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Managing Your Legal Department and Making It More Efficient

Insights From General Counsel in the Chemical and Performance Materials Industry

Welcome to our inaugural report on law department structure and management in the chemical industry. This report is the culmination of a survey and series of roundtable discussions of General Counsels in the industry, a group that has been meeting annually for 15 years. General Counsels from chemical companies representing petrochemicals, basics and specialty sectors of the chemical industry attend these meetings, which are facilitated by global law firm Squire Patton Boggs with the support of the following Steering Committee:

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We hope you find this report useful in reviewing the management of your law department and gleaning ideas from some of your peers in the industry, and we look forward to continuing our conversations with you on these important issues.

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Key Findings of This Report

1 Most legal department leaders are finding their non-legal colleagues are increasingly turning to the legal department to manage more than what would typically have been supported in the past *(see pages 4 – 6)*.

2 Almost across the board, legal departments rely on negotiating discounts, enforcing billing guidelines and pre-matter scoping to manage external costs. Outside of these top three tactics, adoption of different cost control measures is less consistent *(see pages 7 and 8)*.

3 The top three metrics on which a legal department's performance is measured by the company are:

- Spend v. budget (82% use this metric)
- Internal client feedback evaluations (55%)
- Year-over-year cost savings (36%)

(see page 13)

Background

In September 2020, Squire Patton Boggs and Acritas, part of Thomson Reuters, partnered together to create an exclusive benchmarking report tailored to organizations in the chemical and performance materials industry sector. This report includes insights from 25 respondent organizations from the industry.

The General Counsels from these respondent organizations participated in an online survey administered by Acritas and the aggregate analysis is presented within. The results were also used as the foundation of a live roundtable discussion. Commentary from this event is also captured within this report.

Throughout this report, many of the results are classified by size of the organization, which reflects company annual revenue. The splits displayed in the report are based on the median annual revenue of the companies that participated in the study.

	Average	**Median**
Revenue	US$8 billion	US$3.7 billion
FTEs	8,490	4,500
Annual legal spend	US$42.6 million	US$9.5 million

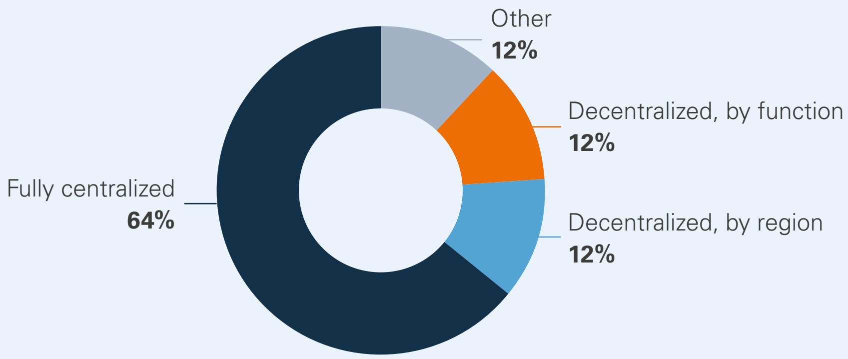
Profile of the Typical Corporate Legal Department in the Chemical and Performance Materials Industry

Legal demands are on the rise. According to Acritas' latest independent research, in the last eight months, **58% of organizations across all industry sectors have reported an increase in their workload.**

With workloads and complexity on the rise, it is unsurprising to see the majority of chemical and performance materials companies reporting a centralized approach to managing their legal operations.

Two-thirds of Departments are Centrally Run

Legal department organization



Other includes: mix of central and decentralized, mix of central and external management

Company size does not strongly influence the type of legal department structure used

Legal department centralization is one of the few benchmarks in this study that was not impacted depending on the size of the organization. Chemicals and performance materials companies – both large and smaller – were more likely to be fully centralized.

