

# **A Corporate Counsel's Guide to Law Firm Panel Selection & Management**

By Anthony Armitage, Steve Lauer and Caroline Poynton

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## ABOUT THE AUTHORS

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### Anthony Armitage

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Anthony Armitage is the MD of First Law. Established in 1999, First Law conducts legal reviews incorporating recommendations on the most efficient use of external and in-house providers, manages competitive tenders for legal services, attends selection and recruitment interviews and advises legal departments on cost-effective delivery of their in-house service. Well over 500 different legal practices have participated in our projects, including many top law firms and over 100 barristers' chambers, representing thousands of individual counsel.

### Steve Lauer

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As Principal of Lauer & Associates, Steven A. Lauer consults with law departments and law firms on the value of legal service. He assists them to better align and recalibrate the cost and value of legal service delivered to corporations and other business entities.

Steve served as Corporate Counsel for Global Compliance Services in Charlotte, North Carolina, specialising in data protection and privacy for that hotline and compliance services company. From April 1989 until May 1997, Steve was an Assistant General Counsel for The Prudential Insurance Company of America. During that time, he held increasing responsibility for the management of legal affairs for the company's commercial real estate investment units, especially in respect of environmental issues and litigation and disputes to which Prudential was a party. From March 1996 until May 1997, he was Project Director for the Prudential Law Department's Outside Counsel Utilization Task Force. In that capacity, he designed and managed the preparation and distribution of 109 distinct work packages (or RFPs) by which Prudential restructured its purchase of legal services and the evaluation of hundreds of proposals submitted by over 130 firms to handle those packages of work, organised a series of orientation meetings with the 22 law firms that won the most work under those RFPs and helped to organise and implement the Prudential Law Department's Best Practices Conference in February 1997.

### Caroline Poynton

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Caroline Poynton is a business journalist, with particular expertise in the legal sector. Before going into freelance journalism in July 2007, she was for six years editor of *Managing Partner* magazine, an Ark Group publication dedicated to senior management in the legal profession. Since working as a freelance journalist, she has written numerous features, as well as in-depth reports, not only on the legal profession, but also on corporate communications and business management generally. In addition, Caroline has supported several firms on their communications strategies, including legal recruitment consultancy First Counsel and management consultants KermaPartners.

## 1. INTRODUCTION

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*By Anthony Armitage*

THE FEAR of the unknown can be a powerful deterrent. To many, the prospect of setting up a legal panel appears fraught with complications and difficulties. This guide has been written to cast light on the world of competitive tenders and panel reviews that you read about so often nowadays in the legal press, and we hope it will become the new tool of choice for all those charged with the procurement of legal services for their employer for the foreseeable future.

We also hope this guide will be of interest to law firms in helping them understand the rationale for and methods of panel set up adopted by business clients.

Although we use the term ‘firm’ frequently, we have noticed an increasing trend for panels to include individual counsel and barristers’ chambers, as well as other business structures providing legal services. Most of the ideas we discuss can be applied equally to procurements involving all types of lawyer, so reference to ‘firm’ should be construed accordingly throughout this guide.

We start by investigating the reasons why legal panels are created. Whether you are a large or small business and whatever sector you operate in, we try to cover principles of universal application which you can all benefit.

### Why set up a panel?

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First, ask yourself what arrangements you currently have in place and how the firms you are now using came to act for you initially. Specifically, there are 4 key questions to consider.

#### **1. Can new firms join and can incumbent firms be removed?**

- How were firms first appointed to act for your organisation?
- Was the relationship started with a referral or recommendation or was it an arbitrary process?
- Was there any merit-based selection involved?
- How do you know that the lawyers you use have the right expertise for both routine and specialist areas of work?
- Do you have any way of assessing quality of work and service standards, and what sanctions do you apply if there is unsatisfactory performance?
- Do you instruct new firms at times of heavy work load or for niche disciplines?
- How does legal service provision within your organisation sit within the general procurement function?

#### **2. What rules do you have about when it is appropriate to instruct external lawyers?**

- How do staff make decisions about when you should instruct externally and which firms or individuals you should use?
- Do you instruct counsel for advocacy work separately and can this be done directly or only through solicitors?
- Is there a mechanism which can alert you about the same legal issue recurring and is there a library resource which stores this data?

## INTRODUCTION

**3. What control do you have over how legal fees are estimated, verified and paid?**

- Do you know how your lawyers calculate their fees?
- Is there a basic rate card or have you negotiated a more detailed set of fees?
- What process do lawyers follow for estimating fees in advance?
- Are market forces brought to bear so that you can be sure you are paying the best rates available at any given time?

**4. What value added benefits do you receive from your lawyers?**

- Is there any co-ordination of value-added benefits on offer?
- How are these managed and are there missed opportunities to receive more or better suited benefits for your organisation?

We have included in Appendix 1 (p113) a sample questionnaire that covers these issues in a structured way and which we hope can be used as a checklist for compiling your own version.

**Building the business case**

Unless you are able to answer positively to most of the questions we have posed, building a business case for setting up or renewing a legal panel should be relatively easy. This is likely to be a major piece of work and may lead to significant organisational change, so it should not be regarded as ‘business as usual’ when embarking on such a project.

It is best to begin by considering first principles. An initial strategic review helps ensure alignment between strategy, policy and delivery. This could include a business justification setting out the rationale for the activity, a procurement

review setting out design and suitability options, and a readiness for service assessment. However, you may not feel that your budget or the size of the project or other factors merit such a bureaucratic approach.

At the very least, we recommend an analysis of risks and a benefits statement is drawn up, identifying risks and benefits across the whole organisation, at all levels. There should also be a benefits realisation plan to show how benefits will actually be delivered.

The typical reasons given by businesses for conducting a panel review are:

- Insufficient data to compare levels of experience and expertise when choosing which lawyers to instruct;
- Inconsistent and inadequate information on how fees are calculated and charged and lack of an audit trail to help analyse trends in legal spend;
- Variations in service delivery between providers;
- Lack of co-ordination of value added benefits offered or potentially available from providers.

A panel review creates the best possible environment to test the legal services market and introduce competitive forces.

In contrast, we believe the risks of undertaking such an exercise are often over-estimated. Here is a selection of reasons we have seen put forward to resist a proposal to conduct a review:

- The likely diversion of human and other resources away from the day-to-day business to managing and running the process;
- Potential limitation of choice by reducing the number and types of

## 2. PROJECT MANAGEMENT

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*By Steve Lauer*

THE PREPARATION and issuance of an invitation to tender (ITT) or request for proposals (RFP) for legal services constitutes a significant exercise. You should not underestimate the preparatory work or the details involved in the entire process. All in all, the time involved in (1) the internal due diligence precedent to the preparation of the document, (2) the drafting of materials conveying the law department's request to the candidate firms, (3) the receipt, review, analysis and evaluation of proposals submitted by the candidates, and (4) the announcement of the award(s) to the candidates whose proposals best meet the department's requirements will take at least six months for a substantial amount of work and multiple candidate firms.

