

# Legal Department Health Review

Strategic planning to achieve long-term, sustainable improvements vs. a quick bandage approach

April 23, 2018  
Session #35

**Deloitte.**

## Meet our session presenters



**Piet Hein Meeter**  
Deloitte Global Leader  
Deloitte Legal,  
Partner, Deloitte  
Netherlands



**Don Fancher**  
Deloitte Global and Deloitte  
US Leader, Forensic  
Principal, Deloitte Financial  
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**Meghann Kelley**  
Deloitte North West Europe  
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Principal, Deloitte Financial  
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Legal Business Consulting,  
Manager, Deloitte Tax LLP

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# Agenda

Area	Speaker	Timing
Session introduction	Piet Hein Meeter and Don Fancher	15 minutes
Developing a strategic plan	Meghann Kelley	15 minutes
Risk and controls	Karina Mowbray	15 minutes
Operations and technology	Tony Reid and Matt Bullwinkel	20 minutes
Wrap up: Strategic planning	Meghann Kelley	10 minutes
Q&A	Piet Hein Meeter	15 minutes

# Session introduction

Piet Hein Meeter

Deloitte Global Leader Deloitte Legal,  
Partner, Deloitte Netherlands

Don Fancher

Deloitte Global and Deloitte US Leader, Forensic  
Principal, Deloitte Financial Advisory Services LLP

# Why we're here today

Support the role of the legal department as a strategic business partner and enabler and dispel misperceptions of being as a blocker

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**BE PREPARED**

TO TAKE ON THE

**FUTURE**

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# Developing a strategic plan

Meghann Kelley

Deloitte North West Europe Tax & Legal Strategy Leader  
Partner, Deloitte UK

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Developing a strategic plan

## Polling: 3 questions



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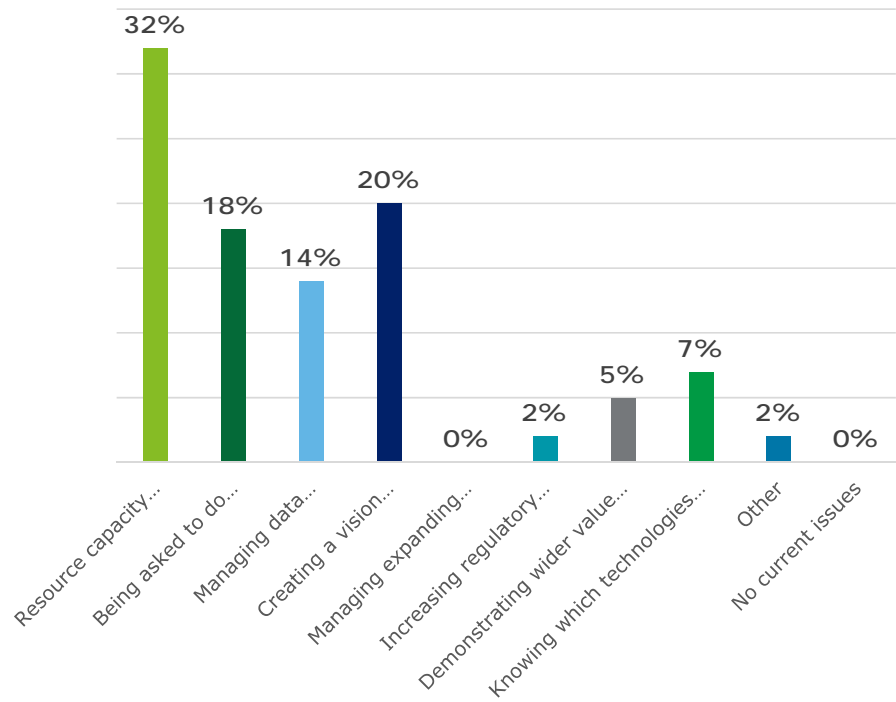
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# Developing a strategic plan

## Polling: 3 questions

### 1. What are the key issues that your legal organization is facing today?

- A. Resource capacity and constraints
- B. Being asked to do more with less
- C. Managing data and mitigating risks
- D. Creating a vision for future of legal
- E. Managing expanding global operations
- F. Increasing regulatory pressure
- G. Demonstrating wider value to the organization
- H. Knowing which technologies to use
- I. Other
- J. No current issues

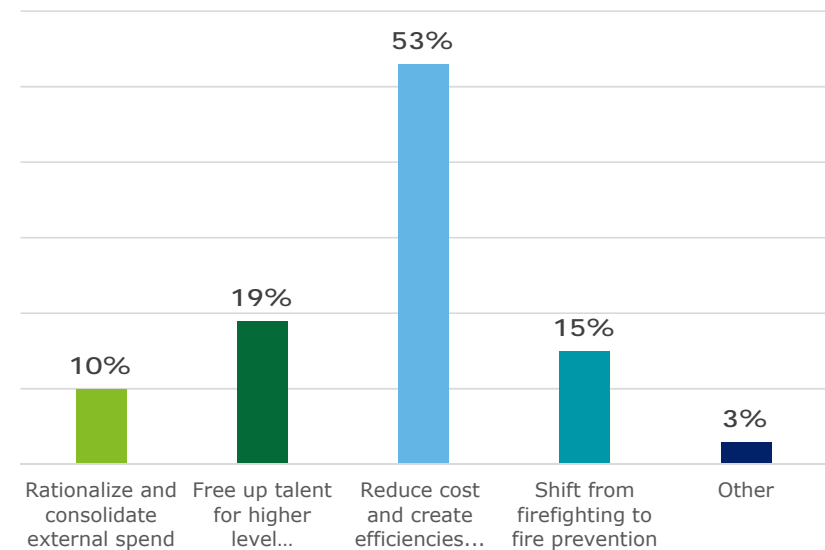


## Developing a strategic plan

### Polling: 3 questions

#### 2. What are the key opportunities to improve the functioning of your legal department?

- A. Rationalize and consolidate external spend
- B. Free up talent for higher level work through alternative sourcing
- C. Reduce cost and create efficiencies through automation/technology and process redesign
- D. Shift from firefighting to fire prevention
- E. Other

