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Legal



What's your problem? Legal Technology
Legal Management Consulting

Foreword

As the great science fiction writer Arthur C Clarke wrote: "Any sufficiently advanced technology is indistinguishable from magic". In preparing this point of view we have spoken to over 20 Deloitte subject matter experts around the world and across a range of disciplines who are currently working with General Counsel and their teams to improve the way they deliver services to the organizations they serve. We've found that there is a general consensus that technology can make a big difference to the way they work. In some markets, the legal function has been working with technology for some time and they are on their second or third wave of tooling solutions. In others, Legal is exploring how technology might be used and which of the many products available on the market is best aligned with their needs. We have also encountered a lot of hyperbole about how transformative some "legal tech" solutions can be. Not quite magic perhaps, but difficult or impossible to substantiate with limited data.

In this point of view, we explore the benefits of technological solutions for in-house teams, the types of technologies that the more mature legal functions are using, the challenges which are preventing others from reaping the rewards of implementing the right solutions, and the most important considerations when it comes to adopting technology. Although Deloitte has developed a number of innovative solutions for the in-house legal market, these are an adjunct to the advisory services we provide. This paper isn't a plug for our tools but a point of view on where we see the market today and how technologies are emerging which will enable the digital transformation of Legal.

In our previous Point of View *In-house Legal Service Delivery* we made clear that, however tempting, starting the transformation of Legal by implementing technology is the wrong way to go. It is essential to start by updating the legal function's strategy to align with the current strategy and needs of the organization and then identify which enablers – of which technology is one – can best support and help execute that strategy. Nothing has changed in that regard. But once you've determined your strategy, this paper will help you determine how to proceed most effectively in adopting legal technology.



Piet Hein Meeter

Global Leader, Deloitte Legal

Executive summary

The General Counsel (GC) is changing from a legal expert and risk mitigator to a business enabler. The best of this new breed of GCs are agile, on the ground, close to the business, and engaged up-front with their organization's design and technology teams, enabling them to advise on contentious issues relating to security or risks.

The general consensus amongst GCs and their teams is that technology is going to transform the operation of in-house legal functions. Currently, the US and UK are leading in the adoption of technology, but there is competition from other jurisdictions introducing new applications, for example the use of Blockchain and other transformative technologies such as Artificial Intelligence (AI).

Legal functions now appreciate the volume of under- or unexploited data under their control, and they understand that valuable insights can only be extracted through the use of technology. Despite this recognition, the pace of adoption has been rather slow. In these pages we explore the challenges which are causing this, the most common uses of technology today and suggest considerations to bear in mind when embarking on or progressing with the adoption of new solutions. We also touch on ways in which Blockchain and AI have the scope to take adoption of legal technology from business-as-usual to digital disruption, transforming the perception of Legal from a risk-averse back office to a strategic partner helping operations to achieve their commercial goals in a legally robust fashion.

Technology is only one component of the transformation of the legal function. Its effectiveness is dependent on the quality of Legal's operational strategy including the ways people and processes, as well as technology and data, will contribute to its achievement. GCs should hold off exploring the myriad of third party legal technology solutions available, until they have decided which of their problems they are trying to solve and whether technology is the best way to fix them. Then the questions of in-house technology, bought in for use on-premises or accessed as a service on the Cloud can be addressed.

Over time, the burden of work will fall differently across the resource mix of legal functions, other in-house functions, offshore, outsourcing, and technology. In the next two to five years, we expect that the deployment of natural language processing will eliminate much contract drafting work, a lot of research will be automated, intuitive document and knowledge management will expedite finding precedents, with the legal function spending less time on administrative tasks and more on strategic advice that adds significant business value. This presents exciting opportunities for GCs and their teams.

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Benefits

The introduction of technology to the legal function adds value to the entire organization and provides additional competitive advantage. The potential benefits are extensive, provided they reflect the strategy that the legal function has developed to support the organization as a whole, and that the selection and implementation of the technology has been rigorous and effective.