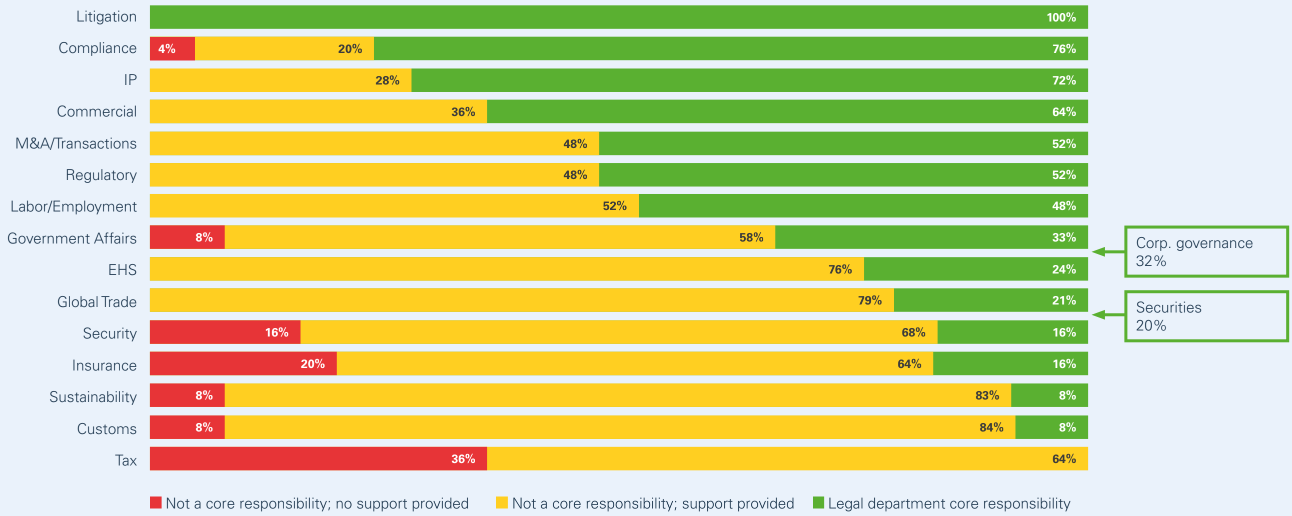
Participants in the virtual roundtable session commented that **one of the primary benefits of a centralized approach to managing the legal department is the ability to ensure consistency in risk philosophies and advice provided.**

What Are Legal Departments Managing?

While the structure of legal departments within the chemical and performance materials industry may be largely similar, what they consider to be the core responsibilities under the direct purview of the legal department vary significantly from company to company.

Little consistency in what falls under the legal department's purview

Legal department core responsibilites



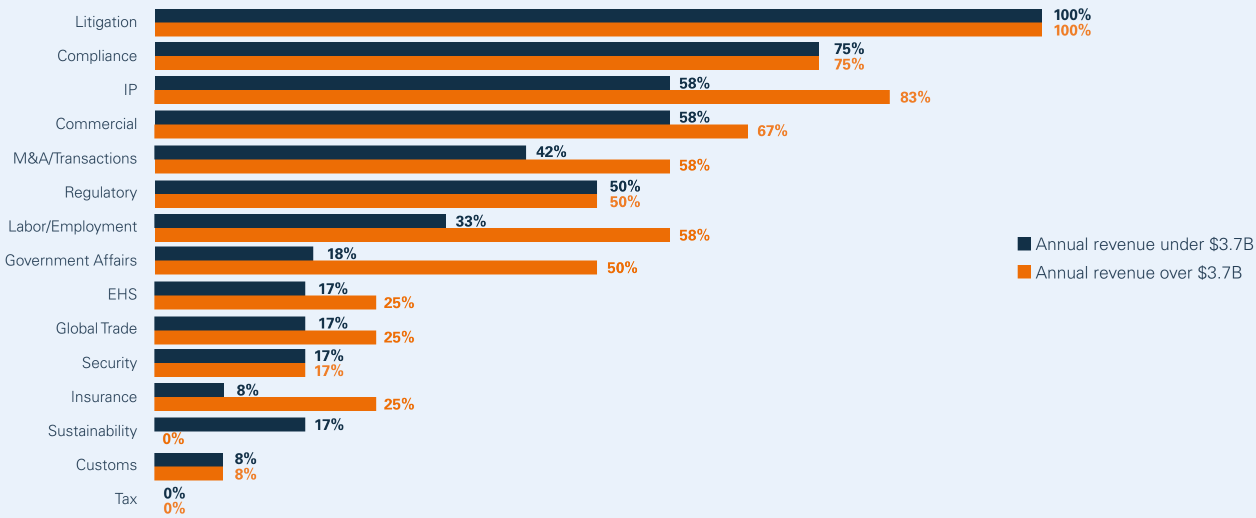
For most of the respondents in this study, they decided whether an area was a core responsibility (rather than an area that legal simply supported) based on if the work associated with the function comes out of the legal department's budget. For example, many of the General Counsels in the roundtable session remarked that transactional work typically initiates, and is funded by, the corporate development department or the finance department. So, even though the legal team supports M&A activities, they do not consider it a core function of the law department.

