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# 2017 Litigation Trends Annual Survey

Perspectives from corporate counsel



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# Executive summary

Our 13th annual litigation trends survey shows that spending on disputes relative to revenue has increased, but also suggests the first signs of a reduction in the overall number of disputes. Specific types of litigation that are driven, for example, by regulators, existing employees and criminal activity are on the increase.

Our report looks in detail at major areas of concern: regulatory investigations; class actions and environmental disputes. GCs and legal teams are constantly having to adapt to these threats and look for new preventative measures.

This year's survey highlights the ever-increasing threat to cybersecurity. Nearly two thirds of our respondents feel more exposed to disputes in this area. Drawing on the lessons learned from this research, our report offers a practical guide to help you evaluate your state of readiness.



Training, early case evaluation and embedding lawyers identified as most effective preventative measures

We also revisit our litigation minimization framework, first published last year. We show that many respondents have taken advantage of the recommended measures and report that, of these, training is emerging as the most impactful. Embedding lawyers in business operations, early case resolution/evaluation and proactive contract review are all shown to have value.

We have also looked at technology tools to assess their impact on efficiency and management control. Surprisingly few organizations are using legal project management systems, client dashboards from their law firms or visual analytics/business intelligence software.

Unless otherwise noted, all currency values are stated in US dollars.

## Key statistics



\$1.7m spend on disputes per \$1bn of revenue\*



3 disputes lawyers per \$1bn of revenue\*



8 disputes handled per \$1bn of revenue\*



59% of legal spend goes to law firms

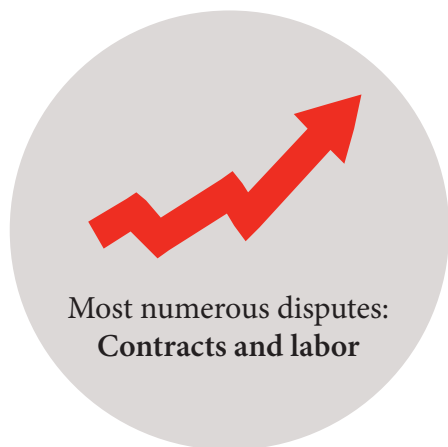


30% of the budget spent internally



41-60% spent internally maximizes cost efficiency

\*median average



72% of work still conducted under hourly rate despite 96% satisfaction level with AFAs

For the first time, this year we explore the impact of adjusting the balance of legal spend between internal and external. It emerges that cost efficiency is greatest where internal spend is between 41 and 60 percent. Nevertheless, most organizations seem to be undershooting this and spending a much greater proportion of their budget externally. The average size of legal teams is up, but still falls short of our assessment of optimal size.

Despite a massive 96 percent satisfaction with Alternative Fee Arrangements and last year's reported plans to increase them, uptake surprisingly seems to have plateaued.

## The research

318 corporate counsel were interviewed across a wide range of sectors. The majority of the respondents are based in the US or work for US companies.

More than half the respondents who reported revenues work for \$1 billion+ organizations.

In total, our respondents spent nearly \$4bn on litigation last year.

**\$1.0  
BILLION**

Median Revenue  
2017

**\$1.5  
MILLION**

Median Disputes Spend  
2017

**0.17%**

Median Spend as %  
of Revenue 2017



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## The trends

# Litigation prevention

We revisit our litigation minimization framework and assess its effectiveness

## Minimizing litigation

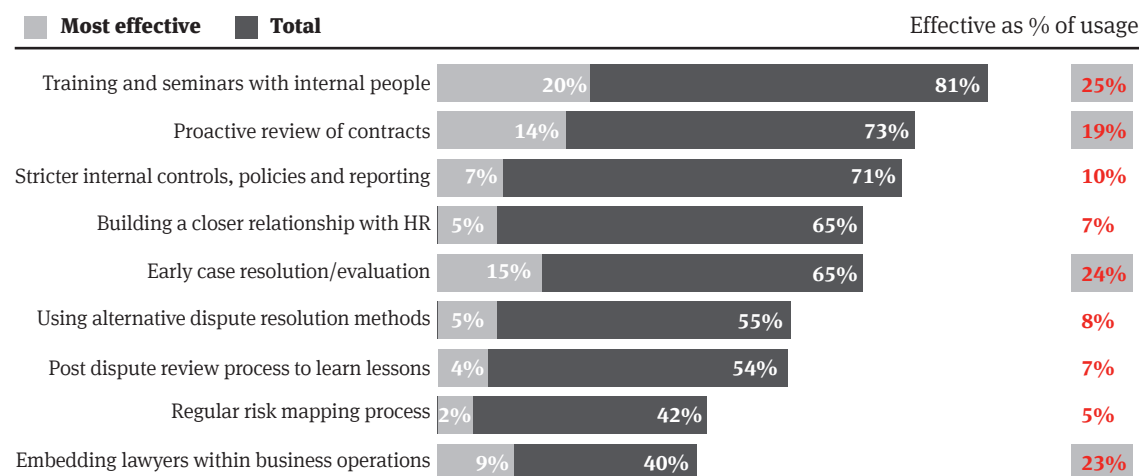
Our 2016 report highlighted key measures used by in-house teams to prevent litigation. From these we advocated a litigation minimization framework. Now we assess the success of this framework.

95 percent are implementing at least one key measure.

Early case resolution, embedding lawyers in the business and proactive contract review are also shown to be highly effective.

## Most effective measures in reducing litigation

Which of these measures has been most effective in reducing the volume of litigation your company faces?  
(Please select one option)



Base: Preventative measures (310)

\*Light gray bars represent proportion who felt the measure was most effective, combined light and dark gray represents proportion of uptake overall.

## The top 4 measures

**Training internal people.** Four out of five of our respondents train their people to be aware of the risks that might lead to a dispute. This approach emerges as the most effective measure overall.

Once a dispute has arisen, we were told that **early case resolution or evaluation** is one of the most successful means to avoid litigation. Just under two thirds have implemented this measure and it comes out as the second most effective.

Fewer respondents have tried **embedding lawyers within business operations**. Those that have, view it as the third most effective approach.

Seven in ten have **proactively reviewed contracts** making it the second most implemented measure. But only one in five of these have found it to be the most effective measure.

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*Training emerges as the number one factor in preventing litigation*



# What is cyber ready? A market survey:

Cybersecurity and data protection are the biggest worries on the horizon



63% of respondents have become more exposed to disputes concerning cybersecurity and data protection over the last 12 months

Many respondents indicate that the largest dispute area on the horizon is related to cyber and data protection. Nearly two thirds feel more exposed to risks associated with cybersecurity and data protection in the last year versus only six percent who feel less exposed. Financial institutions; life sciences and healthcare; and technology and innovation organizations reported even higher levels of exposure than their peers in other industries.

While myriad frameworks have been developed to address cybersecurity risks (including the NIST Cybersecurity Framework) a survey of market practices around these issues revealed the following steps are being undertaken by forward-looking organizations.

**Take stock** Identify the risk factors – define the scope and scale of threats

**Experts** Strengthen your IT team with specialist expertise and resources

**Safeguarding** Invest in safeguarding and defensive measures

**Training** Train and educate your people

**Establish policies** Establish policies and protocols and check for compliance

**Defense audit** Audit your defenses. Try hacking your own system

## Take stock of your readiness – 3 key areas to look at

Perspectives vary by industry but respondents agree that cybersecurity and data protection are a real and growing threat to operations.

Unsurprisingly, this has created tension in balancing potential risks against the appropriate level of investment in mitigation tactics.

Identifying the risk factors of their organizations and their operations is thought by many to be key to successful mitigation. Drawing on the experiences of corporate counsel in our survey, we have identified three areas where companies are evaluating their exposure:



### Target data

- Prevalence of high value data and proprietary information
- Sensitivity of information



### Weak points

- Operational vulnerabilities
- Regular scrutiny



### Scale of threat

- Volume of prevalence of threats
- Sophistication and aggressiveness of external threats

Respondents find that the primary risk lies in the value of the data being held. This is particularly relevant to those operating in the life sciences and healthcare spheres, as well as financial sectors, with health records and personal financial details most obviously at risk. Those citing data value as a risk factor are significantly more likely to be investing in sophisticated security measures as a key facet of their risk mitigation:



*“We have implemented dual factor authentication for people who are accessing our systems from off-site. We have improved and reinforced our firewalls and we are in the middle of transitioning to one electronic medical record system when we previously had several disjointed and unconnected systems.”*

Increasing scrutiny from business customers and regulators is also a key factor, leading to a growing focus on compliance:

*“I don’t think [the increased focus] has anything to do with our business model. I think it has more to do with the attention that the appropriate governmental and regulatory agencies are applying in the space.”*

For many respondents, their organization’s specific operations are not necessarily the key risk factor, the more notable issue being a constantly growing trend of increased threats and attempts to access systems.

