

Financial institutions  
Energy  
Infrastructure, mining and commodities  
Transport  
Technology and innovation  
Life sciences and healthcare

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 NORTON ROSE FULBRIGHT

# 2015 Litigation Trends Annual Survey



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More than 50 locations, including Houston, New York, London, Toronto, Hong Kong, Singapore, Sydney, Johannesburg, Dubai.

Attorney advertising

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The 2015 Litigation Trends Annual Survey commissioned by Norton Rose Fulbright collects and presents the experiences and opinions of corporate counsel regarding various aspects of litigation and disputes-related matters. An independent research firm surveyed 803 participants working for companies headquartered in 26 countries worldwide.<sup>1</sup>

The data is analyzed by geographic region, industry, company size in annual gross revenues, amount of litigation spend and, where previous data points are available, comparisons are drawn to historical survey findings (US year-end 2013 and UK year-end 2012). All monetary values are stated in US dollars, unless otherwise noted.

Though in its eleventh year, in many ways this survey represents a new benchmark for Litigation Trends. In addition to US and UK data, as in prior years, the survey also includes responses from Australia, Canada, France, Germany and Asia, making this the most far reaching survey of corporate counsel we have ever conducted. We look forward to building on this new foundation next year and beyond.

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<sup>1</sup> As with any survey, not all participants answered every question. The sum of percentages may total more or less than 100% due to rounding and/or respondents being given more than one option.

This year's Litigation Trends Survey – our 11th annual – is the most extensive in our history and truly represents a global outlook. More than 800 corporate counsel from 26 countries participated, giving us unique insights into the litigation issues and trends that are affecting businesses around the world, from the most common types of cases companies face to the approach they take in managing disputes.

While each country or region surveyed is unique, one common theme comes through loud and clear – corporate counsel around the world see the growing litigiousness of the business environment as an important trend that bears watching. This is especially true with regard to regulatory investigations and class action lawsuits, both of which are increasing in scope and frequency.

When asked to choose the top three to five types of legal disputes that are of greatest concern to their company, 39 percent of respondents to this year's survey selected "Regulatory/Investigations," more than any other option. In addition, half of all respondents to this year's survey said they had spent more time during the last three years addressing regulatory requests or enforcement proceedings.

"The regulatory environment is becoming increasingly tough and therefore we are expecting more and more challenges in this area," said one general counsel from the UK.

This same sentiment is shared in the US. One US-based general counsel said, "The federal government has added a lot of additional regulatory requirements on us, and I see an increase in external entities coming to our campus to investigate our compliance."

The increase in lawsuits and potential lawsuits faced by companies worldwide, along with the trend toward more regulatory oversight and investigations, results in higher

litigation budgets and more time and attention required on behalf of legal departments and senior executives.

As one respondent – the general counsel for an Australian company – said: "A lot of times these lawsuits are without foundation, and you end up tackling them just to avoid the ongoing cost of being involved in the process."

Some of this is driven by technology, which is making it easier and less expensive than ever before to develop a class action, regardless of whether or not there is actually harm. The growth in class actions is adding to an already substantial array of legal and regulatory challenges that firms face as they do business in a more complex world.

Looking forward, approximately 25 percent said they believe the number of legal disputes their company will face in the next 12 months will increase. These trends have a real-world impact on the way companies will interact with the marketplace, and with each other, in the years to come.

This year's white paper contains a great deal of interesting information and insight, with analysis broken down by country/region and by industry. It provides a fascinating look at the state of corporate litigation today, and will give us a unique data set to benchmark against for future surveys.



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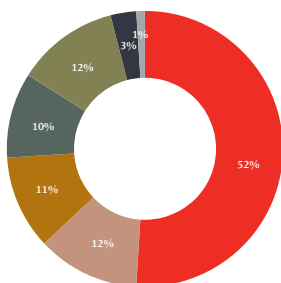
Chapter 1  
Respondent profile

01

Respondent profile

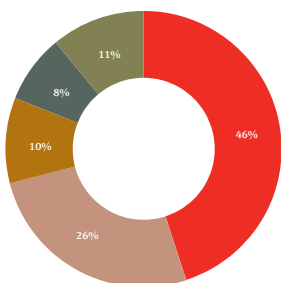
Significant sample: 803 corporate counsel responded to the survey. This survey was conducted at the end of 2014 and beginning of 2015.

Headquarters



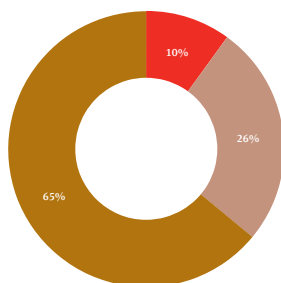
- United States
- Australia
- United Kingdom
- Canada
- Europe\*
- Asia†
- Other

Respondent titles



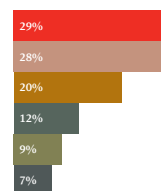
- General Counsel
- Associate/Deputy/Assistant GC
- Head of Litigation
- Senior Counsel
- Other

Revenue



- < \$100 million
- \$100 million - \$999 million
- \$1 billion or more

Industry sectors



- Technology and innovation
- Financial institutions
- Energy
- Infrastructure, mining and commodities
- Life sciences and healthcare
- Transport

Four out of five respondents identify themselves as General Counsel, Associate/Deputy/Assistant GC or Head of Litigation.

“Other” titles include Vice President, Company Secretary and Chief Legal Officer.

Most recent company annual gross revenues: Percentages are based on those respondents who provided gross revenue information for their companies.

The following references to companies by size are used throughout this report:

- “Smaller companies” – revenues less than \$100 million
- “Mid-sized companies” – revenues of \$100 million to \$999 million
- “Larger companies” – revenues of \$1 billion or more<sup>††</sup>

\* Europe includes primarily Germany and France but also includes organizations headquartered in Switzerland, The Netherlands, Norway, Spain and elsewhere.

† Asia includes organizations headquartered in Hong Kong, Singapore, Japan and China.

†† Among the larger companies, 41% have revenues of \$5 billion or more.

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Chapter 2

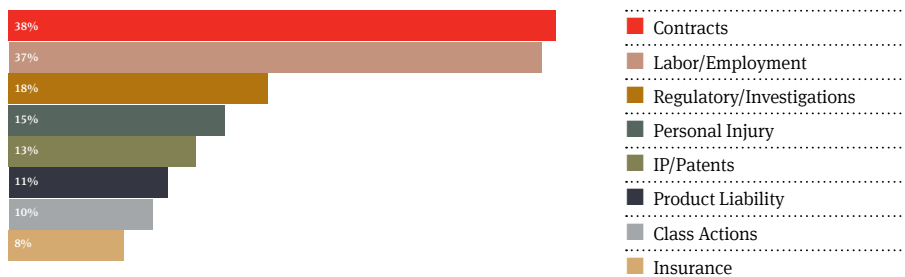
## Litigation overview



02

Litigation overview

## Most numerous types of litigation pending in the last 12 months



Respondents were asked to choose the three to five most numerous types of litigation pending against their companies in the past year, from a list of more than 20 categories.

### Contracts

Contract matters are the most numerous type of litigation among all respondents polled (38%), with no significant differences reported among geographic regions.

Among UK respondents, the prevalence of Contract matters has declined considerably to 35% from 57% when last polled in late 2012.

### Labor/Employment

Canadian respondents report significantly more Labor/Employment matters pending (49%) compared with the total sample (37%).

Mid-sized companies report more Labor/Employment matters (50%) compared with the total sample (37%).

### Regulatory/Investigations

French (3%) and German (7%) respondents are less likely to face Regulatory/Investigations disputes compared with the overall sample (18%).

### Personal Injury

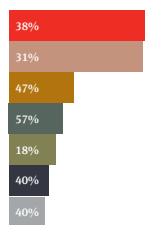
Personal Injury litigation is significantly more prevalent in the US (21%) and less prevalent in the UK (6%) compared with the total sample (15%).



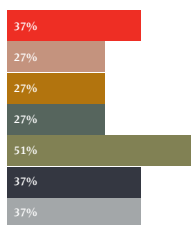
Litigation overview

## Most numerous dispute types by industry sector

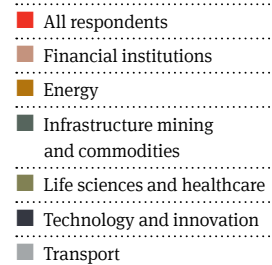
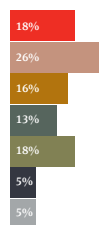
### Contracts



### Labor/Employment



### Regulatory/Investigations



### IP/Patents

IP/Patents litigation is more common among US respondents (18%) than among all respondents (13%), while it is less common among UK (7%) and Australian (6%) respondents.

IP/Patents are more prevalent among Life sciences and healthcare respondents (34%) than for the total sample (13%). Larger organizations encounter more IP/Patents (18%) compared with all respondents (13%).

### Product Liability

The prominence of Product Liability cases among respondents (11%) is driven primarily by the US, where 17% report these among their most numerous pending matters. Far fewer Australian (3%), Canadian (4%) and British (3%) respondents report such matters as among the most numerous.

Life sciences and healthcare respondents list Product Liability as among the most prevalent disputes far more often (30%) than for the total base (11%). Larger organizations are more likely to experience Product Liability (17%) disputes compared with all respondents (11%).

### Class/Group Actions

Only 4% of respondents in Australia list Class/Group Action cases as among the most common, compared with 10% for the total sample.

### Banking/Finance

In the UK, Banking/Finance disputes (16%) are much more common than for the total sample (7%).

### Insurance

Financial institutions (19%) are more likely to face Insurance litigation compared with their peers (8%).

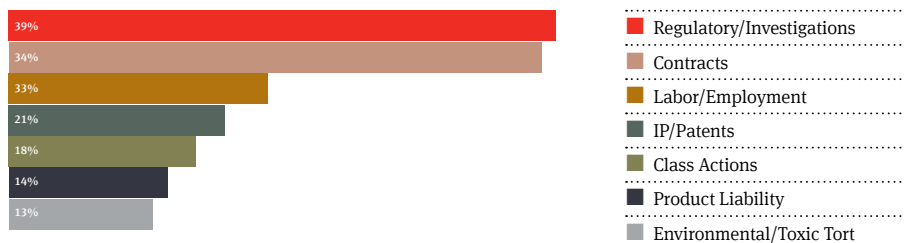
### Other litigation types

Energy companies experience Environmental/Toxic Tort litigation as a top dispute type more often (21%) than reported by all respondents (7%). Company/Commercial Construction litigation is more prevalent in Canada (15%) compared with all respondents (5%).

Litigation overview

## Types of legal disputes that most concern companies

Top concerns



Respondents were asked to choose the three to five types of legal disputes of greatest concern to their companies from a list of more than 20 categories.