The obvious benefits of technology for Legal and the business include, but extend beyond: better risk management, increased efficiency through lower cost and time saved, reduction in human error, and the avoidance of fines and penalties by meeting filing deadlines and license obligations. In the case of regulatory obligations, compliance is traceable, trackable and auditable to demonstrate a robust compliance framework. Technology also frees up resources that can be applied to identify and manage the key legal risks, which is ultimately the core function of Legal.

Leveraging data

Legal departments own extensive data. Using technology to structure data sets, improve its visibility and share it across the organization can change the perception of Legal from cost centre to business partner. For example, insights derived from an entity management solution may offer the opportunity to streamline the corporate structure, while analytics performed in contract management tooling enable Legal to review contract clauses (for example to take advantage of an RPI uplift), manage the renewal of contracts with harmonized clauses that optimize the contract's performance for the organization, and eliminate expired contracts. Legal is also better able to manage, defend and exploit the organization's intellectual property by controlling it digitally.

Closer to operations

Today the GCs of high performing companies have built on their traditional stewardship role and they help manage corporate risk and compliance to reduce exposure and add value by proactively contributing to the organization's strategy and growth. To do this, GCs need to optimize the legal function's strategy, processes, workflow and tools which involves increased efficiency, standardization, alternative resourcing models including shared services and outsourcing, and technology-enabled tooling.

Technology provides greater transparency into Legal's operations allowing key performance indicator (KPI) reporting to the C-suite and facilitating valuable business insights to be gleaned from the data available, for example, by drawing on AI-derived insights as to what leads to the best performing contracts from a business perspective. This ability to be sufficiently close to operations to understand commercial objectives enables Legal to give good advice at the beginning of the process, rather than just formalizing the contract or reacting when things go wrong or putting up barriers as a way of minimizing risks. In this way, the organization's risk management and contractual effectiveness are optimized.

Focus on adding value

The value of lawyers is not in deriving the inputs to a process but in interpreting the outputs, advising on strategy, and identifying nuances to provide high quality strategic advice, whether it relates to a contract, M&A activity or litigation. By eliminating low value tasks that in the past have taken as much as 80 per cent of in-house lawyers' time, space is made to focus on higher value strategic and creative work such as legal risk management, for which they are trained and which, in the foreseeable future, cannot be undertaken by a machine. Technology allows these lawyers to be more agile and respond to changes in operations as they occur so that Legal is always aligned with their internal customers' goals.

Technology provides visibility about the services provided to the organization through dashboards and heat maps which demonstrate the value Legal is adding and eliminates subjective evaluation. This data offers the opportunity to introduce objective KPIs that give the C-suite insight into how Legal is performing and enables Legal to identify and optimize areas where improvement is required. This quantifiable performance promotes the increased tailoring of legal solutions which are relevant to the organization.

Over time, the use of technology (both in-house and by external advisors) should allow for the re-tasking of external legal spend to more value-adding activities. Legal may also become leaders in introducing technology to other parts of the business, for example in the onboarding of new employees so that the risk of something being missed in the manual process is eliminated. There will also be further efficiency gains as the solution provider upgrades their tooling and adds functionality. In terms of return on investment, this is particularly true for cloud-based software-as-a-service (SaaS) which incorporates AI. As the tooling learns and improves its accuracy, all users benefit.

The life of the lawyer

It is a common complaint amongst in-house teams that their lawyers are overloaded. Reducing this overload through the use of technology not only allows more focus on value-adding activities but also improves the lawyers' work/life balance and reduces the frustration of repetitive tasks and questions. Instead they revert to doing more judgemental, strategic legal work and potentially add new areas of specialism. For example an Intellectual Property lawyer might add skills in the legal aspects of Cloud, Blockchain or Digital Business Models which help the wider organization develop new products and services within a robust legal framework.