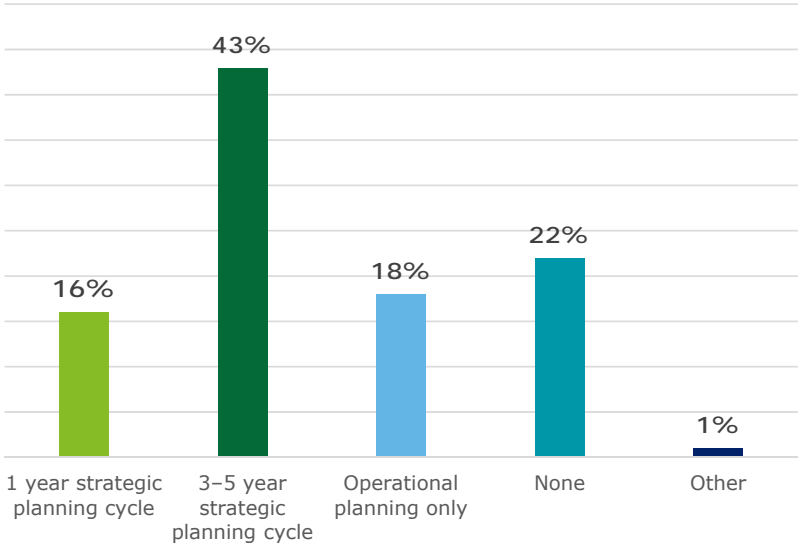


# Developing a strategic plan

## Polling: 3 questions

### 3. What does your strategic planning cycle look like?

- A. 1 year strategic planning cycle
- B. 3-5 year strategic planning cycle
- C. Operational planning only
- D. None
- E. Other



A quick bandage approach vs. long-term, sustainable change ... it is all about where you start



# Plan to make a plan

Focus of today



Exceptional events



## Plan to make a plan (cont.)

### Focus of today



### Benefits of strategic planning

Clear goals with owners

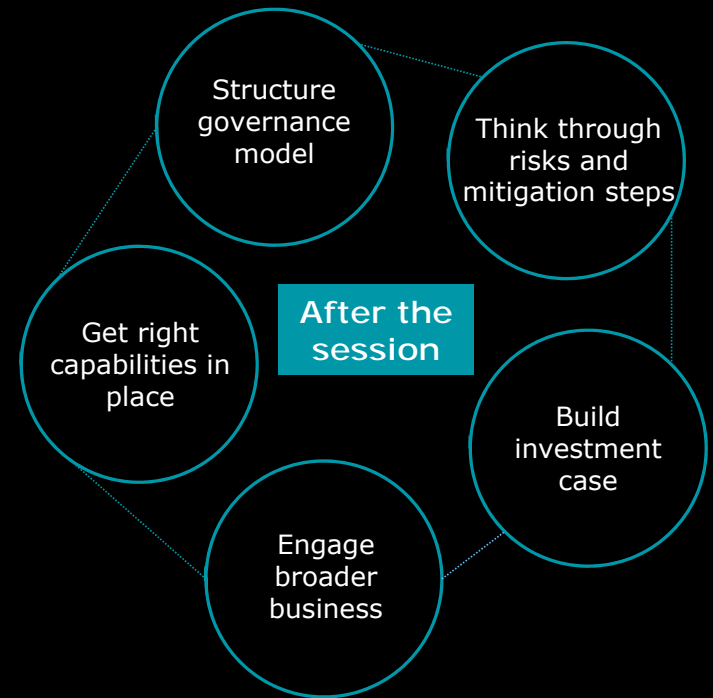
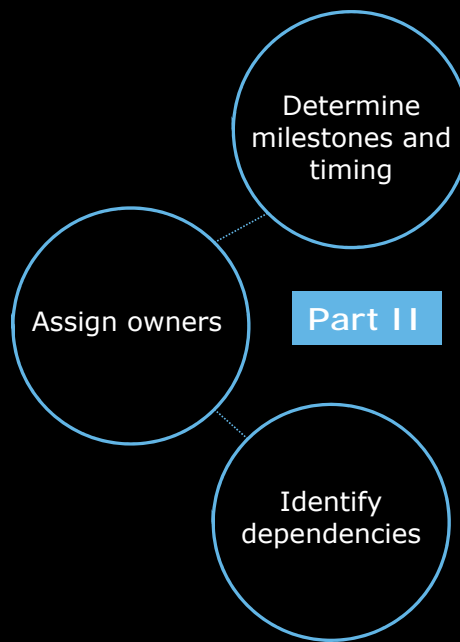
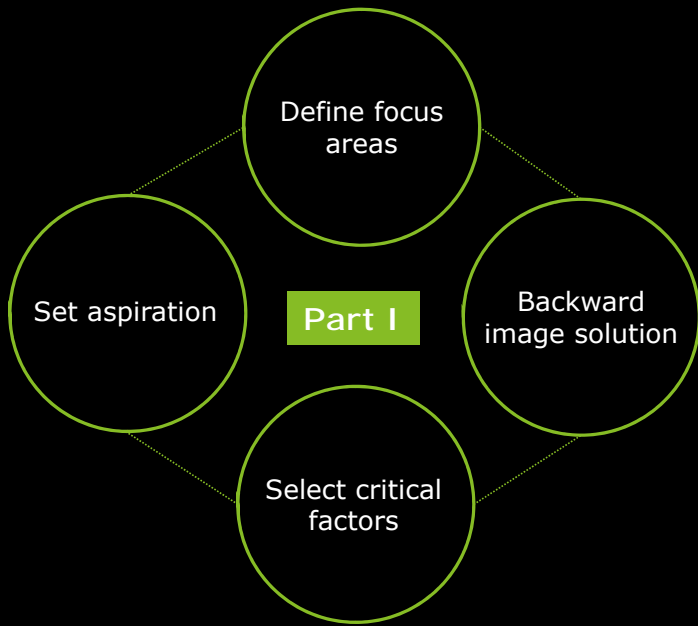
Address root cause before selecting a solution

Focus on operational risks and mitigation steps

Enable transformational change

Improve engagement with the broader business

# Strategic planning process





# Building your plan

## Aspiration – What will your legal function look like in 3 years?

Elevate the role of the legal department to be viewed as a **strategic partner** within the broader organization through **better leadership engagement**, **more efficient processes**, and **more focused delivery**

### What key areas will you focus on to achieve your aspiration? (Examples)

#### Delivery

- Improve quality and experience by reducing turn around time by say 50% on contract drafting

#### Talent

- Reduce in-house legal hours on routine tasks by say 25% to increase focus on more complex legal matters and have more capability to manage unpredictable events

#### Relationships

- Introduce regular reporting and analytics covering legal risks and critical matters

### What will be completed by the end of year 3?

- Transform legal department operations by implementing predictive tools and technology and an agile sourcing model
- Retrain/hire resources to focus on higher level activities
- Revamp risk process and controls
- Implement risk reporting and analytics

### What will you need to start by the end of year 1?

- Conduct operating model assessment
- Develop technology selection roadmap
- Perform risk assessment
- Define talent needs and roles
- Engage in scenario planning
- Develop reporting structure

# Risk and controls

Karina Mowbray

Legal Management Consulting Partner, Deloitte UK

How do you manage legal risk?