### Regulatory/Investigations

Regulatory matters are the top concern for in-house counsel. This contrasts to findings for the most numerous litigation pending, where Regulatory/Investigations receive fewer than half the mentions of contracts and Labor/Employment matters.

More US respondents say Regulatory/Investigations disputes are a top concern (48%) compared with the broader sample (39%), while Canadian respondents are less concerned (24%).

Respondents from Financial institutions are more concerned than their peers in the broader sample about Regulatory/Investigations (46% vs. 39%).

### Contracts

The percentage of US respondents most concerned with Contract disputes declined to 29% from 36% in the previous survey.

Australian respondents are more concerned with Contract disputes (49%) versus all respondents (34%).

In the UK, 35% list Contracts as a top concern, far fewer than the 53% who indicated this area as their top concern when last polled in late 2012.

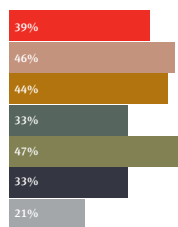
Half of Infrastructure, mining and commodities respondents list contracts as a top concern, compared with about one-third of the broader sample.

Energy industry respondents are more concerned about Contracts (45%) compared with the total sample (34%).

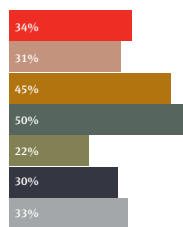
Litigation overview

## Top concerns by industry sector

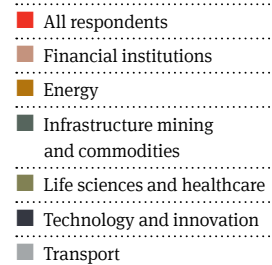
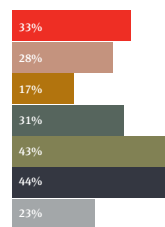
### Regulatory/Investigations



### Contracts



### Labor/Employment



### Labor/Employment

On Labor/Employment matters, Canadians are most concerned (45%), while UK respondents were less so (21%), compared with the entire sample (33%).

Technology and innovation respondents are more concerned with Labor/Employment (44%) compared with their peers (33%).

### IP/Patents

IP/Patents disputes are of greater concern in the US (30%) compared with all respondents (21%). Only about one in ten respondents in Australia, Canada and the UK list IP/Patents among their top dispute concerns.

Life sciences and healthcare (45%) and Technology and innovation respondents are more concerned with IP/Patents (37%) compared with the broader sample (21%).

### Class Actions

More US respondents list Class Actions as a top concern (25%) compared with the total sample (18%). In the UK, the proportion of respondents concerned with Class Actions fell to 10% from 27% when polled two years ago.

### Product Liability

Concern over Product Liability disputes varies greatly by region: US respondents are most concerned (18%), while UK respondents are less concerned (8%) about Product liability compared with all respondents (14%).

Life sciences and healthcare counsel are more concerned with Product Liability (32% vs. 14%).

### Environmental/Toxic Tort

Energy industry respondents are more concerned about Environmental/Toxic Tort (38%) compared with the total sample (13%).

### Other litigation types

Banking/Finance disputes are of concern to more UK respondents (21%) compared with the total sample (9%).

Company/Commercial Construction is of concern to more Australian (14%) and Canadian (17%) survey respondents compared with the overall sample (6%).

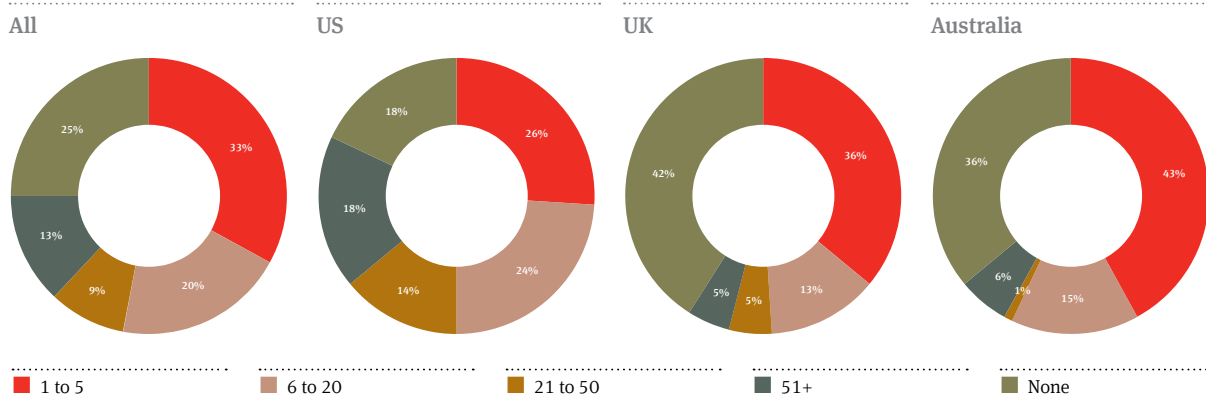
Respondents from Financial institutions are more concerned than their peers in the broader sample about Securities Litigation/Enforcement (20% vs. 11%), Banking/Finance disputes (28% vs. 9%) and Insurance disputes (22% vs. 8%).

Mining and Commodities respondents are more concerned about Company/Commercial Construction (21%) than their peers (8%).

Life sciences and healthcare counsel are more concerned with Professional Malpractice (29%) compared with the broader sample (7%).

Litigation overview

## Lawsuits/proceedings commenced against companies in the last 12 months



Responses from Asia, Canada, France and Germany are all in line with the overall sample. In the US, 55% of respondents indicate that they have more than five lawsuits pending.

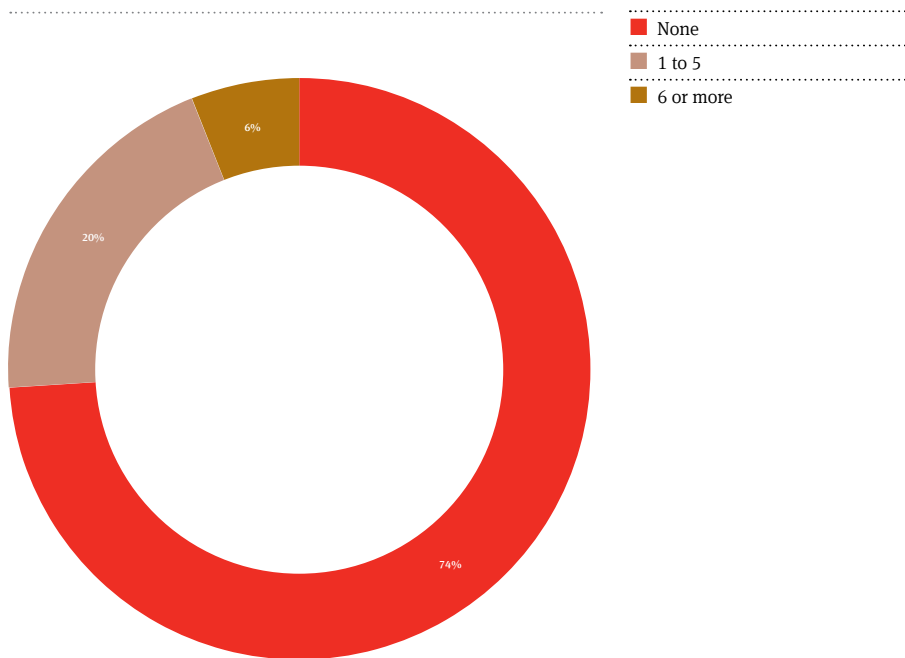
The number of lawsuits filed against US respondents' companies in the past 12 months is very stable, with no significant change since 2010. At 42%, UK respondents are more likely to report no pending lawsuits compared with their peers in other regions.

Larger organizations are more likely (37%) to have more than 20 lawsuits pending against them, compared with the overall sample (22%). Financial Industry respondents report the lowest incidence of one or more pending lawsuits (66%).

Respondents from the Life sciences and health sector report the highest incidence of at least one lawsuit against their companies. (90%).

Litigation overview

## Lawsuits with \$20M+ at issue against respondent companies



Australians report the lowest incidence of large lawsuits against them, with 90% reporting no such suits and the remaining 10% reporting five or fewer.

There are no other significant geographic differences versus the total sample.

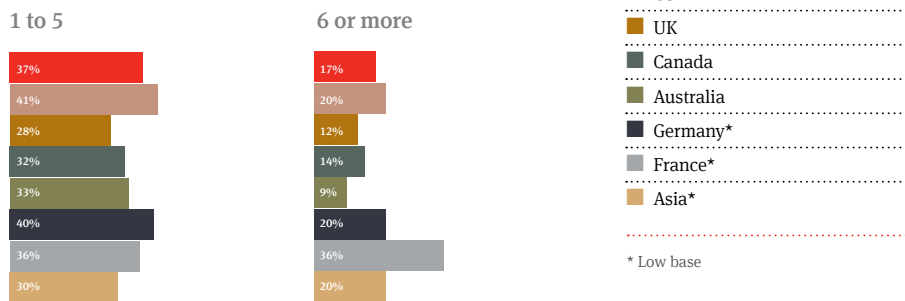
Larger organizations are more likely (40%) to have one or more lawsuit with more than \$20 million at issue pending against them, compared with the overall sample (26%).

There is no significant variation by industry sector.

Litigation overview

## Lawsuits commenced by companies in the last 12 months

### Lawsuits commenced by respondent



Financial industry respondents are less likely to have one or more lawsuits commenced by their companies (40%) compared with the broader sample (54%).

There are no other variations by industry sector.

### Lawsuits with \$20+ million at issue commenced by companies

More than 80% of respondents report no lawsuits with more than \$20 million at issue commenced by their organization; 18% report five or fewer and just 1% report six or more. There is no significant regional variation. For organizations with revenues in excess of \$10 billion, 40% report at least one lawsuit commenced by them with more than \$20 million at issue, much higher than for the total sample (19%).

Litigation overview

## Arbitrations pending against companies

### One or more arbitrations against



In the US, 42% report one or more arbitrations, slightly more than the 35% reported among all respondents.

Australian respondents report significantly fewer arbitration proceedings pending against them, with just 17% indicating one or more. Other regions do not differ significantly from the total.

Life sciences and healthcare respondents are more likely to report at least one arbitration pending against them (51%) versus the total sample (35%).

Of those with annual litigation spend in excess of \$15 million, 67% have at least one arbitration against them.

More than half of organizations reporting \$1 billion or more in revenue and two-thirds of those with \$10 billion in revenue have one or more arbitrations against them.

### Arbitrations initiated by respondent companies

Among all respondents, 23% have commenced at least one arbitration against other parties. Canadian and Australian respondents are less likely to have to have commenced an arbitration (13% for both). No significant difference exists among the other regions in the sample.

