A close-up photograph of several ants on a green background. One ant is on a thin, light-colored stem on the left. A large group of ants is clustered in the center, and another ant is on a dark stem on the right. The background is a solid, vibrant green.

# EY General Counsel Barometer 2017

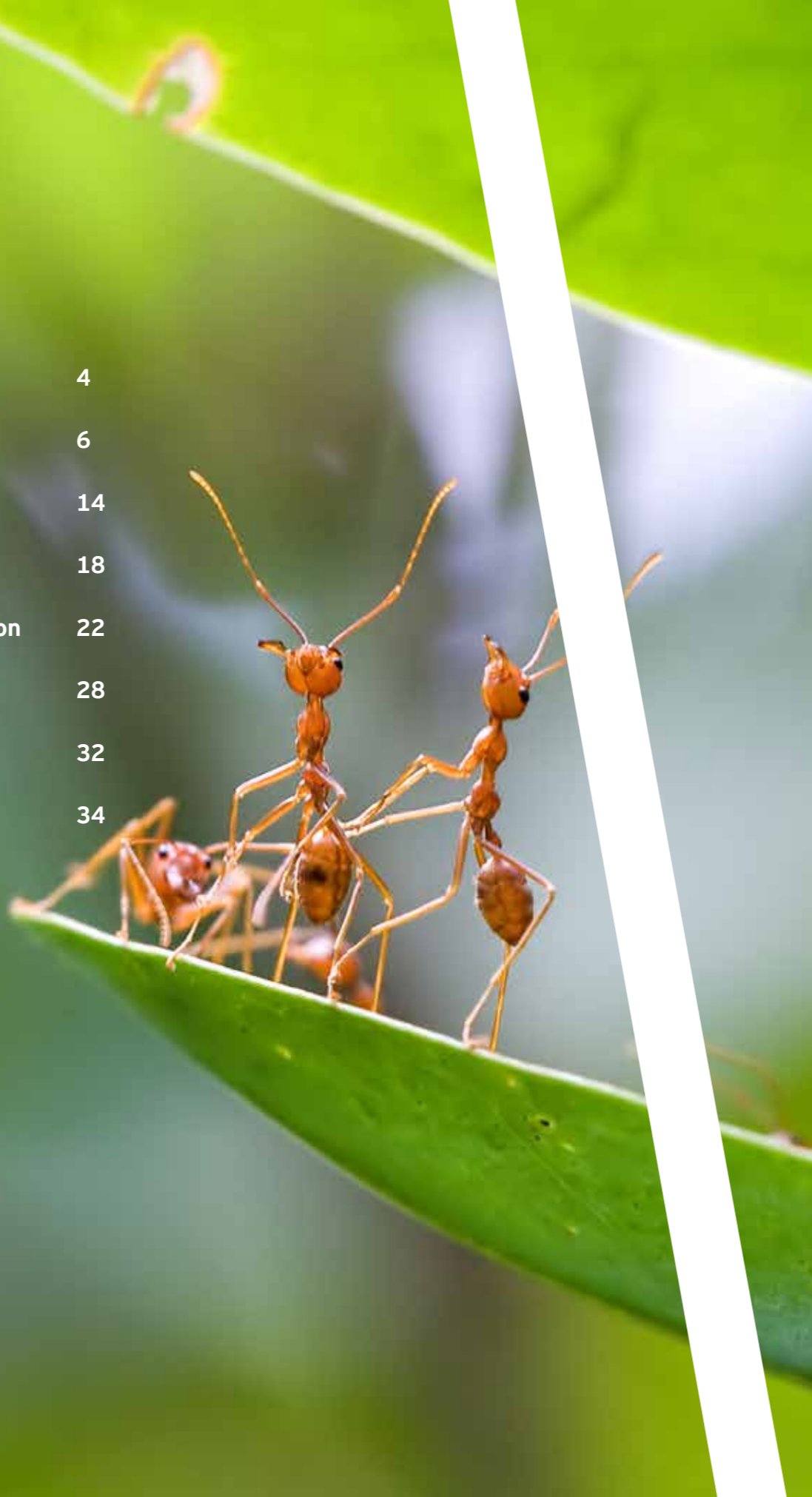
In-house counsel's response  
to the digital age