## Polling: 5 questions



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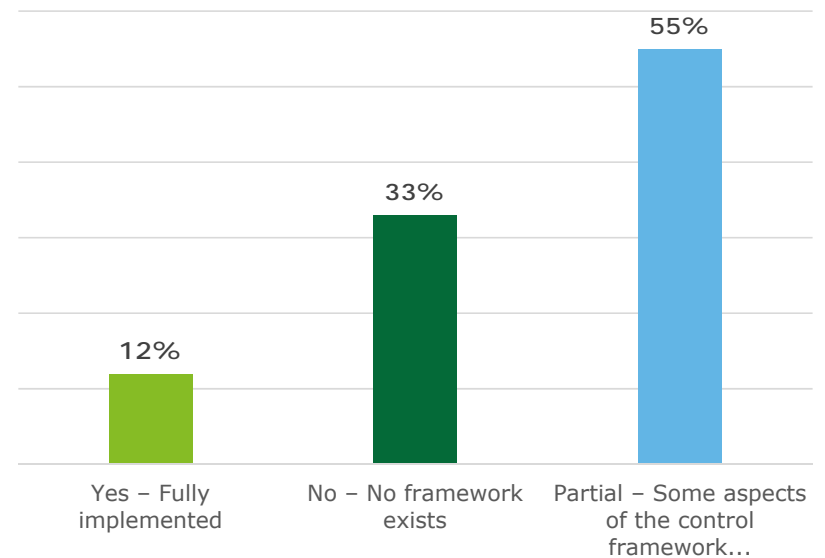
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# How do you manage legal risk?

Polling: 5 questions

1. Does your organization have a legal risk management framework that is defined, documented, measured, tested and reported?

- A. Yes – Fully implemented
- B. No – No framework exists
- C. Partial – Some aspects of the control framework are implemented

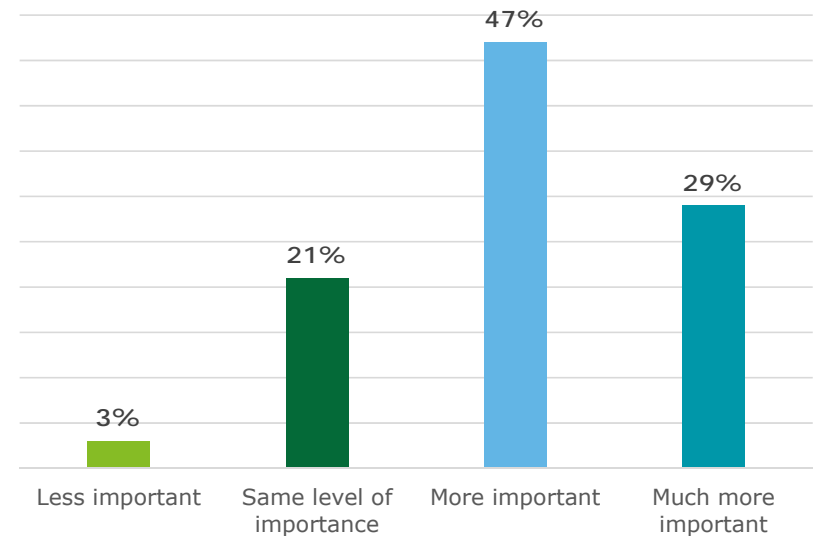


## How do you manage legal risk?

Polling: 5 questions

2. In the next 3-5 years, how much change do you anticipate in the importance and scrutiny of legal risk management within your business?

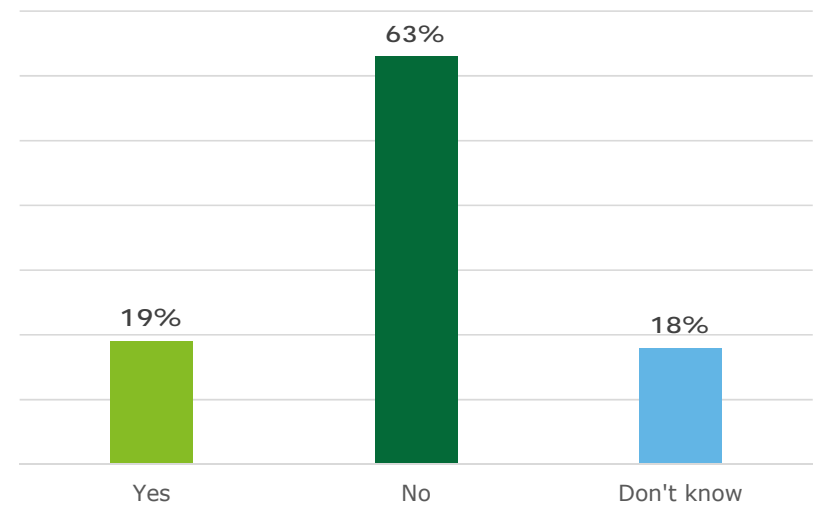
- A. Less important
- B. Same level of importance
- C. More important
- D. Much more important



