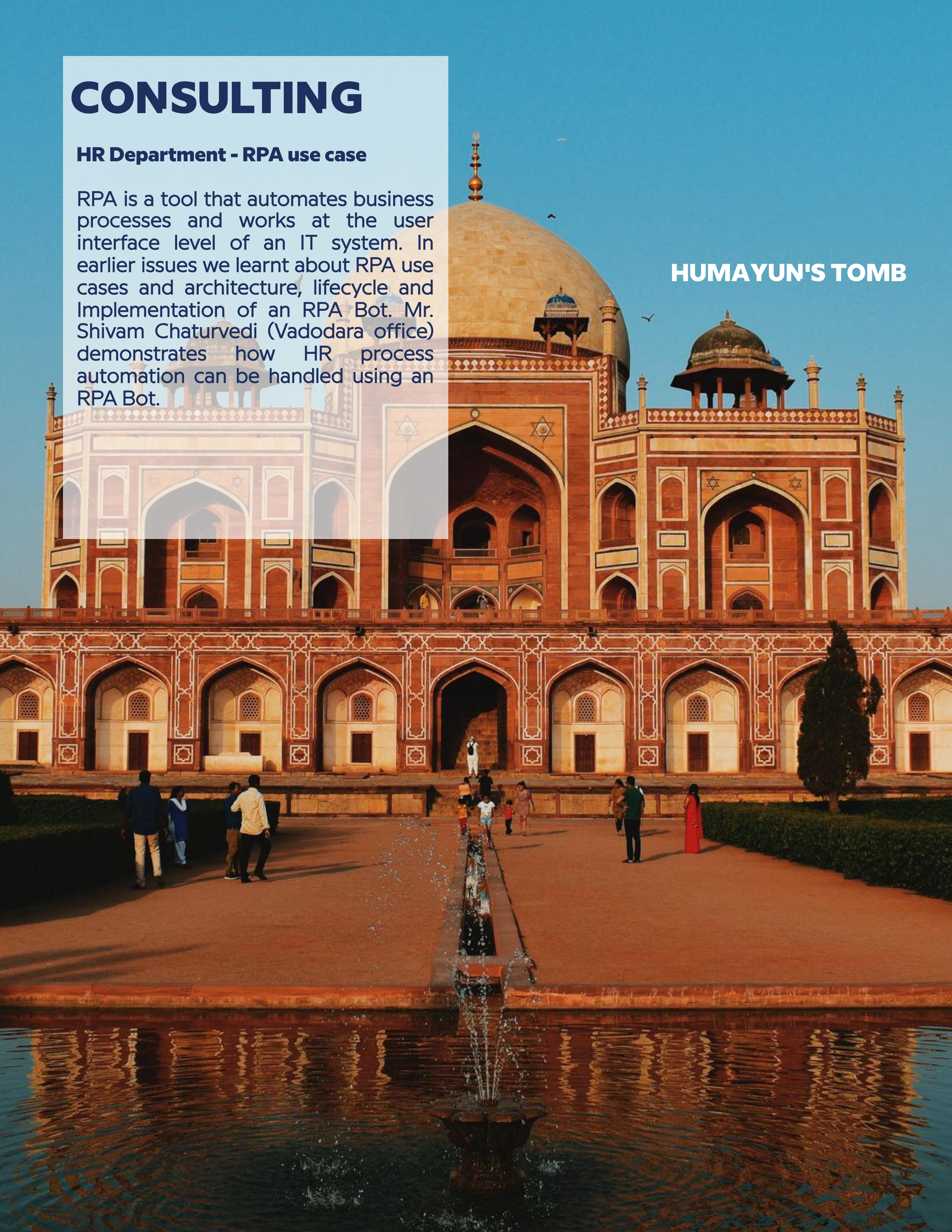


TAJ MAHAL

CONSULTING

HR Department - RPA use case

RPA is a tool that automates business processes and works at the user interface level of an IT system. In earlier issues we learnt about RPA use cases and architecture, lifecycle and Implementation of an RPA Bot. Mr. Shivam Chaturvedi (Vadodara office) demonstrates how HR process automation can be handled using an RPA Bot.