**EY**

Building a better  
working world

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## Editorial

Switzerland is widely respected for its cultural tradition of caution, and the country's legal professionals are no exception. Where does this leave them in today's world, where technological trends like big data, the cloud and blockchain are colliding to create synergies that revolutionize and disrupt the way we all work?

Efforts by the government and business organizations to position Switzerland as a pioneer of digital transformation have so far focused on typically more innovative sectors. That doesn't mean, however, that in-house legal counsel and law firms are not affected.

Despite a growing market for digital solutions in legal services, from artificial intelligence to automation, lawyers in Switzerland are often unaware that highly effective and reliable tools are already available. Sophisticated software, powerful computation models and user-friendly visualization dashboards can transform and vastly accelerate time-consuming detail work in a variety of areas of application, from contract management to due diligence.

Legal functions are already anticipating changes in the way machines and humans will work together in the future. It sounds like good news for budget planners: algorithms work behind the scenes to turn masses of data into meaningful patterns in a fraction of the time - and at a much lower cost -

than it would take a paralegal or junior lawyer. But what does this trend mean for the profession as a whole?

Although the most highly qualified and specialized professionals are far less likely to be ousted by artificial intelligence than younger and less qualified colleagues, they may have to contend with even higher caseloads as expectations on speed, accuracy and output change. As the job profiles of legal workers evolve, the focus is likely to shift to skill in using new tools and excellence in performing the tasks that technology is - currently - unable to assume. This development raises a number of issues that legal practitioners - and potentially legislators - will have to address: Who is liable for legal services rendered partially or even completely by software? How will workplace rules and codes of conduct be affected?

EY's General Counsel Barometer, the first survey of its kind in Switzerland, is designed to assess and track developments in the legal domain. We explore how the legal profession is responding to digital trends and regulatory change and what this means for the future of legal work.

We hope you enjoy reading our insights. If you would like to discuss how any of our findings relate to your organization specifically, please get in touch with us.<sup>1</sup>