It is worth noting that in nearly every area included in this study (outside of tax), **80% or more of respondents said the legal department was either directly responsible for or provided legal support to their organization in some fashion.** This underscores the increasing role the legal department plays in the day-to-day operations of their organization's core business processes.

Taking a closer look at this particular analysis shows that larger chemical and performance materials organizations (those with more than US$3.7 billion in annual revenue) are likely to consider more functions their core responsibility than their smaller counterparts.

Key differences in what legal handles depending on company size

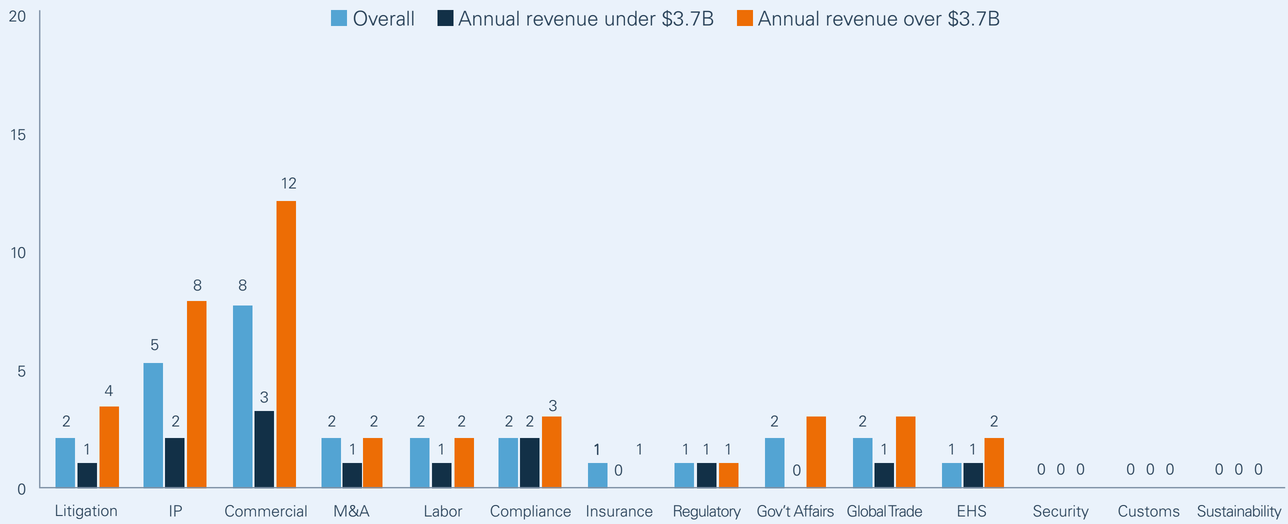
Legal department core responsibilites



The interesting exception to this trend is in the area of sustainability, where smaller legal departments (those at organizations with less than US$3.7 billion in annual revenue) are more likely to consider this a core responsibility – albeit it is only 17% of those organizations. For many of the General Counsels at the roundtable session, they indicated sustainability resides within the marketing and product development department at their organization.