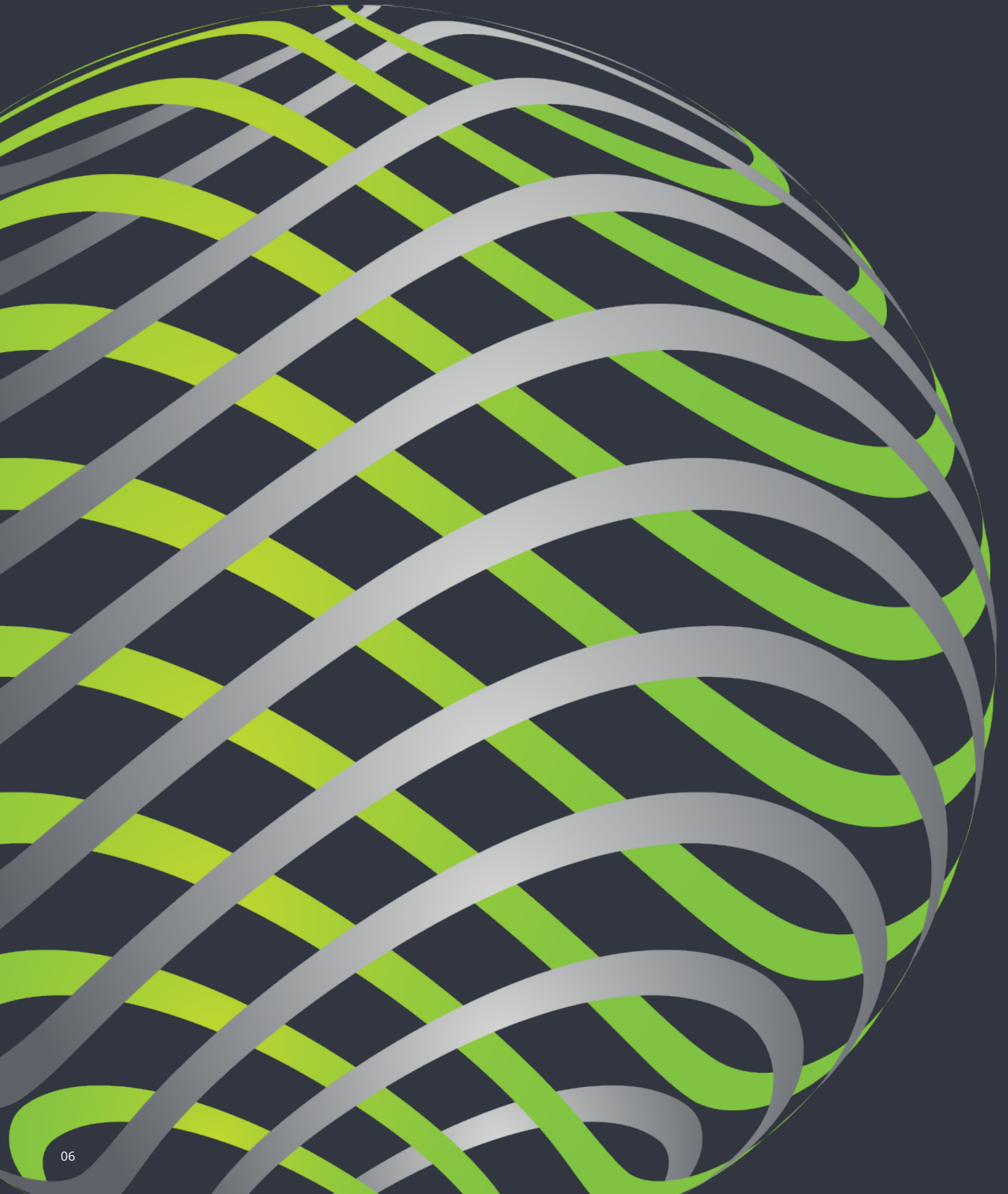
Case study: technology and litigation

The deployment of end-to-end contract management tooling results in an enhanced contractual position for the organization. It enables monitoring to avoid breaches and to identify when the counter-party is in breach of contract.

Knowledge management solutions allow Legal to assess the chances of success in litigation by analyzing analogous cases and decisions rather than relying on research by individuals under pressure and the experience and gut feel of the legal function.

During the litigation process e-discovery tools assist with the process of relevant disclosure and cognitive text analytics direct Legal to the most relevant aspects of the counter-parties disclosure.

Taken together, technology reduces the risk of breach and supports the process of settlement and litigation to make maximum use of the lawyer's skills by freeing up time from tasks that lend themselves to automation.



