

General Counsel Imperative Series

Critical answers and actions to reframe your future



How do you turn barriers
into building blocks?



The better the question.
The better the answer.
The better the world works.

The EY logo, consisting of the letters 'EY' in a bold, white, sans-serif font. A yellow triangle points upwards from the top of the 'Y'.

Building a better
working world



Preface

We are at a transformative moment. While caution remains the word and lesson of choice, it is increasingly clear that, as we move out of the first quarter of 2021, the business landscape is primed for an explosion of growth. According to data from Oxford Economics, over the next 10 months, global GDP is expected to enter a period of hypergrowth - upwards of 10% - to be followed by a period of elevated growth for the next two to three years. While the expected growth will likely present challenges for already strained businesses, it must also be seen from the wider context of how, or whether, businesses bring talent back to their offices, how they retool supply chains and how they rethink how work of all types gets done. At the same time, many businesses are considering how to address the long-term challenges associated with the growing global emphasis on sustainability and social justice in many areas including regulation, corporate governance, supply chain management, recruitment and corporate citizenship. How companies and their leaders navigate this transformative moment is of critical importance. Their ability to do so will depend in no small measure on whether the legal department and other related functions are able to deliver data driven, cost-effective services that identify and mitigate risk while driving productivity and growth.

To understand these challenges and changes, in early 2021, EY Law and the Harvard Law School Center on the Legal Profession worked together on a major research project, interviewing 2,000 business leaders across 22 countries. The extensive survey focused on law department operations (including talent, data, technology, and sourcing), contract creation and management and corporate secretarial operations supporting legal entity compliance and governance. The result is an extensive and current dataset that captures the operation and transformation of law departments from the perspectives of both General Counsel and other business leaders.

Over the coming weeks and months, we will present results from this research project in a series of reports and articles. This first report, *The General Counsel Imperative: How do you turn barriers into building blocks?* focuses on how businesses, understood through the priorities of their CEOs, are approaching 2021 and beyond, and what the implications of these priorities are for the legal department. As the survey data underscores, as growth skyrockets over the next 18 to 24 months, law departments will be under significant pressure from the top to align with wider business priorities and to think and act differently. While controlling costs is important, maximizing the legal function's value to the organization will be a key differentiator, particularly with respect to assessing and managing the myriad of increased risks that businesses are likely to face in this new environment. Developing and effectively deploying data driven metrics of quality and cost will therefore be key. All of this must be done while rethinking the nature of work and talent. Understanding how law departments approach risk management, adjust to these new realities, and protect their companies from future hazards will therefore be critical.

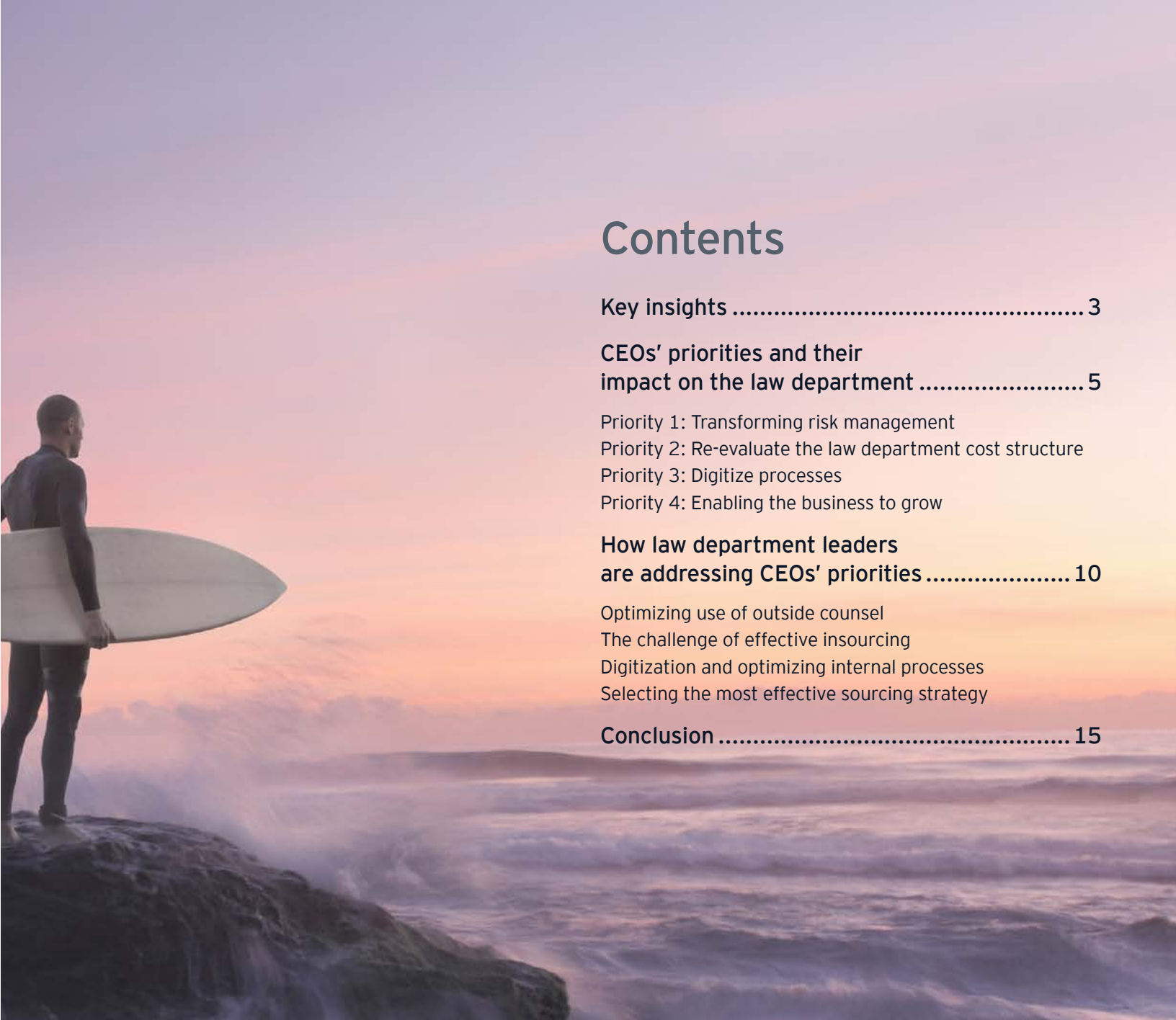
The extensive dataset and the findings presented in this report offer a relevant way of examining the operation and transformation of law departments in a changing world. We look forward to engaging with you on these important issues in the weeks and months ahead.



