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# Practical Law International Horizon-Scanning Survey **2017**

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## EXECUTIVE SUMMARY

Thomson Reuters surveyed lawyers working cross-border in-house and in private practice to take their views on the key issues on the horizon for 2017.

We asked about the impact on their practice of anticipated legal and regulatory changes and the outlook for cross-border deals in 2017. We also asked them to consider the evolving business of law, and what skills are vital for lawyers in 2017.

The 128 respondents represented a broad cross-section of legal practitioners working on cross-border matters (see *appendix, Survey methodology*). 61.5% of respondents work in private practice and 38.5% in-house.

This executive summary sets out the key findings.



### WIDER POLITICAL AND ECONOMIC FACTORS WILL NEGATIVELY IMPACT CROSS-BORDER WORK IN 2017

- Respondents identified legal and regulatory changes around Brexit, cyber-security, and anti-bribery and corruption as factors that would have the most significant impact on the cross-border deal market in 2017, but considered it unlikely that developments around climate change would have a significant impact on the deal market.
- In terms of wider geo-political developments, respondents were most concerned about the negative impact on the cross-border deal market of Brexit and the slowing Chinese economy, although this was to some extent countered by the likely positive impact of a global low interest rate environment and low commodity prices.
- 21% of respondents thought that the outcome of the 2016 US presidential election would have a positive impact on the cross-border deal market, with 62% stating it would have a negative impact and 18% saying it would have no impact.

### CROSS-BORDER LAWYERS CAN EXPECT A BUSY YEAR OF COMPLEX WORK

- The majority of respondents were optimistic that fewer firms will need to turn down cross-border work in 2017 due to complexity.
- The majority of respondents expect deal volume and total deal value for 2017 to be about the same as it was in 2016.

### LAWYERS ARE STILL SEARCHING FOR THE RIGHT ALTERNATIVE TO THE BILLABLE HOUR

- The majority of respondents expect their organisation to explore alternative fee arrangements in 2017.
- Most also expect to see a change in the proportion of legal work handled internally and externally by their organisation.

### ARE LEGAL PRACTITIONERS GIVING AI ENOUGH ATTENTION?

- 60% of respondents stated that the use of artificial intelligence would not be important for their organisation in 2017.
- The majority of respondents believed technologies relating to data management, electronic document storage, matter management and agile working would be important for organisations in 2017.

### LAWYERS IN 2017 NEED A BROAD RANGE OF WIDER SKILLS TO BE EFFECTIVE

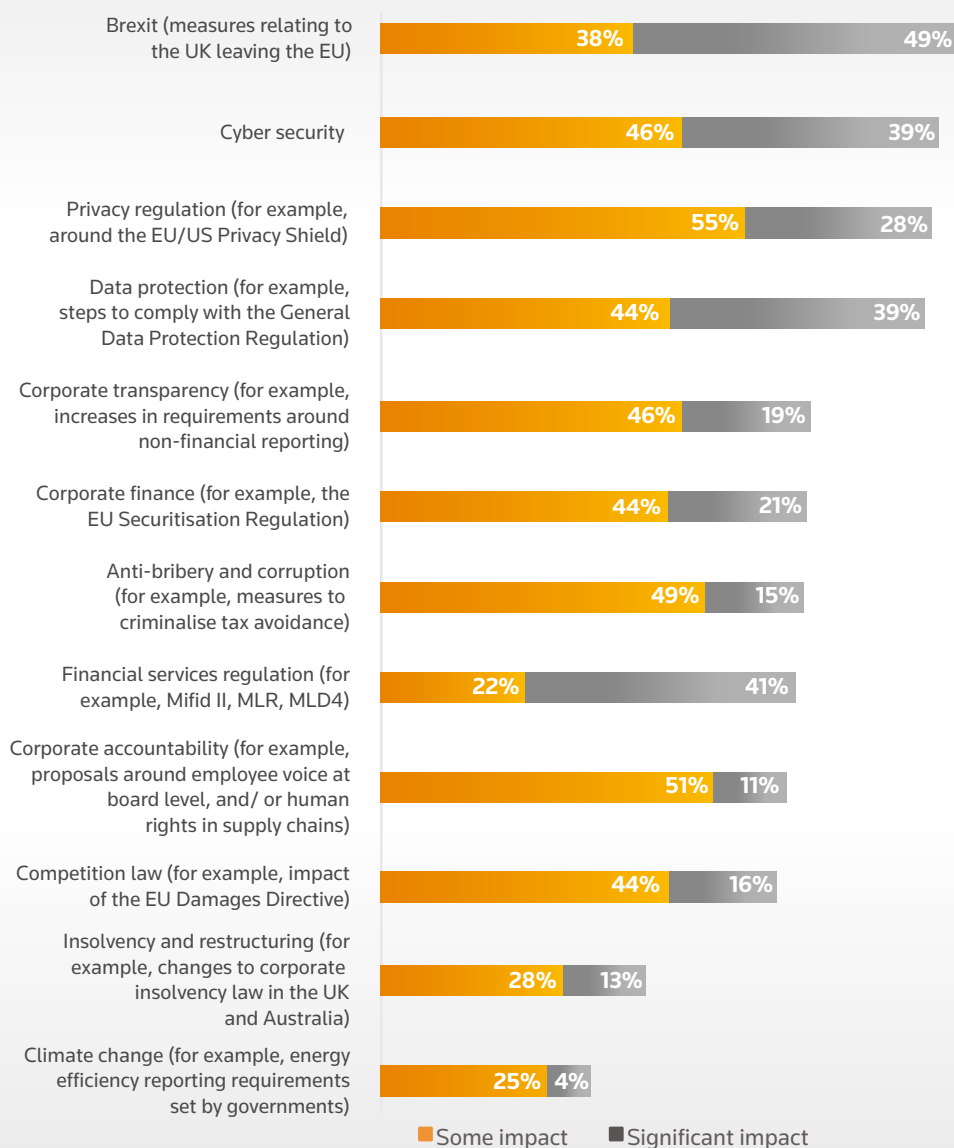
- 83% of respondents thought project and process management would be essential skills for legal teams to have in 2017.
- 75% of respondents believed that financial literacy was an essential skill for 2017 but just 21% of respondents identified formal managerial training as important for lawyers, despite the fact that financial literacy is a key component of such training.