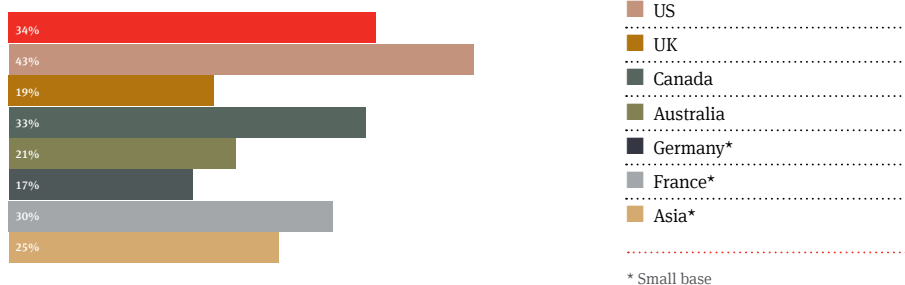
In the US and UK, arbitrations commenced by respondents have remained steady since 2011, with no statistically significant change.

Organizations with more than \$1 billion in revenue report substantially higher rates of initiating one or more arbitrations (38%) compared with the overall sample (23%).

Litigation overview

## Regulatory proceedings commenced against respondents

More than one regulatory proceeding against



\* Small base

### Regulatory proceedings initiated by respondents

Only 10% of respondents indicate that they have initiated a regulatory proceeding.

There has been a sharp decrease in the proportion of UK respondents who have initiated a regulatory proceeding, from 24% in 2012 to just 3% in this survey.

Among US respondents, 11% initiated one or more proceedings, unchanged since 2011.

Just 4% of respondents indicate that they have initiated a proceeding with more than \$20 million at issue. Energy companies are the most likely to have done so, with 10% indicating that they have initiated such a large proceeding.

The US reports the greatest incidence of one or more regulatory proceedings commenced against respondent companies (43%). This proportion has remained steady for the past three years. Among UK respondents, 19% report one or more proceedings, marking a significant decline from 36% in 2012.

Respondents with litigation budgets in excess of \$15 million are much more likely to be facing one or more regulatory proceedings (66%) compared with the total sample (34%). Among larger companies, 51% indicate that they have one or more regulatory proceeding pending against them, while just 16% of smaller companies have at least one.

For companies with revenues in excess of \$10 billion, 32% report one or more regulatory proceedings with more than \$20 million at issue being commenced against them, compared with just 12% of all respondents.

There are no significant differences among different industry sectors.



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Chapter 3

## Litigation costs and disputes trends

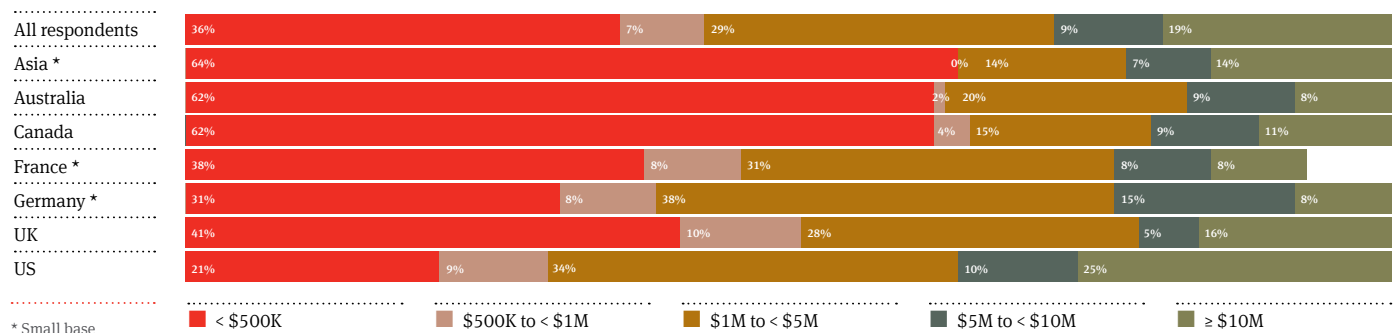


03

Litigation costs and disputes trends

## Annual litigation expenditure (excluding costs of settlement and judgments)

### Annual litigation spend by region



Among all survey respondents, the median litigation budget excluding costs of settlement and judgments is \$1.2 million, while the mean is skewed upward by the larger budgets in our sample, to \$11.6 million.

Litigation spend varies considerably by geographic region.

Among Life sciences and healthcare industry respondents, just 18% report litigation budgets of \$1 million or less, compared with 36% for all respondents.

Other key industry sectors show no significant differences versus the total.

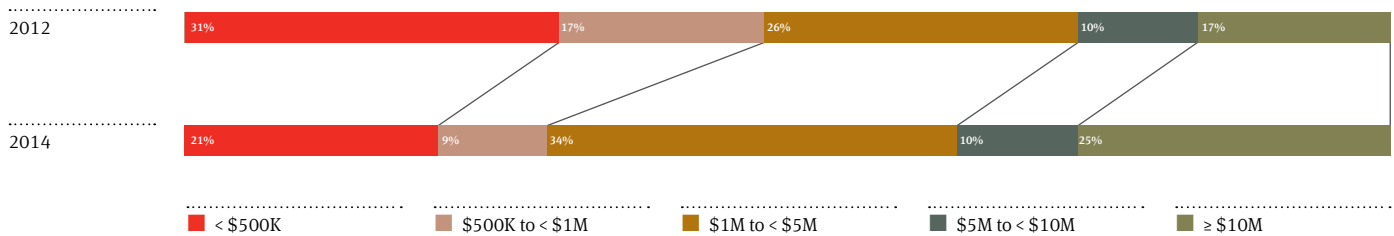
### Annual litigation expenditure by gross revenues

	< \$100 million	\$100 million - \$999 million	\$1 billion or more
< \$500K	72%	52%	13%
\$500K to < \$1M	10%	14%	5%
\$1M to < \$5M	15%	26%	34%
\$5M to < \$10M	0%	4%	15%
≥ \$10M	3%	4%	32%

**Litigation costs and disputes trends**

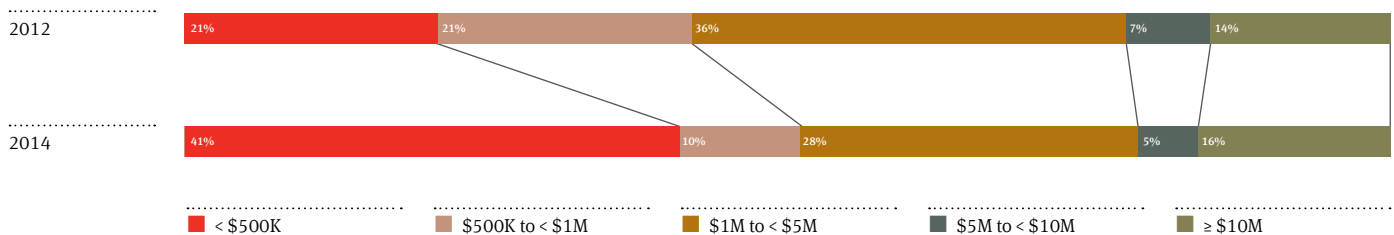
Consistent with our 2013 findings, US respondents with budgets of \$1 million to \$5 million (34%) have increased as a share of the total compared with two years ago (26%). There is also a slight increase in the proportions reporting budgets of \$10 million or more. Corresponding decreases are reported for budgets less than \$1 million (31% in 2014 versus 48% in 2012).

**US annual litigation spend**



Among UK respondents, there has been an increase in the proportion reporting budgets of less than \$500 thousand (41% this year versus 21% in 2012). The bulk of this increase comes at the expense of those reporting budgets ranging from \$500 thousand to \$1 million (10% and 21% in 2014 and 2012, respectively).

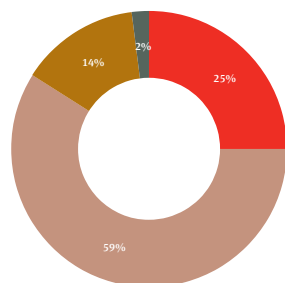
**UK annual litigation spend**



Litigation costs and disputes trends

## Do you expect the number of legal disputes your company will face in the next 12 months to increase, decrease or stay the same?

All respondents

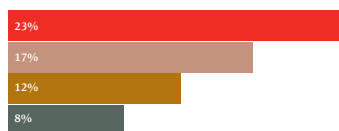


- Increase
- Stay the same
- Decrease
- None pending

There are no significant differences by region, industry sector or company size.

Sentiments in the US and UK are unchanged since 2012, the last time this question was posed.

Why do you expect an increase?



- Company is expanding / growing (incl. M&A)
- Aware of disputes that are likely to emerge
- Increasingly litigious environment / impact of high profile settlements
- Economic climate

*“As we acquire more assets, that necessarily brings more opportunity for disputes.” – US Energy Company GC*

*“We have got a few matters that are on the horizon that we can see already.” – UK Energy AGC*

*“I think [Australia is] becoming a more litigious environment.” – Australian Transport Company GC*

*“We all are expecting a softer economy next year and that usually will bring about more disputes.” – US Finance AGC*

*“Because relations with suppliers, or with partners, are more and more tense. Negotiations getting more complicated.” – French Technology & Innovation GC*

*“Increasing appetite of external regulators to bring FCPA/UK Bribery Act enforcement claims.” – Asia-based Chief Compliance Officer of US Technology & Innovation company*

Why do you expect a decrease?



- Current disputes will be resolved
- Do not anticipate new disputes / cases arising
- Better management / prevention / more proactive (inc. contacts)
- Higher number of disputes than normal this year / disputes will decline / revert to usual level

*“Because what we have pending right now is probably going to be resolved by the end of the year.” – US Technology & Innovation Company GC*

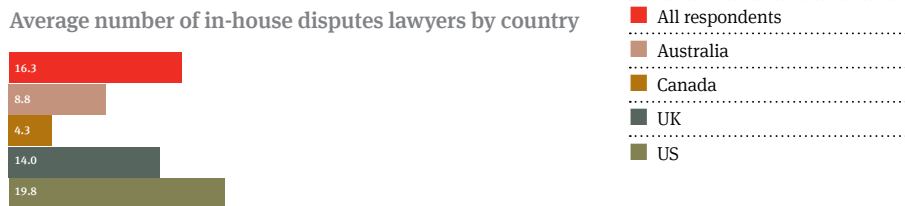
*“We have implemented some new procedures for our front-line personnel so that we are addressing disputes before they become litigious.” - Canadian Infrastructure, mining and commodities industry GC*

*“We are just getting tighter on our legal spend, and probably will be looking for ways to keep control of it.” - Chinese Financial Institution GC*

Litigation costs and disputes trends

## In-house litigation staffing

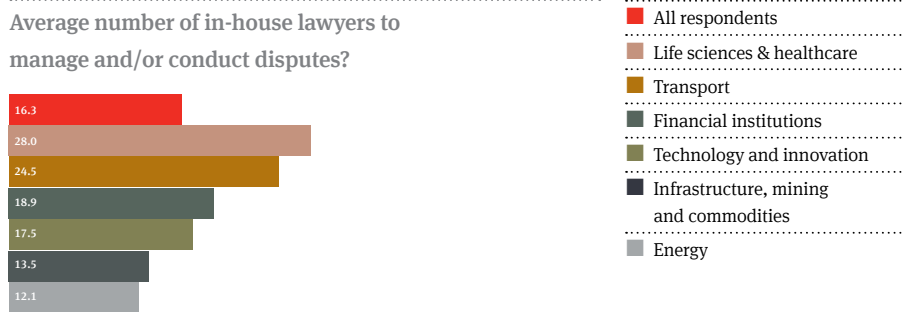
Average number of in-house disputes lawyers by country



The largest average in-house litigation staff size is found in the US, with nearly 20 lawyers on average, while Canadian litigation teams average just over four lawyers.