Cornelius Grossmann
EY Global Law Leader



David B. Wilkins
Lester Kissel Professor of Law,
Vice Dean for Global Initiatives on the Legal
Profession, and Faculty Director of the Center
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Our survey methodology

This survey includes responses from more than 2,000 business leaders from 17 industries and 22 countries across the globe.

The research incorporates interviews with 1,000 law department leaders, and further interviews with leaders from procurement, commercial contracting, business development, and legal entity management teams. In parallel, a broader and separate piece of EY research, The CEO Imperative, spoke to CEOs about their business goals for 2021 and beyond.

Seen together, this research – captured in this first of three reports – provides a 360-degree view of the broader legal function, the enterprise-wide role it has to play and how it is perceived within large organizations.

This study is part of the General Counsel Imperative Series, which provides critical answers and actions to help General Counsel reframe their future. Discover other insights for GCOs at [ey.com/generalcounsel](https://www.ey.com/generalcounsel).

Key insights

In January 2021, EY Law and the Harvard Law School Center on the Legal Profession conducted 2,000 interviews to better understand the opportunities and challenges facing law departments.

Five key findings from the research stand out:

1. Risk management is a top priority, but confidence levels are low.

CEOs cite risk management as the area in which they expect to implement the most change over the next three years, but few General Counsel are “very confident” in their department’s abilities to identify, measure, and manage complex risk.

2. Business leaders report contracting inefficiencies are impacting revenue growth.

Almost all business development leaders say they face challenges working with their law departments on issues related to contracting – with 50% saying inefficiencies in the contracting process have resulted in lost business.

3. Workloads are increasing faster than budgets and law departments are planning even more ambitious cost reductions.

General Counsel expect workloads to increase by 25% over the next three years, yet 75% don’t expect budgets to keep pace. At the same time, many law department leaders are planning significant cost reductions that will require major operational changes.

4. C-suites have not been persuaded to support critical investments in legal technology and process improvement.

General Counsel report that increased use of technology offers the greatest opportunity for cost savings. Yet, law departments face challenges securing budget for technology and process improvement from the C-suite.

5. Law departments continue to use traditional delivery methods despite mounting challenges.

Many law departments report significant challenges with managing outside counsel and insourcing. Meanwhile the use of self-service, centers of excellence and co-sourcing strategies appears underused. Finding the right sourcing mix is critical.