HUMAYUN'S TOMB

Recap

In the previous articles, we learnt about RPA use cases and architecture, lifecycle and implementation of an RPA Bot. Before that let us take a quick recap.

RPA is a tool that automates business processes and works at the user interface (UI) level of an IT system. RPA technologies can be set up to gather information, carry out transactions, interact with other digital systems, and even reply to emails. Within an ERP system, tens of thousands of bots can be deployed and given individual tasks.

Objective

The objective of this article is to dig deep into human resources (HR) process automation, covering the tasks that can be automated. In this article, we have demonstrated two HR processes that can be automated.

HR use case

HR plays a vital role in an organisation by managing and developing human resources. Employee onboarding and creating offer letters are the most frequent and time-consuming tasks, out of the many duties that fall under the umbrella of the HR function. Processing these tasks can be tedious in businesses where people are hired in large numbers.

Automation is the solution to overcome this complexity, and we have created an RPA Bot to automate the employee onboarding and offer letter generation process.

Here are some problem statements and related solutions:

1. Offer letter generation (Recruitment process: documentation)

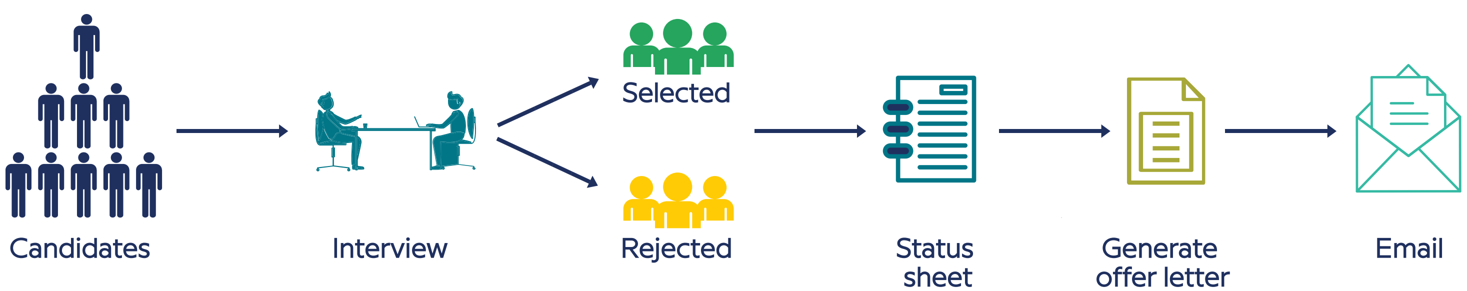
Background

Bulk hiring/campus recruitment is a strategy for sourcing and hiring young professionals or freshers for entry-level positions for medium to large-sized companies. It takes a high amount of effort to recruit manpower. Once the hiring process is completed, HR works on the generation of offer letters and rolls out the offer letters to the selected candidates.

Problem statement

Generating the offer letters and mailing them to the selected candidates is a repetitive and mundane task. This task generally consumes 90% of the working time of an employee.