## LEGAL AND REGULATORY DEVELOPMENTS ON THE HORIZON

Participants were asked to what extent certain anticipated legal and regulatory developments would impact cross-border work in 2017 (see box, *Legal and regulatory developments impacting cross-border work in 2017*).

A significant majority of respondents expected legal and regulatory developments around cyber-security, privacy regulation and data protection to impact the cross-border deal market.

## Legal and regulatory developments in the following areas to have an impact on cross-border work in 2017



### DATA PROTECTION REGULATION IS AFFECTING EVERY COMPANY, EVERYWHERE

The key (though not the only) development in this area is the impending EU General Data Protection Regulation (GDPR), to strengthen and unify data protection for individuals within the EU (see [Practice note, General Data Protection Regulation: key provisions and what businesses should be doing now](#)).

“The GDPR affects essentially every company handling European data, no matter where it is based, including the export of personal data outside the EU,” according to Emily Leach of the International Association of Privacy Professionals (see [box, Spotlight on compliance and corporate accountability](#)).

However, the EU GDPR is just part of the picture, says Leach: “China and Russia now have data localization laws, Japan just instituted a new privacy law on 1st January, 2017, and we have more privacy laws emerging at the state level in the USA with each legislative session.” According to Leach, 47 states in the USA now have their own data breach notification laws. (See [Practical Law Global Guide, Data Protection and Privacy](#).) “These factors, combined with bigger penalties for violations, have organisations realizing the urgent need to take privacy seriously and put knowledgeable professionals in place to manage it.”



Emily Leach,  
International  
Association  
of Privacy  
Professionals

## SPOTLIGHT ON COMPLIANCE AND CORPORATE ACCOUNTABILITY

### How are organisations coping with new reporting and document storage burdens?

Organisations are coping with the increased compliance, data management and document storage burdens in light of the legal and regulatory changes around data protection and privacy regulation, by hiring privacy professionals. I think this is one reason we are seeing huge growth in the industry and in our membership.

They are also combining new policies with training and accountability processes. It is one thing to put policies in place to protect data, but making sure employees know what those policies are and follow them is equally as important.

Companies are recognizing that almost every employee in an organization touches data, so everyone needs some basic knowledge of how to handle personal information — from the call centre employee to the c-suite.

Human error has always been a major culprit in data breaches, so training people who do not have privacy or data protection in their job description can go a long way toward compliance. We are seeing companies do that more and more. Finally, they are also documenting their efforts and creating audit processes to make sure that training is actually effective.

Due to the increased reporting burdens as a result of legal and regulatory change around corporate accountability and transparency, the number of vendors offering privacy services is at an all-time high.

Many IT companies are creating user-friendly, customizable tools to simplify processes like data mapping, privacy impact assessments and privacy program management to ease these reporting requirements. Prior to these tools being available, many organizations were relying on word documents and excel sheets for tracking. Unfortunately, some still are. The new reporting requirements are forcing everyone to step up their game. These tools are going to play a big role in that.

## RELATIVE SLOWDOWN IN CHINA A SIGNIFICANT GEO-POLITICAL FACTOR

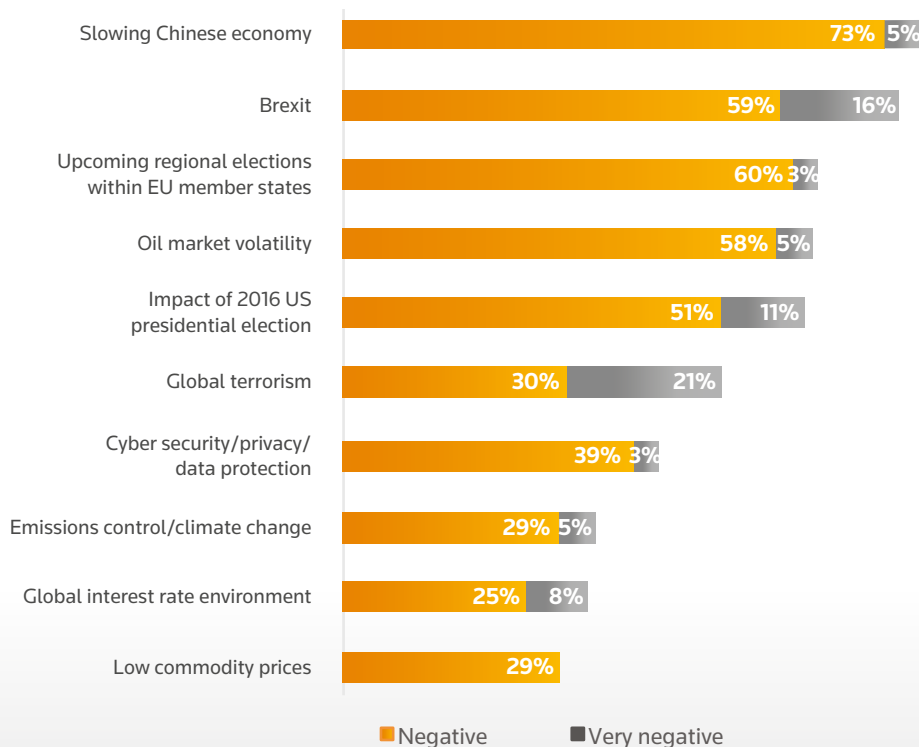
When asked what wider geo-political factors they expected to impact the cross-border deal market in 2017, a majority of respondents identified the slowing Chinese economy as a likely negative factor (see *box, Geo-political factors impacting cross-border work in 2017*).