*“It’s not our business model, it’s really the outside environment and the increases in attempts at cyber-attack.”*

Not only is the number of threats growing, but so is the sophistication of attacks and challenges. Keeping ahead of these is a key goal for organizations:

*“We have a corporate security group and risk assessment group that regularly looks at what risks are out there. They have implemented response procedures if we are aware of any scams or phishing attacks and they send us notifications of [imminent] concerns. I know we have groups that are regularly monitoring and staying on top of any cybersecurity threats.”*

### Experts – bring them into your tech team

The most common defensive measure is to **strengthen internal IT resources**, with two out of five organizations preparing in this way. Having the right expertise on hand is seen as ensuring organizations’ abilities to accurately assess the scope and scale of risks and to prepare in an adequate way.

*“We’ve improved our IT security function, we have personnel in place who understand those functions and we’ve spent more money on that aspect of our IT function.”*



### Corporate leaders can’t afford taking a wait-and-see approach to the General Data Protection Regulation (GDPR):

- The GDPR is a new, very prescriptive regulation with global impact on any organization that does business in Europe
- Expect robust enforcement across the EU
- Fines may reach up to 4% of global turnover
- The regime requires organizations to establish security frameworks and modify business practices accordingly

— Boris Segalis, Co-Head,  
Data Protection, Privacy &  
Cybersecurity, United States

## Safeguarding – invest in these measures

Once the right team is in place, respondents highlighted the importance of **equipping them with the right tools** as the next step in the process. In addition to technological defenses such as encryption, physical defensive measures, such as providing locks and preventing access to areas where sensitive documentation are seen as key. 37 percent of organizations have invested in safeguarding measures. Among these, one respondent listed:

*“Enhanced encryption on our emails, dedicated portals for communication of sensitive information, clean desk policy at the company – meaning that we encourage our employees to lock up their files on a regular basis and not to leave paperwork exposed on their desk – added physical security in our rental offices, additional locks, keeping customers out of certain areas of our operations.”*

## Train – your people

**Training and education** is also widely thought to be a key part of preparing the organization for cybersecurity and data protection risk. As previously mentioned, training is perceived as the most effective preventative measure for disputes in general.

*“We have included training for information security about email phishing and how to recognize harmful emails and programs that someone may try to install.”*

## Establish policies – provide structure and guidelines

One in five organizations have updated their policies and protocols for employees, in particular technology teams. Respondents stressed that ensuring compliance is as important as putting the policies and protocols in place.

*“I personally, as counsel, go through with our IT group to make sure [...] they’re complying with all of the varying standards. A lot of times though they say they are complying with the standards, they aren’t, or they say they’re working on it. So, we try to have [...] verification of what we’re doing in order to devote appropriate resources to those.”*



**“Any security plan should be tested. The best way to do that is to augment your own testing with third party auditing. A qualified third party is going to look at your security measures with a fresh eye and a lot of experience. Aggressive auditing provides great benefits from a cyber risk readiness perspective.”**

*— Boris Segalis, Co-Head,  
Data Protection, Privacy &  
Cybersecurity, United States*

## Defenses – make sure you audit them

Among the most vigilant respondents, the final step is to audit their defenses by drawing on third-party experts. Testing defenses, for example by attempting to hack into their systems, is seen as vital for ensuring what they have put in place works. Only one in five had prepared in this way.

*“We pay an outside company to try to break into our system every year. They call it an audit but what they do is they try to hack into the system and they come up with a list of vulnerabilities that we have to correct.”*

## The threat does not go away

All of these tactics are being adopted by organizations in varying degrees. Even so, we were struck that despite these efforts, only a very small proportion of organizations feel less exposed than they did 12 months ago (6 percent).



### In the words of the Red Queen

*“Now, here, you see, it takes all the running you can do, just to keep in the same place. If you want to get somewhere else, you must run at least twice as fast!”*

*Through the looking glass, Lewis Carroll*

Cybersecurity and data protection are increasingly dynamic risk areas, and with increasing scrutiny emerging from areas such as GDPR, there is little doubt that organizations will have to review and update their defenses constantly:

*“We have more expertise, we have hired lawyers in those areas to be able to handle those threats and of course in Europe you have to have someone to manage those things. [GDPR] is coming soon so we’ve been preparing for that by having the right people in place and the right procedures in place.”*

# Using technology to manage disputes

## Do you have the right tools in place?

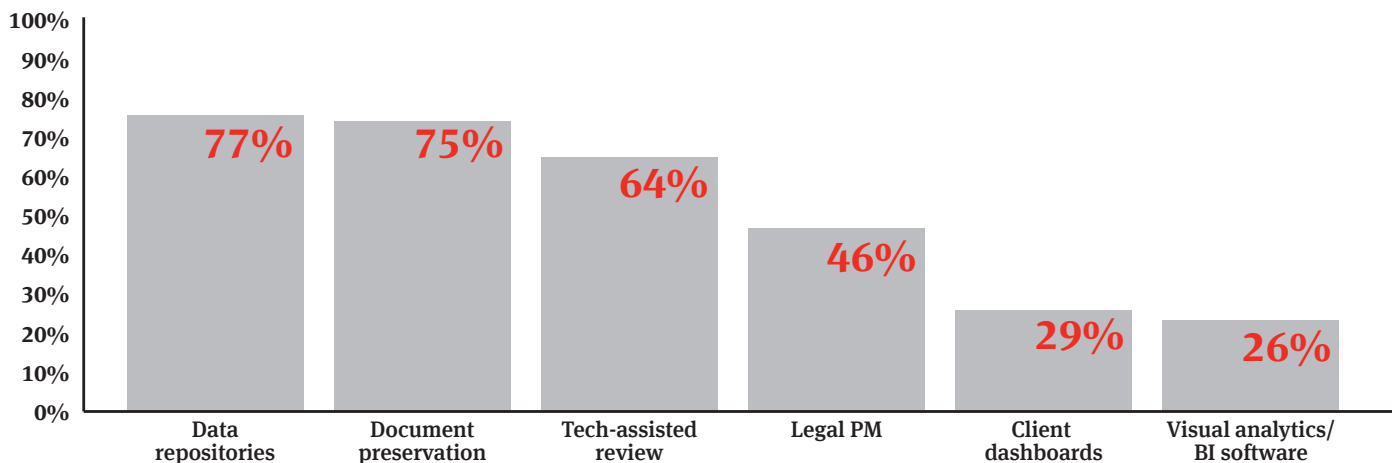
Technology is driving efficiency in the legal industry, particularly in the litigation area. Yet, this research reveals that uptake of new technology varies considerably from one organization to another. All organizations will have to look more to technology to drive more value from the resources they have.

Financial institutions are leading the way with a higher uptake of all technologies and are understandably seen as setting trends for managing legal work.

So far the most utilized technologies are: data repositories,<sup>1</sup> document preservation tools<sup>2</sup> and technology assisted review.<sup>3</sup> As yet other technologies show a far lower uptake by corporate counsel. Fewer than half use legal project management<sup>4</sup> to help manage the life cycle of a matter; less than a third use client dashboards<sup>5</sup> allowing collaborative working and updates on live cases/budgets and only one in four use visual analytics.<sup>6</sup>

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## Are you currently using any of the following technologies or have you used them in the last 12 months?



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1 Tools to store, enrich, analyze, and synthesize large data sets.

2 Software to distribute and track preservation notices and acknowledgements.

3 A process of having computer software electronically classify documents based on input from expert reviewers. E.g., predictive coding.

4 Tools and services for managing the life cycle of a case or matter more effectively.

5 Collaborative platforms with daily updates on live cases and budgeting tools.

6 Software used to analyze data sets to illustrate trends, identify gaps in data sets and to highlight electronic communication patterns.

## Benefits of tech

Corporate counsel report several key benefits from adopting new technologies. Looking at the three most common technologies (data repositories, document preservation and tech assisted review), these benefits are:

### Efficiencies:

Tech assisted review is most commonly (but not exclusively) cited as driving efficiencies and saving money. The number of hours required by counsel to review data are drastically reduced by the ability to sift and search data for key terms.

*“You can upload data and apply search terms. It’s the most efficient way of doing it. It significantly reduces the amount of hours that are otherwise required to review data.”*

### Organization:

Benefits of data repositories and preservation tools arise from improvements to the dispute management process. Controlling storage of, and access to, centrally stored and preserved key data sources reduces the risk of inadvertent deletion and speeds up discovery when required. Despite over three quarters of counsel relying on self-preservation for at least some of their disputes, technology offers instead dependable record retention without relying on self-preservation.

*“It gives us a central means to make sure that the information is not being inadvertently deleted, which for us is an important consideration, since we have a fairly aggressive record-retention policy.”*

### Reliability:

Benefits arise from counsel having the tools to follow a paper trail and successfully defend a case. By not relying on self-preservation, the potential for human error is removed and a solid evidence-based platform is given.