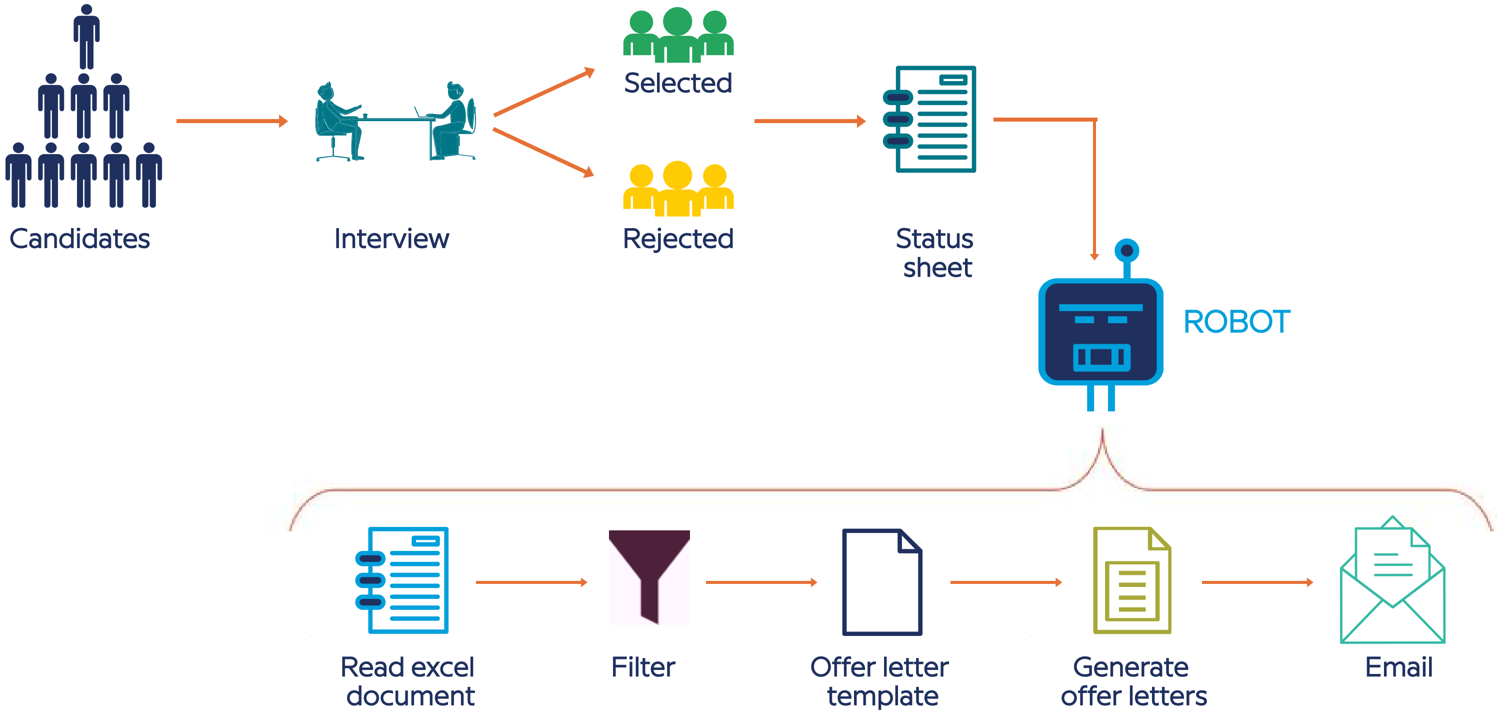
Manual process of generating offer letters



Solution

A new record is created by the interviewer in the 'status sheet' and once the record is created and the candidate is hired the robot generates an offer letter for the selected candidate.

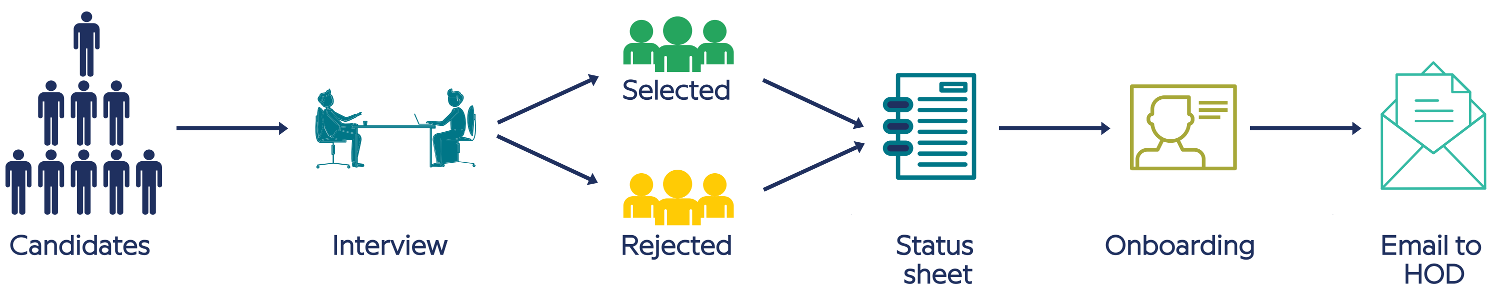
Automated process for offer letter generation