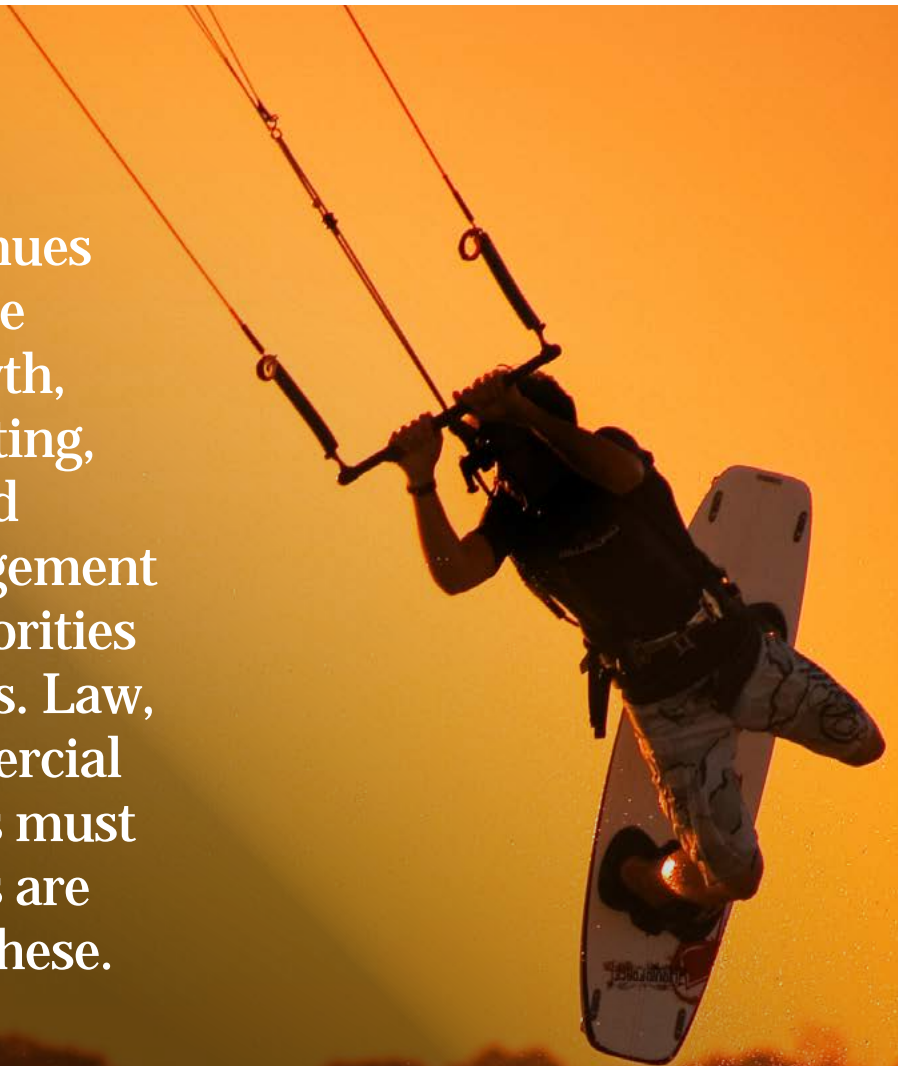
“The feedback from the interviews suggests that law, procurement and commercial contracting departments are under increased pressure from boards, CEOs and CFOs to operate differently,” says John Knox, EY Global Legal Managed Services Leader. “While cost control continues to be a priority, it isn’t the only goal. Enabling growth, delivering faster contracting, providing better data and transforming risk management are also key strategic priorities for most business leaders. Law, procurement and commercial contracting departments must ensure operating models are optimized to deliver on these.”

To meet the priorities of their CEOs, law departments should continue to embrace change and increase their agility to align with the overall strategy of the business. Strategic law departments are embarking on bold initiatives toward a comprehensive and transparent approach to risk management, controlling costs through technology, and directly enabling the growth of the business. The most innovative are using a portfolio approach – combining outside counsel management, internal optimization, technology, and co-sourcing strategies. This research aims to provide building blocks that the law department can use to better support business goals during recovery and beyond.

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John Knox, EY Global Legal Managed Services Leader



CEOs' priorities and their impact on the law department

Although law departments and other business functions have their own priorities, there is broad acceptance that these functions cannot operate in silos if they are to support the needs of the wider enterprise. Research undertaken as part of the [2021 EY CEO Imperative Study](#) delves into the priorities of CEOs across a wide range of topics. For law department leaders who have made greater alignment with business strategy a key goal, a number of those priorities are likely to have the largest impact.

Priority 1: Transforming risk management

CEOs named risk management as the area in which they expect to implement the most change over the next three years, with nearly half saying they would like to increase focus on strategic existential risks. This suggests a desire to manage major risks more closely. Given the challenges the global economy and most organizations faced in 2020, this seems prudent.

Interviews with General Counsel, however, provide a mixed picture regarding risk management. The good news is that most report some level of confidence in their department's ability to manage complex risks (see next figure). Eighty-three percent, for example, reported some level of confidence in managing new privacy and disposition rules.

However, few General Counsel reported being "very confident" in their department's abilities to manage complex risk in a number of areas – a position that may be explained by considering CEOs' second risk-management-related priority.

Of the CEOs who said transforming risk management was a priority, 61% said they would like their organization to take a more data-driven

approach. This suggests a desire to increase access to data and information that can be used to better identify, quantify and manage risk.