*“It helps us to create the paper trail to show that we are not negligent.”*



**“Some of our technology tools make it possible to communicate with clients about complex legal matters at a level of detail that was previously impossible. The insights we glean from legal project management, client dashboards and data visualization tools can transform the way a business tackles legal matters.”**

*— Jeff Layne, Head of Business Readiness and Development, United States*

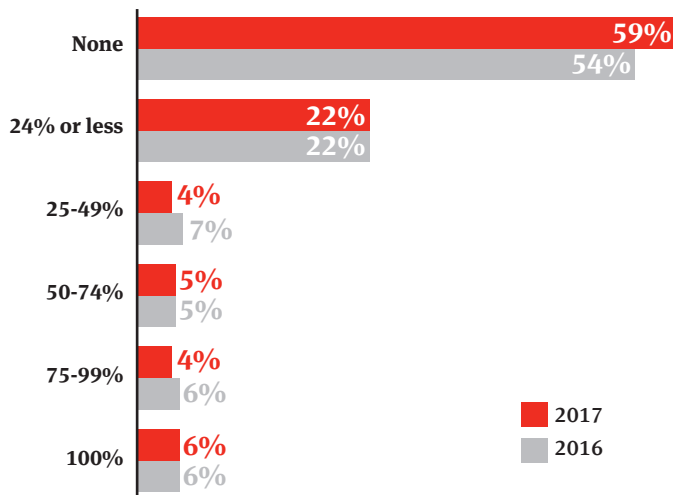
# Discovery

After a spike in 2016, our 2017 study sees the proportion of organizations who have had to undertake cross-border discovery in at least some of their matters, fall to 2015 levels. The number who have needed to conduct cross-border discovery for at least half of their cases remains unchanged. Similarly, there has been little change in the number having to balance data protection requirements in one jurisdiction with discovery requirements in another.

We will continue to watch this trend with interest, especially given the current increase in concern over cybersecurity and data protection and the increased scrutiny likely to fall on this key area.

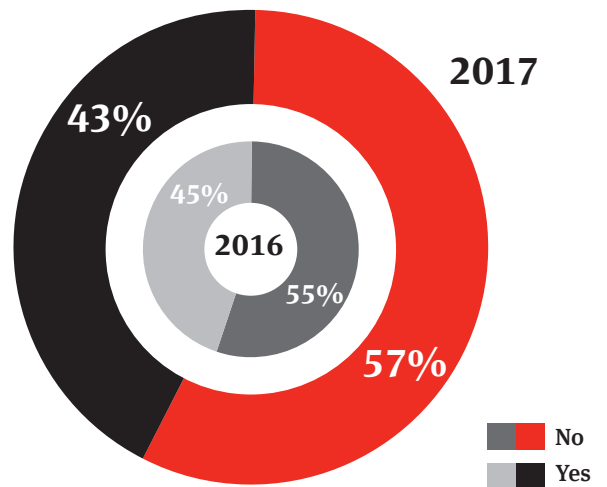
## Cross border discovery

In the past 12 months, for what percentage of your matters have you been required to conduct cross-border discovery?



## Data protection regulations

In the last 12 months have you had to balance any data protection regulations in one jurisdiction with your discovery obligations in another jurisdiction?





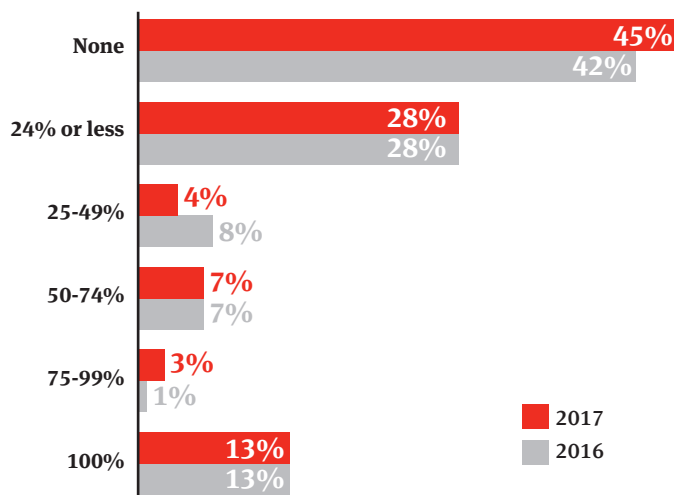
With the increased focus on data preservation and protection, we expect a growing number of matters requiring data preservation from mobile devices. In fact, over the last two years, that requirement and the range of devices in question has remained largely unchanged.

Technology is playing an increasing role in the preservation of documents and data during the discovery process. Fewer organizations are relying entirely on self-preservation (10 percentage point drop since 2016) and there has been a slight increase in the number of organizations who never rely on self-preservation for any matters.

For those not relying on self-preservation, the internal IT team is frequently the first port of call for data collection. Centrally maintained data sources which prevent the deletion or modification of documents play a critical role too.

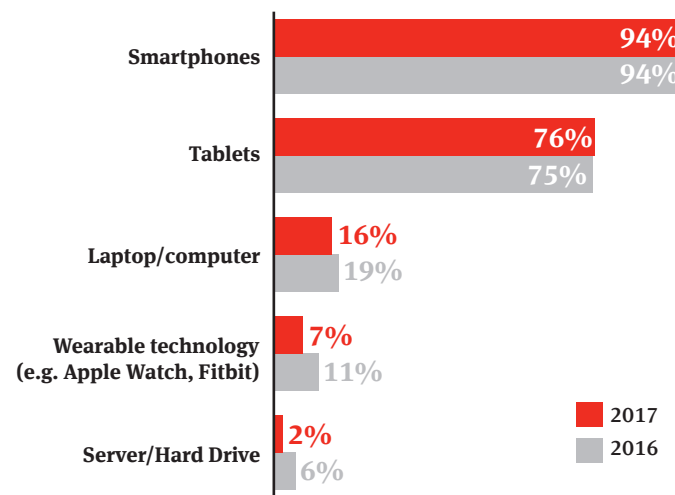
## Need to preserve or collect data

In the past 12 months, for what percentage of your matters have you been required to preserve or collect data from a mobile device?



## Types of device in question

Have you had to preserve or collect from any of the following devices in the last 12 months?

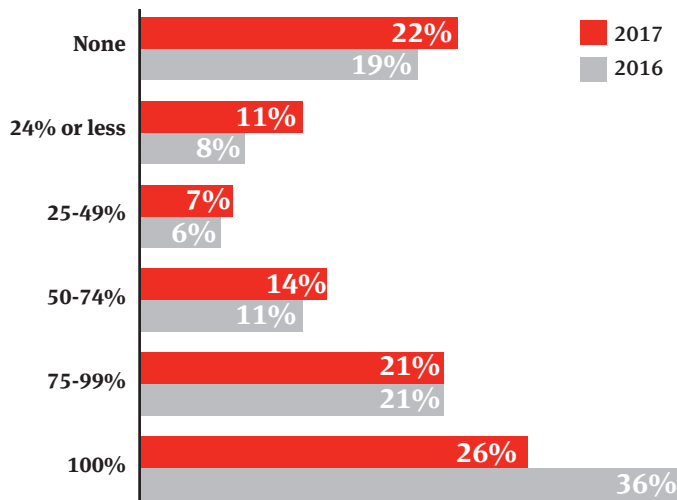


*“[Concerning] the termination of key employees: it’s the preservation of documents that they’ve worked on through use of a companywide server and also preservation of the [local] data, such as messages on their company iPad and cell phones.”*

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## Self-preservation

In the past 12 months, for what percentage of your matters have you primarily relied upon self-preservation?



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## Alternatives to self-preservation

If you do not rely on self-preservation, how do you preserve potentially relevant documents?



Ask IT function to collect all data sources of pertinent custodians



Company maintains data sources that prevent the deletion or modification of documents



Index data maintained by pertinent custodians and apply search terms



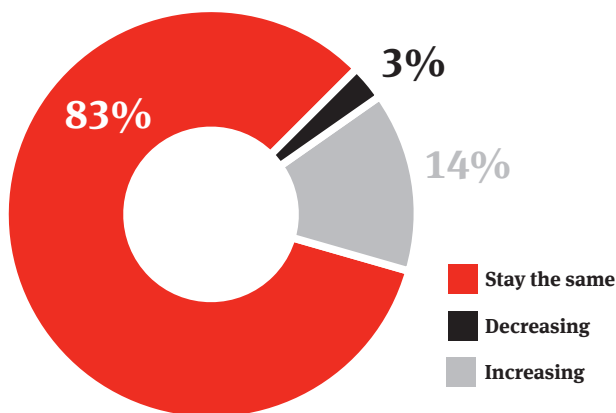
Ask discovery vendor or other third party to collect pertinent data from custodians

# Resourcing disputes

Where should you strike the balance between external and internal resource?

This study shows that the average organization had 0.3 disputes lawyers per \$100m of revenue, or 3.3 lawyers per \$1bn of revenue and spent 0.17 percent of their revenue on dispute management, or \$1.7m per \$1bn of revenue. Both the team size and the typical spend relative to revenue have increased since 2016.