Types of technology

The technology available to the legal function includes “old school” solutions that make business-as-usual processes more efficient and accurate, and disruptive tooling that increases efficiency and adds value by changing the way legal services are rendered and by delivering insights across the organization. Until recently, the market has been characterized by the former. To date, there appears to be nothing which could be described as strategic and certainly no interlinked solution suite allowing the integrated use of data.

Solutions in use

In-house teams that are already taking advantage of technology typically deploy it as follows:



Entity management providing a single source of truth containing information about each group member including shareholders, directors and filing deadlines. Some tools also automatically execute corporate actions such as resolution drafting



End-to-end contract management enabling much of the workflow to be done outside the legal team, freeing up time, and including: automated creation from templates (using algorithms, not rules based systems), editing and version control, electronic signatures, review and analytics to extract specific contract clauses, identify gaps and produce insights, centralized document repository, management of obligations under the contract or license, and contract communication to visualize components of the contract



Matter management including collaboration and workflow management tools with real-time status reports and documents in one place, and tools for managing ongoing cases, enabling effective litigation management, budgeting and reporting



Knowledge management including statutes, precedents, court decisions, opinions obtained on behalf of the organization, and regulations applicable to the business. The best tools include search and analytics capabilities, and web scraping for changes to regulations



e-discovery tooling for due diligence exercises and the disclosure phase of litigation, also used for document review and analysis and data segmentation



Global Risk & Compliance (GRC) tooling combines components of knowledge management systems with matter management. Responsibility for GRC often sits outside Legal so this may fall outside the strict definition of legal technology.

Emerging technology



Artificial Intelligence

Systems are taking advantage of AI to create highly standardized documents such as non-disclosure or confidentiality agreements, and robotic process automation for highly detailed but low added value, step-by-step tasks. Chatbots can provide easy access to information and make contracts interactive.



Cloud

The Cloud enables applications to be run efficiently on third party servers and connected to users' computers via the internet, removing the need for extensive in-house storage.



Blockchain

Through a linked data list, Blockchain enables efficient recording of transactions between parties and may be considered secure by design. We have identified various domains for its application, including:

- Blockchain for Legal: for example in the design and automation of contracts
- Blockchain for law firms: for example for anonymous panels for alternative dispute resolution
- Legal for Blockchain businesses: for example advising on disputes, filings, trusted party, consortia management, and digital marketing
- Legal input to Blockchain initiatives: for example consortia using decentralized platforms.

Systems are taking advantage of AI to create highly standardized documents such as non-disclosure or confidentiality agreements.





Challenges

GCs and their teams are interested and open to change with technology, but there are a variety of challenges that may need to be addressed. The first is how to free up some time in an already overstretched team that is grappling with new regulations and dynamic business models.

Legal needs to address “not knowing what they don't know” in order to consider software selection and to carry out a detailed overhaul of the operating model. To overcome this, organizations are hiring Chief Legal Operating Officers (CLOOs) to focus on transforming the way Legal delivers its services.

Understanding the impact

Lawyers may also need help in understanding how technology can be deployed in the legal function. There is a lot of creativity, intuition and serendipity in legal work which does not lend itself to automation, and lawyers are trained to do bespoke work. Part of the process of adopting technology involves identifying those aspects of a process which can be standardized and those areas of practice which have the volumes to “industrialize”. In some cases this thought process may lead to the conclusion that simply refining processes, clarifying the structure of the legal function and the responsibilities of those within it, and making information more easily available to their colleagues through FAQs and internal social media is sufficient. Automation is not always the answer.

Too much choice

One of the most often cited obstacles to technology adoption is the abundance of solutions on the market and in many cases the lack of an industry standard.

The sheer level of “noise” makes it a challenge for the GC to sort through what is available and focus on those tools offering the best fit with the needs of Legal and the wider organization.

Given this variety, it is essential to identify the causes (rather than symptoms) of the problem or problems which, if fixed, would make a material difference in terms of efficiency (both lawyer time and cash cost) and effectiveness. This immediately reduces the number of solutions for consideration.