Canadian disputes teams are the least likely to be staffed by more than five lawyers (20%) compared with the total sample (34%). In this measure, other geographic segments do not differ significantly from the total sample.

Average number of in-house lawyers to manage and/or conduct disputes?



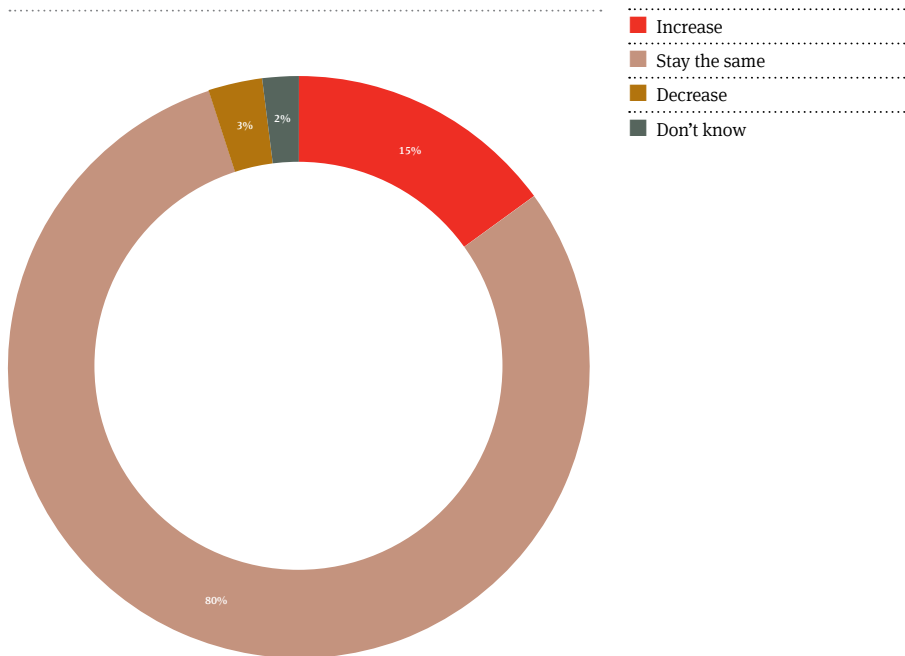
The Life sciences and healthcare and Transport industries report the largest in-house disputes staff with 28 and 24.5, respectively.

Energy and Infrastructure, Mining and Commodities industry respondents have the smallest litigation staffs on average (12.1 and 13.5, respectively).

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Litigation costs and disputes trends

During the next 12 months, do you expect the number of in-house lawyers within your company who manage and/or conduct disputes to increase, decrease or stay the same?



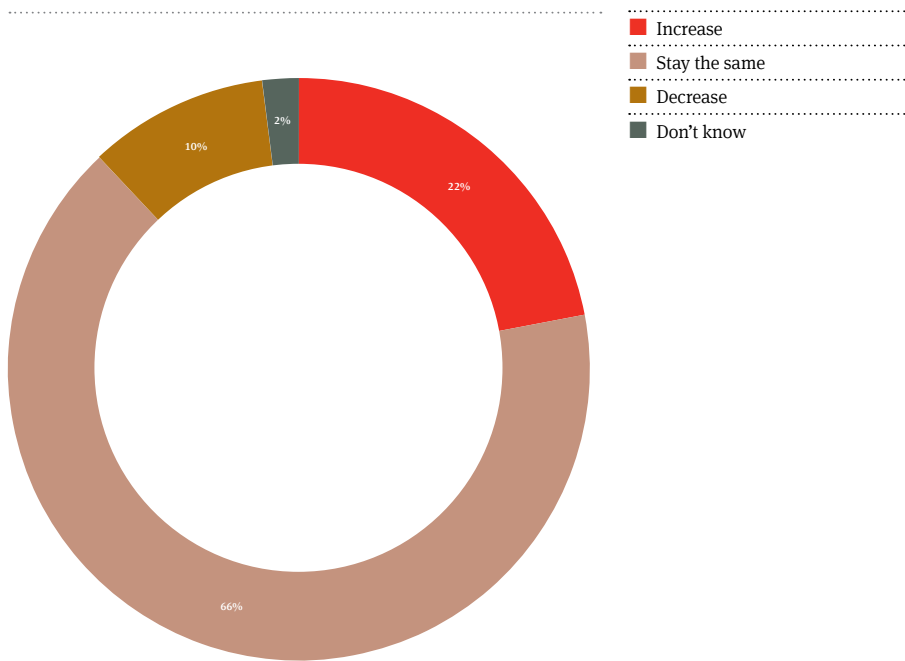
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Eighty percent of respondents expect the number of in-house litigation lawyers at their organizations to stay the same, while 15% expect an increase.

These values are comparable to findings in the four previous years and there are no significant differences by geography or industry.

Litigation costs and disputes trends

Over the past 12 months, has the number of law firms on your outside counsel disputes roster increased, decreased or stayed the same?



Among the entire pool of respondents, 22% have increased the number of firms on their rosters in the past year. There is no significant variation by geography and results are consistent with last year's findings.

Energy respondents (32%) are more likely to have increased the number of firms on their roster and Financial institutions (15%) are the least likely to have increased the number of panel firms.

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Chapter 4

## Alternative fee arrangements



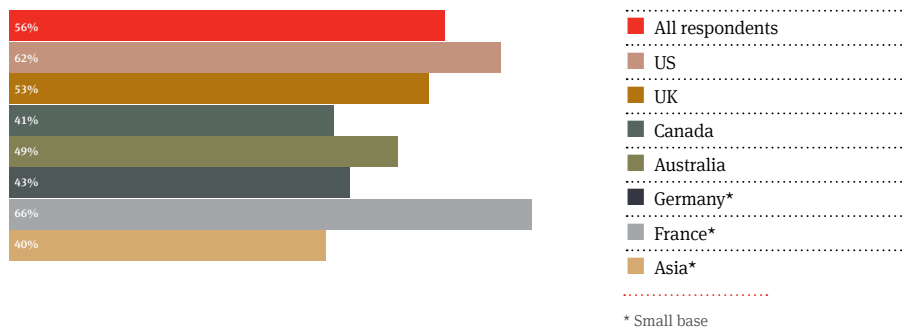
# 04



Alternative fee arrangements

## Does your company use alternative fee arrangements (AFAs)?

### Use AFAs



Use of AFAs in the US is consistent with 2013 findings.

Larger companies continue to be the most active users of AFAs (68% of companies with over \$1 billion in gross revenues; 77% among those with more than \$10 billion in revenues).

There is no significant variation among industry sectors in the use of AFAs. Of those who use AFAs, 40% use them for 10% or less of their total legal expenditure.

Just 13% use AFAs for more than half their outside counsel spend.

Alternative fee arrangements

## Most used types of AFAs

Respondents were asked to identify the three types of AFAs they use the most. As in the last two surveys, fixed fee, capped fee and blended rate are the three most commonly used types of AFAs:

### Most used AFAs



### Most used AFAs (Capped Fee)



Capped Fees are less common in the US (51%) compared with the total sample (59%), while UK respondents use Capped Fee AFAs more frequently (76%). The use of Capped Fee AFAs increased considerably in the UK from 2012, when 55% used them. Other regions do not differ significantly from the overall sample.

Fixed Fee AFAs are most used among Life sciences and healthcare respondents (79%) compared with the greater sample (66%).

Financial Institution respondents are more likely to use Capped Fee (68%) and Blended Rate (49%) AFAs compared with their peers in other industries (59% and 39%, respectively).

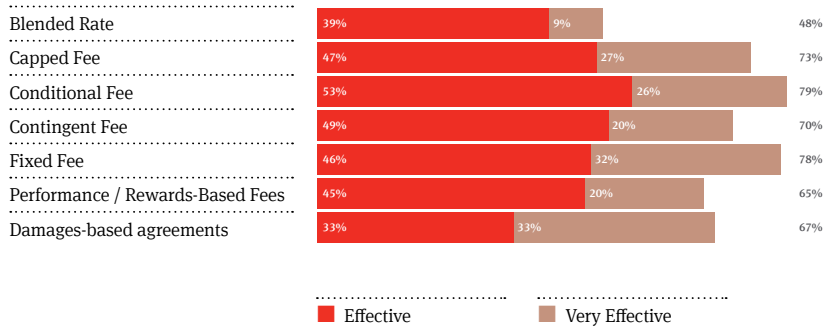
In the US, use of Performance/ Rewards-Based Fees (25%) fell compared with last year (35%).

Alternative fee arrangements

## Effectiveness of the types of AFAs

Respondents were asked how effective various types of alternative fee arrangements have been in accomplishing their companies' goals.

### Effectiveness of AFA types

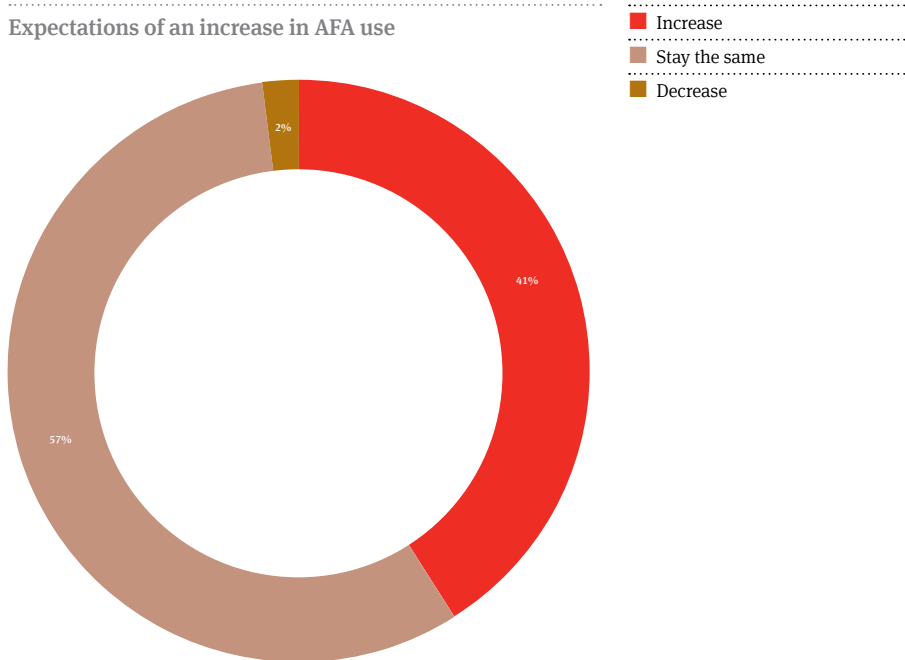


Alternative fee arrangements

## Expectations of an increase in AFA use

Respondents were asked if they expect their use of AFAs to increase, decrease or stay the same over the next 12 months.