The overarching takeaway is clear: most legal department leaders find their non-legal colleagues frequently turn to them for advice and counsel on how to reduce risk exposure in functions that are not typically considered under the legal department's core purview. Not surprisingly, staffing levels are largely aligned with whether or not a function is considered a core responsibility of the legal department.

Average number of full-time lawyers dedicated to work type



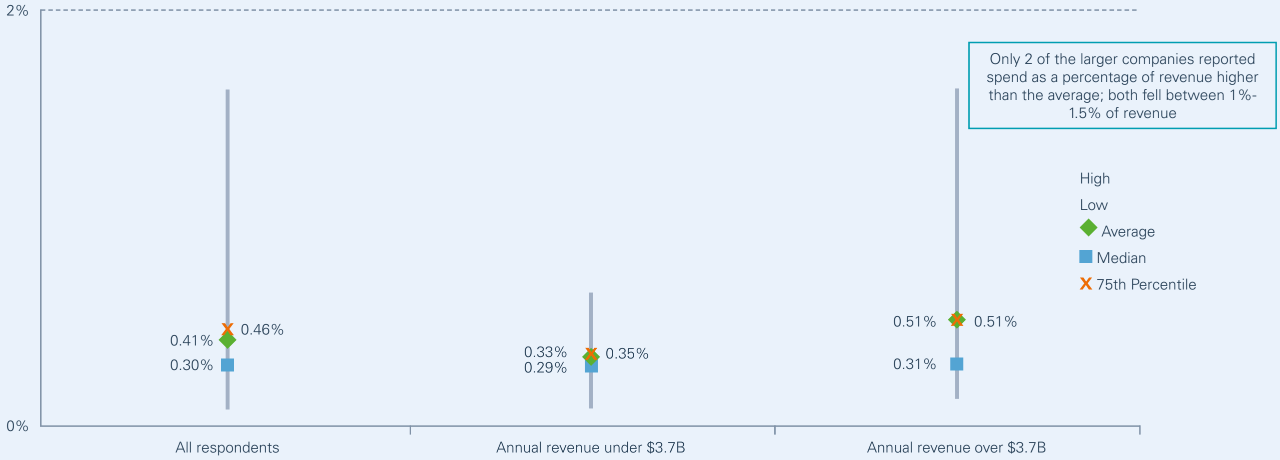
The bigger question facing many legal departments is, if the rest of the organization continues to rely on the legal department for support, will headcounts rise to ensure risk is properly managed from a holistic perspective?

Spend Management Sophistication: Legal Spending, Budget Distributions, and How Companies Are Controlling Costs

Despite the variances in what companies consider the core responsibility of the legal department, ultimately legal spend as a percent of company revenue is fairly consistent across chemical and performance materials companies of all sizes.

Legal spend as a percentage of revenue: Benchmarking spend distributions

Total legal spend as a percentage of revenue



While the average spend as a percent of revenue figures is noticeably different when looking at companies of different sizes, the median figures are fairly in line. This indicates that only a handful of organizations have substantially higher spend as a percent of revenue – most organizations are in line with the median figures.

The two largest components of any legal budget are:

(1) Spend with external legal services providers

(2) Salaries

Legal budget breakdown: Benchmarking spend distributions

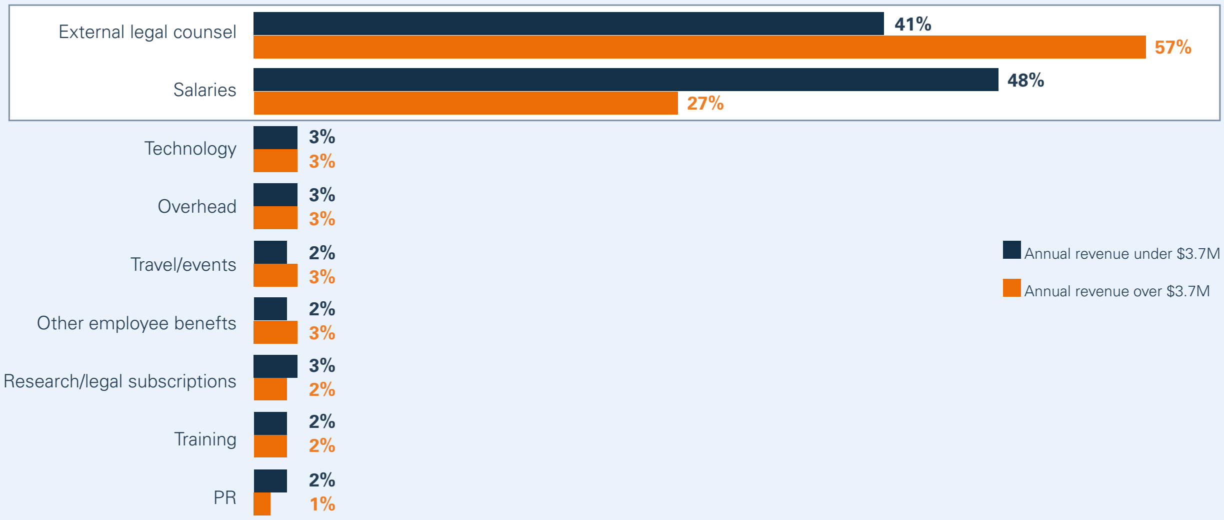
Average proportion of legal budget, if proportion is greater than zero

Note: other employee benefits includes additional perks outside of traditional benefits packages. This typically includes expenses like CLEs, bar fees, membership fees, etc.

As seen in other industries, the biggest difference in how legal budgets are distributed comes down to how much a company relies on internal resources versus external ones. In most cases, larger organizations are more likely to spend a greater percentage of their legal budget on external resources, while smaller organizations are more heavily weighted internally.

Major differences in proportion of spend to external counsel and salaries based on company size

Average proportion of legal budget, if proportion is greater than zero

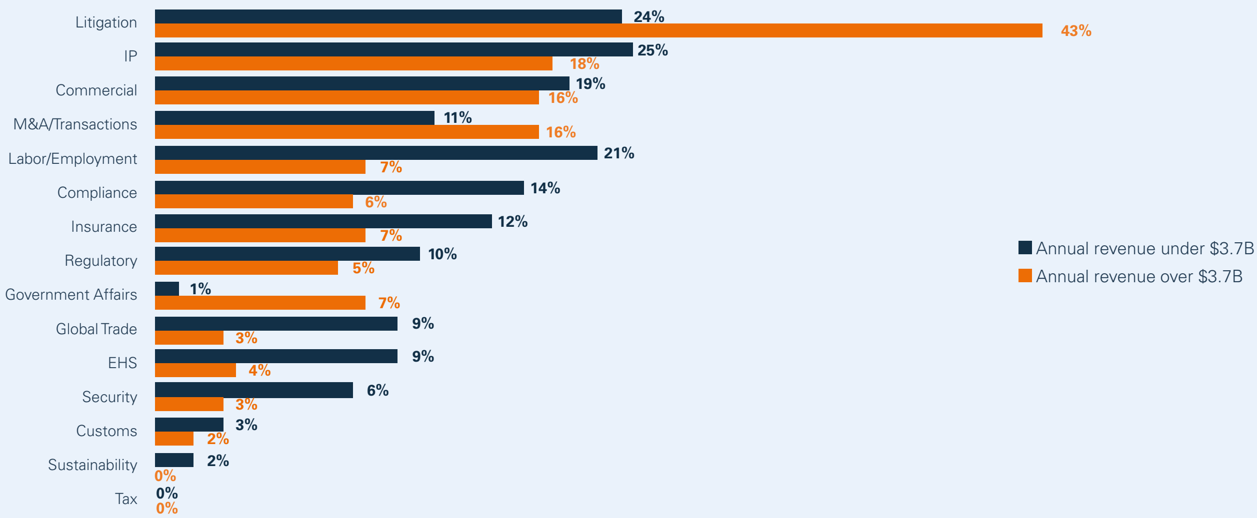


There is more disparity in budget allocation when looking at budgets across different work types – outside of litigation, which is the largest budget item for nearly every chemical and performance materials company. On average, litigation accounts for one-third of companies' legal budgets. IP, commercial, M&A and labor round out the top five budget areas.