## How do you manage legal risk? Polling: 5 questions

### 3. Has the risk appetite for legal risk been clearly defined at your organization?

- A. Yes
- B. No
- C. Don't know

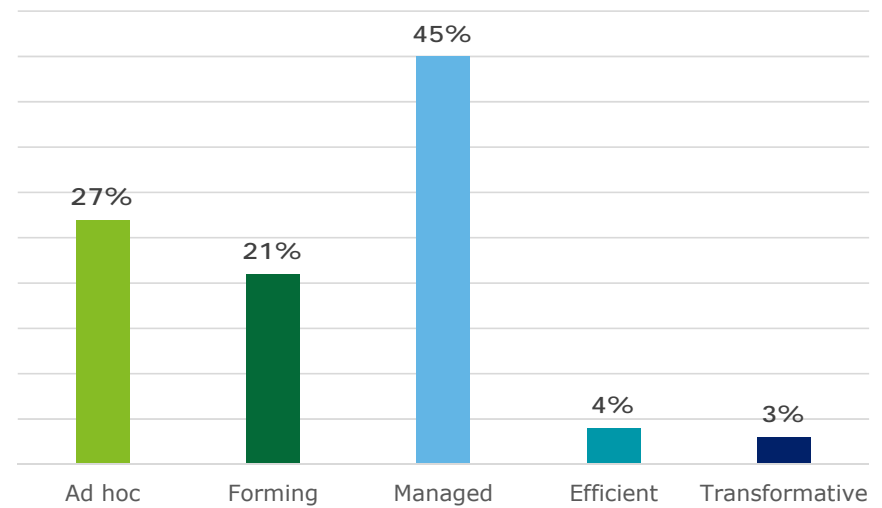


## How do you manage legal risk?

Polling: 5 questions

### 4. On the maturity scale shown, how would you rate your company's legal risk management approach?

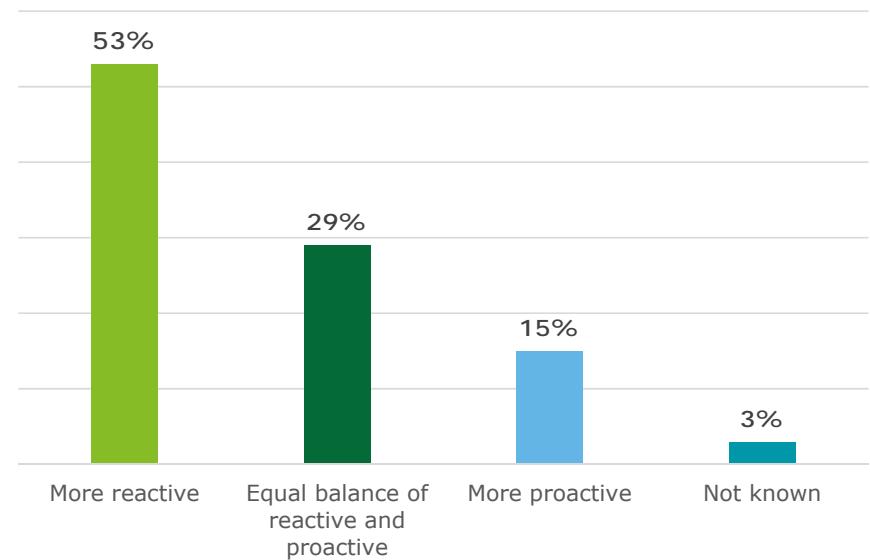
- A. Ad hoc
- B. Forming
- C. Managed
- D. Efficient
- E. Transformative



## How do you manage legal risk? Polling: 5 questions

### 5. Would you define your approach to legal risk management as more reactive or proactive?

- A. More reactive
- B. Equal balance of reactive and proactive
- C. More proactive
- D. Not known





# What is legal risk?

## Definition and accountability: Common challenges

- **No commonly agreed definition**

- The broad definition (legal consequences)
- The narrow definition (legal operations and activities legal executes)

- **Unclear allocation of responsibilities, legal risk 'falls through the cracks'**

- Blurred lines between legal and other risk areas (Operational risk, Compliance, Regulatory, Conduct etc.)
- Lack of executive focus or appreciation for complexity

- **Risk ownership vs. management controls**

- Legal is responsible for helping to manage legal risk (including risk mitigation activities), accountability for the consequences once the risk materializes may sit with the business}

## How do you manage legal risk effectively?

### Legal risk management: Common challenges

- Inconsistent treatment within operational risk frameworks
  - Is it important enough to be its own risk category?
  - Is it part of the 1st or 2nd lines of defense or both?
- Legal seen as reactive rather than proactive
- Deprioritized due to budgetary constraints
- Risk specialists not involved in designing controls approach or operating effectiveness
- Regulatory pressures

# Legal risk management

## A risk management framework

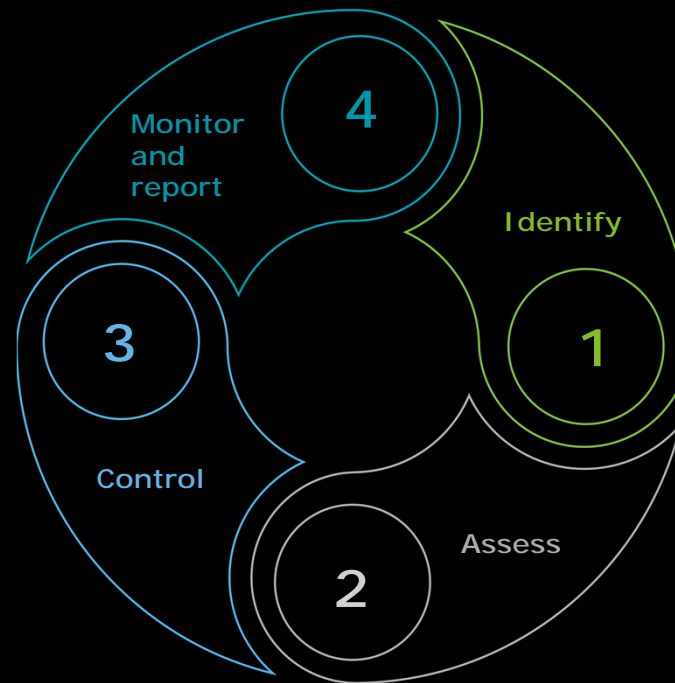
### Monitor and report

Key control indicators, control testing, control owner attestations

Report residual risk profile and control effectiveness to relevant governance forums

### Control

Set a control framework to operate within the bounds of internal risk appetite



### Identify

Understand the risk universe to help identify the legal risks which could have a material impact on the organization's business strategy or objectives

### Assess

Define and embed a risk assessment process to assess the level of risk exposure against an agreed set of impact criteria

# Identify

## An example: Company ABC

Understand the risk universe to help identify the legal risks which could have a material impact on the organization's business strategy or objectives





Risk	Definition
Contractual	The risk that commercial contracts are either not in place or cannot be enforced as designed due to inadequate contractual documentation
Intellectual property	The risk of failing to adequately protect the organization's intellectual property (IP) or the risk of the organization infringing the IP rights of a third party
Litigation	The risk of failure to adequately manage litigation (as claimant or defendant)
Competition/antitrust	The risk of failure to manage competition and antitrust issues
Data privacy	The risk of failure to comply with relevant data privacy law or regulation
Use of law firms	The risk of failure to obtain adequate legal advice from external counsel
Legislation	The risk of failure to appropriately manage changes to relevant legislation, regulation or case law
Operations of the company ...	... (potential for legal risk)