2. Employee onboarding

Problem statement

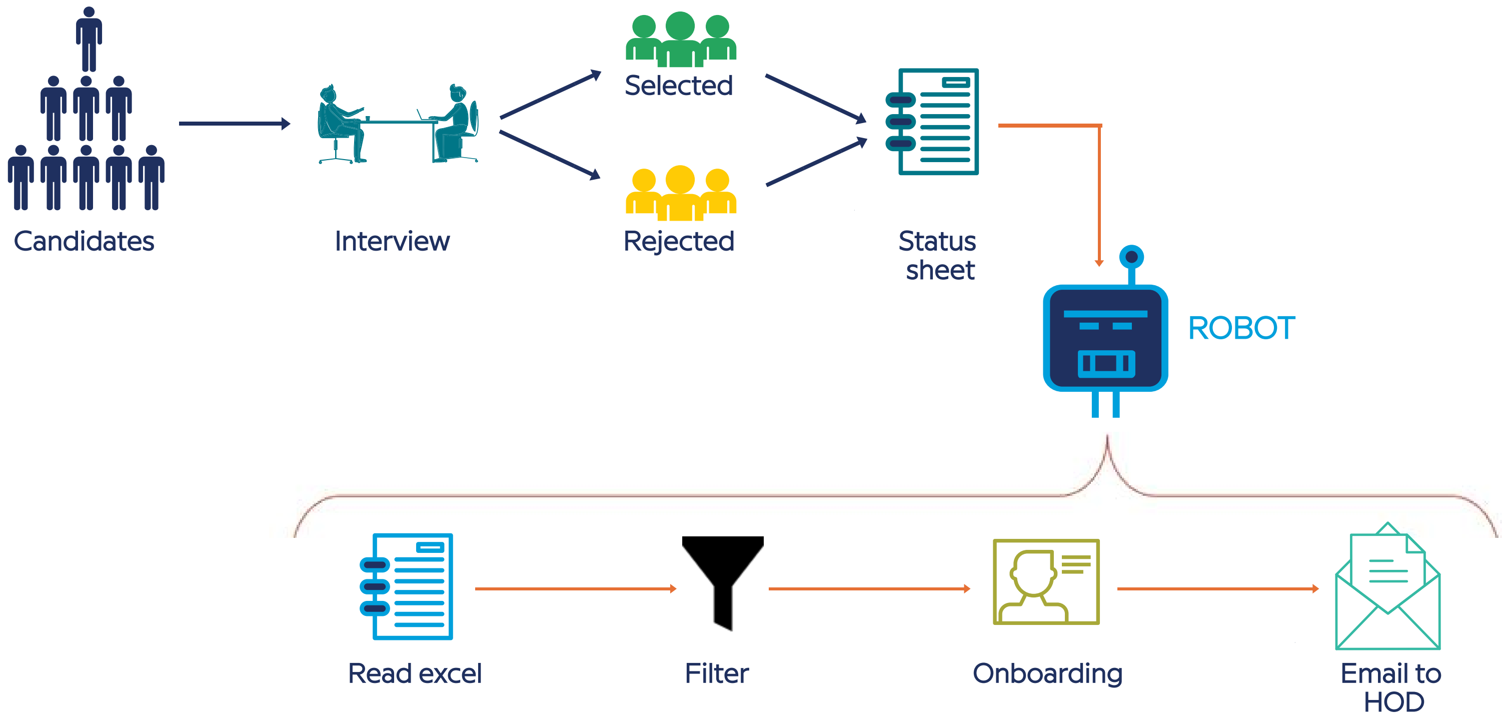
New employee provisioning takes upto 2-3 hours of personnel time to enter data into different systems applications just to onboard an employee.



Solution

A new record is created by the interviewer in the 'status sheet' and once the record is created and the employee is hired the robot onboards the employee.