### **Setting the strategic direction for the exercise - the business case**

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The preparatory work encompasses several distinct subjects and issues. To prepare an ITT or RFP that serves the company's interests well, the company's inside lawyers must accumulate and analyse historical data regarding past use of legal service. Since many organisations have not maintained such information in one easily accessible location or format, the lawyers must capture relevant data from multiple sources within the organisation. This preparatory work should take at least two weeks, but for a large organisation contemplating a substantial exercise (e.g, a large volume of work to be included within the scope of the RFP/ITT or a number of distinct RFP/ITT exercises) the preparation might consume two months.

Drafting the ITT or RFP requires that the department address a number of key issues. First and foremost, the department must decide the purpose of the exercise. (The purpose, as we use the term, connotes more than simply "securing legal service for a case or transaction.") Inasmuch as an ITT or RFP is a flexible tool, the scope of the document itself, its detail and the burden on the department and responding firms will vary considerably according to its purpose.

A law department often commences an RFP- or ITT-based exercise in order to reduce costs. There are a variety of ways to cut costs - some yield short-term reductions with limited long-term benefit, while others seek longer-range tools that lead to cost containment over an extended period. Cost cutting for short-term gain without attention to other issues can even lead to adverse results, particularly if the cost cutting undermines other strategic goals.

A large number of changes have occurred within the legal profession in recent years, many of which have been driven by corporate clients.<sup>1</sup> Many companies have reduced the number of law firms with which they plan to work in the future.<sup>2</sup> Many law departments have taken the initiative of demanding changes in the relationship between law firms and corporate clients in order to realise greater value from those relationships. In-house lawyers are exploring with renewed vigor alternative fee arrangements that will more closely align the interests of client and counsel and deliver legal service more consistent with the clients' expectations of value (see Chapter 7, p39).

In light of those developments, the use of an RFP or ITT provides a law department with the mechanism to establish a more meaningful relationship with outside service providers.<sup>3</sup>

Before drafting the RFP/ITT, however, the in-house lawyers should ensure their plans for how they will work with outside service providers (as will be laid out in this report) aligns with the perspectives of their internal clients. The analysis that constitutes preparation for the RFP or ITT also lies at the heart of a strategic plan for the law department. In fact, the process of developing a strategic plan should precede the RFP/ITT process because it leads to a much more informed design for delivering and managing the legal service that the company will require in the foreseeable future.<sup>4</sup> In discussions with their internal clients to prepare for the RFP/ITT, then, the in-house lawyers should address how the legal service better enables the business to achieve its goals. This definition of “value” for the company can then provide foundation for the vision the law department lays out for its outside counterparts in the RFP/ITT.

The in-house lawyers’ core objective will be to apply the best expertise to the task at hand. The first step is to take stock of the in-house legal resources. Answer several questions. What expertise is available in the department? How closely does that expertise match up with the anticipated legal work? Will the in-house lawyers be able to locate sufficient resources to handle the expected volume of that work? Are the in-house resources located in the appropriate parts of the country (or the world)?

Another potentially valuable use of an RFP or ITT relates to the way in which the corporate law department wants or expects to work with outside service providers. The

company’s leverage in respect of its expectations of outside lawyers and others never exceeds what exists when it first identifies and begins the process of selecting its preferred providers. Accordingly, the RFP or ITT can serve as the mechanism by which it can define the terms under which it wants to work with them.

In the RFP or ITT itself, in-house counsel can describe the strategic vision of the law department for its work with outside providers. The document’s descriptions of the distinct roles of in-house and outside counsel - in the context of the anticipated legal service that the company will require to achieve its business goals - should complement each other.

Establishing the client’s view of how the law department and external law-related resources will add value to the business should consume a relatively short time: perhaps three or four weeks. That congruence of views should emerge from discussions between senior business executives and law department leaders. Surveys of frequent users of the law department’s services and discussions with business unit heads will enable the department to draft a document that clearly expresses how the anticipated efforts of outside providers fit within that value definition.

The strategic planning for the exercise should take place while the law department collects the data needed to prepare the RFP/ITT, but will take several weeks to meet with interviewees among the corporate management team, compiling their views and integrating those views into the law department’s process for the RFP/ITT.

### Deciding on a “game plan”

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It is important to have a “game plan” in mind when commencing the preparation



### 3. PREPARE AND DISTRIBUTE THE REQUEST FOR PROPOSALS (RFP)/INVITATION TO TENDER (ITT)

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*By Steve Lauer*

AN RFP/ITT is one of the most rigorous of methods of identifying and selecting outside legal-service providers.<sup>1</sup> An RFP requires considerable preparation and sustained attention by the law department. Law firms responding to an RFP have to provide more information than has historically been the case on a file-by-file basis. The evaluation process can be time-consuming because the amount of information and the variety of proposals received. Nevertheless, an RFP can be a useful process to introduce significant change in the client/counsel relationship.

Whether the company is searching for counsel on a matter-by-matter basis or to handle a group of assignments is also relevant to the selection process. For the former, the investment of time and resources associated with an RFP might not be justifiable, unless an assignment is very large or complex. On the other hand, if a company is looking for counsel to handle a large number of related or similar matters - such as multiple transactions or repetitive litigation – the benefits of an investment in an RFP might be realized over the course of the assignments.

If time lines are tight, the required range of capabilities is not as great and/or the risk of selecting less appropriate counsel is lower, then a process that is more rapid and less demanding – such as an RFQ – might suffice.

An important consideration is how much of the company's work will be performed by the company's in-house counsel. Each law department has distinct

capabilities. Some have internal expertise on multiple substantive areas of law. Others have in-house litigation capability. Are the in-house lawyers pro-active and extremely involved in all aspects of the company's legal affairs, or do they limit themselves to a more reserved role and allow outside counsel much more latitude in delivering legal services?

The process of preparing an RFP or ITT should cover the following subjects.

#### Identifying candidates

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The selection process will commence with identifying law firms to invite to participate. How can inside counsel do that? References from in-house counsel at other companies are excellent starting points. Even references from a company's present outside counsel firms can be useful. Sources such as Martindale-Hubbell, WestLaw, Chambers and other directories (some of which list more specific specialties) offer some value. Because such directories have, by necessity, little or no direct relevance or relationship to the needs of any specific company, though, the information they provide can only be a starting point.

#### Selection criteria

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The next step is to identify the selection criteria. Corporate management increasingly demands accountability from the law department for the delivery of legal service and retention of appropriate

counsel, so it is important to be objective and ensure the criteria is well defined. Developing clear criteria requires the law department to think through the types of legal services needed and what would characterise a law firm that would be best suited to providing that service. The development of criteria should also encourage greater consistency in reviewing firm proposals. The more specific the selection criteria, the easier it will be to manage the selection process.

It is important selection is based on the merits of the proposals. Firms may have been retained in the past on the basis of personal relationships between individual partners and individual in-house counsel. Although these firms may have been very capable, this approach is ill advised. A personal relationship can inhibit due consideration of the substantive needs of the company or stand in the way of a meaningful critique of the quality of the service provided. Moreover, such a selection method prevents clear measurement of how well the company's legal needs are being met because there is no agreed-upon set of standards on which that service is measured.

With increasing scrutiny of all major decisions made on behalf of a company by its senior management and its board of directors (or equivalent), a law department should expect its selection of outside counsel to come under similar scrutiny. Having the "right" counsel - or, on the other side of the ledger, "wrong counsel" - can have a significant impact on a company's fortunes, so defensibility of the selection process is key.