On 20th January, 2017, China announced that its GDP grew 6.8% on-year in the fourth quarter of 2016, China's slowest annual growth figure in 26 years according to the National Bureau of Statistics (see [China posts weakest annual economic growth in 26 years, money.cnn.com, 19 January 2017](#)). Although this was better than predicted (in a Reuters poll, economists forecast 6.7% growth in the fourth quarter of 2016), by historical standards China's growth is slowing down (see [China's fourth-quarter growth seen steady at 6.7 percent amid heavy government support, Reuters, 18 January 2017](#)).

A recent report by the IMF predicts that growth will slow further to 6.0% by 2018 (see [IMF: A Shifting Global Economic Landscape: Update to the World Economic Outlook \(January 2017\)](#)).

“The slowdown in China has hit world trade in general, as patients who breathed in the Chinese sneeze pass the germs onto other countries, which then pass it further down the line. Korea’s export market looks much less promising because of weakening sales to China,” says Andrew McCaffery, global head of alternative investing at Aberdeen Asset Management, one of the UK’s biggest investment firms (see [Just How Big Is China’s Impact On The World Economy?, forbes.com, 14 April 2016](#)). Many analysts have also said that as the Chinese economy slows, more Asian clients are seeking dollar- and euro-denominated assets.

### Geo-political factors impacting cross-border work in 2017



### IMPACT OF ANTICIPATED COMMODITY PRICE FALLS MAY BE OVER-STATED

The majority of respondents are anticipating a positive bump to the cross-border deal market from low commodity prices. China is one of the world’s biggest commodity consumers and as demand from China declines, so will commodity prices. The fall in commodity prices in 2011 proved catastrophic for Brazil’s economy but represented a significant opportunity for some investors.

Are the falling commodity prices bottoming out? Possibly. China National Petroleum Corp said the country’s net crude imports will rise 5.3 per cent to 396 million tonnes in 2017, with crude consumption headed for a record 594 million tonnes or 12 million bpd this year (see [Oil rises on supply cuts, record China demand forecast, reuters.com, 12 Jan 2017](#)). Brent crude prices have edged up with this news and are already up from from 2016’s 11 year low of \$33 a barrel.



According to the World Bank's quarterly Commodities Market Outlook report published in October 2016, prices for commodities other than oil are also forecasted to rise in 2017. It is possible then that commodity prices in 2017 might not be as low as had previously been expected.

### THE CROSS-BORDER DEAL ENVIRONMENT IN 2017

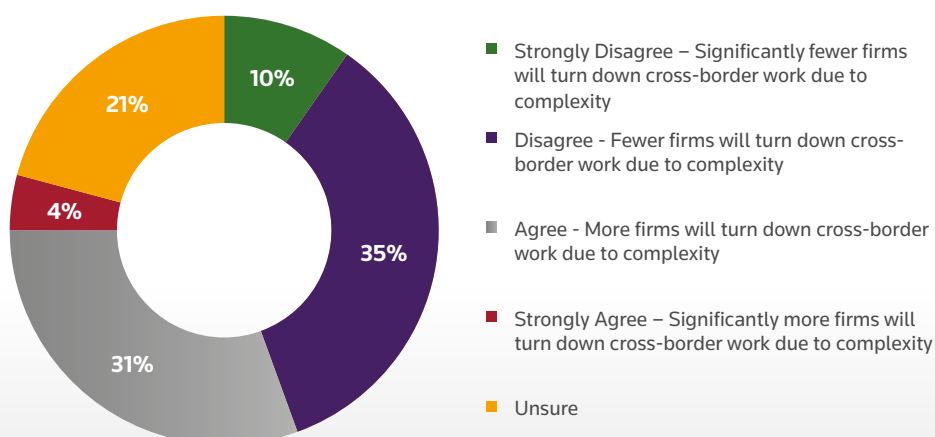
In the "Legal Aspects of Cross-border Transactions: Trends, Challenges and Opportunities" survey conducted in 2016, we found that legal complexity was limiting transaction volumes, with 44% of law firms and 41% of corporates revealing they had turned down cross-border work due to the legal and regulatory complexity.

A majority of respondents expect fewer firms to turn down cross-border work in 2017 due to complexity (see box, *Will the number of firms turning down cross-border work due to complexity change in 2017?*).

"Today nearly all transactions we see have at least one cross-border aspect to them," says Christoph Wolf, a partner in the corporate group in Baker McKenzie's Frankfurt office and head of the firm's German Capital Markets group.

The increasingly globalised nature of business and global geo-political complexities are driving the complexities in cross-border transactions, according to Wolf. "Even if a German target is being acquired by a German buyer, it is likely that either the buyer or the seller will have assets out of Germany."