Oliver Blum  
Partner  
Head of Legal Services  
Zurich, Switzerland



Dr. Maja Krapf  
Partner  
Legal Services  
Zurich, Switzerland

<sup>1</sup> See contact details on page 34

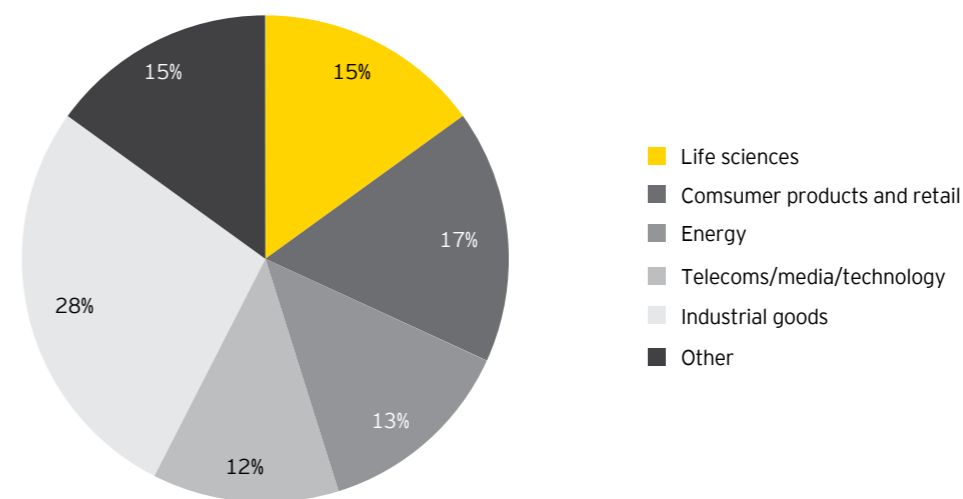




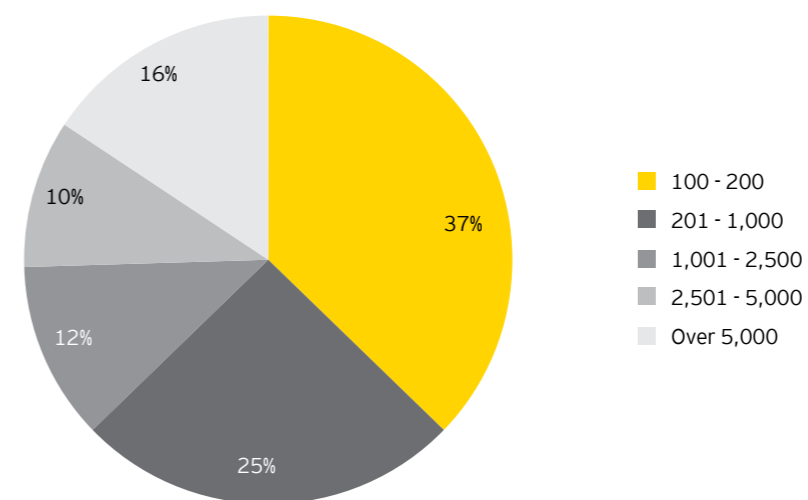
## Study scope and methodology

This report presents the results of a survey conducted by GfK Switzerland in the period from May through June 2017. The survey sample comprises 102 legal counsel executives in Switzerland across multiple sectors, including: life sciences; consumer products and retail; energy; telecommunications, media and technology; industrial goods.

### Sectors



### Number of employees

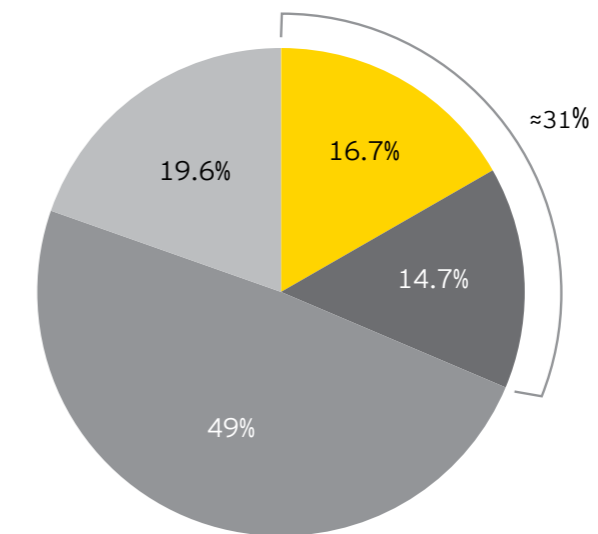


# 1 Study design



## Major impact of digitization on legal work

What impact is the digitization of legal work (e.g., digital contract management, automatic creation of documents, use of AI to analyze documents) having on work in your legal department?



■ Major impact
 ■ Relatively major impact
 ■ Minor impact
 ■ No impact

Roughly one-third of legal departments surveyed report that digitization is already having a major to relatively major impact on their work. Although that is a significant share of the population sample, in-house counsel may still be underestimating the impact of digitization. In fact, major law firms or the legal service lines of the Big Four professional services firms<sup>2</sup> already make extensive use of a