While 76% of chemical and performance materials companies include compliance in their legal budgets, on average, this area accounts for less than 10% of total legal spend. Frequently, this area is funded by standalone compliance departments or individual business units within the organization.

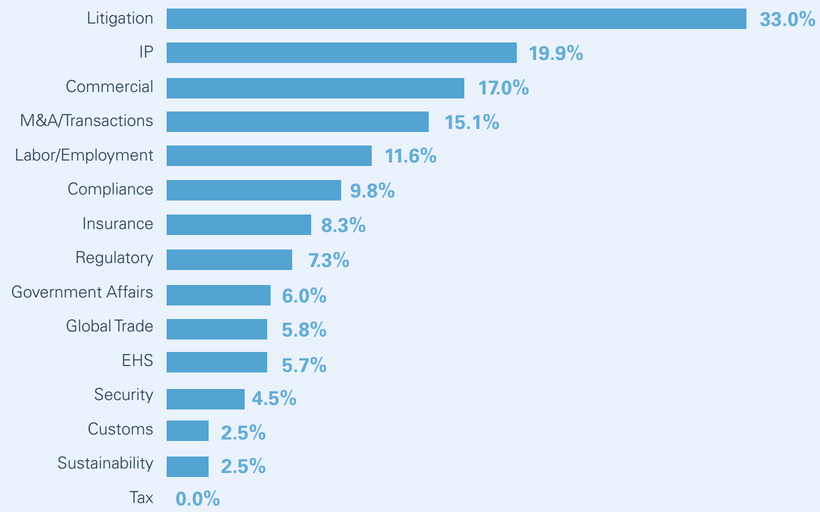
Litigation the bulk of large companies' legal budgets

Average proportion of legal budget, if proportion is greater than zero



Legal budget breakdown: Benchmarking spend distributions

Average proportion of legal budget, if proportion is greater than zero



Percent of companies with areas in budget in 2019	
Litigation	96%
IP	72%
Commercial	64%
M&A/Transactions	52%
Labor/Employment	48%
Compliance	76%
Insurance	16%
Regulatory	48%
Government Affairs	28%
Global Trade	16%
EHS	28%
Security	8%
Customs	8%
Sustainability	8%
Tax	0%

As seen when looking at what is considered a core legal department responsibility, there are substantial differences when looking at how legal budgets are distributed by company size. This is especially true for litigation and labor/employment spend levels.

While working on this survey and through our ongoing discussions with clients in the industry, the following issues have been a focus, and here are some observations from Squire Patton Boggs:

Environmental Regulatory

The incoming Biden Administration's environmental agenda differs in fundamental ways that will significantly impact the chemicals industry. Short-term priorities are expected to include:

- Aggressive efforts to address climate change
- Heightened focus on environmental justice
- Increased enforcement
- Eliminating executive orders and guidance that streamline regulation and permitting
- Increasing the stringency of chemicals risk regulations

Particular challenges are likely to face companies that use the 30 substances already flagged for risk evaluations under TSCA. The new administration is expected to take a significantly broader approach to identifying related exposure risks, and a much stricter approach to controlling them. Similarly, companies can expect increased scrutiny on the risks of new chemicals, resulting in longer approval times, additional data/testing requests and tighter restrictions. Consistently, the chemicals industry should plan for increased scrutiny on (and active enforcement to limit) exposure risks associated with facility emissions – particularly those that present environmental justice concerns. Given the expected regulatory headwinds, companies should take this opportunity to assess key business risks, develop related mitigation strategies and redouble compliance efforts.

Litigation

Litigation is a key driver in the overall legal spend for chemical companies of all sizes. In addition to routine matters, chemical companies are uniquely vulnerable to outsized disputes that present significant risk and, in turn, require significant resources to manage.

These outsized disputes often fit a similar pattern. An event sparks the interest of the civil plaintiffs' bar, regulators, law enforcement, the media and/or legislators. As one or more of these interested parties take action, the others are more likely to act as well. More importantly, an adverse outcome can have cascading impact across multiple disputes. Once this "wheel of misfortune" begins to spin, companies can easily find themselves defending on multiple fronts simultaneously – at great risk and expense.