Clear selection criteria also serve another very important role. When preparing for and drafting an RFP/ITT, you need to think ahead to the functioning relationship that will ensue. A law depart-

ment must be well-positioned to evaluate outside counsel's efforts on a regular basis. Unless the RFP/ITT includes measurable criteria - initially used for the selection but later for evaluation as well - that evaluative process cannot be effective.

In-house lawyers should factor into the counsel-selection process the participation of the company's internal business units. Efficient legal services are often delivered directly to that ultimate client by outside counsel. Satisfaction of that internal client is the determinant for both inside and outside counsel about whether legal services satisfactorily addressed the company's needs. When considering the involvement of your clients in counsel selection, at least three issues are in play. How will their views be solicited? How will the results of the final selections be communicated? How will the client interact with outside counsel once the work is assigned?

Does a company select a law firm or a lawyer? Both approaches have merit and they are not mutually exclusive. Even when a particular assignment requires a specialty or expertise that is available from a few individual lawyers, there are few assignments that only require the work of one lawyer. Rather, the individual lawyers command a team that provides the service. Thus, the capabilities of the firm are always a relevant consideration in the selection process.

### **Third parties and the "unbundling" of legal service**

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In-house lawyers should consider bringing other organisations into the system for delivering legal services to their internal clients. In some cases, this might mean a number of law firms with which the

## 4. REVIEW RESPONSES AND SHORTLISTING

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*By Steve Lauer*

HAVING DISTRIBUTED the RFP/ITT and received proposals from invited firms, a law department must review those responsive proposals and reach conclusions.

The department must first determine whether all of the proposals submitted responded appropriately to the questions and requirements of the RFP/ITT. For example, if the department had laid out some terms of the representation that would be required by the company, did any of the submitting firms fail to meet those terms? If so, the in-house lawyers would be in a position to reach some quick decisions regarding those non-qualifying proposals.

If the evaluation process will include multiple lawyers and other personnel (the law department might wish to solicit the views of its internal clients), it is important to establish a consistent scoring mechanism. Individuals often “grade” on disparate scales (“high” and “low” graders in school come to mind). Given the competitive nature of the RFP/ITT process, however, in-house lawyers should minimise such inconsistency. Doing so will serve several purposes.

First, it will maximise the chances that final selections will enjoy broad consensus within the law department because the shared perspectives of the reviewing in-house lawyers will go a long way to establish the legitimacy of the process. This, in turn, will increase the defensibility of the final selections within the department.

Second, the standards used in the evaluative process will assist in ongoing reviews. As noted earlier, in-house lawyers should periodically review their

company’s outside service providers to discover how well they have met the expectations set for them and expressed in the documents that established their relationship to begin with (those documents being, for the most part, the RFP/ITT and the retention letter/agreement that memorialises the terms of the awards).

If the RFP/ITT set out the process by which the firms’ proposals would be received, reviewed and judged (as it should), the department should follow that process as closely as possible. To do otherwise could lead to scepticism about the department’s commitment to other terms in the document. That, in turn, could cause complications in the supplier relationship. Firms might feel they have some leverage or ability to influence the department’s management of relationships if they believe it was not fully committed to the terms that it set out at the commencement of the process.

Transparency, within the limits that exist due to client confidentiality concerns, corporate concern for the security of proprietary information and law department authority, can strengthen the process considerably. It will increase the defensibility of the process and demonstrate the department’s ethics and fairness.

The process of evaluating firms and awarding work entails several significant steps. What role will face-to-face meetings play in the decisions? During the process, how will communications with the firms be handled? What role will internal business clients play? The department’s decisions here can improve or undermine the process in various ways.

As stated above, the internal clients

of the law department are the consumers of the legal service provided by both the in-house and outside lawyers. As such, clients' views regarding who serves their preferences should play a large or decisive role in the ultimate selection process. This does not mean they need to participate directly in the process by meeting with candidate firms; although such meetings can be incorporated into the process if the law department believes their participation will strengthen the process directly.

The more completely a lawyer understands the business of his or her client, the more effectively they can serve their client's needs. If one goal of an RFP/ITT consists of securing outside assistance from those who understand the client's business needs, the firms invited to submit proposals might benefit from an opportunity to communicate directly with the ultimate client. Such direct access would enable firms to submit proposals that are even more responsive to the client's needs than would otherwise be possible.

Should the law department meet with any or all of the candidate firms face to face? Clearly, such meetings can add considerable value to the process. Face-to-face meetings allow both parties to "size each other up" in ways that simply are not possible by mere exchange of written documents. At the same time, though, when a law department is reviewing (or contemplating reviewing) proposals from a significant number of law firms, such face-to-face meetings may not be feasible due to time or personnel constraints.

In such circumstances, the department might opt for a staged process. The RFP/ITT will identify candidate firms whose capabilities match the needs of the company. This allows the law department to shortlist a smaller number of firms to engage in discussions.

Face-to-face meetings with competing firms should play some role in the identification-and-selection process. After the award of work pursuant to the RFP/ITT, the internal and external lawyers for the company will need to work together closely and in a coordinated fashion. It is therefore important that lawyers on both sides have met and achieved a comfort level with each other in advance.

Another challenging problem relates to information access. While the law department will, in the process of drafting its RFP/ITT, seek to include all information and data that will enable firms to prepare and submit responsive proposals, it may overlook some key data or knowledge about the company, its business or its past use of outside legal professionals. Another firm might, in preparing its proposal, recognise a data need and request information from the in-house lawyers or seek to meet with them in order to develop a better understanding so as to submit a more precise and helpful proposal. If a firm makes such an inquiry, should the law department disseminate to all competing firms similar or identical information that it provides to the inquiring firm? In other words, should the department strive to provide equality among the competing firms vis-a-vis the information available to them? Does the firm that identified the information gap deserve to benefit from its perspicacity? Perhaps the natural inclination to "level the playing field" should not operate in this situation, at least to its full extent. In any event, the law department should determine how it will act should the situation arise.

However a law department might run its RFP/ITT process, it should communicate with the firms that submit proposals. Simply mailing an RFP/ITT to a number

## 5. INTERVIEWS

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*By Anthony Armitage*

A CRUCIAL part of lawyer-client engagements is personal relationships. Because most lawyers organise themselves in partnership or equivalent corporate structures, there is a potential disconnect between your evaluation of a firm as a whole and the attributes of individual fee-earners with whom you will work. The purpose of conducting face-to-face interviews is to go some way towards bridging that gap.

In other words, interviews should be used to obtain information which cannot be sourced through the written word alone. Much of this information will fall into soft skills categories and involve a degree of subjectivity in assessing individual personalities.

You will have decided in the earlier stages of the panel set up how you will shortlist for interview and therefore which firms you will be inviting, but what if your adherence to the formal process creates a perverse result by omitting one of your favourite incumbent firms? Hindsight is a wonderful thing as through it we have learned that you should build in to your ITT a mechanism by which you, as client, can request further evaluation stages (comprising references, demonstrations, interviews or presentations) outside the express terms of the ITT. This enables you to conduct a 'viva' type examination for those incumbents, giving them an opportunity to increase their scores and become eligible for the next stage without undermining the fairness of the process for others.