Since many of these tools are provided by start-up or early stage companies, the mismatch between a large corporation and a small company should not be underestimated in terms of the sales and buying processes, language used and cash-flow expectations. A small vendor may not have the financial strength, internal policies or insurance cover to gain approval as a potential supplier. This can be a useful, albeit sometimes unwelcome, way of further narrowing the solutions to consider.

Using the Cloud

If the decision is made to adopt technology solutions, using Cloud-based SaaS is typically the best option from a value for money perspective and it has the flexibility for expansion if beneficial, or to be turned off if not. However, data security and privacy can cause the GC's team to be cautious due to the impact of global regulations.

Examples include the GDPR impact on non-EU companies using EU-based Cloud services, and non-US companies using a US-based provider fearing customer's data may be disclosed to the authorities under the US Cloud Act. In contrast, Switzerland's privacy environment is attractive to some Cloud providers as a safe haven. Another alternative is the use of private Clouds but these are not straightforward to set up and there are concerns that not all levels can be secured, leaving a residual risk that data could be exposed.

The US is arguably the most advanced market in terms of legal technology adoption and most legal functions are now comfortable with using Cloud solutions, not least because it generally offers the best value for money. It is likely that the majority of other jurisdictions will go down this path subject to local nuances such as the regime around the protection of professional secrets in Germany, which might lead to continuing caution.

Using Blockchain

Blockchain is a very hot topic and its potential applications in the legal environment were discussed more extensively in our Point of View *Blockchain: Legal implications, questions, opportunities and risks*. In the context of the legal function of today, it is fair to say that there has been a lot of interest but little in the way of application so far. Similar to the use of Cloud, we expect that the use of Blockchain in other parts of the organization will involve Legal in considering the implications and potential impacts. This will gradually socialize the use of Blockchain within Legal and lawyers will start to identify use cases applicable to their work.

Making the selection

Once the number of potential solutions has been reduced sufficiently, it makes sense for Legal to seek help from IT (including cyber security) in evaluating the final candidates. Is the technology sufficiently accurate and reliable? What are the plans for future development and upgrades? Will our data be secure and remain under our control? Will it be hosted on-premises or in the Cloud? How will this technology work with our existing systems? Is the level of product validation sufficient? Where does liability for failure lie? And who owns the intellectual property if we take the product and develop it further? Leveraging the expertise of IT both helps Legal to avoid making bad decisions but also helps lawyers to understand the language and concepts behind legal technology and socialize its use by the legal function.

Building a business case

It also makes sense to involve Finance in helping to build the business case for investing in technology, since an effective implementation is not simply a matter of "plug and play". For example, if the proposed tooling involves machine learning, who within the legal function will be responsible for providing the machine with its initial corpus of knowledge and then teaching the machine to eliminate false positives, false negatives, and "don't knows" so that its accuracy improves to a level where it starts to add value? Do they have the time and what will this cost? And does the organization have sufficient volumes of similar source documentation to run the iterations necessary for the machine to learn?

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Price is often an obstacle when building a business case to demonstrate the return on investment (ROI) in technology. Calculation of the ROI requires data such as KPIs and the cost of the "As Is" approach, which Legal doesn't have in the absence of existing systems. A rough ROI can be developed by doing some manual work and making assumptions on (for example) the cost of contract preparation and the costs of implementation. In any event, it makes sense to perform a risk assessment on the investment and start modestly.

Implementation costs themselves may not be straightforward as any technology is likely to impact people and processes directly within Legal, and potentially have a ripple effect on other functions. As a result, in the first year, technology will increase the cost of Legal. If the GC has been charged with short-term cost-reduction, they tend only to consider technology after options which offer faster results, including bringing down the cost of their panel and lower cost solutions for resourcing such as shared service centres, offshoring and outsourcing.

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Considerations when adopting technology

The extent of technology enablement we expect within the legal function and, increasingly, digital transformation, will vary according to the level of regulation, the size of the organization and its industry. Large, highly regulated organizations or those in the technology field are likely to use more technology than less regulated, smaller organizations in traditional industries.

A legal function will perform a wide range of tasks, some of which will lend themselves to automation. Other activities that lend themselves to a technology solution could be handed over to other functions if they require no legal expertise, while infrequent jobs such as legal due diligence might be outsourced to the organization's legal advisors, many of whom are already using e-discovery tools for this purpose.