Responses from law department and business leaders, however, suggest there is significant work to be done in this area. For example, 68% of General Counsel say they don't have accurate and up-to-date information on their legal entities. This lack of transparency limits law departments' ability to report on the tax and corporate governance risks their organizations face.

A similar share (65%) report they do not have all the data and technology they need to effectively respond to a data breach, giving rise to risks related to compliance and data privacy.

Responses from law department and business leaders also suggest gaps in process management and underuse of technology are limiting organizations' visibility into risk. Sixty-nine percent of companies report their contract creation process isn't standardized, seventy-one percent say their contracts aren't monitored for deviations from standard terms, and seventy-eight percent say they don't systematically track contractual obligations. The lack of process management and technology-assisted monitoring creates a broad range of risks that ripple through corporate supply chains and client relationships.

As Heidi Stenberg, EY Americas Legal Function Consulting Leader, observes, "CEOs' desire to take a more data-driven approach to risk management is ultimately a desire for greater transparency. They want to understand the risks their organizations face at a more granular level. Addressing this will need to be a top priority for law department leaders."

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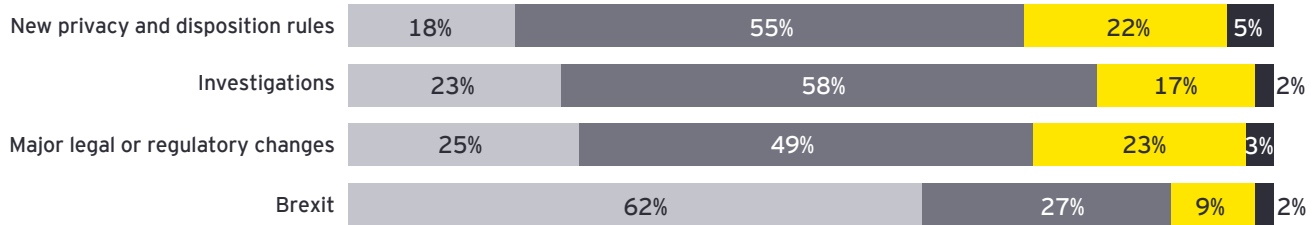
CEOs' desire to take a more data-driven approach to risk management is ultimately a desire for greater transparency. ... Addressing this will need to be a top priority for law department leaders.

Heidi Stenberg, EY Americas Legal Function Consulting Leader

Most General Counsel are not very confident in their department's ability to manage complex legal risks

% of General Counsel reporting confidence in department's ability to manage risk

Complex legal risks



Risk related to changes in the external operation environment



Priority 2: Re-evaluate the law department cost structure

While the need to increase efficiency isn't new, the economic challenges of the past year have brought it into sharper focus. Fifty-three percent of CEOs responded that they anticipate launching a significant cost reduction effort in the next 12 months, and law departments will clearly have their part to play.

Indeed, 88% of General Counsel reported they are planning to reduce the overall cost of the legal function over the next three years – with pressure from the CEO and board ranked as the number one reason for doing so.

The average cost savings being targeted by the largest organizations – those with more than \$20 billion in annual revenue – is 18% over the next three years. This represents a significant increase from the EY [Reimagining the Legal Function Report 2019](#), which showed large companies targeting savings of 11%. Indeed, today over half of these departments are targeting savings of 20% or more.

If law departments plan to save one out of every five dollars they currently spend, significant changes in how they operate will need to be made. This is particularly true given that the “K” shaped economy that many economists are predicting over the next 12 to 24 months. During this time, some industries are expected to see significant growth, while others may face headwinds that will place greater demands on law departments to drive growth while managing risk.

18%

Average cost savings target
for larger companies

14%

Average cost savings target
for smaller companies



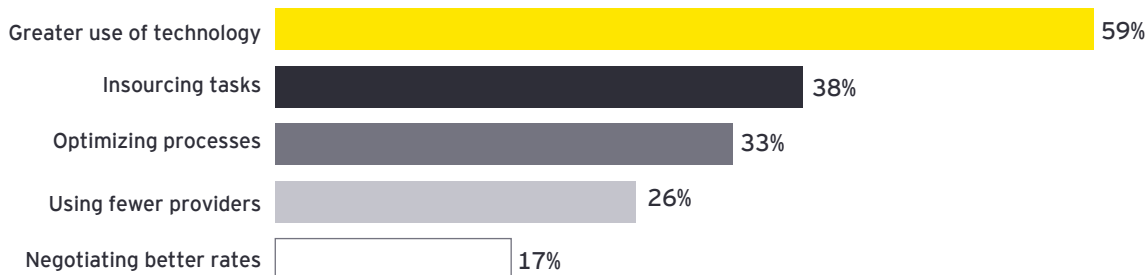
Priority 3: Digitize processes

The role that technology will play in the ongoing transformation of businesses is inarguable, and CEOs' priorities reflect this. Digitization is ranked as the number one priority among CEOs planning changes to their business model. Sixty-one percent are expecting to make significant investments into data and technology.