Expectations of an increase in AFA use



Among US and UK respondents, there was no change versus 2012 and 2013 surveys.

There are no significant differences among regional or industry segments.

### Why are respondents expecting to increase use of AFAs?

*“These arrangements lower legal spend generally. They also tend to speed transactions by limiting ‘make work’ advisor behaviour.”* – Australia-based GC of a Hong Kong Transport Company

*“Success in alternative fee billing is an extremely effective way of measuring just how good (1) the in-house legal department is, and (2) how well external counsel is performing.”* – Canadian Energy Company GC

*“Because a fixed price, for example, could in some cases be of more interest than an agreed hourly rate – easier to calculate.”* – German Financial Industry Senior Counsel

*“Just to be able to go to [our board of directors] and say ‘a second opinion on this will cost ten thousand pounds or twenty thousand pounds’ is just so helpful. So I suspect that having had the positive experience... it’s likely that we will do it more.”* – UK Financial Industry Senior Counsel

*“We want to move to value-based arrangements because we think that is a better alignment of incentives – for both the corporation and law firm.”* – US Technology & Innovation AGC

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Alternative fee arrangements

## Company size is a good predictor of rising use of AFAs:

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### Expect to increase use of AFAs by company revenue



Perhaps not surprisingly, large organizations are more likely to expect an increase in their use of AFAs in 2015.

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Experience with AFAs

More than 97% of respondents who have experience with AFAs are satisfied with the work performed under Alternative Fee Arrangements.

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Chapter 5

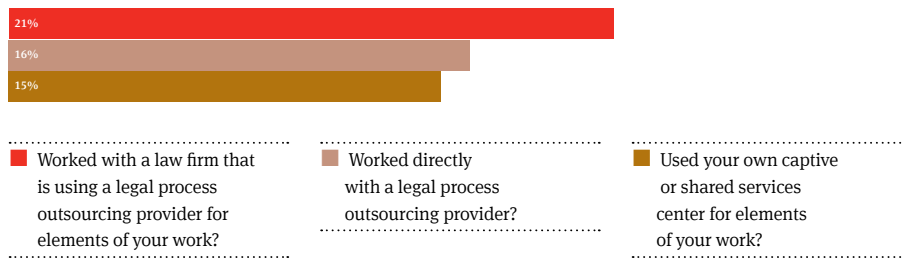
## Legal Process Outsourcing (LPO)



05

Legal Process Outsourcing (LPO)

## Have you employed any of the following strategies in the last 12 months?



With no significant variation across the countries we surveyed, significant minorities indicate that they have used alternative legal sourcing strategies including working with law firms that use LPOs (21%), worked directly with LPOs (16%) or used their own captive or shared service center for legal work (15%).

Financial Institution respondents (32%) are more likely than their peers (21%) to work with law firms that use legal process outsourcing providers.

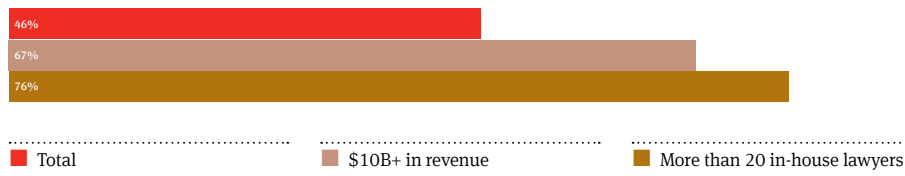
Legal departments with more than 20 lawyers on staff are more likely to use LPOs either directly (41%) or through their law firm partners (46%). Similarly, 44% of companies with \$10 billion or more in revenues use LPOs directly and 43% do so via law firms.

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Legal Process Outsourcing (LPO)

## Importance of demonstrating cost-effective sourcing of legal services: Moderately Important or Very Important

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In selecting a law firm, nearly half of respondents indicate it is “Very Important” or “Moderately Important” that law firms demonstrate cost-effective sourcing of legal services.

Companies with annual revenue of \$10 billion or more and those with legal departments staffing more than 20 lawyers (67% and 76%, respectively) are more likely to rate the use of alternative sourcing strategies such as legal process outsourcing as “very important” or “moderately important.”



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Chapter 6

Government and regulatory matters

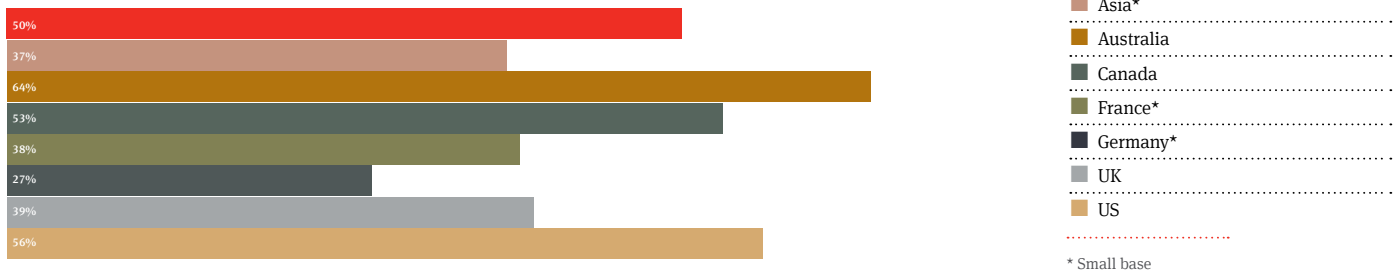


06

Government and regulatory matters

## Has your company retained outside counsel for assistance in any government or regulatory investigation in the last 12 months?

Retained counsel in a government or regulatory investigation



Australian (64%) respondents are the most likely to report retaining counsel to assist with investigations, German (27%) respondents are the least likely.

US and UK responses are consistent with 2012 and 2013 surveys.

Company size is a good predictor of the level of regulatory need, with larger companies much more likely (64%) to retain outside counsel to assist with investigations than their mid-sized (44%) and smaller (17%)

peers. Among companies with \$10 billion or more in revenue, 75% indicate that they have retained counsel to assist with investigations.

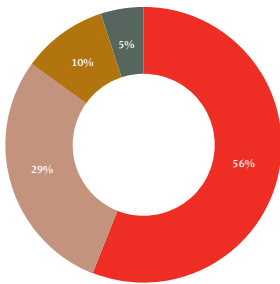
Top agencies cited by region

Asia	Australia	Canada	France	Germany	UK	US
Corrupt Practices Investigation Bureau (Singapore)	Australian Competition and Consumer Commission	Provincial Attorney General	Autorité de la Concurrence	BaFin	Financial Conduct Authority	Department of Justice
US Securities and Exchange Commission	Work, health and safety regulator (Commonwealth, State or Territory)	Federal Department of Justice	Tax Authorities	Gewerbeaufsichtsamt	Prudential Regulation Authority	Securities and Exchange Commission
		Provincial Securities Commission		Börsenaufsicht		State Attorney General
		Health Canada		Bundesnetzagentur		
				Luftfahrtbundesamt		
				Umweltbundesamt		

Among US respondents indicating that they retained counsel in response to a DOJ investigation, 63% were the primary target of the investigation.

Government and regulatory matters

## How many internal investigations requiring assistance of outside counsel did your company commence in the last 12 months?



- None
- One or two
- Three to five
- Six or more

Across the entire sample, 44% of respondents indicate that they have had at least one internal investigation requiring assistance of outside counsel in the previous 12 months.

Life sciences and healthcare respondents (67%) are most likely to have experienced such an investigation.

Not surprisingly, larger companies are much more likely (53%) to report an internal investigation requiring law firm assistance compared with companies with revenues below \$1 billion (31%).

### US Trend: One or more internal investigations requiring assistance of outside counsel



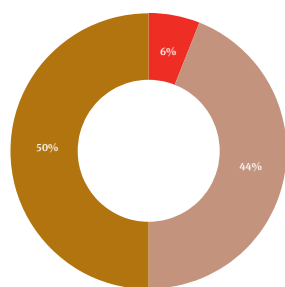
- 2012
- 2013
- 2014

The proportion of US respondents experiencing an internal investigation requiring assistance of outside counsel fell to near 2012 levels after rising in 2013.

Across the entire sample, one-quarter of companies that commenced an internal investigation within the last 12 months also reported the matter to a regulatory agency, about the same level as in the previous two years for US and UK respondents.

Government and regulatory matters

## Time spent in the last three years addressing regulatory investigative requests or regulatory enforcement proceedings as a party or non-party



- Less time
- Same amount of time
- More time

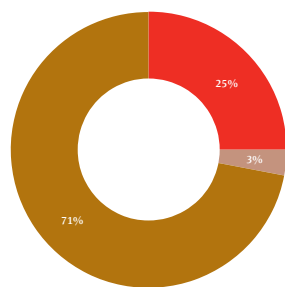
Half of all respondents who answered say they have spent more time during the last three years addressing regulatory requests or enforcement proceedings, either as a party or non-party.

Respondents from the UK (67%) are the most likely to feel an increased burden from regulatory matters, while German respondents (21%) are least likely.

Responses from Asia, Australia, Canada, France and US are all in line with the overall sample.

The only industry sector that varies significantly from the overall sample is Transport, of which only 28% feel that they spent more time on regulatory enforcement.

## Over the past three years, have cross-border regulatory inquiries or investigations directed to your company increased, decreased or stayed the same?