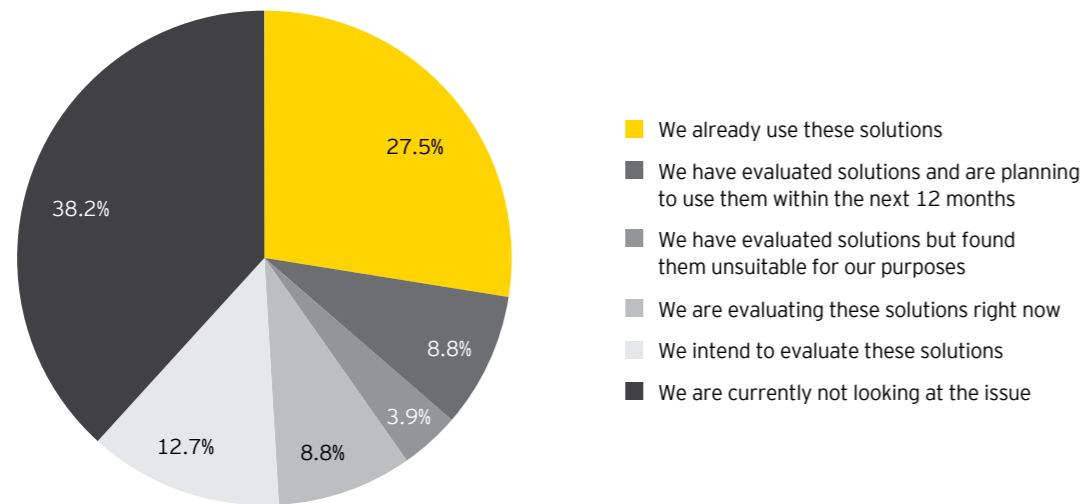
variety of digital tools, in particular document automation. In any event, given the pace of developments in digital technologies - from automation to advanced analytics to artificial intelligence - we expect a significant increase in the share of respondents seeing a big impact from digitization over the coming years.

<sup>2</sup>EY, KPMG, PWC, Deloitte

# 2. Digitization

### Digital tools still a rare sight in legal departments

Are you already using digital solutions or planning to do so?

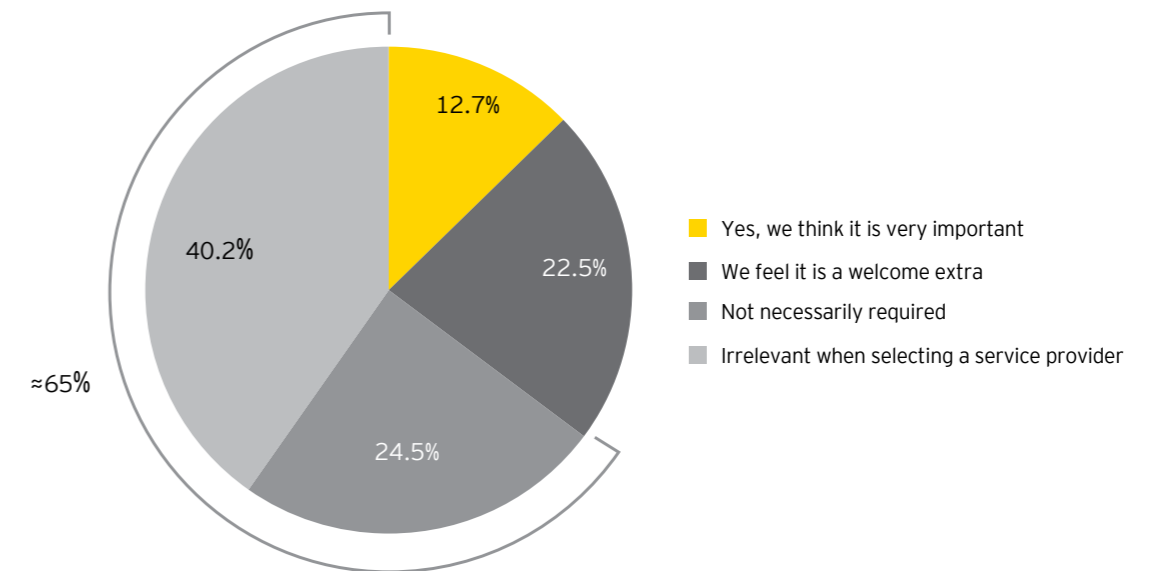


Despite the ever-increasing impact of digital technologies in more and more organizations, only about one-quarter of the legal departments surveyed are already using digital tools themselves. This confirms the common wisdom that lawyers are notoriously slow in picking up new technologies.