Interviews can also be used as a way of testing how well a firm makes decisions about the selection of fee-earners for a particular purpose, project or instruc-

tion. The best mix of attendees is one that allows each individual to contribute positively and equally. The team should also have the necessary technical knowledge and presentation skills to be able to perform well on the day and to answer anticipated questions concisely and accurately.

Examples of poor decision making in this area are a firm allowing one attendee to dominate the interview and conversely having minimal or no contribution from another. Also, the dynamics of the interviewee team can reveal weaknesses in approach. Embarrassed silences, strong disagreements within a team, contradictory replies, answering a question in a way the interviewee thinks the interviewer wants to hear rather than honestly, and answering a different question from the one asked, all create a negative impression.

To be fair to invited firms, clients should make clear how long the interview will last, what the structure will be (e.g. opening presentation followed by a question and answer session with an opportunity to ask questions at the end), how many and what kind of attendees there should be and some indication of topics or issues likely to be discussed. Include any other instructions that are particular to your organisation which might assist firms in their preparation.

You can give clues in your invitation as to the optimum mix of attendees. We have often seen firms bring their senior partner or even their marketing director to interview. On occasions this may be appropriate but given that a purpose of a

## INTERVIEWS

face-to-face meeting is to learn about the character of individuals you are likely to work with, it may be better for firms to bring along more fee-earners who would be involved in the day-to-day lawyer-client relationship.

There is some debate as to the merits of firms bringing promotional materials to interview and handing them out. As a rule of thumb, we recommend that brochures and the like are not brought but it can be beneficial to have pictures and short biographies of the attendees. These can serve as a useful *aide memoire* for the interview panel at the end of a session of interviews.

Firms should decide and rehearse in advance the style that will be used for presentations. There is a delicate balance to be found between being too prepared and not being prepared enough. A slick and fully rehearsed performance can convey an impression of insincerity if not softened by humour and some improvisation, whereas turning up unrehearsed and not working as a cohesive team can obviously cause a presentation to flounder.

Firms should also consider what etiquette they will adopt when answering questions. Will a hierarchy exist between individuals with the lead presenter fielding all questions initially, or will it be more of a democratic process allowing anyone to answer if they feel it appropriate to do so? It probably does not matter which approach you adopt but any hesitation or confusion arising on the day could count against you.

Clients will have to think carefully about how assessments of interview performances will tie into earlier stages of the procurement. One difficulty that can arise is if you have scored firms in the ITT according to lot (area of law) rather than ranking them overall, how are you going to merge your ITT marks with

your interview marks? This can become a complex calculation if your intention is to appoint specific firms to specific lots. Will the interview score be added to each lot score to produce revised rankings per lot or will the ITT scores be treated as a pass threshold so that the only differentiator for deciding appointments will be interview performance, or will it be a combination of these methods? If it is a combination of methods, have you informed firms accordingly? This can have a bearing on how firms prepare for and present at interview.

The make-up of the client's interview panel is important too. The number of interviewers should be in proportion to the number of interviewees, following the principle that it is best not to have more of the former than the latter. Each interviewer should have a reason to be there and be able to act in representative capacity on behalf of others in your client organisation, who would be involved in instructing the newly appointed firms once the panel has been set up.

The next key step for clients in preparing for interview is to decide the questions that will be asked and who will ask them (in that order). Questions fall in to two broad categories – those that require spontaneous thought and those that are factual in nature requiring explanation or clarification. The way both types are answered will reveal subjective aspects for evaluation. In some ways the questions you ask can be compared to the questions that might be asked in a job interview. The opening could test the interviewees' knowledge about topical issues of law or the nature of the client's business, leading on to questions about how the firm would manage the relationship going forward.

It is not an exact science when evaluating answers to interview questions, but a good place to start is to allocate questions

## 6. POST PITCH

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*By Anthony Armitage*

THE LAST thing you will want to do is miss the opportunity to capitalise over the long term on the benefits you have created in setting up your new panel.

Misunderstandings can arise on the part of stakeholders who have not been involved at the coal face of the project. This may lead to false assumptions about the purpose of the exercise and its outcomes and, in turn, a drift back to old ways of instructing lawyers. Countering this requires communication, education and training, both internally and with appointed firms, which can be done post-pitch.

If resources allow, a member of staff should be given overall responsibility to manage the new panel. Your in-house legal department would usually perform this role, led by your general counsel if you have one. The difficulty can be competing demands on time, as managing external lawyers is only a part of an employed lawyer's work and sacrifices may have to be made in other, and perhaps more important, day-to-day responsibilities. For the purposes of this chapter we have described this person as a 'legal services manager'.

Commentators have likened the role of an in-house lawyer to a General Practitioner in the medical profession. Any type of legal problem can arrive at your doorstep and as the first port of call you have to diagnose it and make a decision whether or not you have the in-house resources and expertise to handle it. If not, the matter is outsourced to the most appropriate external firm. Effective time management means this filtering should

be done in as short a time as possible after the issue lands on your desk.

If you have followed the steps recommended in this guide you will have created an excellent framework for future management of the panel. Although at times a legal services manager may feel like something of a post box, the infrastructure you will now have in place makes it much easier to develop your organisation's relations with panel firms and for you to put your own stamp on the nuances of those relationships and the procedures and policies to be adopted in daily practice.

Some observers say that all of the functions of a legal services manager can be undertaken by a non-lawyer. This rather depends on how you describe the job specification. It is possible to separate activities into legal and administrative. It helps if the chosen person has involvement in and/or an understanding of legal services. Crucially, if they can free up the in-house team to concentrate on providing legal advice to the business, significant efficiency savings can be achieved.

It may be appropriate to hold 'get to know you' sessions with firms soon after appointments are confirmed. It seems to be an increasing trend to expect firms to work together for a single client collaboratively rather than in competition. The extent to which firms share this view can be tested at interview, but the reality of the situation will only become apparent over time. Real attitudes can be observed initially at the induction sessions and for this reason you might like to invite all panel firms to the same event. The format can vary consider-



## POST PITCH

able from a morning briefing to a full day seminar.

The induction programme can be used to educate and inform firms about your organisation's business, letting them witness first-hand how your office functions and meeting key employees.

Going forward, here are some examples of other administrative functions that add value to the legal services manager's role and some of which, we would argue, do not have to be performed under the control of a qualified lawyer:

### Creating centralised records

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Contact lists for all in-house staff, external law firms and confirmed panel appointments should be exchanged and distributed appropriately.

Firms should have provided comprehensive pricing information in the panel set up. The key is to then import that data in to a single, searchable source that can be accessed easily across your organisation. If accurately integrated with firms' original submissions and kept up to date, the record can serve as a versatile management tool.

### Negotiating fees and verification and processing of bills

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Database technology will allow you to compare fees charged by firms against other firms that are on the same panel and to rank prices in ascending order. These functions could be used prior to instructions being issued to help select the best value providers, to assist in fee negotiations and to verify invoices after an instruction has been completed and billed.

As a non-qualified legal services manager you would be able to provide this kind of fee advisory service to the

in-house lawyers on request, thereby sparing them direct negotiation and time consuming administration, which might otherwise interfere with their professional relationships and working routines.