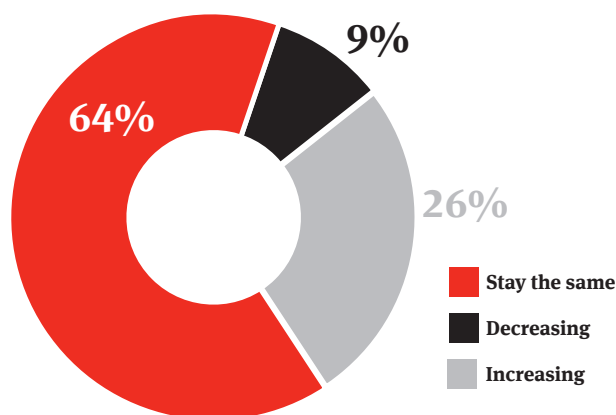
## Team size



**3 disputes lawyers per \$1bn of revenue\***

Teams are largely staying the same size. Of the few that intend to change, there are more growing their teams (14% here compared to 18% in 2016) than reducing them (3%).

## Outside counsel



**\$1.7 million on disputes per \$1bn of revenue\***

Contrary to media reports on consolidation, there is a marked tendency to increase the number of law firms respondents are instructing. 26% are planning on increasing the number they work with versus 9% who plan instead to consolidate.

\*median average

Scale, industry and location of organizations all have a bearing on spend and team size. The table below shows how the median average varies across different demographic groups\*.

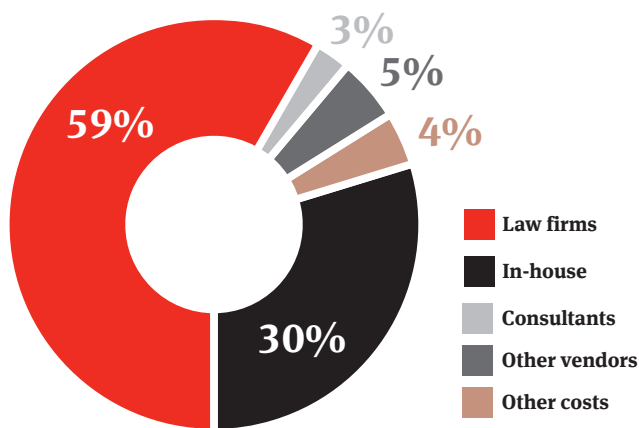
Demographic	Median team size per \$100m revenue	Spend as % of revenue
Revenue < \$100m	6	0.50%
Revenue \$100-\$1bn	0.7	0.19%
Revenue > \$1bn	0.11	0.13%
Life sciences and healthcare	0.27	0.37%
Financial institutions	0.5	0.25%
Technology	0.21	0.13%
Energy	0.41	0.11%

*\*NB. the mean average can be distorted by particularly expensive disputes. We have used median averages, to ignore the effect of outliers.*

### The optimal balance between internal and external

To help determine the optimal balance of internal to external resources we asked respondents to tell us how much of their organization’s spend was allocated to different areas and then compared the efficiency of their overall spend.

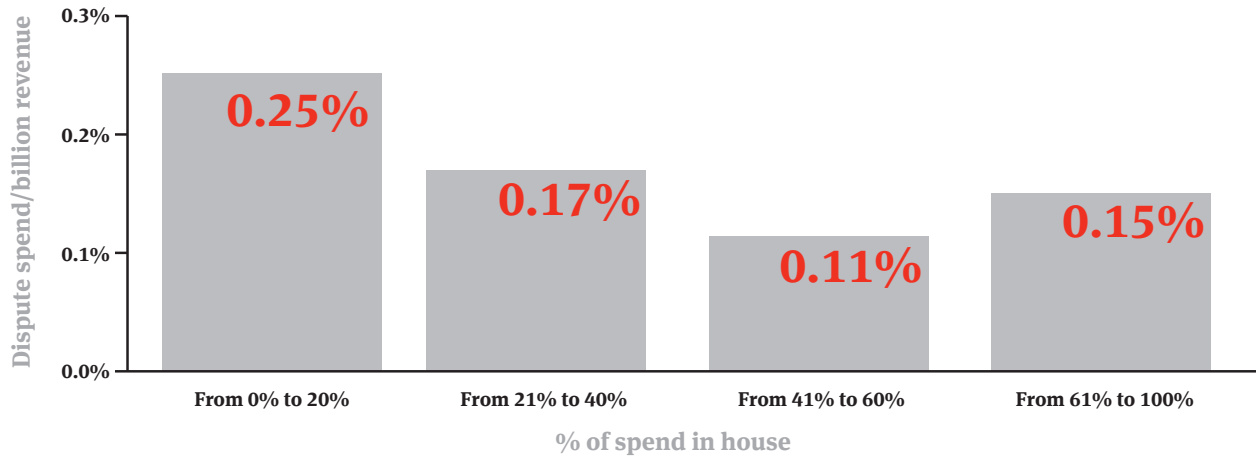
#### Proportion of budget



**41-60% spent internally maximizes cost efficiency**

Just under a third of budget is allocated in-house. Law firms take up the bulk of spend at 59% and 8% is allocated between consultants and other vendors, leaving < 4% for other costs.

## Percent of spend in house



Spending on disputes as a proportion of the organization's revenue is least when internal spend is between 41% and 60% of overall budget.

*\*This analysis does not allow for the fully loaded costs of employment*

# Impact of Alternative Fee Arrangements (AFAs)

## Use of AFAs, satisfaction with AFAs and future trends

Our study presents a puzzling picture which probably reveals the challenges of bringing about changes in the way external counsel are instructed. Last year, 37 percent of respondents told us they were going to increase their use of AFAs. Those who have used AFAs over the year are almost universally satisfied with the quality of the work they have received. But, despite this, the use of AFAs (56 percent) and their average spend under an AFA (28 percent) are largely unchanged since last year.

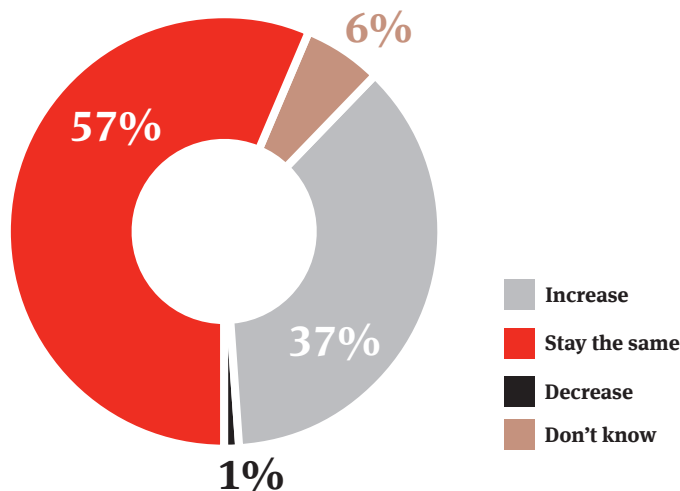
The inherent unpredictability of many types of dispute could be placing a ceiling on the proportion of matters where both parties feel confident operating under an AFA. However, staged approaches to AFAs can help to overcome this.

Predictions for 2018 once again show a rise in AFAs – it will be interesting to see if this materializes or whether inertia persists.



**96% were satisfied with the quality of work provided under AFAs**

### AFA usage



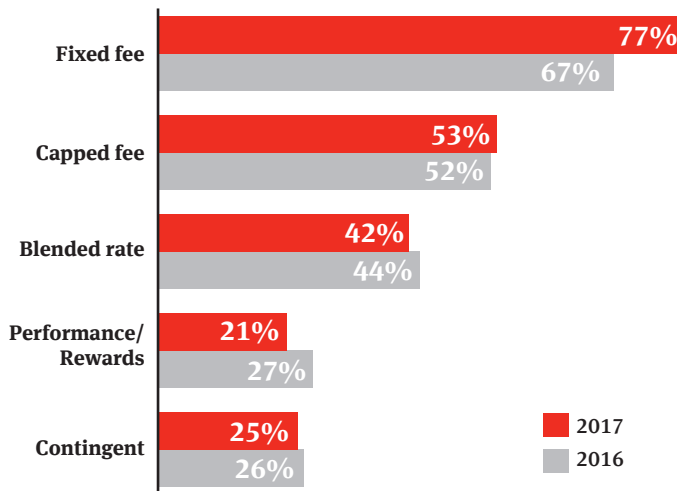
Looking ahead, again a high proportion (37%) expect to increase their use of AFAs versus only 1% expecting to decrease their use of AFAs.

Drivers of increased use are reported as:

- Driving cost efficiency
- Incentivizing law firms to perform
- Enabling greater certainty around cost and ease of budgeting

## Most commonly used types of AFA

What are the three types of Alternative Fee Arrangements you use most?



Fixed fees and capped fees remain the most widely used type of AFA.

Organizations which have employed performance-based (down slightly) or contingent fees (essentially flat) report that they have found these approaches comparable to fixed fee arrangements when it comes to billing goals. The certainty of a fixed approach to billing disputes is still much preferred over risk sharing or outcome related options.