Looking at the other end of the scale, however, only 38% of in-house counsels consider the topic irrelevant at present. The remainder are either in the process of evaluating potential solutions or intend to do so soon.

### Digital tools not yet essential for external collaboration

Do you expect your external legal service providers to use or offer these digital services?



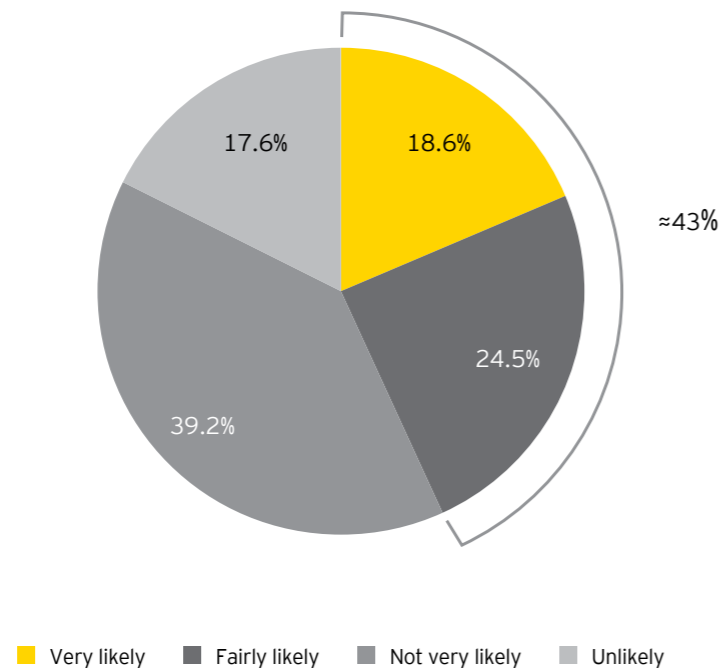
About two-thirds of legal departments still consider it irrelevant or at least not absolutely necessary for their external legal service providers to use digital solutions. Indeed, only 13% consider their use important at present. This may partly be attributable to a lack of awareness of the digital tools already available today specifically for legal work (see above).

However, as digital tools become more sophisticated and the benefits self-evident,

their use will increasingly become a key factor determining the nature of collaboration arrangements and the choice of external service providers. Even if in-house counsel do not explicitly insist on their legal service providers using specific digital solutions, in practice, the latter will still be forced to stay abreast of developments in technology if they intend to stay competitive, both in terms of pricing and service level.

### Human labor under pressure from software

Do you think it is likely that human work in legal services will be replaced by software solutions to a significant extent in the next few years?