# Assess

## An example: Company ABC

- Assess risk exposure against an agreed set of impact criteria

### Illustrative Example

	Low	Medium	High
 <b>Customer</b>	<ul style="list-style-type: none"> <li>• Minor impact to services for a small number of customers (&lt;2%)</li> </ul>	<ul style="list-style-type: none"> <li>• Moderate impact to services for a number of customers</li> </ul>	<ul style="list-style-type: none"> <li>• Significant impact to service for a large number of customers (&gt;10%)</li> </ul>
 <b>Financial</b>	<ul style="list-style-type: none"> <li>• Minor financial impact (&lt;1% of revenue)</li> </ul>	<ul style="list-style-type: none"> <li>• Moderate financial impact</li> </ul>	<ul style="list-style-type: none"> <li>• Significant financial impact (&gt;5% of revenue)</li> </ul>
 <b>Regulatory</b>	<ul style="list-style-type: none"> <li>• Minor regulatory scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>• Moderate regulatory scrutiny and fines</li> </ul>	<ul style="list-style-type: none"> <li>• Significant regulatory investigation and fines</li> <li>• Implication for firm's license to operate</li> </ul>
 <b>Reputation</b>	<ul style="list-style-type: none"> <li>• Minor coverage in local/regional media</li> <li>• Minor damage to brand image among a small number of customers</li> </ul>	<ul style="list-style-type: none"> <li>• Some coverage in national media</li> <li>• Moderate damage to brand image among a limited number of customers</li> </ul>	<ul style="list-style-type: none"> <li>• Significant coverage in national and international media</li> <li>• Widespread and irreversible damage to brand image</li> </ul>

# Assess

## An example: Company ABC – Contract risk

Risk Scenario: Commercial contracts are either not in place or cannot be enforced as intended due to inadequate contractual documentation

**Inherent risk (High/Medium/Low)**    +    **Mitigating controls**    =    **Residual risk (High/Medium/Low)**

	Inherent risk rating	Mitigating controls	Residual risk rating
What is it?	The likelihood of the risk event occurring and/or the impact assuming no mitigating controls	Processes or activities designed to reduce the likelihood and/or impact of the risk event	The likelihood of the risk event occurring and/or the impact assuming mitigating controls are in place
Illustrative example	<ul style="list-style-type: none"> <li>• Customer: High</li> <li>• Financial: High</li> <li>• Regulatory: High</li> <li>• Reputational: Medium</li> </ul>	<ul style="list-style-type: none"> <li>• Standard contract templates are in place for all contracts above US\$50K</li> <li>• Deviation from standard terms must be reviewed and signed-off by legal</li> </ul>	<ul style="list-style-type: none"> <li>• Customer: Medium</li> <li>• Financial: Medium</li> <li>• Regulatory: Medium</li> <li>• Reputational: Medium</li> </ul>
Indicative overall risk rating	High	N/A	Medium

## Assess

### An example: Company ABC – Contract risk

- **Objective:** Manage the residual risk in line with the organization's risk appetite

**Risk appetite:** The amount of risk an organization is prepared to accept, at any point of time, in the pursuit of its business strategy or objectives

- **Possible responses:**

- Tolerate
- Treat
- Transfer
- Terminate

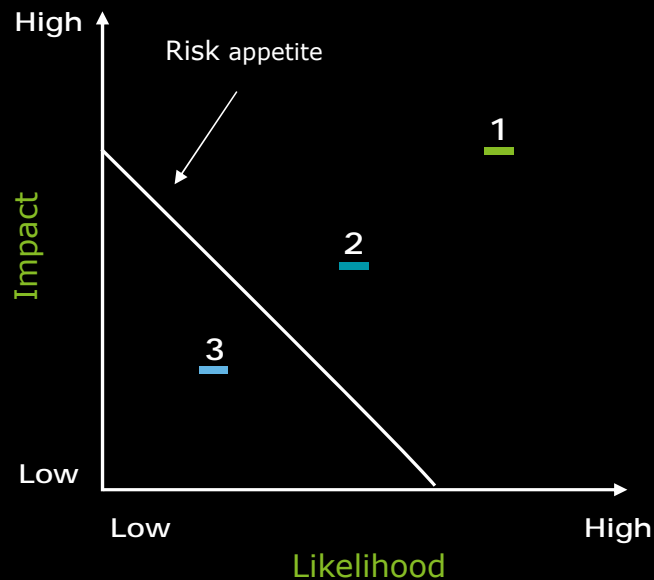
**Illustrative example:** The residual risk rating (Medium) is deemed outside of appetite

In response management decides to 'treat' the risk by implementing an additional control that all contracts above US \$150K threshold must be reviewed by legal

# Control

## An example: Company ABC – Contract risk

### Illustrative example



1. Inherent risk – with no controls applied risk is out of appetite
2. Residual risk 1 – taking into account the existing control environment, residual risk is deemed out of appetite
3. Residual risk 2 – to bring risk within appetite, management introduces an additional review control which reduces the likelihood of the risk event occurring



# Monitor and report

## An example: Company ABC – Contract risk

### Monitor

Design a methodology for assessing the effectiveness of mitigating controls

Control	Key Risk Indicator (KRI)	Tolerance threshold	Control test	Design adequacy	Operating effectiveness
Legal must review all contracts above US\$150K in value	% compliance with legal review of contracts above US\$150K	90%	Sample testing to statistical level of confidence the contracts during the year to assess compliance	Walk through of example of control and determine if appropriate or if ways to by-pass	Sample test

### Reporting

- Report Company ABC’s residual risk profile for contract risk to monthly risk committee
- Any exceptions to control effectiveness outside of risk appetite are escalated to senior management

## Common pitfalls and accelerators

### Legal risk management

- Avoid “Issues and Breaches” think “Controls” (preventative, detective, corrective)
- Utilize existing risk management frameworks - engage with your second and third lines of defense
- If it feels risky, it probably is – how do you mitigate or report?
- Take time to horizon scan emerging risk areas
- Use automation and data
- Participate in capital adequacy scenario activities
- Develop strong relationships with your business stakeholders/understand the business

# Operations and technology

Tony Reid

Deloitte US Legal Business Consulting Leader  
Principal, Deloitte Financial Advisory Services LLP