### Will the number of firms turning down cross-border work due to complexity change in 2017?



### INCREASING REGULATORY SCRUTINY IMPACTING DEALS

Regulatory issues are at the forefront of many bids particularly higher value deals. Obtaining clearances can be time-consuming.

Nick Rumsby, a partner in the corporate group in Linklaters' London office said "on the bigger deals, we expect that buyers will have to navigate difficult anti-trust processes with national regulators." (See [Article, Public M&A: Predictions for 2017](#).) According to Rumsby: "In addition to anti-trust concerns, public interest considerations are also becoming more relevant in large M&A."



## CHINESE M&A MARKET TAMING AFTER A RECORD SPREE

At the end of 2016, Chinese regulators toughened their position on capital outflow after a year of record deals where Chinese companies' overseas purchases surged past 2015's record of \$121bn for non-financial outbound investments, reaching \$146bn over the first 10 months of 2016 (see [China to clamp down on outbound M&A in war on capital flight, ft.com, 29 November 2016](#)). There was speculation that regulators were seeking to tame a record deal-making spree that alarmed officials from Washington to Berlin (see [China to Curb Megadeals as Regulators Tame Record Overseas Spree, Bloomberg.com, 28 November 2016](#)).

According to Chunshek Chan, Head of M&A Research at Dealogic, whilst this increased regulatory scrutiny seems onerous, the impact might be smaller than most expect. "We will not see blockbuster deals as we did last year like the ChemChina and Syngenta deal," he said. "Any deals above US\$1bn outside of a buyer's core industry will be heavily scrutinised by regulators, but most Chinese outbound deals do not happen in that space, they happen in the sub US\$1bn space in manufacturing, so the volume [of deals] will come down a bit but the amount of activity will continue." (see [M&A Outlook for 2017, dealogic.com](#)).

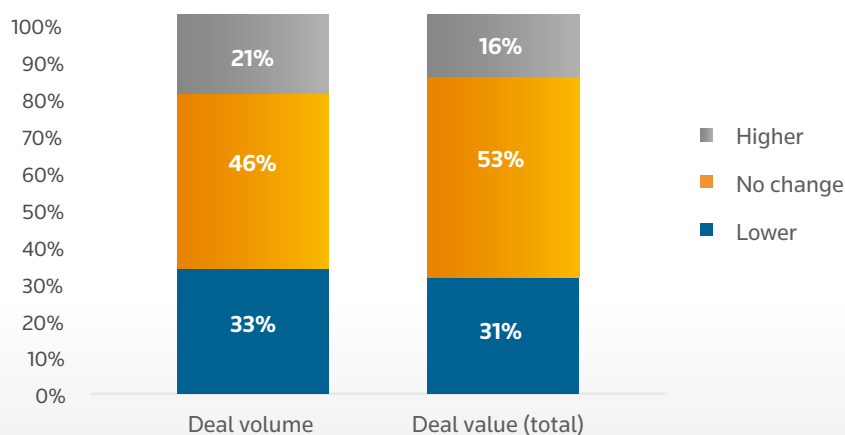
## AN OPTIMISTIC VIEW OF VALUES AND VOLUMES OVERALL

According to the Institute for Mergers, Acquisitions and Alliances, 2015 was a record year for merger and acquisition activity, as global values for deals hit their highest values since 2007 (see [Number & Value of M&A Worldwide, imaa.org](#)).

A report by Mergermarket highlighted that global M&A activity in 2016 managed to reach its third highest deal value since 2007 despite value dropping 18.1% with 670 fewer deals announced as compared to 2015 (see [Mergermarket: 2016 Global M&A Report Press Release \(4 January 2017\)](#)).

While respondents were nervous about the impact of geo-political changes, they were still optimistic about the deal outlook for 2017 (see box, *How do you think cross-border deal volume and value in 2017 will compare with 2016?*).

### How do you think cross-border deal volume and value in 2017 will compare with 2016?



A number of respondents thought that global political uncertainty would, as one respondent put it, “lead to deals being shelved or not even started”. However, the majority of respondents still expected both deal volume and total deal value for 2017 to be around the same as it was in 2016 (see box, *Spotlight on cross-border deal flow*).

### SPOTLIGHT ON CROSS-BORDER DEAL FLOW



Christoph Wolf,  
head of German  
Capital Markets,  
Baker McKenzie  
Frankfurt

#### What is the outlook for 2017 for cross-border work?

I am cautiously optimistic about the deal landscape in 2017. The transactions we see as a team do not suggest that there will be any slow-down in cross-border M&A in 2017 but it is difficult to make an educated guess this early in the year.

From my own personal experience I have no reason to believe there will be less cross-border activity. We are all anticipating geo-political complexities and difficulties this year, but the trend towards more cross-border work has been developing over a number of years. While we are unsure what will happen this year, we are approaching the year with healthy caution. We have no reason to believe 2017 will not be as busy as 2016. In fact, it could even be busier.

### SOURCING AND DELIVERING LEGAL SERVICES

The majority of respondents expected that their organisations would explore alternative fee arrangements (where clients provide compensation to a law firm based on a structure other than hourly billing) in 2017.

### CAPTURING THE VALUE OF LEGAL SERVICES

The billable hour has long been a bone of contention between lawyers and their clients, with the American Bar Association describing it as “the lawyer’s measure of cost, not necessarily a measure of the value he or she is providing the clients in their legal needs.” (See *Marketing Alternative Fee Arrangements*, [americanbar.org](http://americanbar.org).)