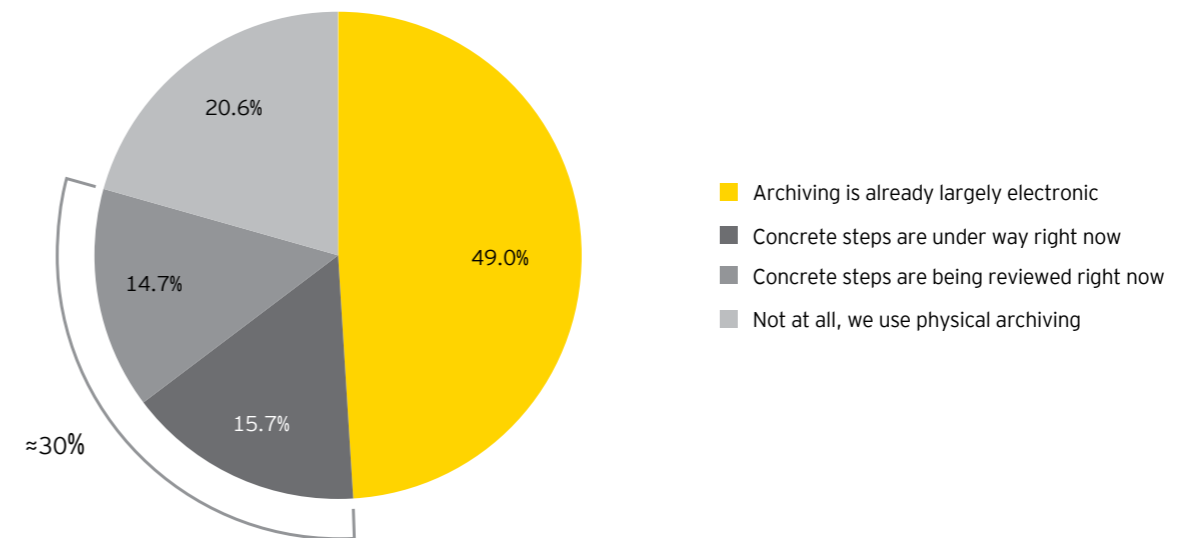
Almost half of in-house legal services departments (43%) think it likely that software solutions will replace people to a significant extent in the legal advice sector in the coming years.

It remains to be seen to what extent and at what speed automation and other technology advances trigger job losses affecting highly qualified legal practitioners. In contrast, the kind of routine tasks currently delegated to junior lawyers, paralegals or non-legal staff are inevitably

going to see extensive automation, leading to substantial job losses in the near term. In future, established lawyers will likely be more specialized and have more time for their clients - or bigger caseloads. But what are the career prospects for aspiring young lawyers starting out at a law firm or in-house legal department in the new digital environment?

### Electronic archiving on the rise

In principle, Swiss law permits electronic archives. Does your company use this option?



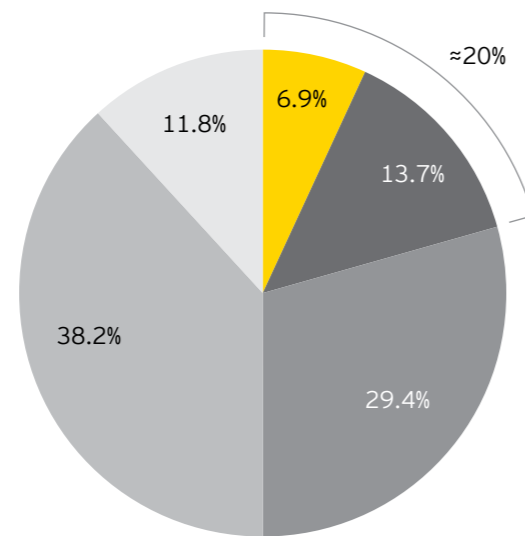
Almost half of the companies surveyed already make use of electronic archiving options to a large extent. A further 30% of companies in our sample are in the process of introducing an electronic archive or are at least assessing the possibility.

In view of the cost benefits and convenience offered by electronic archiving solutions, this

trend can be expected to continue. Moreover, as digital solutions for the legal market advance, the move toward electronic archiving will accelerate given that the digitized information they hold is a valuable resource for an array of advanced functionalities (e.g., search-and-retrieval, qualitative analysis, pattern recognition).

### Relevance of blockchain currently marginal ...

Is blockchain relevant for your work (e.g., for payments, processing contracts)?