Matt Bullwinkel

Legal Business Consulting, Manager Deloitte Tax LLP

## Your legal department operating model

### Polling: 5 questions



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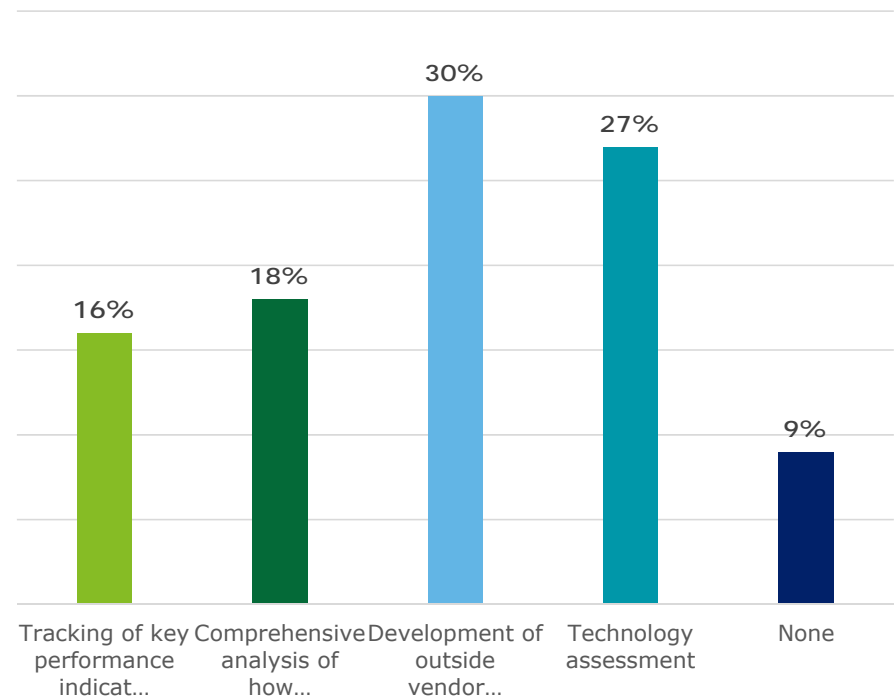
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# Your legal department operating model

## Polling: 5 questions

### 1. Which of the following activities have you undertaken (select most recent)

- A. Tracking of key performance indicator metrics (KPIs)
- B. Comprehensive analysis of how internal counsel spends time (activity analysis)
- C. Development of outside vendor management program
- D. Technology assessment
- E. None

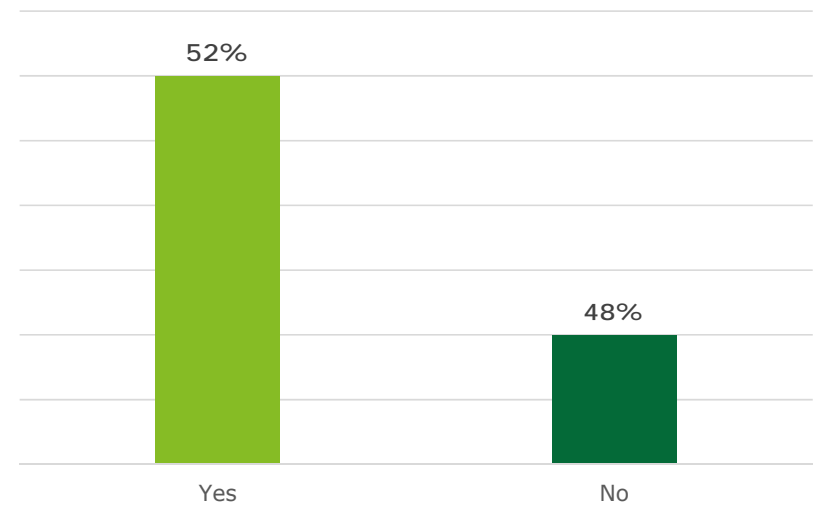


## Your legal department operating model

Polling: 5 questions

2. Are you tracking performance metrics to inform the legal department leaders and corporate stakeholders about legal department activities?