Specifically, a database tool could offer the following functionality:

#### ***Create comparisons of likely costs before instructing***

All firms on the new panel should have agreed to use the same specification of work categories, levels of fee-earner seniority and fee types so it should therefore be easy to key in the line items that make up your instruction (e.g. employment advice, 10 hours partner time and 6 hours junior associate time) and the database will sort the results to show a full breakdown of cost comparisons. Armed with this information you can make a better informed decision on which firm to instruct and it can assist you in negotiating a fee with a preferred provider

#### ***Verify invoices***

Key in line items from the invoice received and the database will calculate what the total invoice sum should be using the pricing information tendered by that firm. If the figures do not match, this is an alert to prompt further investigation that could disclose an innocent mistake or a misunderstanding or possible over or undercharging. The database can also show you what other firms would have charged for the same piece of work retrospectively, enabling you to make a better informed decision the next time you issue a similar instruction.

These kinds of comparisons provide information as to fee variations between firms. However, it is equally important that the firm is suitably competent.



## 7. MANAGING THE EXTERNAL COUNSEL RELATIONSHIP

By Caroline Poynton

THE GLOBAL economic downturn has reshaped the legal profession, as law firms and corporate legal departments have shed thousands of lawyers to contain costs. In previous recessions, these jobs returned once economies recovered, but there is a general consensus that the legal landscape will look very different this time around.

*New York Times* columnist and author Thomas L. Friedman recently posed this question: “What if the crisis of 2008 represents something much more fundamental than a deep recession? What if it’s telling us that the whole growth model we created over the last 50 years is simply unsustainable economically and ecologically and that 2008 was when we hit the wall – when Mother Nature and the market both said: “No more.”<sup>1</sup>

Frankly, the legal industry, like most corporate companies, has learned to do more with less. This is being fuelled by legal departments that are demanding cost-efficiency and actively seeking lower rates. To help drive down costs and reduce legal spend, many legal departments are outsourcing commodity legal work and using contract lawyers for one-off projects.

### **Law firms must respond to market demands**

Law firms must get better at mirroring the many qualities that are commonly found in-house – better understanding of clients’ products, priorities and finances, and more commercial sense. Legal marketing consultant Larry Bodine sums this up perfectly in an excellent blog post.

He says firms that survive the recession will:

- “Have ‘customers’ not ‘clients’.
- Offer flat fees per project or per procedure.
- Have rates that are markedly lower than in 2008.
- Will routinely produce budgets for all legal work.
- Be run like real businesses, which know their costs, can calculate a profit margin, and offer customers “just in time” services at the best price possible.
- Realise that customers are fickle and expect personalised service.
- Have lawyers that know their clients’ businesses, their goals, strategies and objectives, and work to help them make more money or cut their costs.”<sup>2</sup>

### **Value based pricing**

The economic downturn has led to a shift in balance in the client/law firm relationship, with a client-led market fast becoming the norm. The days of the billable hour as autocratic appear numbered as businesses demand more value, accountability and creativity from law firm fee structures.

Hourly billing was originally justified because of its objectivity and efficiency. That is, hourly billing allows clients to compare the rates of attorneys/lawyers and know in advance how much they will be charged for time expended. And it has some advantages: it’s simple and easy to break down on a bill and provides the ultimate comparison tool between

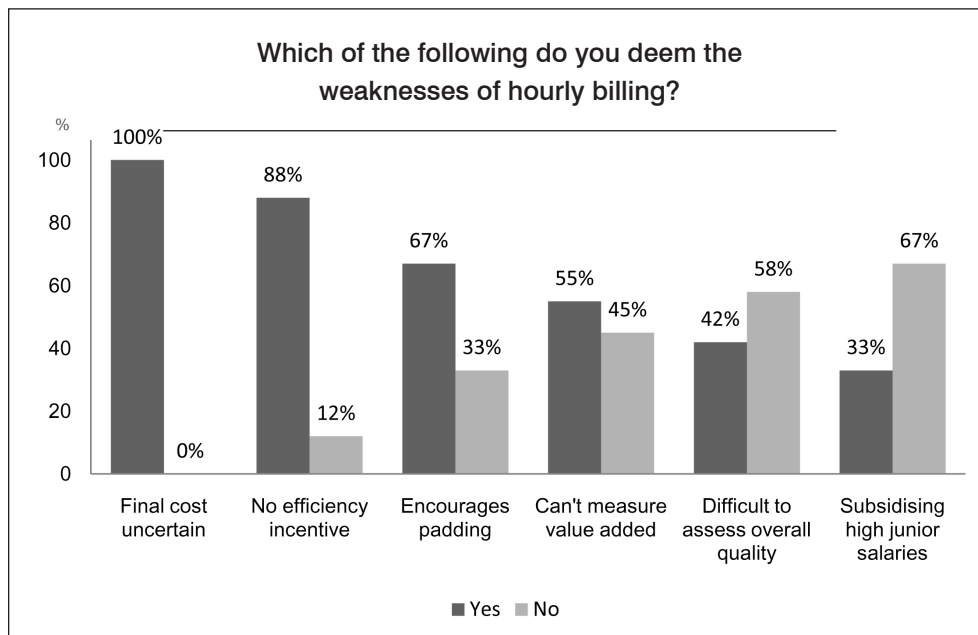


Figure 7.1 – CCR's 'Alternative Fee Arrangements' 2011 Survey

firms. But it has also come in for endless criticism, which has intensified in recent years: it doesn't deliver value for money nor reflect the true value of the legal service provided; it encourages inefficiency and padding; and, it's an open-ended cost (see *Figure 7.1*).

To make the move away from exclusive hourly billing, legal work needs to be seen as a service provided by the law firm, not hours spent doing the work. Those 'services' need to be broken down and a value attached to each. This puts alternative fee arrangements (AFAs) firmly back on the agenda, driven by a need on both sides for an economic efficiency not necessarily found under the billable hour.

#### **Slow adoption of AFAs**

Alternative fee arrangements take many forms – fixed fee, success/conditional fee, capped fee, value-based fee, risk collars, portfolio pricing, capacity-based pricing, etc. And while there are clear signs in-house counsel have started to explore many of

these options (see *Figure 7.2*, p42), the uptake has been slower than predicted.

There are many reasons for this. Respondents to CCR's AFA survey point to numerous barriers, but chief among these are "Reluctance by external counsel", "Difficulty in how to price and structure" and "Unpredictability of matter type". A lack of basic understanding also gives rise to numerous concerns. Which AFAs suit which types of matter? What is the potential impact on the legal department and its internal processes? Also, hourly billing is based on years of metrics and data, AFAs are not, so there is a lack of information to measure the potential profitability of such arrangements.

Rees Morrison, who has advised in-house counsel for the past 24 years on management issues, suggests several reasons why in-house counsel are not hitting their external providers hard. In particular, he points to a typical GC argument: They like the services they get from firms and feel the value delivered for

## ARTICLE

GETTING MORE FROM YOUR LEGAL SPEND –  
EMERGING TRENDS AND BEST PRACTICES

*By Eversheds Consulting*

AS LEGAL costs continue to climb, financial pressures are leading many companies to instigate spend reduction programmes and demand more from their legal functions. In a lot of instances, the message to general counsel (GC) could hardly be clearer from senior management: “Get the costs of your legal department down and under control or face the consequences.” Unfortunately, this is forced upon GCs who often lack the time, data and analysis to justify their own internal spend.