General Counsel also believe greater use of technology can lead to significant benefits for their department and, in turn, its reputation within the organization. Fifty-nine percent of General Counsel believe technology offers significant or very significant potential for cost savings, far ahead of any other opportunities (see figure below).

Where do you see opportunities for cost savings?

% reporting strategy as offering significant or very significant cost savings opportunities



Yet it appears digitizing legal and risk management processes is still a work in progress. Only 50% of law departments, for example, report they have made greater use of technology in the past 12 months¹. Approximately one in every three law departments still say they don't have the technology they need to do their job².

Similar challenges can be seen in other areas. Ninety-four percent of companies report they face challenges with their legal entity management systems. In contracting, nearly all (99%) say they do not have the data and technology they need to optimize processes. These are significant shortcomings.

While there are many reasons that explain why law departments struggle to implement new technology, one is particularly interesting given CEOs' focus on this area. Ninety-seven percent of General Counsel said they face challenges securing budget for investments in legal technology, the number one challenge being the C-suite not prioritizing investments in legal and risk management.

Rob Dinning, EY EMEA Legal Function Consulting Leader, observes that "convincing the CEO and board that investing in legal technology can increase efficiency, improve services, and enable more sophisticated risk management clearly needs to be a top priority for law departments. This requires an investment case supported by data, an area which has been challenging for many legal functions and where legal operations skillsets can add significant value."

1 Association of Corporate Counsel Chief Legal Officer Report 2020

2 Blickstein Group Law Department Operations Survey, 2019

Priority 4: Enabling the business to grow

Considering the challenges currently facing the global economy, it should be no surprise that CEOs are concerned about their organization's growth prospects. Indeed, 66% of CEOs say that they don't expect their business to grow this year. Even more concerning was that only 19% said they believe growth in 2021 will outpace 2020.

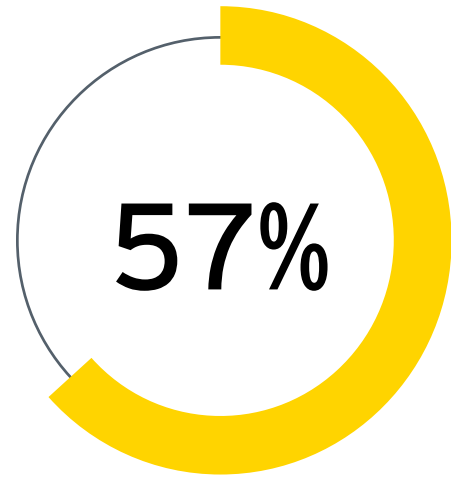
Given these expectations, it is vital that each part of the organization is optimized to support revenue generators, facilitate growth and enable the business's broader strategy. Our research reveals law and contracting departments will need to prioritize this area.

Ninety percent of business development leaders reported they face challenges working with their procurement, law and commercial teams on issues related to contracting, with fifty-seven percent saying that inefficiencies in the contracting process slow revenue recognition.

More worryingly, half of business development leaders reported that these inefficiencies have resulted in lost business. In the current economic environment, any lost revenue is a major cause for concern.

General Counsel are aware of these challenges with only 52% reporting that their department's day-to-day work is aligned with the broader business strategy. The same percentage report their department is effective at adding value to the business.

"Enabling growth will be a crucial priority over the next twelve months," notes John Knox. "To maximize growth opportunities, law, procurement and commercial contracting departments will need to ensure they are focused on the key risks and that their processes are optimized."



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John Knox,
EY Global Legal Managed Services Leader

How law department leaders are addressing CEOs' priorities

To respond to CEOs' priorities for 2021, law department leaders and business leaders from across the organization will need to embrace new ways of working. Indeed, a majority of law departments (92%) report they are already changing the way they operate using a range of approaches.

Slightly more than half of departments (51%) are implementing tactical solutions designed to target specific problems. The same percentage have programs in place to re-engineer their legal function. Thirty percent are considering creating a co-sourcing or outsourcing relationship with a third-party provider to manage parts of the legal function.

This alone demonstrates that there is no one-size-fits-all route to transformation. Indeed, many organizations choose to run multiple strategies in parallel – combining outside counsel management, insourcing, process and technology optimization, and co-sourcing/outsourcing. Yet there is often little coordination among them or systematic analysis of which strategy to use when.

Optimizing use of outside counsel

Many law departments see the benefits of external lawyers including that they bring significant legal expertise. However, they typically come at considerable cost and consume a large part of a law department's budget. Given the current cost-reduction environment, it's unsurprising that law departments turn to outside counsel management programs. The key to these initiatives is supporting them appropriately and using them as part of an overall balanced approach.