- Increased
- Decreased
- Stayed the same

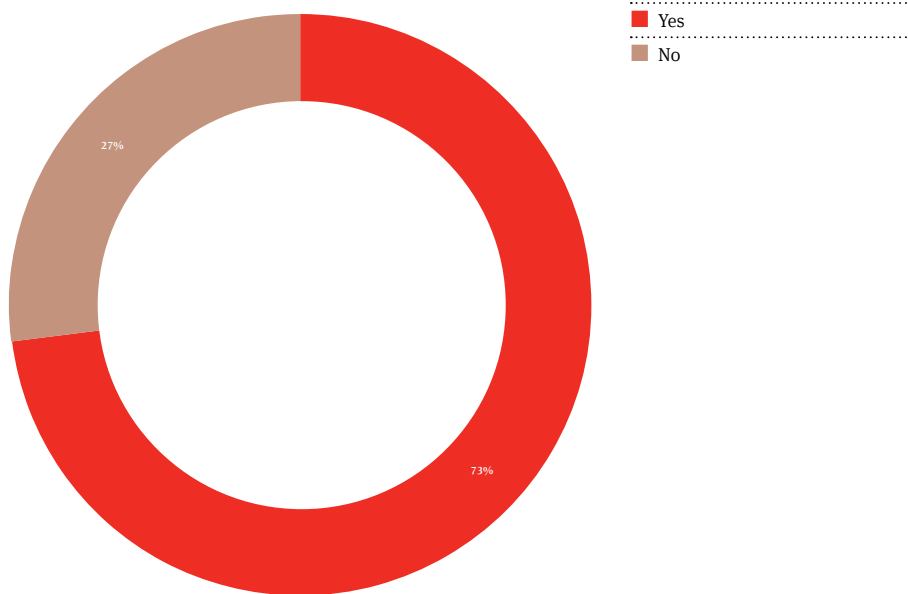
One-quarter of respondents who answered this question say that cross-border regulatory inquiries/ investigations have increased over the past three years.

UK respondents (48%) are the most likely to say that cross-border regulation is on the upswing, while German respondents (9%) are the least likely to think so.

Responses from Asia, Australia, Canada, France and US did not differ significantly from the overall sample. Financial institutions (35%) are more likely than their peers in other sectors to find cross-border regulatory actions more common, as are businesses with \$10 billion or more in revenue (45%).

Government and regulatory matters

## Where you have a cross-border dispute or regulatory investigation, do you prefer using a single law firm?



### Reasons for preferring a single firm:

1. Consistency/continuity
2. Centralized/single point of contact
3. Coordination/logistics
4. Efficiency/more efficient service
5. Cost effective

*“Uniform flow of information and process handling.”* – German conglomerate GC

*“[A single firm may] act almost as our outsourced in-house counsel function.”* - Australian Financial Institution GC

*“I prefer to use large firms with multiple international offices so that they can address all of the concerns in one place.”* – US Technology and innovation GC

*“Coordinating law firms—or rather lack of coordination between different firms—can often be a problem.”* – UK Financial Institution GC

*“Because for us to be efficient, the law firm needs a thorough knowledge of our business, so with several law firms, we would need to repeat the same thing several times, and we’d also have to pay each time.”* – French Technology and innovation CEO

Nearly three-quarters of respondents prefer to use a single law firm when facing cross-border disputes or investigations.

German (95%) and Australian (90%) respondents are most likely to use one firm across borders.

Responses from Asia, Canada, France, UK and US do not differ significantly from the overall sample.

Mid-sized companies (90%) and those with litigation budgets of \$1 million-\$3 million (92%) are more likely than their larger and smaller peers to favor using one law firm.

Energy industry respondents (55%) are the least inclined to prefer using a single firm.

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Chapter 7

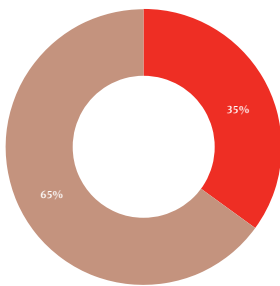
## Electronic discovery



07

Electronic discovery

## Have you conducted cross-border discovery in the past 12 months?

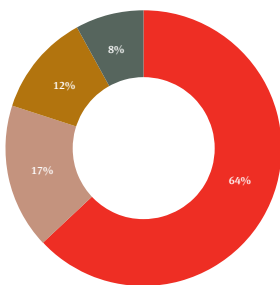


Companies with annual revenue of \$5 billion or more (54%) are much more likely to have conducted cross-border discovery in the past 12 months.

There are no significant differences among industries or regions.

- Yes
- No

## Of those who conducted cross-border discovery: what percentage of your matters do these represent?



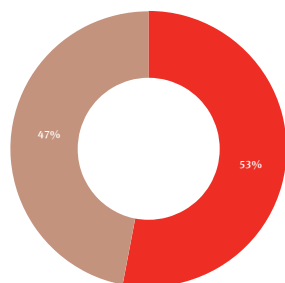
The majority of those conducting cross-border discovery do so for less than one-quarter of matters (64%).

There are no significant differences by region, industry or company size.

- 24% or less
- 25-49%
- 50-74%
- 75-100%

Electronic discovery

## In the past 12 months have you been required to preserve or collect data from a mobile device?



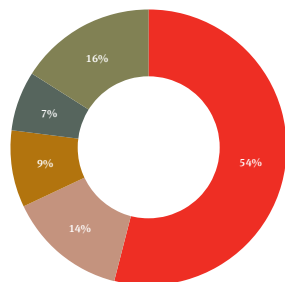
US respondents (62%) are the most likely to have preserved/collected data from a mobile device, while Australian respondents (36%) are least likely.

Life sciences and healthcare (72%) respondents are more likely than their peers to have collected mobile device data.

Smaller companies (24%) are less likely to have preserved or collected data from a mobile device in the past 12 months, while larger companies (67%) are more likely.

- Yes
- No

## Of those who did collect data from a mobile device: what percentage of matters does this represent?

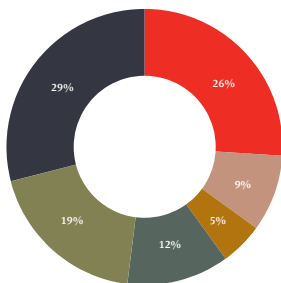


- 24% or less
- 25-49%
- 50-74%
- 75-99%
- 100%



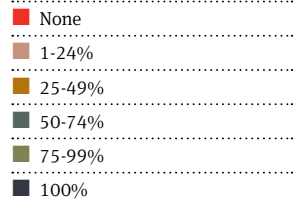
Electronic discovery

## In what percentage of cases do you primarily rely upon self-preservation?



Life sciences and healthcare respondents (88%) are the most likely to rely on self-preservation for at least some matters, compared with the total sample (74%).

There are no other significant differences among regions, industry or company size.



## Top reasons respondents do not rely on self-preservation

1. Cannot always rely on/trust individuals
2. Greater certainty/defensibility, lower risk
3. IT is more effective
4. Automatic storage/back-up of data

*“We can’t rely upon our employees to know what is relevant, what is not.” – Canadian Technology and innovation GC*

*“Employees don’t understand the impact of spoliation.” - US GC*

*“[Self-preservation] is not as reliable as if you’re using an automated system.” – UK GC*

*“We have a disaster recovery centre so everything’s backed up.” – Australian Technology and innovation GC*

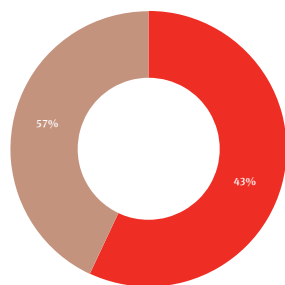
## When you don’t rely on self-preservation, how do you preserve potentially relevant documents?



- IT collects data
- Company maintains data sources that prevent modifications
- Discovery vendor collects data

Electronic discovery

## For your current matters are you using technology assisted review (for example predictive coding or other data analytics)?



More than half of respondents use technology assisted review.

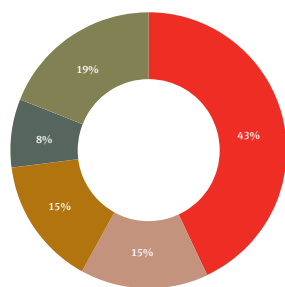
There are no significant differences among regions.

Life sciences and healthcare (75%) respondents are most likely to use technology assisted review.

Not surprisingly, smaller companies (32%) are least likely to use machine review, while companies earning \$10 billion annually (79%) are the most likely.

- Yes
- No

## Of those using technology assisted review: for what percentage of your current matters are you using it?



- 24% or less
- 25-49%
- 50-74%

- 75-99%
- 100%

Of those using technology assisted review, Infrastructure, mining and commodities (73%) respondents are the most likely to use technology assisted review for more than half their current matters compared with the entire sample (42%), while Transport (18%) respondents are among the least likely.

There are no other significant differences by industry, region or company size.

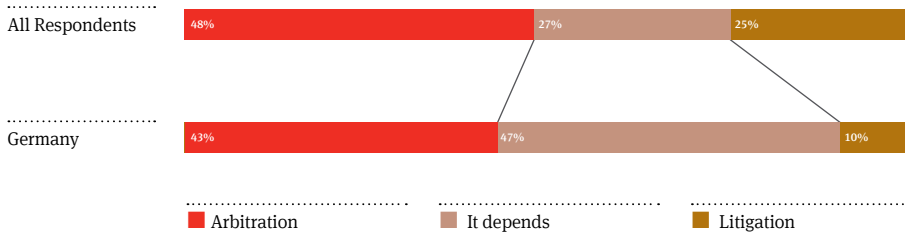
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Chapter 8  
International arbitration



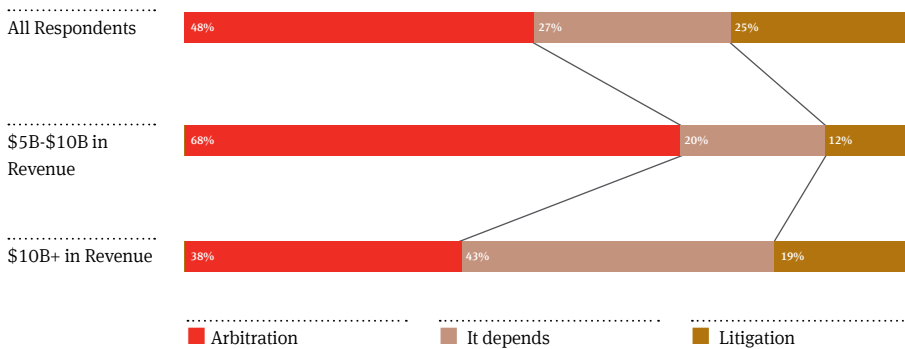
International arbitration

## In disputes that are international in nature, and when given a choice, does your company choose litigation or arbitration?



Given the choice, nearly half of respondents prefer to use arbitration as a means of resolving disputes, with one-quarter preferring litigation and about the same proportion saying “it depends.”

In Germany, just 10% of respondents prefer litigation while nearly half say that the context will determine their preference. There are no other significant differences by region.