General Counsels should be vigilant in identifying routine issues that can spin into these larger matters. Once identified, companies are well served by creating the smallest possible team of core stakeholders to manage the internal decision-making process. This team should be augmented with outside legal support with specific experience in managing complex, multifaceted disputes. Together, these groups are best positioned to identify specific strategies to minimize the long-term risk and spend from these outsized cases.

Compliance

The COVID-19 pandemic continues to affect the entire world. However, the Foreign Corrupt Practices Act (FCPA) and anti-corruption enforcement continue to be a high priority and, in fact, 2020 had a record amount of financial penalties.

Organizations and businesses are increasingly expected to rapidly modify (or modernize) their compliance programs, internal investigations and internal controls, as well as conduct risk assessments based on this new reality. It has been clear that there is no "pandemic defense" for violating anti-corruption laws.

This new "normal" is posing unprecedented challenges to compliance professionals for preventing, detecting and reacting appropriately to compliance risks, especially dealing with a remote working environment. Methods that before were not considered now have been largely applied. Here are some key actions to ensure compliance during the pandemic period:

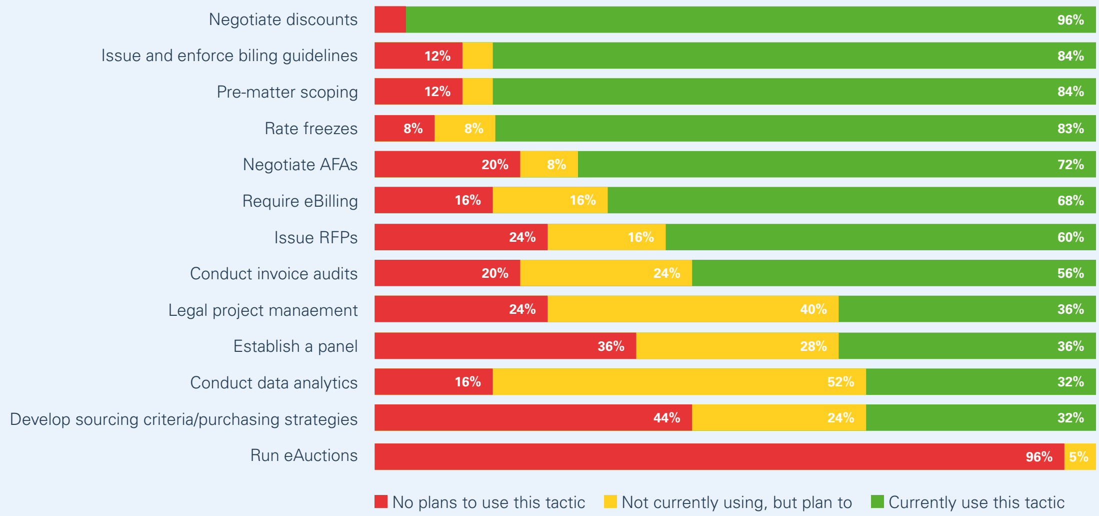
- Reiterate corporate commitment to compliance. Companies and organizations must periodically refresh and reaffirm their commitment to anticorruption laws and internal policies and procedures during the pandemic. Senior and middle management should emphasize their commitment to compliance to demonstrate to employees that compliance is a priority to the organization or business.
- Conduct target compliance training to reflect the changing risk profile. The pandemic may have modified the company's risk profile. Disruption or changes in the regulatory environment (for example, the closure of borders and travel restrictions), the remote working situation and increasing business pressure to recoup revenue may lead employees to disregard the company's policies and procedures. New training must be available to employees, including newly identified risk and pressure points brought by the pandemic.
- Master technology and rethink compliance functions. The pandemic is forcing companies to quickly update their pre-existing practices and protocols with the aid of technology. The investment in technological innovation aids continuous operations, quality service and optimal performance of the work. However, it also presents many risks to the business organization, such as malfunction, breakdowns, cybersecurity and data privacy.
- Focus on remote risk assessment/due diligence procedures for potential new and existing third parties. Although most corporate compliance has been built around in-person contact and training, travel and other restrictions have required companies to perform compliance functions remotely. Historically, in-person interviews have been central to sound internal investigations, due diligence and risk assessment. With the experience of remote processes required by COVID-19, there may be increased acceptance of remote processes in some parts of compliance-accepted practices.