There are various alternatives in the market, ranging from retrospective arrangements based on value where fees are determined by the firm at the conclusion of the matter based on client objectives as defined at the outset, to fixed or flat fees where a client engages a law firm to provide a specific service for a set price.

“There is escalating pressure on legal firms to provide clients with better value and to prove constantly that they are worth the investment,” according to Paresh Khushal, Head of Professionals for Thomson Reuters, Middle East & North Africa.

“This puts law firms in a position where they need to be as transparent as possible about costs, and pressures them to offer a high-quality service at a more competitive price. In many cases, this means rethinking the traditional per hour billing model.”

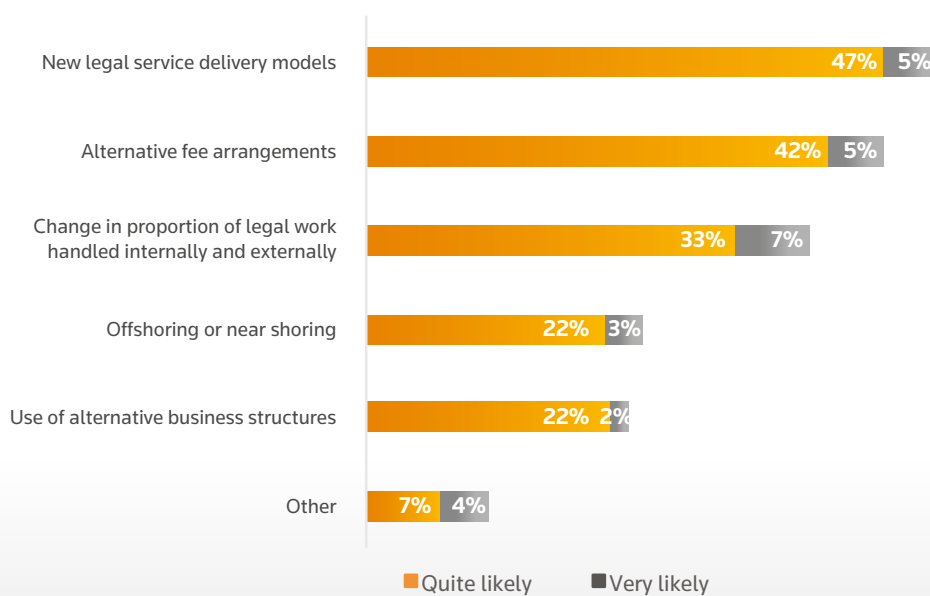
### IN-HOUSE TEAMS WORKING CREATIVELY

A related development is the focus by a number of organisations on how they distribute work internally and externally (see box, *How likely is your organisation to explore new sourcing approaches in 2017?*).

Some organisations, such as BT, are redistributing work within their own in-house departments and growing in-house teams (see *BT: the most innovative in-house team in the FTSE 100*, [thelawyer.com](http://thelawyer.com), 8 February 2016 (requires registration)). Others have created captive outsourcing centres (see *Article, Inside Life, Richard Tapp Carillion plc*).

It appears that this trend will continue as the majority of respondents expected to see a change in the proportion of legal work handled internally and externally by their organisation.

### How likely is your organisation to explore new sourcing approaches in 2017?



### CONTRACT LAWYERS: SUPERTEMPS?

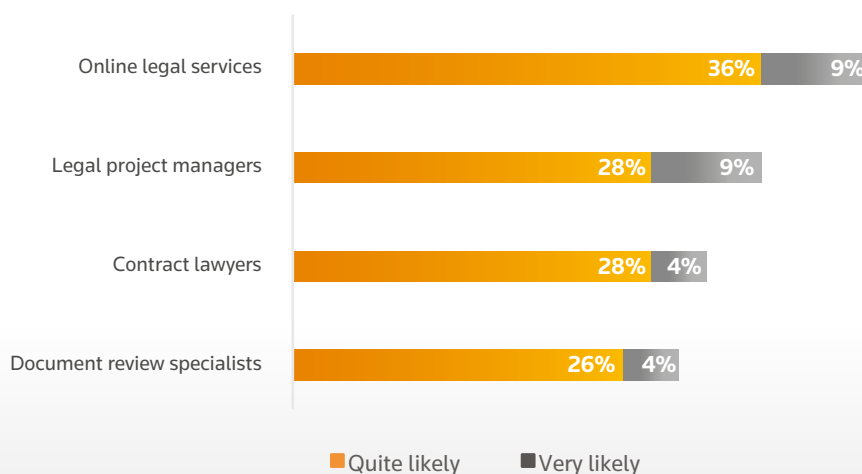
In 2012 Jody Greenstone Miller and Matt Miller wrote an article that appeared in the Harvard Business Review about the rise of workers they called “supertemps”.

Supertemps were “top managers and professionals, from lawyers to CFOs to consultants, who’ve been trained at top schools and companies and choose to pursue project-based careers independent of any major firm” (see [The Rise of the Supertemp](#), *hbr.org*, May 2012).

In the legal world the equivalent is ‘flexible legal resource’: contract lawyers who work independently on cases or deals on a contract basis, moving from one project to another.

Many major international firms have established their offerings in this area in the past three years, including Allen & Overy with Peerpoint, Eversheds with Agile and Addleshaw Goddard with AG Integrate. And yet, only 32% of respondents said their organisations were likely to explore the use of contract lawyers this year (see *box, What alternatives will you look at?*).