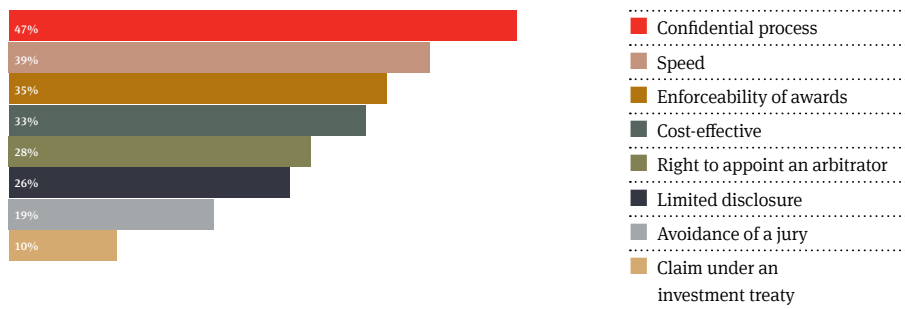


Across all regions and industries, more than two-thirds of businesses earning \$5 billion to \$10 billion in revenue prefer arbitration, while those earning \$10 billion or more are more likely to say “it depends.” There are no other meaningful differences by company size or among industry sectors.

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International arbitration

## Why does your company choose arbitration for international disputes?



International arbitration

## Was your company a party to an international arbitration in the past 12 months?

Party to international arbitrations by company revenue



Across our sample, about one-quarter of respondents have been party to an arbitration in the previous 12 months.

Companies with less than \$1 billion in revenue (11%) are much less likely to have engaged in arbitration, while larger companies are more likely. Among those with \$1 billion or more in revenue, 38% have been involved in an arbitration, while 63% of those with \$10 billion or more have been a party to an international arbitration.

There are no significant differences among regions or industry sectors.

Party to international arbitrations by industry

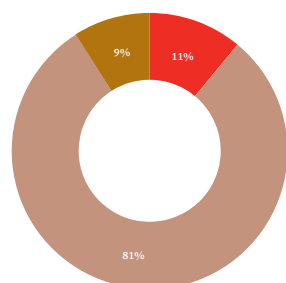


Financial institutions (17%) respondents are the least likely industry sector to have been a party to an arbitration, while Energy (38%) and Infrastructure, mining and commodities companies (43%) are among the most likely. Other industries show no significant difference compared with the broader sample.

There is no meaningful variation among the regions we surveyed.

International arbitration

## Are you expecting an increase or decrease in the number of international arbitrations your company is a party to over the next 12 months?



- Increase
- Stay the same
- Decrease

Most respondents expect the number of arbitrations involving their companies to stay the same (81%).

There are no significant differences by region or industry sector.

Respondents from companies with \$10 billion or more in revenue are more likely to expect an increase in arbitrations, with 25% saying so and just 65% expecting the volume to stay the same.

Top cities for seat of arbitration

1. Europe: London
2. North America: New York
3. Asia: Singapore
4. Middle East: Dubai

What factors influence your choice of seat?

*“Convenience and sophistication of the legal system.”* – Canadian Head of Litigation

*“The location of the company’s regional head office.”* – Singapore GC

*“Applicable law. If we have a dispute in Paris, we will make sure that French law can be applied by the arbitrators.”* – French Chief Counsel

*“Reputation, availability of experts and enforceability of the awards made.”* – Malaysian GC

Arbitration institutions your company has had experience with in the past five years:

Asia	Australia	Canada	France	Germany	UK	US
International Chamber of Commerce Court of Arbitration	International Chamber of Commerce Court of Arbitration	International Chamber of Commerce Court of Arbitration	International Chamber of Commerce Court of Arbitration	International Chamber of Commerce Court of Arbitration	London Court of International Arbitration	American Arbitration Association/ International Centre for Dispute Resolution
China International Economic and Trade Arbitration Commission	London Court of International Arbitration	ADR Institute of Canada			International Chamber of Commerce Court of Arbitration	JAMS
Hong Kong International Arbitration Centre)	Singapore International Arbitration Centre					International Chamber of Commerce Court of Arbitration
Singapore International Arbitration Centre						

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Chapter 9  
Class actions



09



Class actions

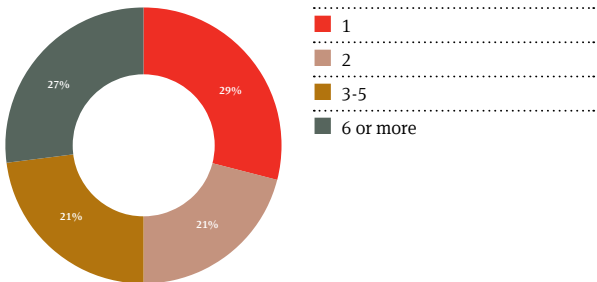
## Have any class or group actions been brought against your company in the past 12 months?

### One or more class/group actions



About one-quarter of all respondents report at least one class or group action in the preceding 12 months. Respondents from the US make up 80% of those who have experienced class or group actions.

## Of those who have experienced class or group actions: how many such actions were brought against your company in the past 12 months?

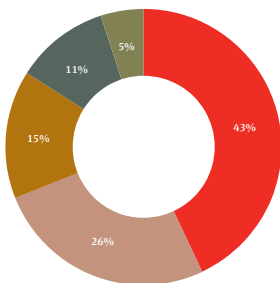


Of those who have had class or group actions brought against their companies, 30% indicate that one or more were certified.

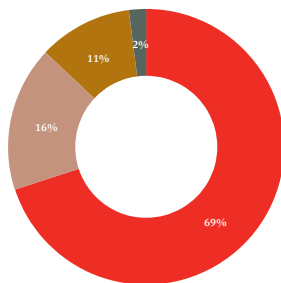
Class actions

In the past 12 months, how many of the class or group actions against your company were settled or dismissed through litigation?

Settled



Dismissed through litigation



- 0
- 1
- 2
- 3-5
- 6 or more

- 0
- 1
- 2
- 3-5

Categories of class or group actions



- Labor/Employment-related
- Consumer (i.e. economic loss)
- Securities
- Mass Tort (including personal injury)
- Antitrust/Competition Law

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Chapter 10  
Intellectual property



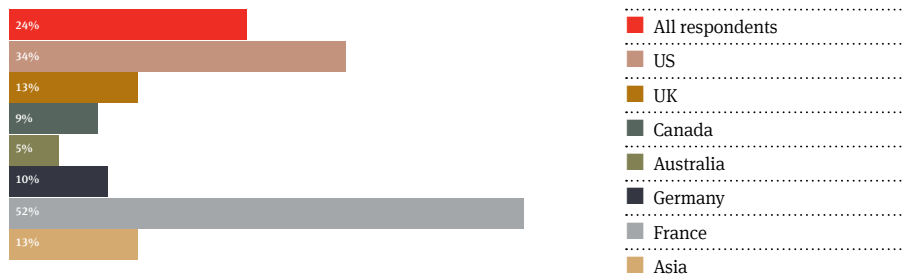
Intellectual property

## Involved in IP lawsuit or proceeding by region

### Yes - as the claimant/plaintiff



### Yes - as the respondent/defendant



Intellectual property

## Involved in IP lawsuit or proceeding by industry

### Yes - as the claimant/plaintiff



### Yes - as the respondent/defendant



Intellectual property

For each type of lawsuit or proceeding listed, do you expect the number of matters to increase, decrease or stay the same during the next 12 months as the claimant/plaintiff, or as the respondent/defendant?

Percentage of respondents reporting one or more matters

Matter type	Claimant/ Plaintiff	Claimant/Plaintiff \$5M+ at issue	Respondent/ Defendant	Respondent/Defendant \$5M+ at issue
Patent infringement	10%	8%	15%	9%
Trade secret	3%	1%	2%	1%
Trademark	7%	2%	6%	1%
Trade dress or "get up"	1%	0%	1%	0%
Counterfeiting	2%	1%	1%	0%
Copyright	1%	1%	4%	1%
Designs	1%	0%	1%	0%
Advertising	2%	1%	1%	0%

For each of the matter types below, most respondents (88%-98%) expect the number of disputes/proceedings as both claimant and respondent to stay the same during the following 12 months.

In all cases, much smaller proportions of respondents (1%-7%) expect to see the number of matters increase, while generally the smallest proportion (0%-5%) foresee a decrease in the coming 12 months.

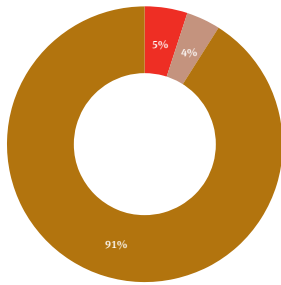
For all matter types presented, differences among regions, industry and company size are not significant.

Intellectual property

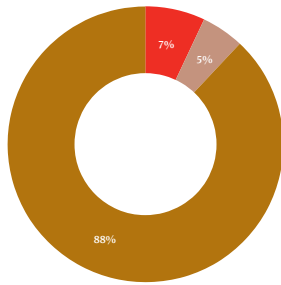
Patent infringement matters

Trade secret matters

Changes as claimant/plaintiff

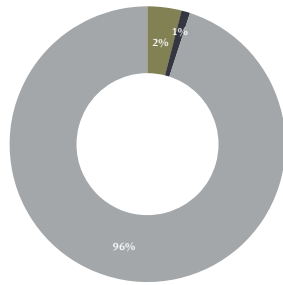


Changes as respondent/defendant

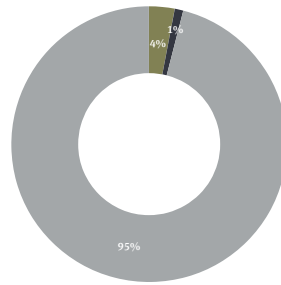


- Increase
- Decrease
- Stay the same

Changes as claimant/plaintiff



Changes as respondent/defendant



- Increase
- Decrease
- Stay the same

Intellectual property

Trademark matters

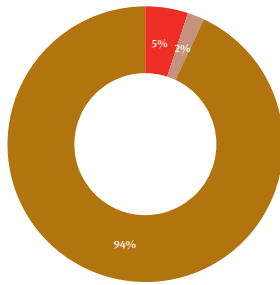
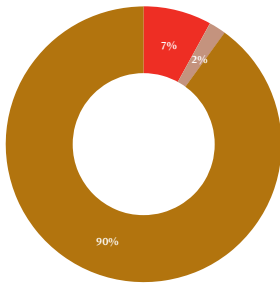
Trade dress or “get up” matters

Changes as claimant/plaintiff

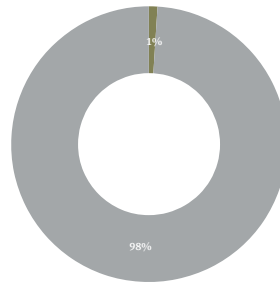
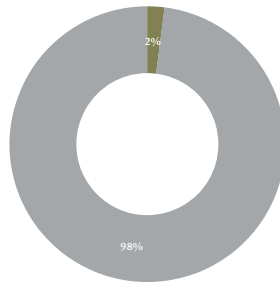
Changes as respondent/defendant