How Are Legal Departments Controlling Costs – Especially With External Legal Providers?

Year after year, controlling legal costs is one of law department leaders’ top priorities. Over time, law departments have built an impressive toolkit of strategies they can implement to help better manage spend. On average, chemical and performance materials legal departments rely on seven different tactics at any given time to help control costs.

Legal departments use an average of 7 different tactics to better manage external counsel

Use of external legal counsel management strategies



Almost across the board, legal departments rely on negotiating discounts, enforcing billing guidelines, pre-matter scoping and rate freezes. Outside of these top four tactics, adoption of different cost control measures is less consistent.

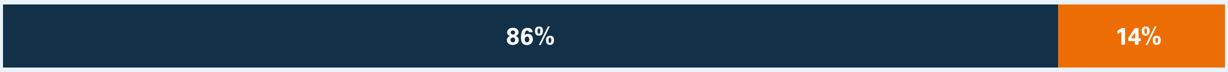
Despite much discussion around project management, law firm panels and data analytics, relatively few legal departments are currently placing a high priority on these tactics. However, in Acritas’ wider research across all industry segments, these particular tactics are seen as highly effective ways to help keep legal spend under control.

The one tactic dismissed by nearly every respondent is the use of eAuctions. In many conversations, law department leaders tend to see the use of eAuctions as undermining to building trusted partnerships with external providers.

What Legal Department Success Looks Like

In the ongoing push to always demonstrate value to the wider organization, legal departments have become more focused than ever on metrics.

More than 85% of chemical and performance materials companies say formal metrics are included in the review of their legal department's success. Like many other sophisticated legal departments, the respondents of this survey discuss a multitude of both quantitative and qualitative metrics to track performance.



- Formal metrics used in legal department performance review
- Only subjective metrics used in legal department performance review

Key Performance Indicators Used by Legal Departments	
Spend v. budget (82% use this metric)	Total exposure managed
Internal client feedback evaluations (55%)	Successful completion of deals
Year-over-year cost savings (36%)	Organizational health index
Number of patents filed (9%)	Cost recovery
Cost per revenue (9%)	

Many of the metrics being tracked by law departments are quantitative by nature. Roundtable participants also discussed the value of tracking data when unexpected issues or legal needs arise and impact budget.

A number of participants discussed when they bill a business unit rather than pull spend out of the legal department budget – a few participants will bill departments directly if the issue or need does not impact the whole organization.

Another KPI mentioned was using alternative or flat fee arrangements in order to ensure outside counsel has "skin in the game" with regard to staying on budget all the way through the process.

Summary

This report will provide a foundation for ongoing discussions of how law departments currently operate and future trends as departments drive to deliver and measure value. To coincide with our program of roundtable meetings for the industry in the US and Europe, we plan to publish further reports to take a closer look at certain aspects of law department management, such as preparation of the law department annual budget, cost management, mitigating risk and measuring success.

In addition, these roundtable meetings are an important forum for General Counsels to discuss a variety of legal, regulatory and policy issues facing the chemicals industry, and offer participants an opportunity to discuss common concerns and pressing challenges.

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Squire Patton Boggs

With a global industry team of 100 lawyers throughout offices in the Americas, Europe, the Middle East and Asia Pacific, we are one of the few law firms with the global capacity and experience to assist clients on chemicals and performance materials, industry, legal, regulatory, advocacy and other matters worldwide. Our clients include a third of the top worldwide chemical companies. You will benefit from our blue-chip client list and cross-practice expertise. We work closely across our practices, and we achieve seamless counsel by working with colleagues from all our practice groups.

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