## What alternatives will you look at?



## LEGAL TECHNOLOGY IN 2017

An overwhelming majority of respondents said data management and electronic document storage technologies would be important for their organisations in 2017, echoing the impact of legal and regulatory developments around data protection and privacy and cyber security (see *box, Spotlight on technology*).

### SPOTLIGHT ON TECHNOLOGY



Maura Grossman,  
Research Professor  
in the David R.  
Cheriton School of  
Computer Science  
at the University  
of Waterloo and  
principal of Maura  
Grossman Law

#### Why is data management so important right now?

The proliferation of electronically stored information in most organisations – both in terms of volume and types – shows no sign of subsiding anytime soon. The highly-publicized data breaches of the past few years have made organisations far more sensitive to the risks of maintaining massive stores of information that is neither well protected nor well managed.

Organisations are focussed on technical solutions (including cloud-based services) to secure their data from hacking, to protect personal and sensitive information in light of increasingly stringent regulations (particularly in the EU), and to control their IT-related spend – including the high costs of electronic discovery – when electronically stored information is allowed to accumulate unchecked in myriad applications both within and outside of the organisation.

#### ARE LEGAL PRACTITIONERS GIVING AI ENOUGH ATTENTION?

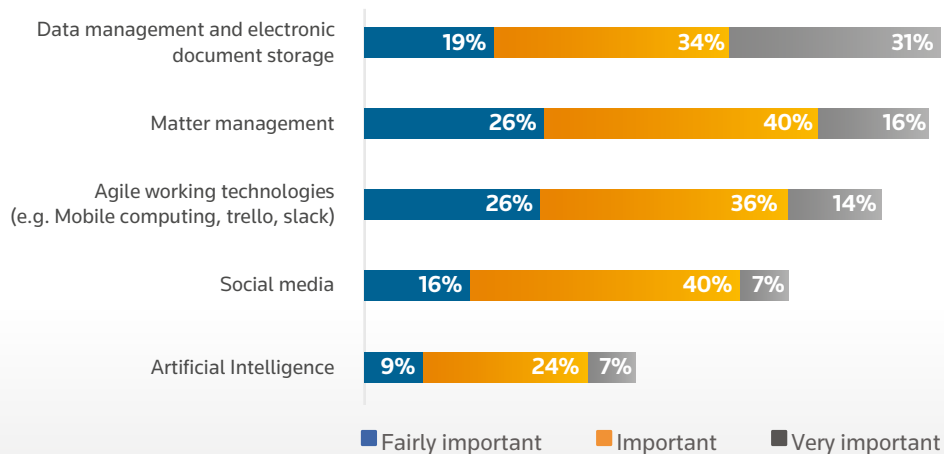
The marriage of technology and legal services has been a topic of ever increasing interest in recent years with artificial intelligence (AI) often being at the forefront of the conversation. Deloitte predicted that up to 114,000 jobs in the legal sector stand to be automated (see *Developing legal talent: Stepping into the future law firm, deloitte.com, February 2016*).



IT law expert Richard Kemp of Kemp IT law expects lawyers to see an increase in AI projects in 2017 (see [Article, Trends in information technology law: looking ahead to 2017](#)).

However, despite this excitement, only 40% of respondents thought AI would be important for their organisation in 2017, telling us that AI is not a top priority for legal practitioners this year (see *box, What technologies will be important for your organisation in 2017?*). Are we all in denial?

### What technologies will be important for your organisation in 2017?



Maura Grossman, who runs the e-discovery consulting practice Maura Grossman Law and who developed a machine learning e-discovery system when she was of counsel at Wachtell Lipton Rosen & Katz, said some lawyers are faster at adopting AI than others.

“Corporate lawyers seem to have embraced contract review and due diligence applications faster than litigators accepted technology-assisted review for electronic discovery,” she said. According to Grossman, AI can be appealing for corporate lawyers as it facilitates their goal of consummating the transaction as quickly as possible allowing traditionally time-consuming tasks like due diligence to be transferred to AI applications.

For corporate lawyers then, the incentive to use AI is clear, but the story is different for litigators. “Litigation is adversarial, and while the consequences of failing to produce relevant documents can be severe, there is generally little upside for doing an efficient job,” Grossman said. “Other than cost savings, which benefit the client and not the law firm, there would seem to be little motivation for litigators to use AI.”

In an interview in the Financial Times, Professor Richard Susskind, a technology consultant and co-author of *The Future of the Professions: How Technology Will Transform the Work of Human Experts*, said the legal industry is unlikely to see anything as dramatic as what Amazon did to bookselling (see [Artificial intelligence disrupting the business of law, ft.com, 6 October 2016](#)).

According to Susskind: “We will see incremental transformations in areas like the way documents are reviewed and the way legal risk is assessed.”