- A. Yes
- B. No

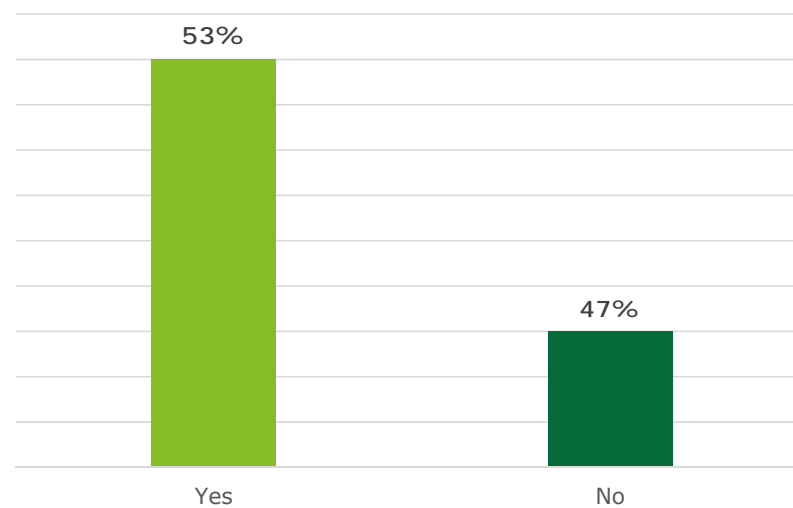


## Your legal department operating model

Polling: 5 questions

3. Do you have a good understanding of where your people are spending their time?

- A. Yes
- B. No

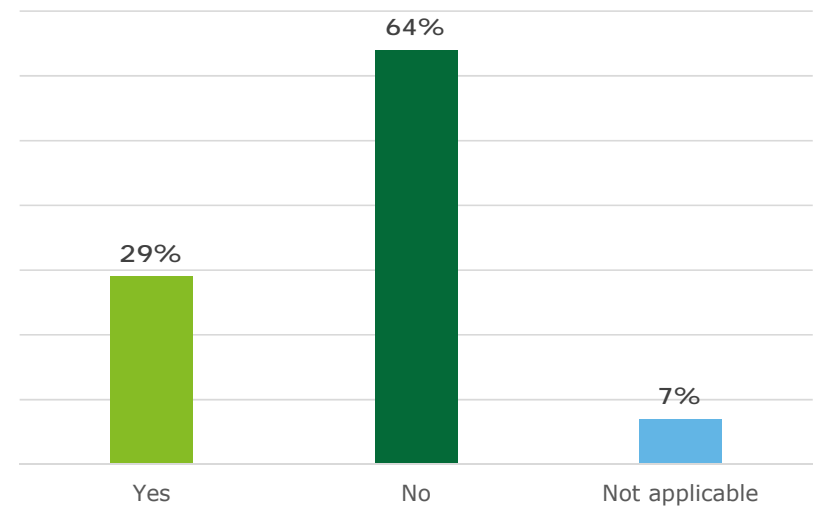


## Your legal department operating model

Polling: 5 questions

4. Do you have a formal process for managing outside counsel and measuring their performance?

- A. Yes
- B. No
- C. Not applicable



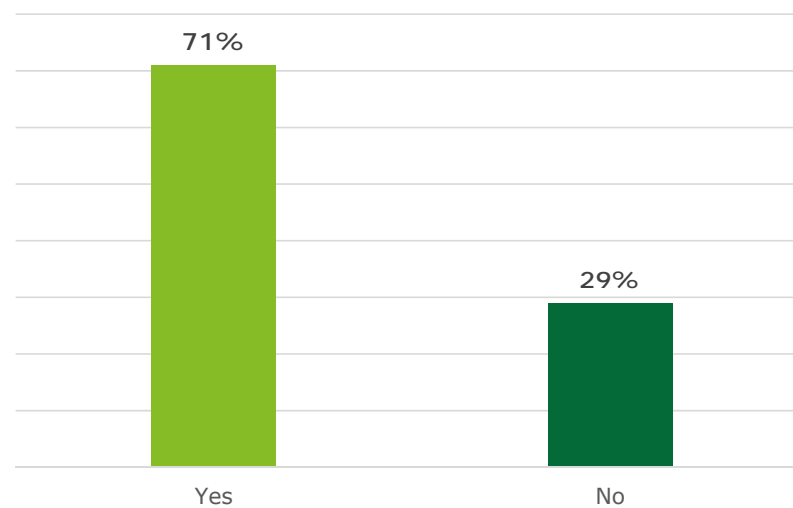


## Your legal department operating model

Polling: 5 questions

5. Have you reviewed your current technology portfolio and/or the potential of emerging technology to improve day-to-day performance?

- A. Yes
- B. No



# Corporate legal's role is evolving

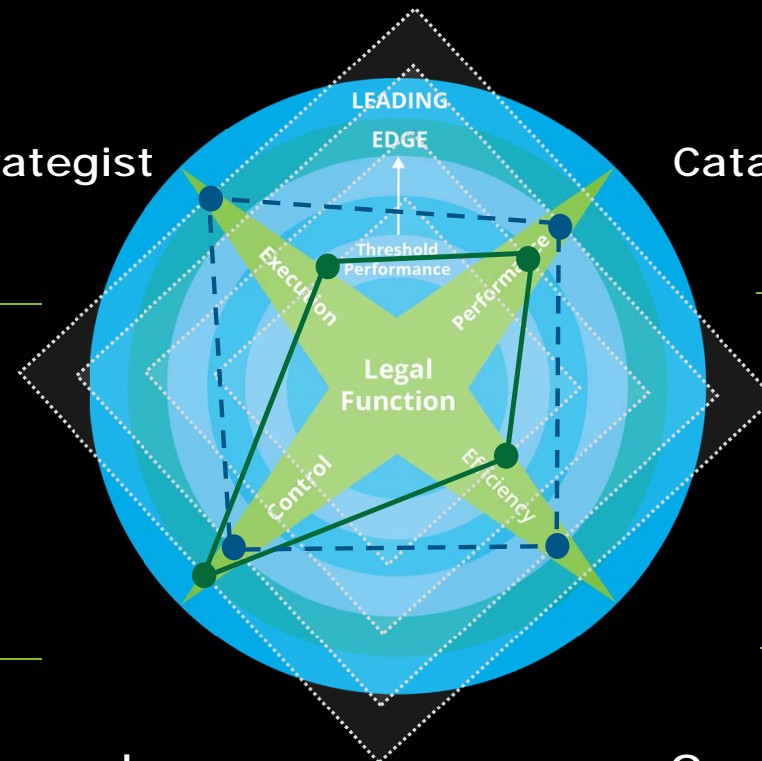
- Partner with senior management to plan and execute the business growth strategy
- Create legal strategy that enables the achievement of business objectives
- Navigate regulatory and legal matters for each business unit
- Monitor significant legal/legislative/regulatory developments

**Strategist**

**Catalyst**

**Steward**

**Operator**

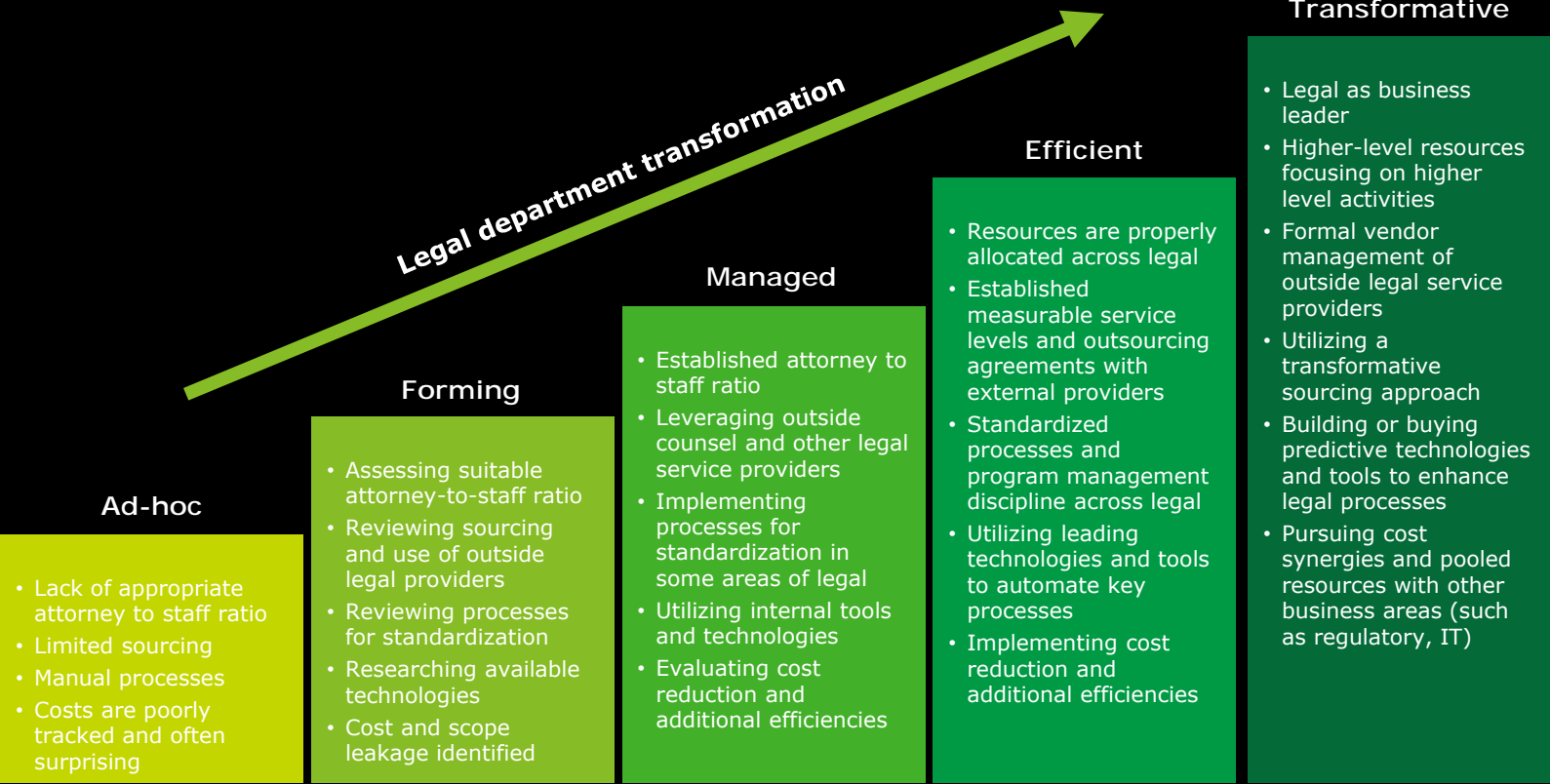


- Create/maintain strong client teaming relationships
- Drive legal service innovation
- Enhance the corporate legal structure to best serve business partners
- Manage legal spend for increased return-on-investment (ROI)