Automated process for onboarding an employee



Automating HR use cases can help organisations in various aspects, some benefits thereof are listed below:

- Increased efficiency and productivity: Certain repetitive HR processes, such as recruiting, onboarding and performance management can be handled by RPA bot thereby increasing the efficiency and productivity of the HR function.
- Improved accuracy and consistency: Substitution of human elements by a bot ensures accuracy and consistency.
- Enhanced employee self-service: An RPA bot can practically render a part of the HR portal self-serviceable by the employees. The employees can log in and update their personal information, skill sets, access the leave records, etc. remotely without contacting the HR department for queries/issues.
- Reduced costs: Automation is the key to reduce the costs. Many processes can be simplified through the use of RPA bot. Implementing the RPA involves a one-time cost, however the same is recovered during the life of the RPA bot thus reducing the total cost of the same functions, if they were manually conducted.

Conclusion

Automation in HR processes saves the time of HR employees helping them to focus on strategic areas instead of routine operational tasks.The RPA bot once deployed manages the repetitive HR functions resulting in accuracy, consistency and cost reduction. Ensuring compliance and management reporting saves managerial time thereby enabling cost reduction.

GRC

Corporate governance in India – an analysis

Corporate governance is a subject of continuous study and practice. It is the system of laws and regulations which controls and directs a business. Ms. Priya Tolani (Vadodara office) discusses about corporate governance, its importance, certain challenges, and briefs us about the present regulations governing the corporate governance environment in India.

PAVAGADH

Corporate governance: what is it?

Corporate governance is the system of laws, rules and procedures which directs and controls a business. It encompasses the roles and responsibilities of the board of directors, management, and shareholders, and the ways in which power is exercised and controlled within the company. The goal of corporate governance is to ensure that a company is run in the best interests of its shareholders and stakeholders, and that it operates in an ethical and transparent manner.

Importance of corporate governance

Corporate governance ensures that the rights of shareholders are protected and that they are given accurate and timely information about the company's performance and financial position. It helps to improve a company's performance by ensuring that decisions are made in the best interests of the company and its shareholders. It ensures that a company is accountable to its shareholders and the public by requiring the maintaining of transparency in its financial reporting and decision-making processes. It promotes ethical behaviour by establishing a framework for decision-making guided by a set of values and principles.

Strong corporate governance helps reduce the risk of fraud and misconduct by providing oversight and checks to prevent abuse of power. It can further help to build trust with stakeholders, such as shareholders, customers, and employees, by demonstrating that the company is being run in an ethical and responsible manner. Companies with good corporate governance practices are better positioned to attract investment as investors tend to prefer companies with strong governance structures.

Need for corporate governance

In India, the need for corporate governance has become increasingly important due to a number of corporate scandals and frauds in recent years. These events have led to a loss of trust in the corporate sector and have highlighted the need for greater transparency and accountability. In addition, the Indian government has implemented a number of regulations and laws aimed at improving corporate governance, such as the Companies Act, 2013 and the Securities and Exchange Board of India (SEBI) - regulations.

Challenges in corporate governance

- One of the biggest challenges in corporate governance in India is the lack of independent directors on boards of companies. Independent directors are non-executive directors who are not affiliated with the management of a company and are not part of the controlling shareholder group. They play an important role in ensuring that the interests of all shareholders are represented and that the board is able to provide effective oversight of the company's management. In India, many companies have a high proportion of promoter-affiliated directors on their boards, which can lead to a lack of diversity and independence in decision-making. It can result in a lack of effective oversight of management and lack of accountability to shareholders. The government of India has taken steps to address this issue by introducing regulations that require listed companies to have at least one-third of their board composed of independent directors.

- Limited transparency and disclosure are another significant challenges in corporate governance. Transparency and disclosure refer to the provision of accurate and timely information about a company's financial and non-financial performance, as well as its governance practices. In India, there have been instances where companies have not provided sufficient information to shareholders and other stakeholders, or have provided misleading or inaccurate information. This can lead to a lack of trust and can make it difficult for investors to take informed decisions.