Strategic alignment

The operating strategy of the legal function should align with the strategy of the organization before technology is considered. The strategic roadmap will take Legal from "As Is" to its target operating model, reflecting Legal's end-to-end processes (as defined by a process analyst) and address ways in which technology can help, including solution implementation. The individual occupying the relatively new role of CLOO, possibly as a direct result of the new strategy, is likely to take the lead on transforming the function.

Putting together the right team

The process of assessing the best technology requires a blend of expertise from both within and outside the organization. Lawyers who understand the organization's market and the regulatory environment need to work with data scientists who understand workflow and how to leverage natural language processing.

A programme management office facilitated by a project manager who straddles the legal and IT domains, overcomes the challenges of change management and communication between the GC's team and technologists. In the past, when Legal has implemented even quite basic technologies, it has struggled if IT has not been involved.

During the evaluation and implementation stages it makes sense to leverage Legal's existing knowledge and valuable insights about the capabilities and limitations of technology. These might have been gleaned from advising on an enterprise-wide AI strategy, or being consulted by other functions who have introduced a revenue-generating digital element to the business model or deployed technology to achieve efficiencies and savings.

Effective implementation

Having established the problem(s) to be solved using technology that will make a material difference to cost, efficiency, work mix or outcomes, it makes sense to determine what data Legal will find most useful and the required reporting and visualizations. However, implementation should only proceed once Legal (with support from other functions or external advisors) has validated its efficacy, sustainability, interfaces with other tools or systems, and secured the budget to invest.

The size of the roll-out is important. It may be prudent to start with the head office legal function operating the technology, optimizing the team's skills and extracting maximum value from the data Legal owns, rather than simultaneously compounding complexities across the organization, which introduces an increased risk of failure.

Ongoing maintenance

To use the technology effectively requires consideration of the impact on people and processes, a change management plan to secure buy-in and training for the legal team in using and maintaining it. For example, if a contract management system is introduced, but not properly maintained, over time it will be cluttered with expired contracts, which could skew analytics unless they are eliminated from the population.

The process of assessing the best technology requires a blend of expertise from both within and outside the organization.



Emerging technologies and the life of the GC

Impact of emerging technology

Over the next two to five years we can expect to see a more extensive use of Cloud/SaaS solutions as concerns over privacy and security are allayed and because of the economics of buying technology in this way. Cloud has the additional attraction that all users get an immediate benefit as cognitive solutions improve in accuracy, and the rate of increase is faster because of the volumes handled compared to a single-enterprise, on-premises tool.

Blockchain legal applications may disrupt some aspects of the role and work of the legal function. For example when contracts or licenses are broken down into their composite parts, coded and added to the Blockchain, it renders the lawyer's ongoing monitoring role largely redundant since "if this, then that" smart contracts ensure compliance. Either the "if" condition is met or the "then" transaction will be withheld. In this environment, the lawyer's skill ensures that the contract as disaggregated and coded still achieves the outcomes that the parties intended.

Blockchain is already being deployed with implications affecting Legal and other functions. One example is intercompany agreements. With the advent of the OECD's Basis Erosion and Profit Shifting (BEPS) initiative, country-by-country reporting and automatic exchange of information between tax authorities, it is essential to be able to demonstrate that an organization's transfer pricing policies are being implemented effectively and consistently. One way of achieving this is by including the intercompany agreements on a private Blockchain, a transparent and immutable source of evidence, the consistency of which depends on fulfillment of the smart contract conditions.

Other use cases that have already been implemented include trade finance, aircraft leasing and short-term staffing for the facilities management industry. The respective benefits include the elimination of extensive paperwork and automatic triggering of payments, automatic confirmation of compliance with the terms of the lease, and a permanent record of compliance with labor law and the employees' relevant certifications. The need for legal input into each of these cases and the opportunity to derive analogous use cases for Legal are obvious.