While outside counsel management programs can involve a wide range of strategies, the most widely used relate to controlling fees, such as hourly rate freezes, greater use of alternative fee arrangements and an increased focus on securing better rates from provider negotiations. Fifty-nine percent of General Counsel believe that a focus on negotiating better rates creates some opportunity for cost savings.

Other approaches include managing outside counsel more closely through outside counsel guidelines, or consolidating spend into fewer providers. Seventy-two percent of General Counsel believe reducing the number of providers can achieve cost savings.

At the same time, only a minority of General Counsel believe these strategies offer *significant* savings. Law departments' challenges with outside counsel management programs shed light on why that is the case. Eighty-three percent say they have too many providers to manage and eighty-one percent don't have the resources to effectively manage their existing providers. Seventy-nine percent of General Counsel say their guidelines are not detailed enough and eighty-five percent report providers don't follow their guidelines.

Furthermore, while the above strategies promise some cost savings, they are unlikely to help accomplish law departments' other priorities related to rethinking risk management, promoting digitization and increasing business enablement efforts.

As Stenberg observes, "Optimizing use of outside counsel provides law departments with the opportunity to shift cost savings to other areas. Reducing the number of providers can also simplify operations. Both outcomes are positive steps forward for law departments and can help ensure the success of other transformation initiatives."

The key is to identify the strengths and weaknesses of each approach and deploy it selectively where it offers the greatest opportunity – finding the most effective balance across all strategies.

The challenge of effective insourcing

Insourcing is among the most visible, discussed trends in the legal market in the past decade. Shifting work internally can reduce spend on outside counsel. It also offers the potential for greater control and more integration with the business. For many law departments, however, insourcing has also produced challenges.

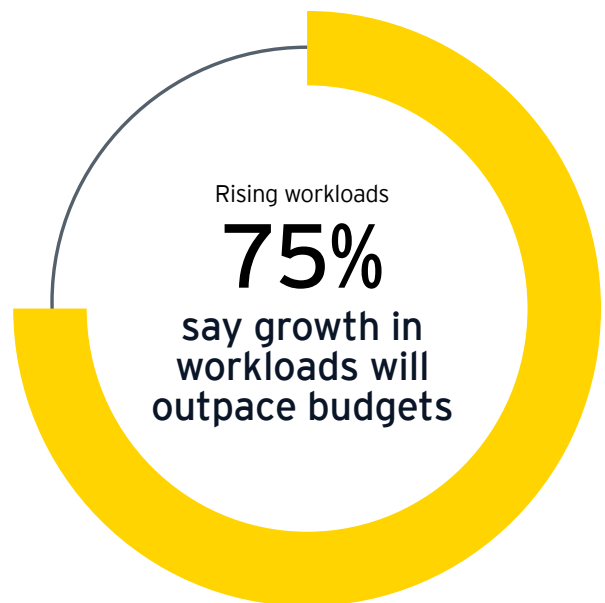
Rising workloads is the most obvious outcome of shifting work in-house. General Counsel expect workloads to increase by 25% over the next three years, yet headcounts are only expected to increase by 3% over the same period. This mismatch helps explain why 76% of departments say they find it challenging to manage current workloads.

A second challenge is an increase in what is perceived as low-value work. Law department leaders report that one out of every five in-house counsel hours is currently spent on low-value, repetitive or routine tasks, with 87% confirming that their department spends too much time on these tasks.

As a result, 47% report that increasing volumes of low-value work have adversely impacted employee morale. Given the importance of retaining and developing talent for law departments, such figures should be a major cause for concern.

Also, as law departments have brought tasks in-house and added more headcount, they have increased the complexity of their department. This complicates efforts to address the priorities of CEOs not directly related to cost control. While insourcing offers some benefits for addressing CEOs' priorities for rethinking risk management and business enablement, greater complexity may work against these goals.

Law department leaders are split on whether insourcing has, overall, been a good strategy. While 78% believe insourcing offers opportunities for savings, few intend to increase headcount significantly over the next three years. To manage this, they will need to turn to technology and process improvement to help optimize the legal department's operating model.



Digitization and optimizing internal processes

The role that technology has to play in transforming law departments cannot be understated. “Technology can not only deliver cost savings, enhance compliance and de-risk the legal function,” says Cornelius Grossmann, EY Global Law Leader, “but it can also help deliver on CEOs’ priorities around data-driven risk management and improving business enablement.”

Most law department leaders are deploying a wide range of strategies in this area including implementing new technologies, automating and standardizing processes, providing training on best practices and redesigning workflows. However, most of these strategies aren’t being used extensively or as part of broader transformation initiatives.

Similar trends can be seen in the actual technologies that are being used. In the contracting space, for example, leaders report using a wide range of technologies (see figure below). Only a minority, however, use these technologies extensively.