- Insufficient regulations and enforcement are major challenges in corporate governance in India. Regulations refer to the laws and guidelines that govern corporate behaviour and oversight. Enforcement refers to the actions taken by regulatory authorities to ensure that companies comply with these regulations. In India, the regulatory framework for corporate governance is complex and there are several laws and guidelines that companies need to comply with, such as the Companies Act and the Securities and Exchange Board of India (SEBI) guidelines. To ensure enforcement of regulations, the regulatory bodies have been granted with the power to investigate alleged violations of corporate governance regulations, impose penalties, and take other actions as necessary. Conflicts of interest and corruption are some other challenges in corporate governance in India. Conflicts of interest arise when a director or executive has a personal interest that conflicts with their duty to act in the best interests of the company. Corruption refers to the misuse of power or position for personal gain. To eliminate the risks of conflict of interests, disclosure of interests and related party transactions are incorporated in various laws and regulations. These amendments are reviewed continuously by the regulators and if felt necessary their applicability is widened.

- A lack of effective communication between companies and their stakeholders is another significant challenge. Communication refers to the exchange of information and ideas between a company and its stakeholders like shareholders, employees, customers and suppliers. To bridge the gap of communication, adequate disclosures are made by the companies in their financial statements. This information helps investors, lenders, and others take the best possible decisions. Furthermore, the companies are also being transparent about their policies, goals, and actions through their newsletters, website disclosures, etc.

Regulations enabling corporate governance

SEBI has issued several regulations to promote corporate governance in India. Some of these regulations include:

- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015: These regulations prescribe the listing requirements for companies and the disclosure norms they need to follow to ensure transparency and accountability to shareholders.

- Regulation 17 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015: It prescribes the composition and the role of the Board of Directors and the requirement of the independent directors and the woman independent directors.

- SEBI (Prohibition of Insider Trading) Regulations, 2015: These regulations prohibit insider trading in securities to ensure fair and equal treatment of all shareholders.

- SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018: These regulations prescribe the requirements for companies to issue securities to the public and the disclosure norms they need to follow for the same.

Furthermore, the Companies Act, 2013 ('Act'), and its rules and regulations provide the legal framework for corporate governance in India. Some of the key provisions include:

- Board of Directors: The Act lays down the composition of the board of directors, including the requirement for independent directors, and their roles and responsibilities.

- Audit Committee: Companies are required to have an audit committee to oversee the financial reporting process and the company's internal controls.

- Corporate Social Responsibility (CSR): Companies need to undertake CSR activities and to disclose their CSR policy and activities in their annual reports.

- Whistle-blower policy: The Act requires companies to establish a whistle-blower policy to provide a mechanism for employees and directors to report any violation of laws or unethical conduct.

- Appointment of Key Managerial Personnel (KMPs): The Act requires companies to appoint a Chief Executive Officer (CEO), a Chief Financial Officer (CFO), and a Company Secretary as KMPs and lays down their roles and responsibilities.

- Holding of annual general meetings (AGM): Requirement to hold AGM and providing shareholders with access to information about the company's performance and governance.

- Appointment of auditors: The Act requires companies to appoint auditors and lays down the manner for their appointment and removal.

These provisions are aimed at ensuring that companies adhere to good governance practices, which in turn helps to protect the interests of shareholders and promote investor confidence in the market.

Conclusion

Corporate governance is a critical aspect of running a successful business. It is a system of rules, practices, and processes that are designed to ensure that a company is directed and controlled in a manner that protects the rights and interests of shareholders and other stakeholders, promotes ethical behaviour, maintains accountability and transparency. The importance of corporate governance cannot be overstated as it helps to improve company performance, reduce the risk of fraud and misconduct and build trust with stakeholders. Effective corporate governance is essential for the long-term success and sustainability of a company and is a key consideration for investors when assessing the risk and potential returns of investing in a company.

TAXATION

GST - Clarifications for dealing with differences in ITC for FY 2017-18 and 2018-19

The GST Council meeting recommendations are implemented through the issue of departmental circulars and orders. In December 2022, a circular was issued by the Central Board of Indirect Taxes and Customs (CBIC) to clarify the manner of dealing with differences in the ITC availed in FORM GSTR-3B as compared to that in FORM GSTR-2A for FY 2017-18 and 2018-19. Mr. Shouvik Roy (Mumbai office) brings out the same in a detailed note.