# Disputes environment

From ten year trends in litigation we benchmark your disputes – the number and those most concerning

## Volumes of disputes

The typical volume of disputes is decreasing very slightly. While the volume of arbitrations remains static, regulatory proceedings have dropped along with lawsuits.

One finding is clear: in contrast to other areas of legal spend outside of disputes, as organizations get larger and become more of a target, the proportion of disputes rises dramatically.

## Disputes started against the company

How many of the following types of legal disputes were commenced against your company in the last 12 months?

Pending against		2017	2016
Revenue			
<b>Lawsuits</b> (Median)	< \$100m	1	0
	\$100m-\$999m	3	5
	\$1bn+	25	30
<b>Arbitrations</b> (Median)	< \$100m	0	0
	\$100m-\$999m	0	0
	\$1bn+	2	2
<b>Reg. Proceedings</b> (Median)	< \$100m	0	0
	\$100m-\$999m	0	0
	\$1bn+	1	1

### Disputes per \$100m revenue\*

	Mean	Median
2017	11.5	0.8
2016	11.8	0.9

\*Includes lawsuits, arbitrations and regulatory proceedings — mean average of those providing both revenue and dispute numbers



## Disputes launched by the company

How many of the following types of legal disputes were commenced by your company in the last 12 months?

Pending against		2017	2016
Revenue			
<b>Lawsuits</b> (Median)	< \$100m	0	0
	\$100m-\$999m	0	1
	\$1bn+	2	2
<b>Arbitrations</b> (Median)	< \$100m	0	0
	\$100m-\$999m	0	0
	\$1bn+	0	0

Disputes per \$100m revenue*		
	Mean	Median
2017	2.8	0
2016	1.8	0.05

*\*Includes lawsuits, arbitrations and regulatory proceedings — mean average of those providing both revenue and dispute numbers*



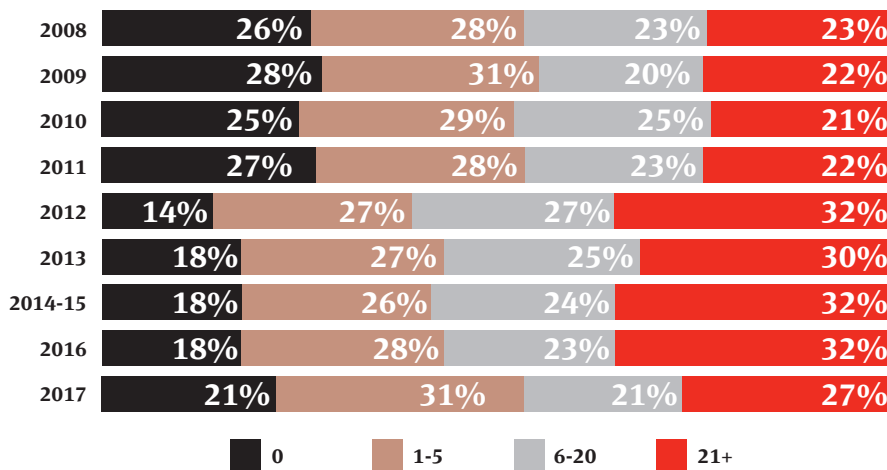
**Volume of disputes shows signs of decline as more companies start to utilize preventative measures and early case resolution**

## Ten-year trends

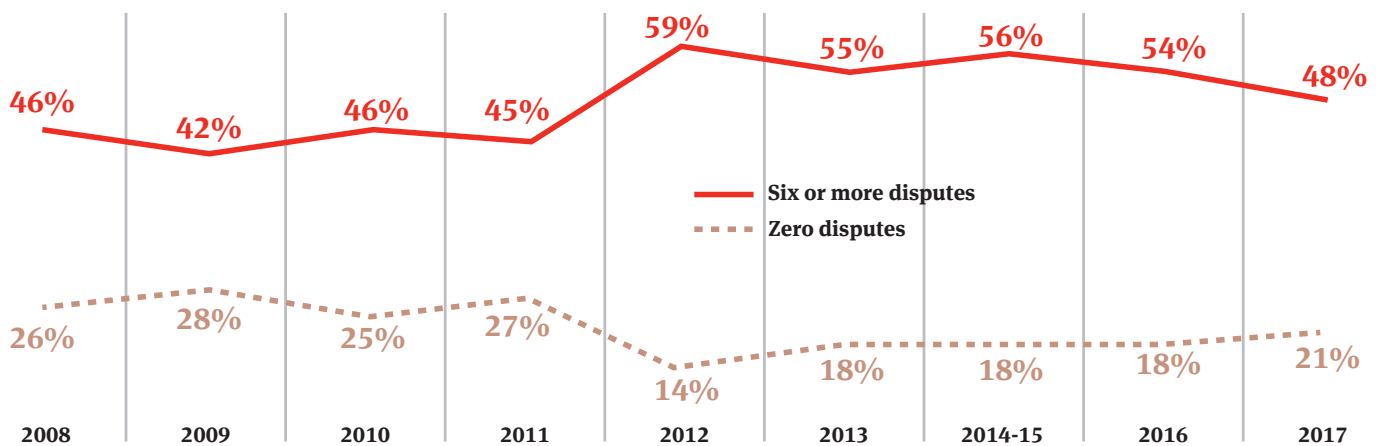
Looking at the ten-year trend, 2012 looks like a step change when disputes started to rise. This now seems to be levelling off.

## Legal disputes against

How many lawsuits were commenced against your company in the last 12 months?



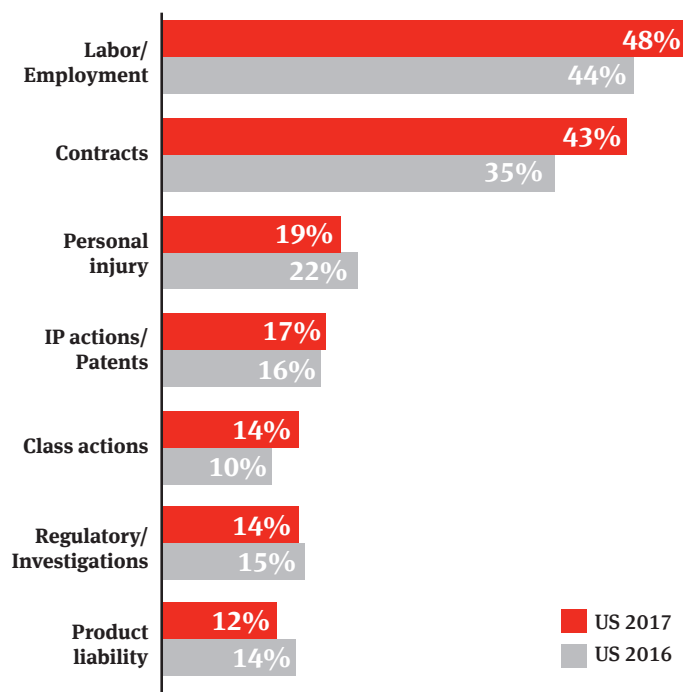
## Six or more v. zero disputes trend



Labor and employment and contractual disputes continue to be the most numerous experienced by organizations over the last 12 months, with contractual disputes in particular continuing to grow. Overall the picture is similar to 2016 though class actions show signs of increasing.