#### ***A starting point***

Measuring value is often seen as a challenging process for an in-house legal team. There may be concerns around resourcing, the introduction of bureaucracy or inadequate returns for the department. But it does not need to be this way. Simple and practical approaches with the right systems and collective approach can be introduced to clarify objectives, improve performance and measure the value of legal spend. This will make it easier to run an in-house legal department, and may also make it simpler to identify areas where GCs and other senior in-house lawyers can attain leadership.

The rest of this article will examine:

- Shared challenges and ways to reduce legal spend;
- Behaviours to enhance client service delivery;
- Increased operational effectiveness;

**“Metrics are an integral part of the continuous improvement process, helping ensure that objectives are being met and that the organisation is succeeding, and, just as importantly, identifying which programs are not working and where changes should be made.”**

*Thomas L. Sager and Gerald G. Boccuti – DuPont*

- Legal spend health check and moving from cost to profit centre.

Increasingly, legal teams and law firms are compared, evaluated, judged, categorised and ranked, with best practices subsequently born. It’s the fated consequence and side effect of a rich and opaque market coming to maturity.

To be clear, there is no single formula or template for measuring value. Business strategies, operational structures and corporate cultures vary enormously, and measurement needs to reflect this. However, there are common themes many companies, including the likes of Tyco and DuPont, have implemented very successfully, which provide some starting points.

#### ***Insight leads to better business decisions***

It’s no surprise that one of the most prevalent trends in the legal industry during the past few years has been the adoption of legal management systems and

INTERVIEW

**JEFFREY CARR, SENIOR VICE PRESIDENT,  
GENERAL COUNSEL AND SECRETARY,  
FMC TECHNOLOGIES**

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*What is your annual revenue?*

\$4.1bn

*How many people are in your team?*

We currently have nine lawyers, although we have three open positions, so we should be staffed at 12.

*What is your legal budget?*

\$12.4m. We spend 73 per cent of that on outside counsel.

*Do you utilise project management tools?*

We are very rigorous in the use of project management tools and techniques. We call our particular approach one degree law. This signifies a removal of the barriers to the efficient delivery of right size legal services. There are two key elements to this philosophy. One is performance based pay. The second is rigorous matter management (and that encompasses billing, status administration, reporting, benchmarking, etc).

*What are the pros and cons of hourly billing?*

When you pay for a service by the hour, what you buy is hours not service. You do not buy either quality or results. There is obviously a built in bias to inefficiency when the service provider is being paid by the hour.

This reminds me of a story with my son. He was about 15 years old at the time and he wanted a new video game. I told him that unless he had the money for it we were not buying it, but I could let him

do some work to earn the money. We had an iron fence in our backyard that needed painting, so I suggested that he could paint that and I would pay him. He agreed and I asked him how much he would charge me. He said he had no idea, maybe just the cost of the video game. I suggested that I could either pay him by the hour for however long it would take or we could do a fixed price, so he would shoulder the risk of how long it would take to paint the fence. He said, maybe we should do it by the hour because I think I could make more money that way. I said you are absolute right, but that's why we were not going to do it by the hour.

Even a kid can understand this. It's amazing to me that we as lawyers, on the buy side, convince ourselves that the work is so complicated and so uncertain that hourly billing is the best way to do things.

Another analogy I use relates to what FMC does. The company makes highly sophisticated, sub-sea equipment for the oil and gas industry – it goes into 8,000 feet of water and is supposed to work for 20 years in conditions harsher than the surface of the moon. We do this every day on a turn-key, fixed-price basis. As a company, we make a lot of money doing this – we take the risk of uncertainty because we are good at what we do. So if a lawyer tells me that he cannot predict how a piece of litigation is going to go, for example, my reaction is that they are pitching for the work because they have handled hundreds of similar cases – I've done none. So in the allocation of risk and uncertainty and the time it is going to take,

## INTERVIEW

**JOHN DOWNING, HEAD OF GROUP LEGAL,  
IMPERIAL TOBACCO GROUP PLC**

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JOHN DOWNING is head of group legal at Imperial Tobacco Group plc, a FTSE-30 global tobacco company headquartered in Bristol, United Kingdom. It is the world's fourth-largest international tobacco company.

Downing manages a team of ten lawyers, which includes two in-house litigators. He joined the company in 2005, having worked for seven years in Linklaters' corporate department.

Highlights of his career include being lead counsel and head of deal execution on the €15 billion public takeover of the Franco-Spanish tobacco company Altadis in January 2008, followed-up by Imperial's £5 billion back-stop acquisition rights issue, as well as its follow-on takeover offer for Logista S.A.

***Which areas of your work do you typically outsource?***

The main areas that we outsource are corporate, litigation, finance and tax. Operating in the tobacco industry, we use specialist boutique advisors when it comes to product liability. For general commercial work and mainstream regulatory issues (ie, regulation as it affects selling or marketing tobacco rather than the product itself), we keep this in-house.

***What is the size of your team?***

At group level there are ten members in my team. For a large FTSE-listed company, I believe we are slightly unusual in being so small. Most of my staff joined the company directly from private practice, mainly from magic circle firms,

so this is their first switch to the corporate side.

Given the profile of team, we do not run trainee programmes.

***Your department costs have remained roughly the same over the past two years. You mention 'Sign-off processes' as a way of controlling costs. Can you elaborate on this?***

Put simply, bills must be relevant and proportionate. We never pay an invoice unless we have seen a draft invoice that has been pre-approved, so the team can check if it's in line with the original quote.

On larger matters, we have a forensic approach to the billing verification process. On a major corporate transaction, we receive the unabridged, weekly timelines of the law firms and staff who have worked on the project. At this stage, there will often be things that we want to challenge, particularly as the firms themselves have not had a chance to vet this information yet.

If you are doing a massive transaction that runs into hundreds of thousands of pounds or more, it's important you check the charging is right on a weekly basis, while it's fresh in your mind.

***Many legal departments have been criticised for being 'sign-off departments'. What is your view?***

As a legal team it is important that this criticism is not meted out at you or your team. If there are legal teams where this is the case, then they have probably lost credibility. If all you are is a legal

## INTERVIEW

**GLEN SILVERSTEIN, PARTNER,  
LEADER & BERKON**

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***Are alternative fee arrangements (AFAs) here to stay?***

Alternative fee arrangements (AFAs) and value driven relationships will start to become the norm. However, I don't think any particular type of AFA has really taken hold yet, so the format and structure of these arrangements is still very much undetermined.

Law firms and in-house lawyers frequently say they are using AFAs, but in many instances they are referring to discounted rates. Discounted rates are not really alternative fees and often turn out to be a false saving – it is pointless securing a 10 per cent discount on rates if you are then billed an additional 10 per cent on the hours. Frankly, the alternative fee that best lowers costs is a capped, fixed or flat fee.

***What are the advantages of AFAs?***

The main advantages are predictability, lower costs and better incentives. And this is where I think both law firms and in-house counsel are not going far enough. If the projected budget (based on traditional budgeting measures) for a matter is \$1,000,000, why can't the fee be negotiated down to \$900,000? If a particular law firm does not want the work for that price, there are many other excellent firms that will. The number of firms with profits per partner numbers over one million dollars is staggering. It is hard to believe there is no room for greater compromise on fees.