— Traditional Role      - - - Future Role








# Legal transformation journey

Focusing on transformative initiatives can increase a legal department's maturity, efficiency, and performance



## Key performance metrics

A well-crafted and implemented KPIs and benchmarking strategy can have significant benefits, including:

-  Cost reduction
-  Operational efficiencies
-  Case/matter strategies backed by analytics
-  Improved staffing model
-  Improved outside counsel and third-party provider strategy
-  Greater transparency to the business
-  Metrics compared to peer organizations

**Metrics should not only be a tool for reporting results, but also to drive change in behavior**

## Measuring how internal counsel spends time

The collection and analysis of how a legal department allocates its time and resources can highlight opportunities for operational efficiencies

### Gaining insight through an activity analysis



#### Data collection

- Gather the information necessary to understand your department's activities
- Centralize this information for ease of review



#### Analysis

- Shed light onto how the department's resources are utilized and allocate their time
- Understand who is doing what level of work within the department



#### Findings

- Understand how the department spends its time, gaining insight how it can be better spent
- Appreciate how the department resources are utilized, identifying ways to increase efficiency

# Vendor management

A variety of sourcing levers can be applied to select and compensate firms, drive operating efficiency, and manage firm relationships

	Sourcing lever	Description
Firm selection and compensation	• Consolidate supply base	• Reduce the number of firms to improve negotiating leverage and service levels
	• Discounted rates	• Negotiate discounts based on annual spend level or account growth
	• Rate freezes	• Establish billing rate freezes on long-term litigation matters
	• Bill rate uniformity	• Achieve parity between firms and levels (by geography, practice area, and position)
	• Spend analytics	• Institute case management system for detailed budgeting, tracking, and auditing of matter-level detail
	• Supplier evaluation	• Conduct an effective RFP process that covers all components of the legal spend
Matter management and operating efficiency	• Segmentation of matters	• Allocate non-strategic matters to firms with lower billing rates
	• Insourcing/outourcing	• Determine the types of legal work that are best suited for insourcing or outsourcing
	• Engagement process	• Standardize process for allocation of docket to in-house lawyer and outside counsel
	• Efficient case staffing	• Track staffing model of matters and create incentives for firms to staff more efficiently
	• Workload management	• Determine appropriate level of in-house lawyer productivity and balancing between attorneys & paralegals
	• E-billing technology	• Reduce the administrative burden by automating receipt, confirmation, and payment of invoices
Firm management	• Centralization of procurement	• Centralize sourcing of law firms for improved process, coordination, and leverage
	• Outside counsel guidelines	• Require preferred firms to adhere to outside counsel and billing guidelines
	• Quarterly strategy sessions	• Engage preferred law firms in long-range planning (e.g., issues of "bench strength", succession planning)
	• Standard invoice requirements	• Set service level expectations for billable time, expenses, training, and other requirements
	• Payment terms	• Negotiate and establish preferential payment terms
	• Performance measurement	• Measure in-house lawyers customer satisfaction with specific law firms and partners

# Legal tech for the legal department



# Wrap up: Strategic planning

Meghann Kelley

Deloitte North West Europe Tax & Legal Strategy Leader  
Partner, Deloitte UK



# Building your plan

## Aspiration – What will your legal function look like in 3 years?

Elevate the role of the legal department to be viewed as a **strategic partner** within the broader organization through **better leadership engagement**, **more efficient processes**, and **more focused delivery**

### What key areas will you focus on to achieve your aspiration? (Example metrics)

#### Delivery

- Improve quality and experience by reducing turn around time by say 50% on contract drafting

#### Talent

- Reduce in-house legal hours on routine tasks by say 25% to increase focus on more complex legal matters and have more capability to manage unpredictable events

#### Relationships

- Introduce regular reporting and analytics covering legal risks and critical matters

### What will be completed by the end of year 3?

- Transform legal department operations by implementing predictive tools and technology and an agile sourcing model
- Retrain/hire resources to focus on higher level activities
- Revamp risk process and controls
- Implement risk reporting and analytics

### What will you need to start by the end of year 1?

- Conduct operating model assessment
- Perform risk assessment
- Engage in scenario planning
- Develop technology selection roadmap
- Define talent needs and roles
- Develop reporting structure and technology needs

## Building your plan

Year 1 Activity	Owner	Key milestones	Timing	Dependencies
Perform risk assessment	Jane	<ul style="list-style-type: none"> <li>Identify</li> <li>Assess</li> <li>Control</li> <li>Monitor report</li> </ul>	<ul style="list-style-type: none"> <li>June 30, 2018</li> <li>August 15, 2018</li> <li>October 15, 2018</li> <li>Ongoing</li> </ul>	<ul style="list-style-type: none"> <li>Sign off of strategic plan</li> <li>Alignment with operating model changes</li> </ul>
Conduct operating model assessment	Joe	<ul style="list-style-type: none"> <li>Define current state</li> <li>Determine desired end state</li> <li>Create implementation roadmap</li> <li>Execute</li> </ul>	<ul style="list-style-type: none"> <li>June 1, 2018</li> <li>August 1, 2018</li> <li>September 15, 2018</li> <li>June 1, 2020</li> </ul>	<ul style="list-style-type: none"> <li>Sign off of strategic plan</li> <li>Secure budget</li> <li>Availability of Technologists</li> </ul>
Develop reporting structure	Chris	<ul style="list-style-type: none"> <li>Assign project manager</li> <li>Determine governance and reporting schedule</li> <li>Secure team members</li> </ul>	<ul style="list-style-type: none"> <li>May 15, 2018</li> <li>May 15, 2018</li> <li>June 15, 2018</li> </ul>	<ul style="list-style-type: none"> <li>Availability of resources</li> </ul>

# Q&A

Piet Hein Meeter

Deloitte Global Leader Deloitte Legal,  
Partner, Deloitte Netherlands



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