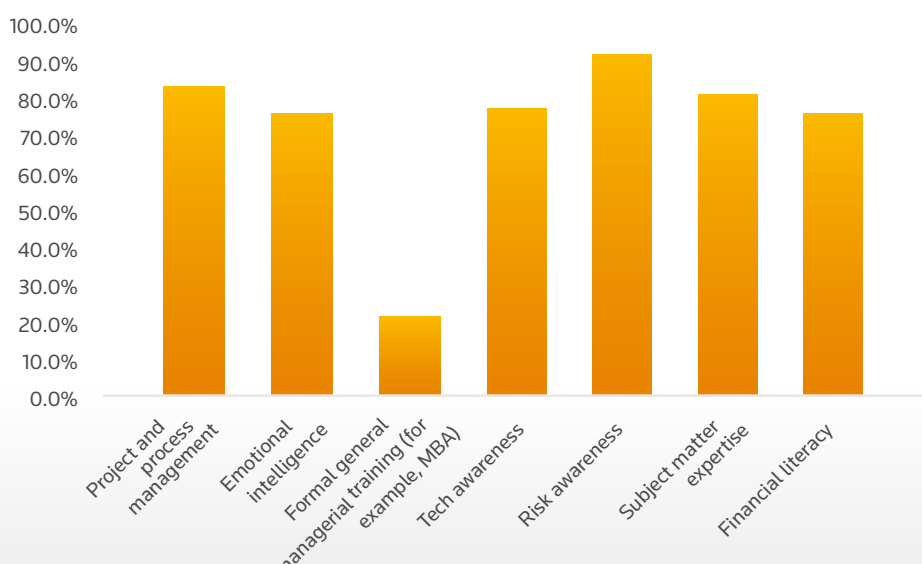
## ESSENTIAL SKILLS FOR 2017

Nearly all our respondents thought that risk awareness would be an essential skill for legal teams in 2017 (see box, *What skills are essential for legal teams in 2017?*).

Bruce Macmillan, Director at RPC Centre for Legal Leadership, said new legislation and legislative change ranging from GDPR to Brexit is driving a higher level of complex, high impact corporate exposure and directors' personal liability. "This is driving an increasing awareness and need from internal business clients for in-house lawyers who understand how business risk and financial modelling shape business decision making," he said. (See box, *Spotlight on formal management training.*)

"Most big business decisions are made on the basis of educated guesses where there is a chance of success and a risk of failure as there are always a large number of unknown or uncertain things which may affect what happens, law being only one of many factors."

### What skills are essential for legal teams in 2017?



### PROJECT AND PROCESS MANAGEMENT SKILLS ARE INCREASINGLY VALUED

The drive to maximise profitability and efficiency has created a demand for lawyers with project management skills in recent years; it is no surprise that the best lawyers know how to get the best outcome for their clients whilst staying within budget and delivering on time.

It seems that these hybrid legal project manager roles will continue to develop as 83% of respondents expect process and project management skills to be essential for legal teams in 2017.

"All repeat business activity acts through formalised or informal processes," said MacMillan. "The legal team has to contribute to the business, get the business to do things, and run and change itself as a department to meet on-going business need. To do this the legal department must be an effective contributor to other people's processes and projects and good at creating its own – this is much easier to do if you understand how processes and project management actually work."

Macmillan also explained that regulators are increasingly looking to businesses for evidence of the existence of demonstrable, current, effective and efficient processes (including around change) as a means of preventing or mitigating corporate and/or staff personal liability. "So not only is the need for process and project management skills clearly there," he said, "it is becoming ever more important to companies as a whole and to the legal teams within them."

#### SPOTLIGHT ON FORMAL MANAGEMENT TRAINING

##### Why do you think formal management training is perceived as unimportant for lawyers?

Remember that the profession in England and Wales has more than doubled in size in the last ten to fifteen years and so many in house lawyers are still growing towards roles where significant levels of management or wider business responsibility or a non-legal role are imminently relevant.

There is also currently a very uneven level of provision of good, relevant in house legal tailored training on these sort of topics – particularly from training providers that wider management and non-legal recruiters (as well as lawyers) would immediately perceive as being a credible and competent provider of wider business knowledge and competence training. So, when the training that is currently available is not that good a match for your needs, then it is understandable that you may not see a benefit in taking that training.

In this context I think that 21% of respondents is a high number and will rise steadily given the factors that are addressed elsewhere in the survey, as more people rise to more senior roles within the in house legal profession, and if/when more focused, tailored and credible courses become available.



*Bruce Macmillan,  
Director at RPC  
Centre for Legal  
Leadership*

#### NEED FOR EMOTIONAL INTELLIGENCE IS NOW WELL UNDERSTOOD

The majority of respondents identified emotional intelligence as a key skill for lawyers in 2017.

According to Kelli Reid, Managing Director at beyondBlackletter, components of emotional intelligence such as empathy, social awareness, general happiness and adaptability significantly influence performance and effectiveness. Emotional success can account for up to 80% of workplace success (see [blog post, Tap into your emotional intelligence for in-house success](#)). "Research also shows that lawyers have lower emotional intelligence than the general population, perhaps because, historically, it has been undervalued and largely ignored in favour of established "hard" legal skills."

The World Economic Forum published a report in January 2016 setting out a list of the top ten skills needed by the 2020 workforce (see [World Economic Forum: The 10 skills you need to thrive in the Fourth Industrial Revolution \(19 January 2016\)](#)). Emotional intelligence does not feature in the top ten list today but is number six on the list of skills that the 2020 workforce will need.

According to Reid, lawyers should learn more about emotional intelligence and incorporate its core competencies into their skill set. Practitioners who do this can enhance their performance, team effectiveness and organisational impact (see [Article, An introduction to emotional intelligence for lawyers](#)).



#### APPENDIX - SURVEY METHODOLOGY

The survey went live to respondents on 5 December 2016 and was closed on 13 January 2017. It was publicised through Practical Law's website and through social media, including LinkedIn.