## Actions pending against the company

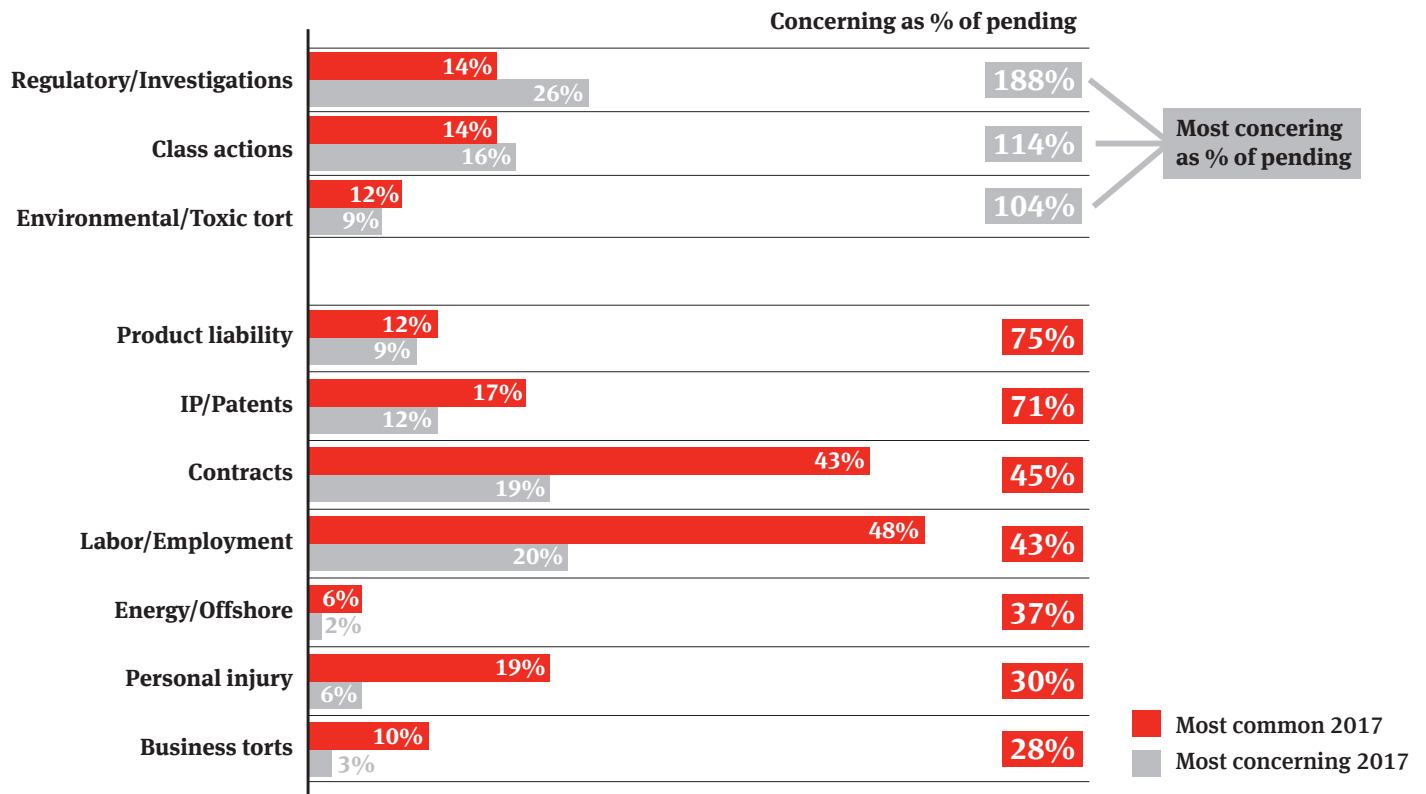
Identify the three most numerous types of litigation matters that were pending against your company in the last 12 months.



## Number of disputes vs how concerning they are

Identify the three most numerous types of litigation matters that were pending against your company in the last 12 months.

Of those legal disputes, which would you class as your top one or two concerns?



Contrasting frequency of disputes with those that are of highest concern to corporate counsel shows a different picture; while areas such as contractual and labor disputes are highly prevalent, relative to their frequency few would classify these areas as their highest area of concern.

Regulatory investigations, class actions and environmental disputes lead to far higher degree of concern relative to the volumes affecting organizations. Regulatory investigations in particular stand out: in relation to the number of these, almost double the proportion would cite this as a top concern.

## Regulatory / Investigations

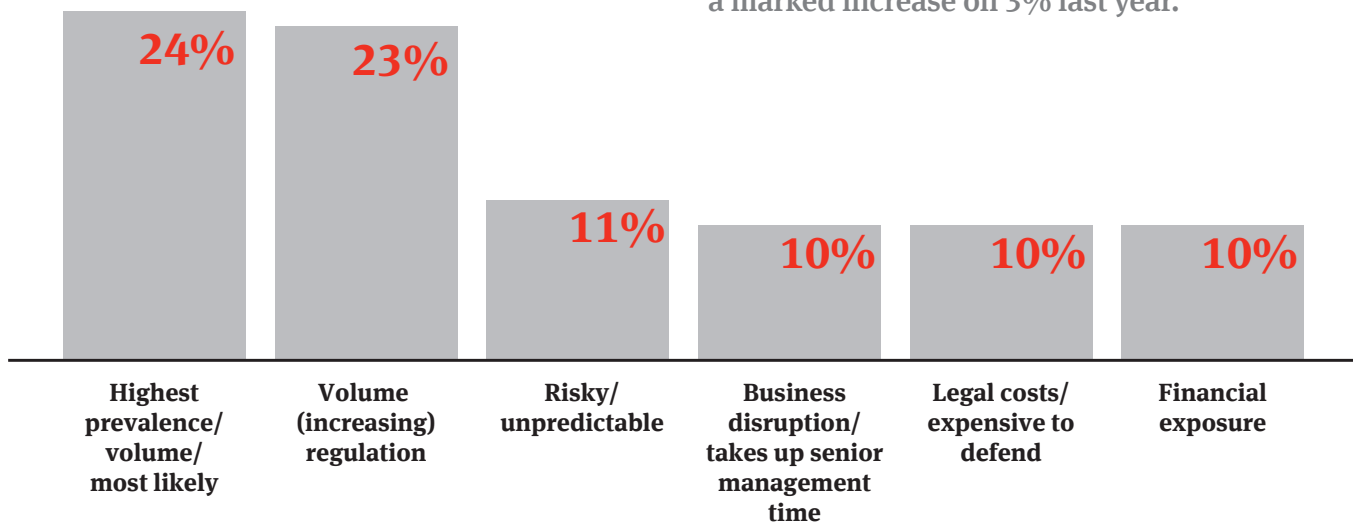
When respondents are asked why disputes involving regulatory investigations are so concerning, they comment on the sheer volume of regulation and the fact that this is increasing. This kind of dispute is seen as being both high risk and unpredictable. Respondents also talked about business disruption and how these types of disputes can take up considerable senior management time. They are also concerned about the cost of defending these disputes as well as the potential financial outlay for fines and associated costs.

*“We’re in a highly regulated industry – there are a lot of regulators – what they say and do matters a lot to our operations. It can be high stakes.”*

### Reasons why disputes are of concern

For your top one or two concerns: Why is that type of dispute a top concern?

74% of regulators mentioned have become more interventionist, down from 97% in 2016. 26% have moved to become less interventionist, a marked increase on 3% last year.



In recent years our trends survey has featured increasing regulator intervention — but this year sees some slowdown this trend.

In 2016 respondents were asked whether they had experienced any regulator becoming more or less interventionist in the preceding 12 months – the results were fairly unequivocal: 97 percent regulators were experienced as more interventionist. Greater proactivity and aggression in enforcement, specific industry spotlights and more regulation necessitating compliance were the key explanations for this.

Fast forward to 2017 and the trend remains, but the picture is less uniform with almost a quarter now experiencing regulators as less interventionist.

Reasons given for increasing intervention are the same as 2016. Those who have found the reverse, often attribute the reduced intervention to a change in US President. Some believe this is a step change in policy. Others see it only as a hiatus:

*“Because of the US administration; during the transition, there is nothing going on typically. People at the top ship out and the incoming administration appoint new Chair people and administrators in the organization, things naturally slow down when there is no leadership there and in our case there is no leadership and no movement there for quite a while.”*

*“There is less enforcement under the Trump administration because people in various roles have promised less regulation.”*

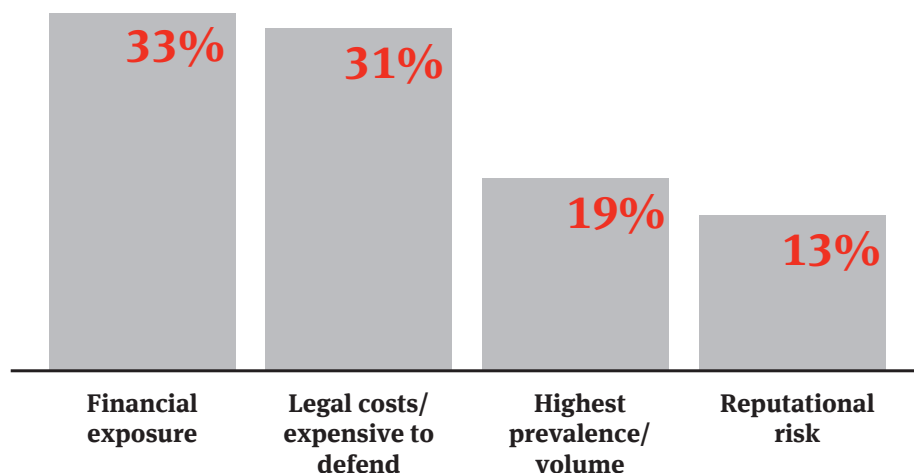
*“Under the new regime, we’re regulated by the SEC (US Securities and Exchange Commission) and they’re obviously taking a bit more of a hands-off approach with the new President, rolling back regulations and all that kind of stuff.”*

## Class actions

Class actions rank as the second most concerning area. Potential financial exposure and associated legal costs are the main reasons for concern.

### Reasons for concern

For your top one or two concerns: Why is that type of dispute a top concern?



“Class actions continue to be a major concern for many businesses, largely due to the potential financial exposure and the perception that these cases are costly to defend. The reputational challenges that frequently accompany these suits can compound the exposure, which is why clients need experienced counsel who can effectively mitigate litigation risk.”

— Gerry Pecht, Global Head of Dispute Resolution and Litigation

“The exposure to the company, the amount of in-house resources needed, and the attorney’s fees.”

“They’re expensive and get a lot of media attention.”

For the second year in a row, a significant minority (nine percent) of respondents cited “class actions” as one of the most important issues impacting them.