One reason for law and contracting departments’ hesitation to implement process improvement strategies more broadly is that they face a wide range of challenges. Ninety percent, for example, report difficulty identifying a process that supports all users, while seventy-seven percent report they struggle with the adoption of new processes.

Law departments also report that too much time is spent selecting technology, implementation is too time consuming and their lawyers don’t fully utilize implemented technologies.

Underlying the law department’s digitization and process optimization difficulties is a broader challenge – a lack of skills. Eighty-three percent of law departments report they lack the skills needed to automate processes, while forty-one percent report they lack the data or expertise to develop a case for investment into legal technology.

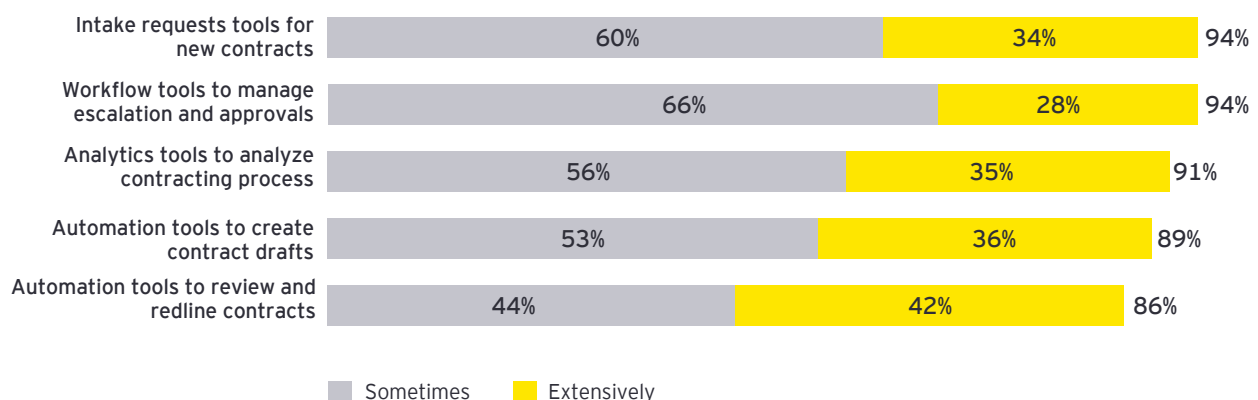
It is widely recognized that digitization and process improvement have the power to transform law department operations, but there are clear obstacles to implementation – including general under-investment, lack of skills or difficulty in identifying the most effective solution. As such, law departments will need to look at how best to accomplish their technology and process improvement goals, be that in-house or through an external provider.

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Technology can not only deliver cost savings, enhance compliance and de-risk the legal function but it can also help deliver on CEOs’ priorities around data-driven risk management and improving business enablement.

Cornelius Grossmann, EY Global Law Leader

What contracting technology does your organization use?



Selecting the most effective sourcing strategy

It is evident from the above that there are benefits and downsides to be found when it comes to using outside counsel, insourcing and implementing technology. For many law departments, it makes sense to play to their strengths – and if any weaknesses cannot be addressed to look to broader solutions to do so.

These solutions may well include self-service automated options, using alternative providers, co-sourcing relationships or the use of an on- or offshore center of excellence.

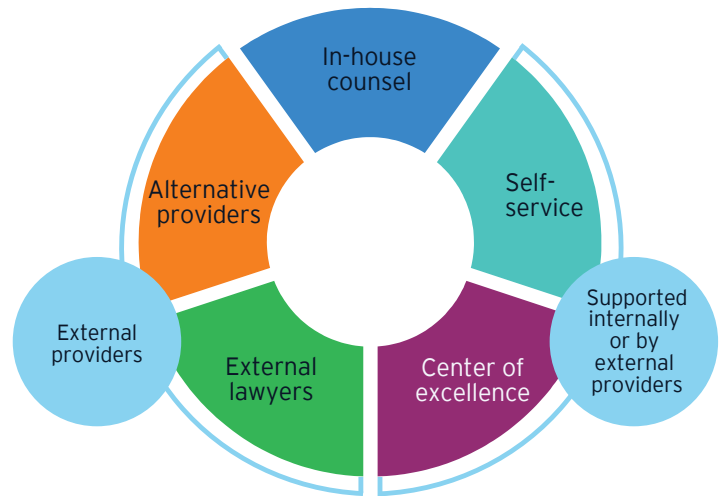
Each of these delivery methods presents opportunities and challenges for General Counsel looking to optimize their legal function and maximize the value they provide their organization.

Self-service strategies, which allows individuals to use standardized resources and automated processes to complete the required work themselves, can be managed internally or via partnerships with external providers. This approach can reduce department workloads and create on-demand services for internal stakeholders to leverage when they need them. At present, few legal services are self-served within large organizations – they are widely used in contracting areas, yet only 16% of contracts are currently self-served.