***What are the main barriers to AFAs?***

The law constantly evolves. Seventy years ago in the US you might not have known

if there was strict liability or not in a particular case. Or you might not have known how a court would rule on a contract or corporate issue. Today we have the answers to many of the most common questions and those cases can now be handled on more of a commodity type basis. Cases outside of these better defined confines occupy what I call the 'unknown zone'. Complex commercial and corporate cases more often sit in this zone where it is more difficult to structure AFAs due to the uncertainty and lack of precedent.

It's also important to note that in-house counsel can sometimes be reluctant to agree to fixed fees. This is driven, at least in part, by concern that they could end up paying more compared to hourly billing. A common case is one where the case is settled or dismissed very quickly. In instances like this, however, it is sensible for both parties to agree to some sort of early resolution fee. This also explains why capped fee proposals may have some benefits over fixed and flat fees. Under a capped fee programme, the client pays the lesser of the amount billed by the hour or an agreed cap.

Ultimately, both law firms and corporate counsel need to take a transactional view about legal services. Whether it takes 18 months or two years to complete a piece of work, or if the work would have been 20 per cent cheaper under the billable hour, this shouldn't matter. A fee needs to be agreed that reflects the true value of the legal services provided and one that works for both parties.

INTERVIEW

**IAN LEEDHAM, SENIOR COUNSEL  
– COMMERCIAL, NATIONAL GRID**

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***Can you outline your career so far at National Grid, and highlight the most challenging aspects of your role?***

I've been with National Grid for about 12 years – but thinking about the changes, mergers and reorganisations it often feels like I have worked for a different company every year! It has always been a fresh and exciting place to work, with lots of challenges and an interesting workload. The company has changed so much that your internal client is constantly reinventing itself and, of course, you're exposed to that change. Reacting and predicting changes is often the hardest part of my role.

***I assume your department must have changed too, within that organisational development?***

There have been a number of reorganisations, so the department structure is vastly different than when I first joined the company. Personally, it has allowed me to develop and progress, but overall the team has reduced with economies of scale, which means we have to be innovative and efficient; furthermore, we have to demonstrate that to the business and our regulators. We have got subject matter specialism in-house but we've had to rethink how we allocate work and become more analytical about how we can add value to the business.

***How has this impacted your relationship with external counsel?***

Ten years ago, few companies had formal panel arrangements, but they are much

more common now. National Grid has always operated a panel structure since I joined, but today it is a smaller panel and our processes and analysis of tenders is far more technical. There has been an increased drive towards encouraging project management and problem solving by our panel firms, which has resulted in better communication.

In terms of pricing, the recession has increased the demand for fixed fees. This is symptomatic of in-house counsel being asked for fixed budgets by the business, so they're pushing the same out onto their law firms. With budgets being squeezed, clients do not want bills they weren't expecting.

***Are fixed fees here to stay?***

Many companies are looking into AFAs in order to reduce cost. As an example, Andrew Garrard [legal director] at ITV operates very well on fixed fees for everything, but that involves setting out a clear scope for pieces of work and then agreeing variations, which is a very good discipline.

Ironically, fixed fees used to be how things were priced. The origin of the hourly fee comes from the US and from people thinking they weren't getting fair billing from lawyers offering fixed fees. It's come full circle and I think the recession has played a part in this. A lot of lawyers still quantify things by time and then associate a cost – changing this perception of the overall value of a transaction is going to be hard.

While every transaction is different there are tasks that you do regularly,



INTERVIEW:

**HUMPHREY M. TOMLINSON, GROUP LEGAL  
DIRECTOR, RSA INSURANCE GROUP  
(FORMERLY ROYAL & SUN ALLIANCE)**

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***Can you outline your career to date?***

I started out in private practice as a corporate lawyer working for international law firm Ashurst. I joined what is now RSA 15 years ago, initially on secondment. I started as legal manager and I am now the group legal director in RSA's Group Corporate Centre, reporting to the group's general counsel.

***What is the size of your legal department?***

We have 70 lawyers across the group and I work within the Group Corporate Centre. The company employs 22,000 people in total.

***What are the typical transactions and legal areas you engage in?***

It's hugely varied. As a large corporation, we cover high-end M&A, bond and share issues, internal capital management and restructurings, reinsurance, major commercial agreements and cross-border procurement contracts, etc. Then there is the plethora of legal compliance and risk-management issues – including anti-bribery and corruption, competition law, data protection, corporate governance, etc.

***What are the key challenges your department faces?***

There are three key challenges that most in-house counsel leaders have to meet head on: managing legal risk and getting the legal aspects of the business properly dealt with; resourcing the function (both internally and externally); and business

engagement (getting proper alignment with the business).

***What risk management systems do you have in place, and do you conduct legal audits?***

We have a number of policies that are adopted by our risk committee at board level. There is also an advisory committee, which I sit on, that looks at what policies need to be implemented and upgrading existing policies. These policies have to be adopted by all of our operations across 32 countries and every local chief executive has to sign off on these quarterly, acknowledging they have been adhered to. If there has been a breach, they need to provide the relevant details so these can be addressed.

We also, of course, have an internal risk function and an internal audit function. We work with the risk function closely in introducing and maintaining policies.

***What is the relationship between your company's corporate risk function and legal department?***

Our risk and legal teams are separate functions within the business, so we have both risk managers and lawyers across our global operations. However, in some of our smaller operations and regions, lawyers may also act as part of the risk function. The legal teams often work very closely with the risk team, and there are several policies that are legal specific.



## GLOBAL LAW DEPARTMENT BENCHMARKS

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The Global Law Department Benchmarks study, conducted by General Counsel Metrics (GCM), presents a new approach to law department performance benchmarks. The metrics are relevant, we believe, not only to general counsel but also to law firm partners.

Benchmark metrics help a general counsel know how well their law departments are managed compared to other law departments.

“Is my spending in line?” “Do I have a typical number of paralegals?” With the most current metrics in hand, in-house managers can respond confidently when the CEO asks, “Do you deliver value?”

An astute general counsel uses benchmarks to argue for more staff, to defend against staff cuts, to get more out of the resources available, and to promote the contributions of the legal team.

### ***New approach***

Let’s consider what GCM’s benchmark survey, a cost-free offering, adds to what other surveys have accomplished and why it provides innovations in benchmark methodology and results.

1. With 1,000-plus respondents, analyses are much more finegrained, reliable, and persuasive.
2. Reports are available in the spring and throughout the year.
3. Graphical display of results for ease of comprehension.
4. Global basis for comparison. Since companies compete in the global marketplace, their legal teams need

to match themselves against industry peers from other countries.

In this report we publish the partial results of GCM’s July 2011 (Release 2.0) benchmark data.

## ABOUT THE PARTICIPANTS

- **Departments:** This study covers 317 law departments from 23 countries (2/3 North America, 1/7 Europe). A full list of participants is available at the end of the Appendix (p108), separated out by 21 industries and by country.
- **Revenue:** One quarter of the participants reported revenue below US\$500 million. One quarter reported revenue greater than US\$5.8 billion. The median revenue was US\$1.5 billion.
- **Spend:** The participants reported US\$8.5 billion in total legal spending in support of US\$3.1 trillion in revenue.
- **Staff:** At the end of 2010, the participants had a total of 8,154 lawyers and

6,783 other legal staff (medians of 8 and 6 respectively). In the smallest “quartile”\* are 94 participants who reported from one to three lawyers. The next “quartile” of 77 participants reported more than three lawyers but fewer than eight. Twenty-two departments have more than 100 lawyers.