This year has seen media coverage of several high profile class actions, including one of the largest cases of its kind in US history. All this has pushed class actions up the risk profile for corporate counsel. Respondents also mention rule changes around class action waivers, and the breadth of scope in actions from a class of a few dozen, up to tens of thousands.

## Cost

“Because most of those claims are frivolous and it ends up being more costly to defend than to settle.”

“Consumer class actions, their significance of potential judgements against the company and the cost involved.”

“Royalty class actions. They are expensive and time consuming.”

## Trend changes

“False advertising, consumer class action litigation.”

“The ability of plaintiffs to band together using social media.”

“Class action letter litigation driven by small number of NY plaintiff firms.”

## Volume

“Consumer class actions. The number of them are growing substantially in the US and in the food and beverage industry.”

“The CFPB ban on class action waivers I expect will create more large size class action litigation against us.”



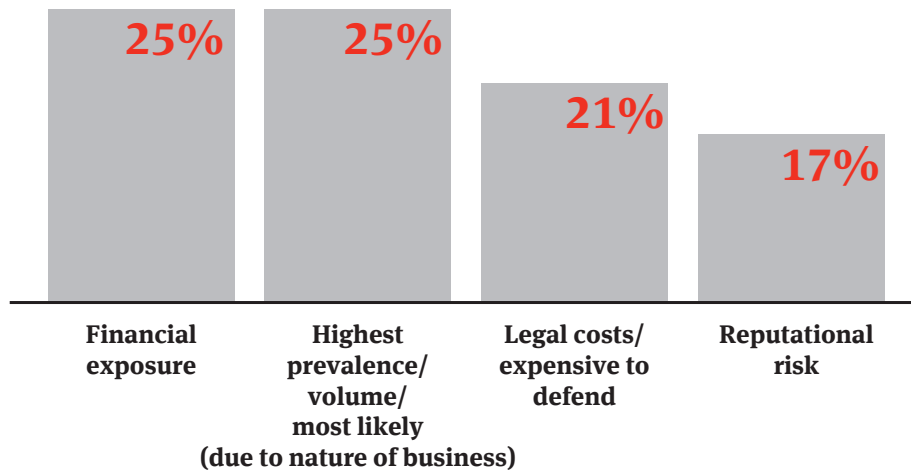
## Environmental disputes

Environmental disputes are less common than other types (even for energy companies), but when they arise, they create a disproportionate level of concern. The potential ramifications of a dispute in this area are huge – especially the potential for high (and escalating) financial exposure.

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### Reasons for concern

For your top one or two concerns: Why is that type of dispute a top concern?



*“The exposure of the environmental lawsuit and the cleanup cost would be much larger than any individual contract litigation or labor lawsuit.”*

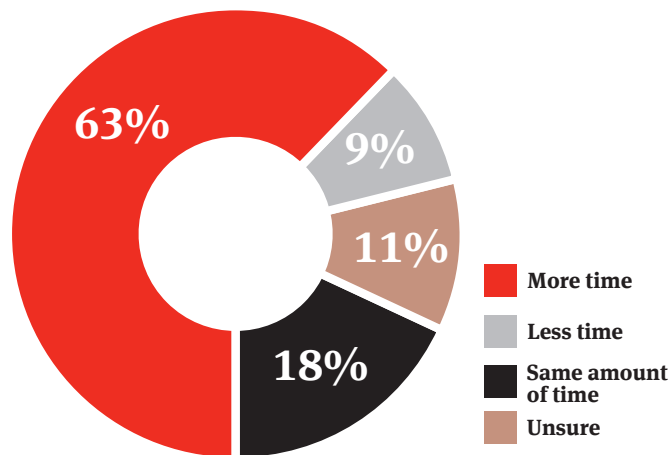
# Antitrust

A slightly larger number of respondents found their organizations spending more time on antitrust matters than those spending less time. This is in line with last year's prediction of a modest increase.

Growth of organizations, sometimes organically but mainly through M&A activity has been the key driver of this. Legacy matters also take up a lot of time.

## Time spent on antitrust issues

During the last 12 months has your company spent less time, the same amount of time or more time addressing antitrust or competition issues either as a party or non-party compared to the previous 12-month period?



### Less time on antitrust:

1. No/fewer antitrust cases
2. Does not affect our business
3. Less M&A Activity

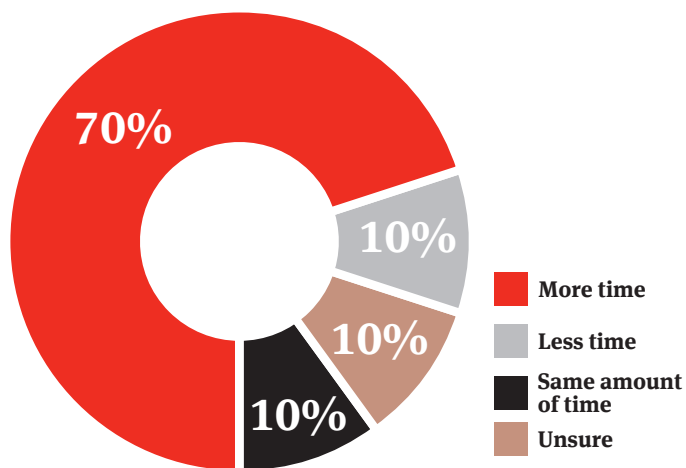
### More time on antitrust:

1. More M&A activity
2. More antitrust cases
3. Dealing with specific antitrust cases

With the exception of the largest organizations, our respondents don't expect this picture to change much. More of largest players expect to spend more time on antitrust matters.

## Outlook for time spent on antitrust

In the next 12 months, do you expect your company to spend less time, the same amount of time or more time addressing antitrust or competition issues either as a party or non-party compared to the previous 12-month period?



### Expect less time on antitrust:

1. Does not affect our business
2. Resolution of cases
3. Less M&A Activity

### Expect more time on antitrust:

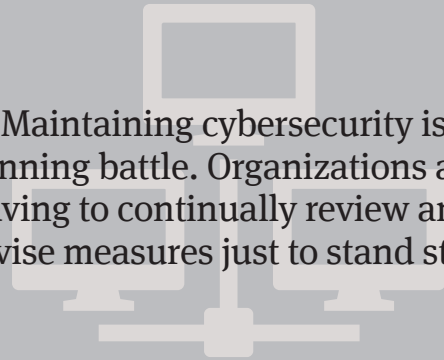
1. More M&A activity/growth
2. Dealing with specific antitrust cases
3. More antitrust cases

# Conclusions



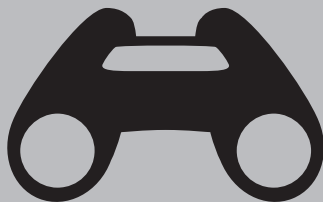
1. Our litigation prevention framework identified key measures that firms can take to reduce litigation. Most organizations are taking up one or more of the measures and they are already being shown to be effective. Training seems to offer the biggest gain.

2. Maintaining cybersecurity is a running battle. Organizations are having to continually review and revise measures just to stand still.



3. Technology has been shown to produce dividends. We have shown gains in efficiency, organization and reliability – even so, many organizations are being slow to adopt new technologies.

4. Technology is also growing in importance with discovery – we expect it to continue to reduce dependence on self-preservation.



5. Resource levels and spend continue to grow in relation to disputes – but this research suggests that spending 41-60% of budget on internal resources results in the lowest overall spend.



6. Many of our respondents are increasing the list of law firms they instruct – despite much media commentary on the converse trend towards consolidation.



7. AFAs have a high satisfaction level but there seems to be some inertia in realizing the expected growth in their use.



8. Regulatory investigations, class actions and environmental disputes are not the most common, but when they arise they create a significantly greater cause for concern



10. The high profile of recent class actions is pushing them up the risk agenda.

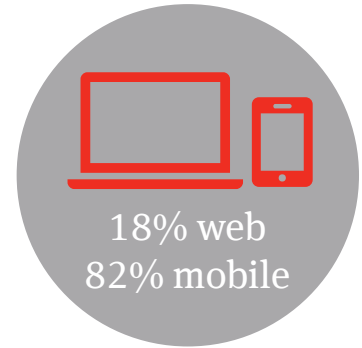
9. The interventionism of regulators may be slowing – only when the new US Administration has found its feet will it be clear whether this is a trend or a hiatus.



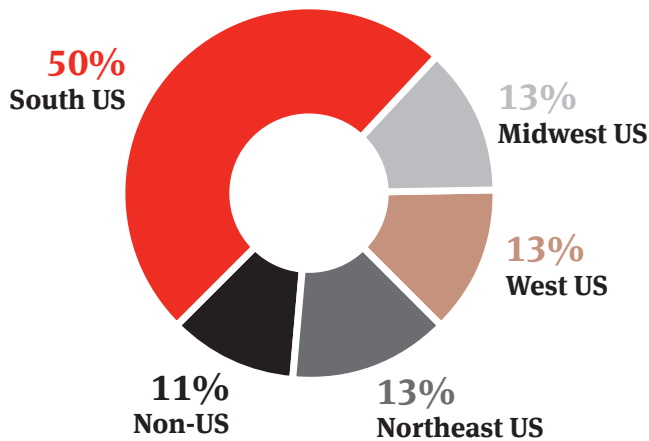
# Methodology and demographics

318 corporate counsel contributed to Norton Rose Fulbright's 13th Annual Litigation Trends survey; respondents were overwhelmingly US-based, or representing US-based organizations.