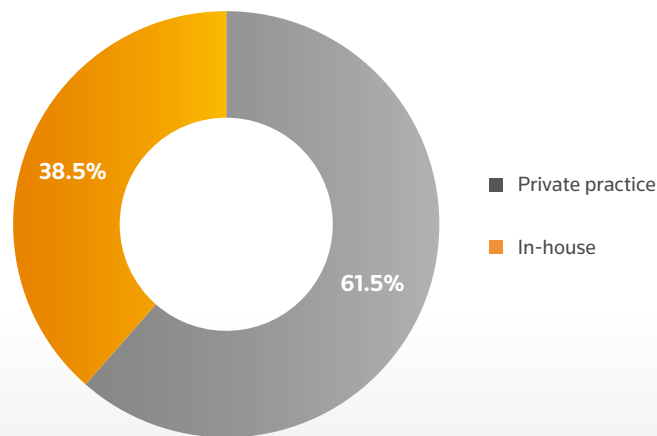
In total 128 respondents answered the survey, 56 of whom answered every question. We also interviewed a small panel of senior private and in-house practitioners, industry specialists and academics in connection with our preliminary findings to add context and qualitative analysis to our report.



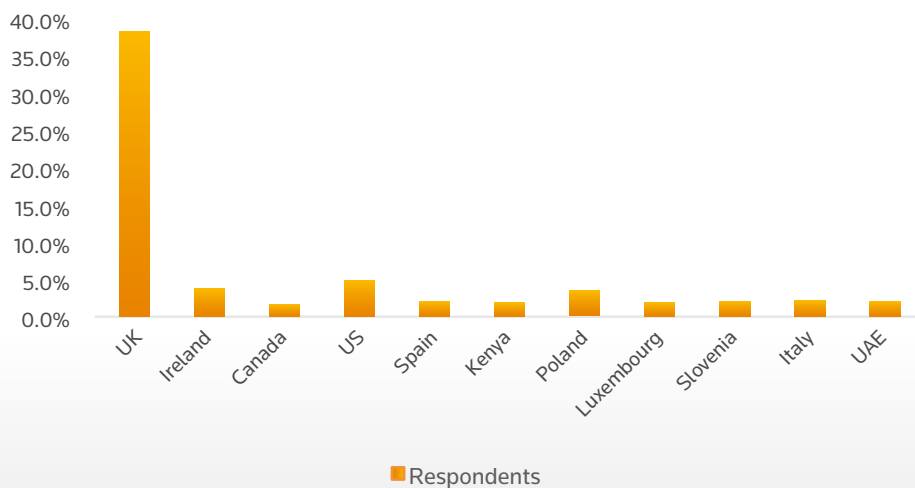
### The charts below show the following:

- Composition of respondents by position (private practitioner or in-house) (see box, *Position*)
- Composition of respondents by jurisdiction of first qualification (see box, *Jurisdiction of qualification*)
- Sectors in which organisations employing the respondents operate (see box, *Which is the main sector in which your organisation operates?*)
- Sectors in which respondents have active clients (see box, *Do you advise clients active in specific sectors, and if so which ones?*)

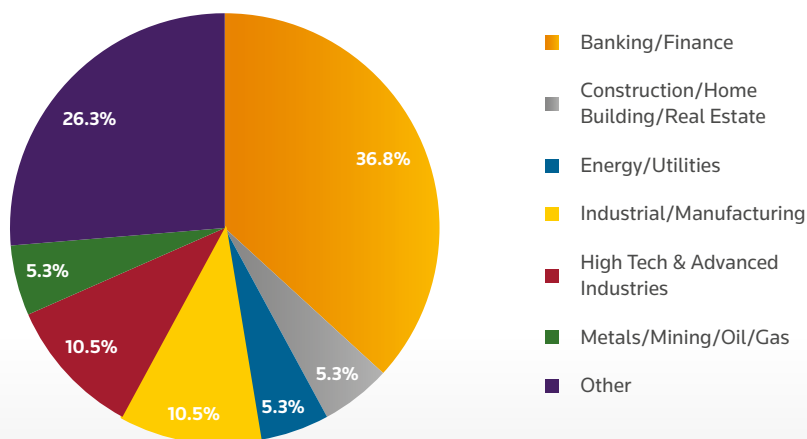
#### Position



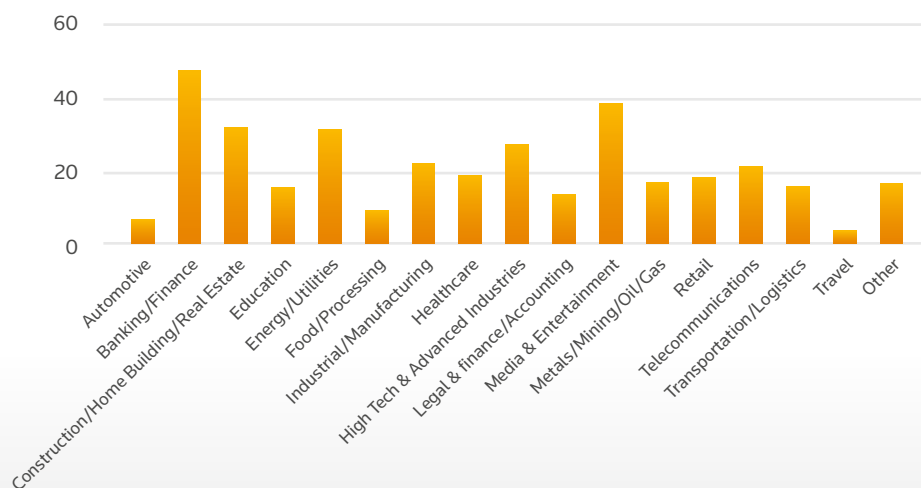
#### Jurisdiction of qualification



### Which is the main sector in which your organisation operates?



### Do you advise clients active in specific sectors, and if so which ones?





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