The table below shows how many participants are in each industry by four revenue ranges. In the smallest range, 75 participants reported between US\$50 million and US\$490 million in revenue. The next to last column shows 73 participants with more than US\$5.8 billion in revenue.

Industries and revenue range	\$50-490m	\$490m-1.9bn	\$1.9-5.8bn	>\$5.8bn	Totals
Aerospace/Defence	2	0	2	4	8
Business Services	2	3	5	1	11
Construction/Engineering	2	3	1	0	6
Consumer Products	4	6	3	0	13
Energy	4	1	2	5	12
Extractive, Mining, Chemical	0	4	5	5	14
Financial Services	7	6	5	7	25
Food & Beverage	1	2	6	4	13
Healthcare	3	4	4	1	12
Insurance	7	7	2	5	21
Leisure/Entertainment/Media	4	3	0	1	8
Manufacturing	8	13	13	16	50
Medical Devices	3	5	7	6	21
National Lab	0	3	3	1	7
Not for Profit/Gov't	4	3	0	1	8
Pharmaceutical	2	1	0	0	3
Retail	2	1	5	4	12
Technology	10	3	5	3	21
Telecomm	4	0	1	4	9
Transportation	3	2	1	2	8
Utilities	3	2	2	3	10
<b>Grand Total</b>	<b>75</b>	<b>72</b>	<b>72</b>	<b>73</b>	<b>292</b>

\*For an explanation of “approximately one quarter” and “quartiles”, see page 81

## UNDERSTANDING THE METRICS TABLES

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- Metrics Tables: After the first table, which shows data for all the participants in this study, each table thereafter presents median benchmarks for one of five characteristics:

**I. Industry** [Table 1 - for illustration purposes, contains data across four industry sectors],

**II. Country** [Tables 1-2, those with 6 or more participants so far],

**III. Region** [Tables 1-2],

**IV. Revenue**, and

**V. Number of Lawyers.**

- Benchmarks: In each table, the left column lists the 25 fundamental benchmarks. This study does not list them in any particular order of priority or importance other than to pair related metrics.
- Columns: Other than the All-Participants Benchmark Table, each column of a table displays median benchmark metrics. The “N= ” at the top tells how many law departments are included in that column. The charts that start after the last Table give quartiles, averages, and trimmed means for the All-Participant group.
- Special “Quartiles” for Revenue and Number of Lawyers: To calculate medians for Revenue and Number of Lawyers, we divided the participants into four groups as equal in size as possible. The groups are not precisely equal because we kept together the departments at the highest number in a group. Thus the first “quartile” group for revenue (the companies with the least revenue) has 80 participants because there were some extra with \$300 million which we kept together.

## ALL-PARTICIPANTS BENCHMARK TABLE\*

Benchmarks for Companies N=317	25% Quartile N=317	Median N=317	Mean N=317	Trimmed Mean N=317	75% Quartile
Total Legal Spending % of Revenue	0.22%	0.41%	1.01%	0.67%	0.86%
Revenue \$ per Total Legal Spending	\$117.17	\$247.40	\$430.43	\$359.32	\$455.36
Lawyers per \$B Revenue	2.50	5.52	26.20	10.39	13.27
Legal Staff per \$B Revenue	4.48	9.82	77.09	19.00	22.80
Lawyers per Legal Staff	0.46	0.57	0.57	0.57	0.67
Lawyers % of Legal Staff	45.96%	56.76%	57.46%	57.35%	66.67%
Lawyers per Paralegal	1.87	2.82	3.89	3.43	4.50
Lawyers per non-Paralegal	0.58	0.71	0.71	0.72	0.86
Revenue per Lawyer	\$75,357,142	\$181,159,420	\$357,031,004	\$280,440,456	\$400,000,000
Revenue per Legal Staff	\$43,859,022	\$101,773,203	\$209,351,142	\$152,423,322	\$222,969,444
Internal Spending per Lawyer	\$208,365	\$300,000	\$511,710	\$332,127	\$450,000
Internal Spending per Legal Staff	\$113,772	\$166,666	\$270,621	\$179,321	\$233,016
External Spending per Lawyer	\$183,708	\$440,000	\$781,609	\$615,210	\$897,678
External Spending per Legal Staff	\$100,000	\$223,083	\$446,683	\$331,383	\$460,606
Total Legal Spending per Lawyer	\$435,000	\$794,021	\$1,283,861	\$957,593	\$1,291,666
Total Legal Spending per Legal Staff	\$234,571	\$424,242	\$711,988	\$517,230	\$710,541
Internal Spending % of Total Legal Spending	28.09%	42.96%	45.70%	45.43%	60.87%
Internal to External Spending Ratio	28/72	43/57	46/54	45/55	61/39
Internal Spending % of Revenue	0.08%	0.17%	0.43%	0.27%	0.33%
Revenue \$ per Internal Spending	\$300.00	\$607.69	\$1,159	\$937.38	\$1,250
External Spending % of Revenue	0.11%	0.23%	0.59%	0.39%	0.45%
Revenue \$ per External Spending	\$222.22	\$458.40	\$1,343	\$947.09	\$932.20
External Spending % of Total Legal Spending	40.00%	57.14%	55.14%	55.36%	72.37%
Cost per Lawyer Hour	\$115.76	\$166.67	\$284.28	\$184.52	\$250.00
Cost per Legal Staff Hour	\$66.92	\$98.04	\$159.19	\$105.48	\$137.07

\*For an explanation of each benchmark, please see the see first page of Appendix (p108). For definitions of the quartile and terms at the top of the columns, see page opposite.

## APPENDIX 1 - QUESTIONNAIRE

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**NAME:**

**OFFICE:**

**RESPONSIBILITIES (briefly describe your main areas of responsibility in relation to legal services):**

### Section A

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Processes for instructing lawyers – covering how decisions are made to obtain legal advice and on who to instruct

1. To what extent do you contact the in-house legal department when or after a legal issue arises?
2. On a case-by-case basis, who decides whether a matter requires legal advice?
3. Do you observe any guidelines or look to see if similar advice has been obtained in the past in deciding whether a matter needs legal advice?
4. How is a decision made as to the most suitable solicitor to instruct?
5. Do you issue instructions by email, telephone or letter?
6. Who drafts an initial instruction and to what extent does that person consult around the business about its content?
7. What internal record is kept of each new instruction and is information about it communicated to the in-house legal department?
8. Are internal records of instructions updated with information about progress, advice given and fees charged?

### Section B

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Terms and conditions of business – what, if any, contracts or policies are in place that govern relations with external law firms

1. Please provide copies of any law firm engagement letters or terms and conditions of business you have been supplied with or use in your dealings with lawyers
2. Are there any informal practises or procedures you follow when working with law firms?
3. Have you ever been in dispute with a law firm or raised queries about fees and, if so, how were the issues resolved?

### Section C

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Negotiation strategy – how legal fees are negotiated and agreed

1. To what extent do you ask for and subsequently receive fee estimate information at the