The life of the GC and their team

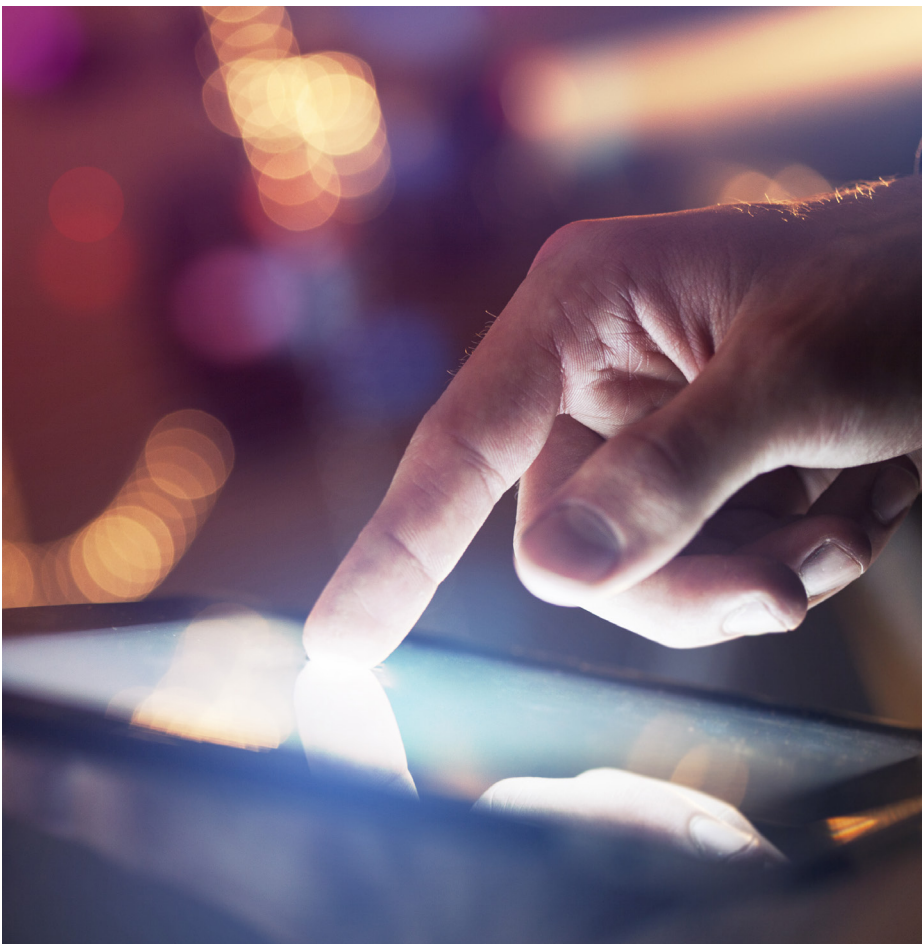
Despite doomsday reports of the numbers of jobs that will be replaced by technology, the adoption of technology by Legal will have a less severe impact on headcount. While cognitive tools are already being used for tasks such as document review for deals and disputes, no tool in the foreseeable future can take over the subjective elements that are core to a lawyer's expertise. IBM Watson may have been able to win the game show Jeopardy! using a supercomputer, but that is because it had been fed with an extensive corpus of general knowledge. The scope for the type of legal question that a robot can answer is quite limited because in many such questions one quickly gets into areas of nuance, motive, risk appetite and – in the case of litigation – emotion. None of this is easy to teach a machine, not least because much depends on the circumstances and other parties in play.

Over the next two to five years we can expect to see a more extensive use of Cloud/SaaS solutions as concerns over privacy and security are allayed and because of the economics of buying technology in this way.

Nevertheless, we expect the composition of the legal function to change with a tilt towards non-lawyers within Legal. We have already made reference to the CLOO and we can expect these to be joined by process analysts and data scientists to help the GC's team become increasingly efficient while deriving the maximum value and insight from the data Legal holds. As solution suites emerge that are integrated with enterprise resource planning (ERP) systems, big data will be gathered on the same platform, the classification and organization of documents will be easier, and the extraction of insights will be facilitated in interactive dashboards.

As tooling matures, repetitive tasks will be taken away from lawyers, allowing them to focus on higher value activities and strategic advice. This will go hand-in-hand with the transformation of the function from legal specialist to a real business partner.

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