Changes as claimant/plaintiff

Changes as respondent/defendant



- Increase
- Decrease
- Stay the same



- Increase
- Decrease
- Stay the same

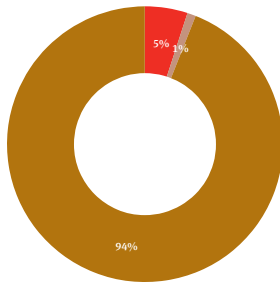


Intellectual property

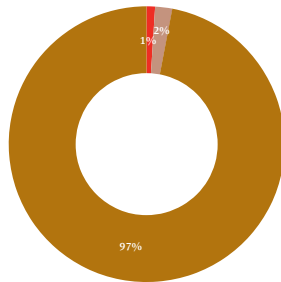
## Counterfeiting matters

## Copyright matters

Changes as  
claimant/plaintiff

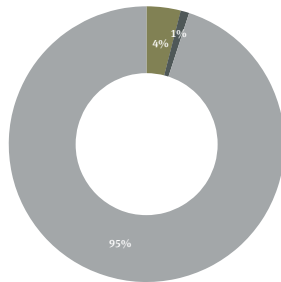


Changes as  
respondent/defendant

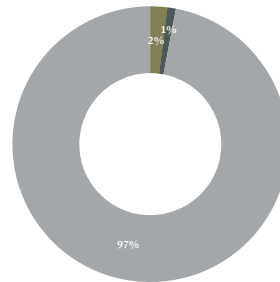


- Increase
- Decrease
- Stay the same

Changes as  
claimant/plaintiff



Changes as  
respondent/defendant

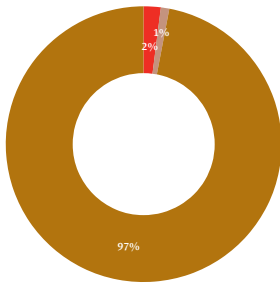


- Increase
- Decrease
- Stay the same

Intellectual property

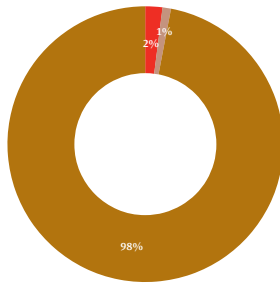
## Design matters

Changes as  
claimant/plaintiff



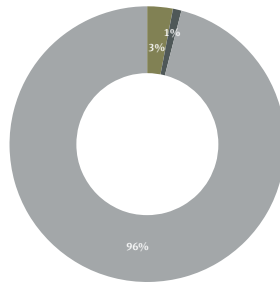
- Increase
- Decrease
- Stay the same

Changes as  
respondent/defendant



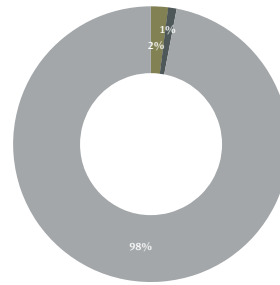
## Advertising matters

Changes as  
claimant/plaintiff



- Increase
- Decrease
- Stay the same


Changes as  
respondent/defendant



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Chapter 11

## Forward-looking trends



# 11

Forward-looking trends

## In the next 12 months, in which jurisdictions do you expect to be litigating?

Asia	Australia	Canada	France	Germany	UK	US
Hong Kong (30%)	Australia (non-specific) (44%)	Canada (non-specific) (47%)	France (50%)	Germany (37%)	UK (46%)	US (most/several states) (35%)
China (27%)	New South Wales (17%)	US (most/several states) (23%)	US (most/several states) (14%)	UK (17%)	US (most/several states) (26%)	Texas (28%)
US (all/most/several states) (13%)	Victoria (11%)	Ontario (19%)		US (most/several states) (13%)	New York (14%)	California (23%)
		Alberta (17%)			Germany (11%)	New York (15%)
					France (10%)	

Not surprisingly, most respondents expect foremost to be litigating in their own regions.

Forward-looking trends

## In your view, what is the most important issue or trend in litigation impacting your company?

Geographical region	Trends
US	Class actions and employment
UK	Litigious environment and labor matters
Canada	Class actions and changing legislation/court decisions
Australia	Class actions, increasing legal costs and a more litigious environment
Germany	Increasing use of Alternative Dispute Resolution and increasing class action volume
France	Class actions, higher litigation volume and more contract litigation
Asia	Increasing cost of time-consuming, sometimes frivolous litigation

Across our sample, the most cited issue is an increasing number of class actions.

Other top concerns include:

Employment/Labor issues

Increased oversight/scrutiny by regulators

Costs of litigation

Increasingly litigious environment

Intellectual property/patent troll litigation

Increased/changing regulation

E-Discovery cost

## Important trends from respondents

*“We are seeing class actions brought where there is no harm and we are starting to see courts allow this and it creates substantial potential liability, where there should be none.”* – US Technology and innovation company Head of Litigation

*“How easy it is for individuals to bring lawsuits online, which I think makes people more litigious.”* – UK Technology and innovation company Chief Legal Officer

*“The recent Supreme Court of Canada’s decision on good faith obligation in contracts.”* – Canadian Energy company GC

*“I think it is probably the class action litigation particularly in the US. A lot of the times it is without foundation, you end up tackling it just to avoid the ongoing cost of being involved in the process, it is a pretty unsatisfactory global system for class action in that regard.”* – Australian Technology and innovation company GC

*“The environment is getting tense. Companies, when they have trouble paying, will search in their contract for a way not to [pay].”* – French Technology and innovation company GC

*“The trend in litigation will lead to arbitration... [increasingly] in a third country. It is happening more often that neither of the two [parties] is prepared to concede to the other that they use their own country.”* – German Life sciences and healthcare industry GC

*“Frivolous legal actions claiming extortionate amounts - a sign of a more litigious society.”* – Malaysian Infrastructure, mining and commodities industry GC

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## Key industry sectors

Our strategy is driven by our focus on six global industries. Our progress in each is determined by our ability to deliver advice that goes beyond just legal. And we remain at the forefront not just through advising on some of the biggest deals going, but also by seeking out pioneering work that will take us into new areas.

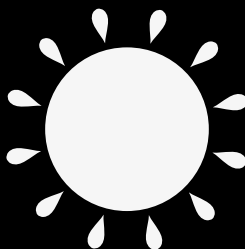


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### Financial institutions

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Our reach in this sector is global, as is our regulatory knowledge and experience of acting on high-profile, cross-border transactions and disputes. With 1,100 dedicated lawyers worldwide, we have strong relationships with the world's leading financial institutions, providing advice across the full range of their legal requirements.



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### Energy

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We have one of the largest global energy practices in the world, with over 850 energy lawyers in every major energy market. Our team works together to deliver sophisticated and forward-thinking advice worldwide – tackling complex issues in areas such as climate change, oil and gas, power and renewables.

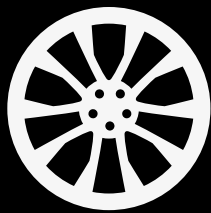


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### Infrastructure, mining and commodities

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We work on major infrastructure, mining and commodities projects in almost every country in the world, including emerging markets such as Africa and Latin America. We have worked on some of the largest and most innovative deals in recent years.



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## Transport

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We have a leading reputation in the transport sector. Our 350 transport lawyers concentrate on aviation, rail and shipping, and we focus on making sustainable connections between transport, energy and infrastructure. Transport is diverse, so our work ranges from asset finance and M&A to dispute resolution and private equity.



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## Technology and innovation

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Our global technology and innovation group advises a number of the world's leading corporations throughout the technology, business services, communications, media, entertainment and consumer markets sectors. With 450 lawyers worldwide, we provide a truly global service to clients in both established and emerging markets.



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## Life sciences and healthcare

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We act for global pharmaceutical, bioscience and technology companies in every stage of the product life cycle, from intellectual property protections to commercial transactions, and mergers and acquisitions. It is no surprise that many of our life sciences and healthcare lawyers have degrees and advanced degrees in science and technology.

## Global resources

Norton Rose Fulbright is a global legal practice. We provide the world's pre-eminent corporations and financial institutions with a full business law service. We have more than 3800 lawyers based in over 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa, the Middle East and Central Asia.



People worldwide

**7400**

Legal staff worldwide

**3800+**

Offices

**50+**

### Europe

Amsterdam

Athens

Brussels

Frankfurt

Hamburg

London

Milan

Moscow

Munich

Paris

Piraeus

Warsaw

### United States

Austin

Dallas

Denver

Houston

Los Angeles

Minneapolis

New York

Pittsburgh-Southpointe

St Louis

San Antonio

Washington DC





Our office locations

**Canada**

- Calgary
- Montréal
- Ottawa
- Québec
- Toronto

**Latin America**

- Bogotá
- Caracas
- Rio de Janeiro

**Asia**

- Bangkok
- Beijing
- Hong Kong
- Jakarta<sup>1</sup>
- Shanghai
- Singapore
- Tokyo

**Australia**

- Brisbane
- Melbourne
- Perth
- Sydney

**Africa**

- Bujumbura<sup>3</sup>
- Cape Town
- Casablanca
- Dar es Salaam
- Durban
- Harare<sup>3</sup>
- Johannesburg
- Kampala<sup>3</sup>

**Middle East**

- Abu Dhabi
- Bahrain
- Dubai
- Riyadh<sup>2</sup>

**Central Asia**

- Almaty

<sup>1</sup> Susandarini & Partners in association with Norton Rose Fulbright Australia

<sup>2</sup> Mohammed Al-Ghamdi Law Firm in association with Fulbright & Jaworski LLP

<sup>3</sup> Alliances

## Dispute resolution and litigation

We have one of the largest dispute resolution and litigation practices in the world, with experience of handling and resolving multi-jurisdictional mandates and international arbitration across all industry sectors. We advise many of the world's largest companies on complex, high-value disputes. Our lawyers both prevent and resolve disputes by giving practical, creative advice that focuses on our clients' strategic and commercial objectives.

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Lawyers

**1200**

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Contact

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'Among the top global dispute resolution practices.'

*Chambers Global 2014*

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### Our practice covers

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Antitrust and competition

Appellate

Catastrophic and mass disaster disputes

Class actions

Commercial disputes

Construction and engineering

Data protection, privacy and access to information

eDiscovery and information governance

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Employment and labor

Energy

Environmental

International arbitration

Life sciences and healthcare

Marine casualty, admiralty and shipping

Mass tort and toxic tort disputes

Patent litigation

Pharmaceutical medical device disputes

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Product liability

Professional liability

Qui Tam/False Claims Act

Real estate

Regulatory and governmental investigations

Securities litigation, investigations and SEC enforcement

Transnational litigation

White collar crime

# Norton Rose Fulbright

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Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

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