HAMPI

During the financial years ('FY') 2017-18 and 2018-19, there were certain discrepancies between the amount of Input Tax Credit ('ITC') availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A, as these were the first 2 years of implementation of GST and the systems were not stabilized . CBIC circular No 183/15/2022-GST, dated 27 December 2022 recognizes and mentions that GSTR-2A could not be made available in the portal during the initial stages of GST implementation. Also, the provisional ITC rules (Rule 36(4) on disallowance of ITC mismatch) were implemented only w.e.f. 9 October 2019. Hence, CBIC issued circular no: 183/15/2022-GST to clarify the taxpayers and tax authorities on dealing with differences in ITC claimed in GSTR-3B compared with GSTR-2A for the FY 2017-28 & 2018-19.

- Recognizing the above problems, where bona fide buyers and recipients may have also been disallowed genuine ITC in the course of scrutiny and investigations, CBIC has laid down certain procedure for verification of ITC in cases involving differences between the amount of ITC availed by registered persons in their FORM GSTR-3B as compared to the amount reflected in their FORM GSTR-2A during FY 2017-18 and 2018-19 in the captioned circular.

The circular however, provides solutions in certain fixed scenarios only:

Scenarios

a. Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for the said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.

b. Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.

c. Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.

d. Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.

Clarifications

In all such cases (a to d), the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the below mentioned procedure:

The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR-3B, but which are not reflecting in his FORM GSTR 2A. The proper officer shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the ITC availed on such invoices by the said registered person:

i. that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
ii. that he has received the goods or services or both;
iii. that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of ITC is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said ITC has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

Where the supplier has furnished FORM GSTR-1 with wrong GSTIN of the recipient, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority (having jurisdiction over the registered person, whose GSTIN has been mentioned wrongly,) that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, (whose GSTIN has been mentioned wrongly,) and such action will be pursued as an independent action.

- The Circular clarified that in order to verify the condition of clause (c) of sub-section (2) of section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

    - In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said FY exceeds INR 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Further, certificate issued by CA or CMA shall contain verifiable UDIN.

    - In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto INR 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

    - It has been further clarified that for the period FY 2017-18, (as per proviso to section 16(4) of CGST Act,) the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR-1 for the month of March, 2019.

    - It is be noted that the aforesaid clarifications are case specific and are applicable to the bona fide errors committed in reporting for FY 2017-18 and 2018-19. Further, the CBIC Circular mentions that these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

  - Further, these instructions will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. and to the adjudication and appeal proceedings which are pending for FY 2017-18 and 2018-19. These instructions will not apply to the completed proceedings.

Comments and implications

- This circular is issued pursuant to recommendations made for such a circular in the 48th GST Council meeting held on 17 December 2022 . Further, this circular is in line with Maharashtra Internal Circular No 02A of 2022 dated 25 February 2022 which deals with guidelines with respect to legal issues pertaining to return scrutiny for tax periods 2017-18 and 2018-19.

- These clarifications are intended as a step to reduce ongoing litigation on the issue of mismatch between ITC availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19.

- The Circular suggests that recipient (buyer of goods/services who is claiming the ITC) may produce -
  - a certificate from the CA or the CMA in case differences exceeds INR 5 lakh, OR
  - produce a certificate from the concerned supplier himself, in case differences are up to INR 5 lakh ....

...in order to certify that supplies have actually been made by the supplier to the said recipient and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B.

- However, it remains to be seen if such a certificate can actually be obtained by a bonafide recipient from a non-compliant and mischievous supplier. Also, no format has been prescribed for the certificates. This may lead to different (subjective an discretionary) requirements from different officers.

- These clarifications are case specific which are applicable to bonafide errors committed in reporting during FY 2017-18 and 2018-19. These guidelines cannot be used for the interpretation of GST law.

- These clarifications are only applicable to ongoing proceedings (inquiries/audits/investigations/ and are not applicable to the completed proceedings). This may lead to litigation (on the plea of discrimination and violation of Article 14 of the Constitution) from those aggrieved buyers/recipients whose ITC has been disallowed in completed proceedings and who have not been able to claim the benefit of this circular (unlike those whose proceedings are still incomplete and pending, and who may thus be able to avail the benefits of this circular).

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