Centers of excellence (or shared service centers) also appear to be underused. While 73% of companies use them to support the legal function, only 9% use them extensively. There are many benefits to using a center of excellence. When optimized they can deliver services at lower costs than traditional law firms or in-house counsel. This is particularly true when centers are in low-cost on- or offshore markets.

While some organizations will receive operational support from other business functions and teams, legal departments thinking of establishing an effective center of excellence should not underestimate the significant time investment required in the short-term to derive high levels of effective service delivery. As centers of excellence can be cumbersome to manage, some departments have turned to third-party providers to help manage personnel, training and ensure continuous improvements in efficiency.

Potential legal sourcing strategies



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Rethinking sourcing strategies offers benefits that go beyond cost control. Using new delivery methods can improve business enablement and enhance risk management.

Rob Dinning, EY EMEA
Legal Function Consulting Leader

Alternative service providers offer process management and technology capabilities. They also utilize sophisticated talent models leveraging traditional lawyers, technologists, other legal professionals and on- and offshore talent.

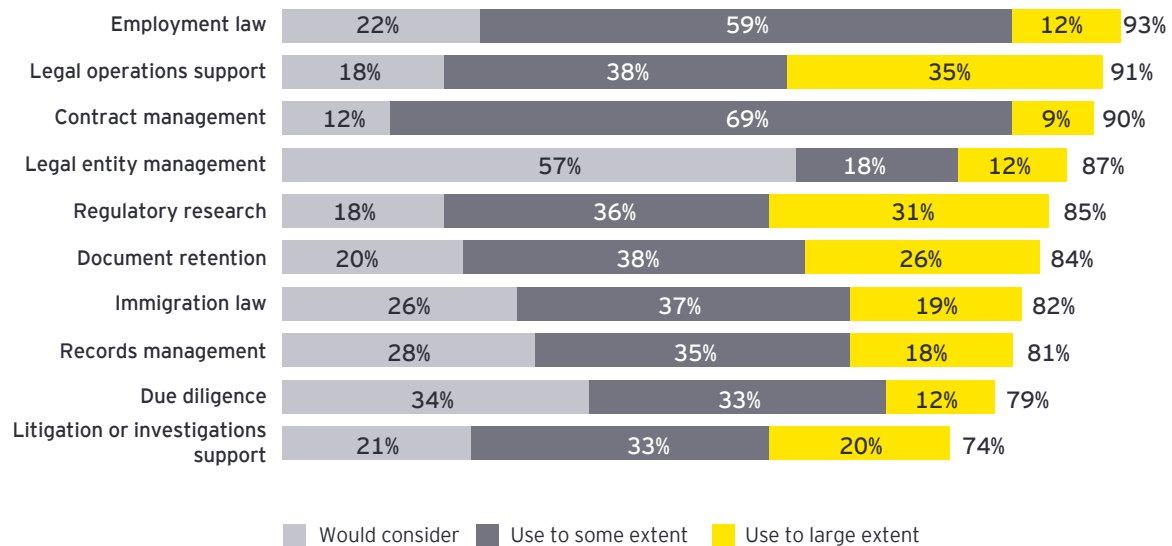
There is a real appetite for the use of alternative providers, with 85% of General Counsel saying that their law department uses their services – an increase from 72% in 2019. The level of use, however, varies widely by law department and by service type. In some areas, like regulatory research or document support, their use is mainstream. In other areas like legal entity management, their use is less common (see figure below).

Interviews with General Counsel suggest law departments appear interested in expanding their use of alternative providers. Significantly, the law departments that currently use alternative providers most extensively are most likely to say they want to expand their use.

“Rethinking sourcing strategies offers benefits that go beyond cost control,” says Dinning. “Using new delivery methods can improve business enablement and enhance risk management. Self-service techniques, for example, can help speed up service delivery.

“Alternative providers’ extensive use of process management and technology allows risk to be managed at a more granular level. It also provides greater access to data and transparency into processes. This allows companies to identify, measure and manage risk in new ways.”

Does your law department use alternative service providers in the following area?



Conclusion

CEOs' priorities for 2021 suggest that law departments will be under significant pressure to think and act differently for the foreseeable future. While cost control is certainly on the agenda, maximizing the legal function's value to the organization appears most important to CEOs.

Enabling growth and the business more broadly will be hugely important in the next 18 to 24 months as the global economy rebounds. Helping transform risk management so that companies can adjust to new realities and protect from future difficulties will also be crucial.

Interviews with leaders from law, procurement, commercial contracting and other departments suggest change is already underway in most legal functions. Many are already using advanced strategies to optimize parts of their department. Expanding these initiatives and maximizing their effectiveness will be the primary challenge for law department leaders in 2021 and beyond.

Law departments' success in this area will ultimately be judged by their alignment with overall business strategy, their success at transforming risk management and in how they help their organization grow.

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