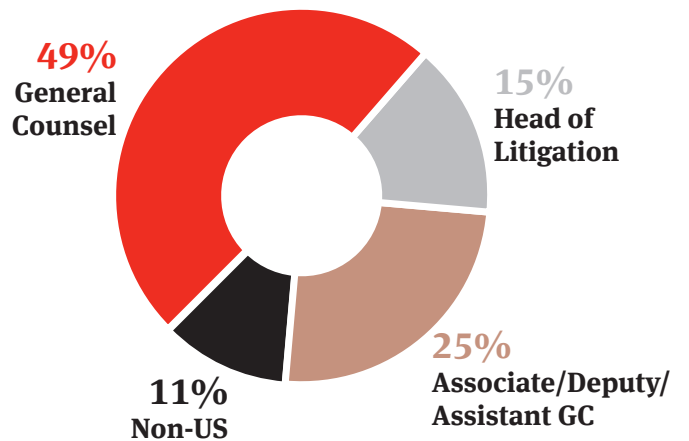
As with previous years, corporate counsel had the opportunity to participate using a web-based survey, with a telephone interview campaign following across July, August and early September 2017.



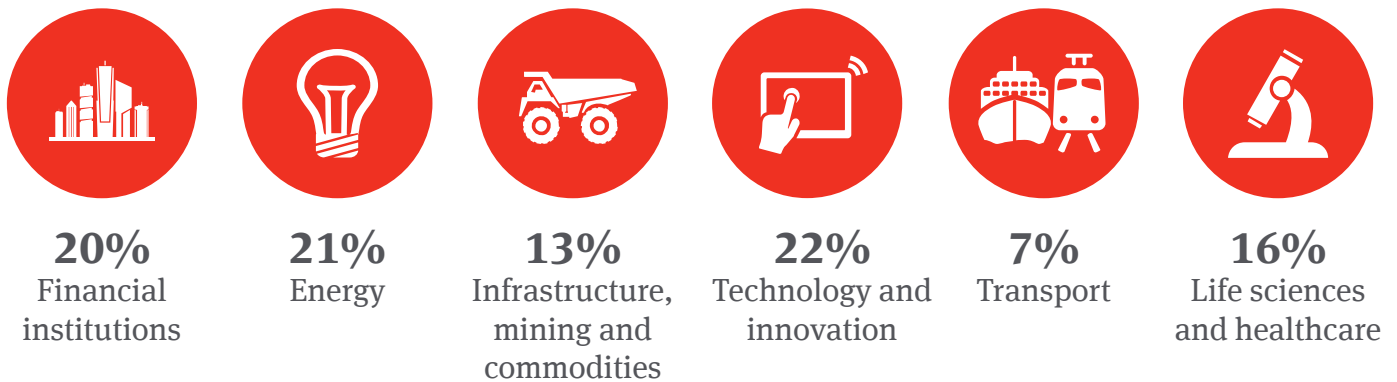
## Demographics – location



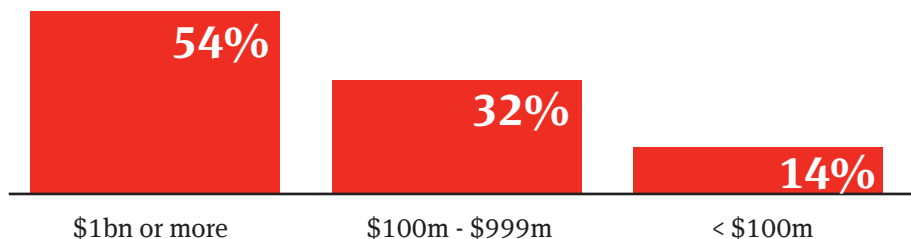
## Demographics – title



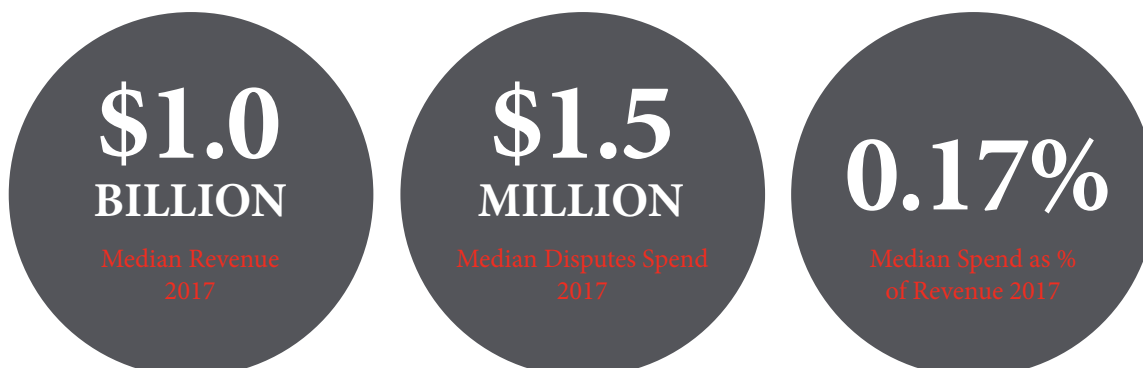
Industry representation proved highly comparable with 2016 US survey response breakdowns, with only a small drop in representation for technology and innovation.



Over half of respondents who provided revenue figures were representing large organizations with over \$1 billion revenue, with a small contingent of organizations under \$100 million revenue. Compared to 2016 reported revenues, a slightly higher proportion of mid-sized organizations have contributed to the results this year, with a small decrease in the smallest and largest organizations.



The median (mid-point) size of participating organization was slightly lower than 2016 at \$1 billion, with a reflective drop in median spend on disputes. However assessing spend as a percent of revenue showed a small increase on 2016 relative to company size.



# Norton Rose Fulbright

## 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.



### Financial institutions

Our clients include banks, asset managers, funds, export credit agencies and insurance companies. We advise them on corporate, financing, regulatory and transactional work, projects, restructuring and insolvency, and dispute resolution and litigation.



### Energy

Our clients face complex issues in the power, renewables, regulated utilities, oil and gas, climate change and water industries: we provide innovative solutions tailored to their needs. France's legal and regulatory framework is changing, and we are involved in its development.



### Infrastructure, mining and commodities

Our clients finance and build major infrastructure and participate in mining projects in every market and region of the world. We also help banks, traders and producers implement structured commodities financing transactions.





### Transport

Our clients seek us out for our reputation in asset finance and our experience in aviation, shipping and rail finance. We advise airlines, rail operators, ship owners, export credit agencies and financial institutions. Together with our clients, we are charting the way ahead for the global transport sector.



### Technology and innovation

Our clients are major players in their sectors. We act for both customers and providers of technology, advising them on laws relating to new technologies, intellectual property and media on contractual and regulatory issues, as well as dispute resolution. We are particularly active in outsourcing and sourcing operations (ITO, BPO, offshoring), data privacy, IT contracts and complex partnership agreements.



### Life sciences and healthcare

Our clients include global pharmaceutical and medical devices companies as well as hospital sector players and biotechs. We advise them on competition and distribution law and on regulatory frameworks as well as all aspects of M&A, IP, public law, insurance, litigation and employment law, supporting them as they grow and adapt their businesses.

## Global resources

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We employ 4000 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa, the Middle East and Central Asia.



♥ Our office locations

### People worldwide

>7000

### Legal staff worldwide

>4000

### Offices

59

### Key industry strengths

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

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- Athens
- Brussels
- Frankfurt
- Hamburg
- Istanbul
- London
- Luxembourg
- Milan
- Monaco
- Moscow
- Munich
- Paris
- Piraeus
- Warsaw

### United States

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- Dallas
- Denver
- Houston
- Los Angeles
- Minneapolis
- New York
- St Louis
- San Antonio
- San Francisco
- Washington DC

### Canada

- Calgary
- Montréal
- Ottawa
- Québec
- Toronto
- Vancouver

### Latin America

- Bogotá
- Caracas
- Mexico City
- Rio de Janeiro
- São Paulo

### Asia

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- Beijing
- Hong Kong
- Jakarta<sup>1</sup>
- Port Moresby
- 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>
- Nairobi<sup>3</sup>

### Middle East

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

### Central Asia

- Almaty

1 TNB & Partners in association with Norton Rose Fulbright Australia  
 2 Mohammed Al-Ghamdi Law Firm in association with Norton Rose Fulbright US LLP

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If you have any questions or would like to be considered for inclusion in next year's survey, please email [litigationtrends@nortonrosefulbright.com](mailto:litigationtrends@nortonrosefulbright.com)

## 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. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

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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