Very relevant Fairly relevant Not particularly relevant Irrelevant Do not know

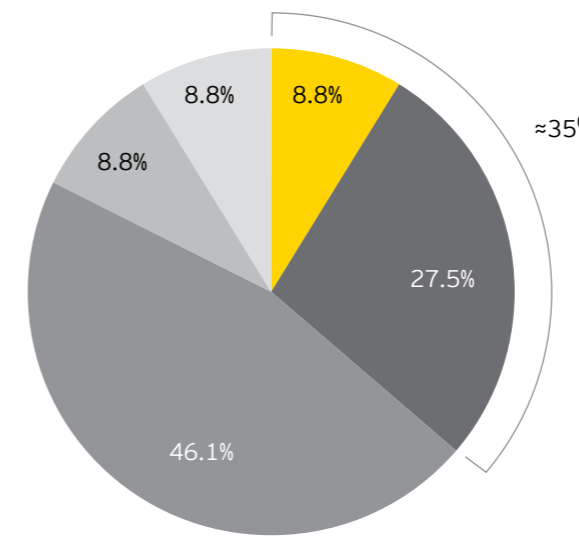
Half of survey respondents state that blockchain technology is irrelevant for their work at present, although 20% already consider the topic relevant or even very relevant. Interestingly, the share of respondents who view blockchain technology as relevant to very relevant is much higher in French-speaking Switzerland and Ticino, at 30%.

An analysis of respondents by organizational size also reveals some differences: unsurprisingly,

larger companies tend to award more importance to the topic compared with smaller organizations. This reflects the efficiency gains they stand to capture and the fact that they tend to be part of more complex economic networks (both intragroup and externally), where familiarity with blockchain solutions may soon become a necessity.

### ... but expected to rise once legal issues are resolved

Do you believe blockchain technologies (e.g., to automate processing of contracts) will become relevant for your work within the next five years?



Will become very relevant  
 Will become fairly relevant  
 Will not become particularly relevant  
 Will remain irrelevant  
 Do not know

A cautious 35% of survey respondents anticipate a growing relevance of blockchain technologies for their work in the coming years. This somewhat muted result may come as a surprise considering the ubiquity of the topic. Nevertheless, given that many legal questions surrounding blockchain

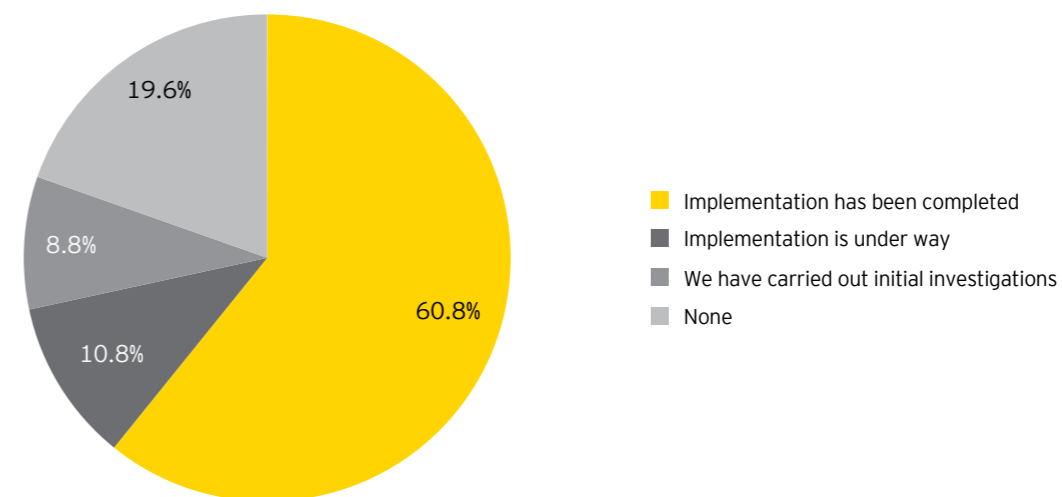
solutions (from liability issues to the fundamental admissibility of crypto-currencies) still await conclusive answers, lawyers' current conservative stance is understandable.





### Potential gaps in compliance with new labor law

*The rules governing recording of working hours changed recently. What steps has your company taken to implement the new requirements?*



Of the sample of companies surveyed, over 60% have already implemented the new legal requirements governing the recording of working hours in the opinion of their respective legal departments. At the same time, 20% have not taken any action in response.

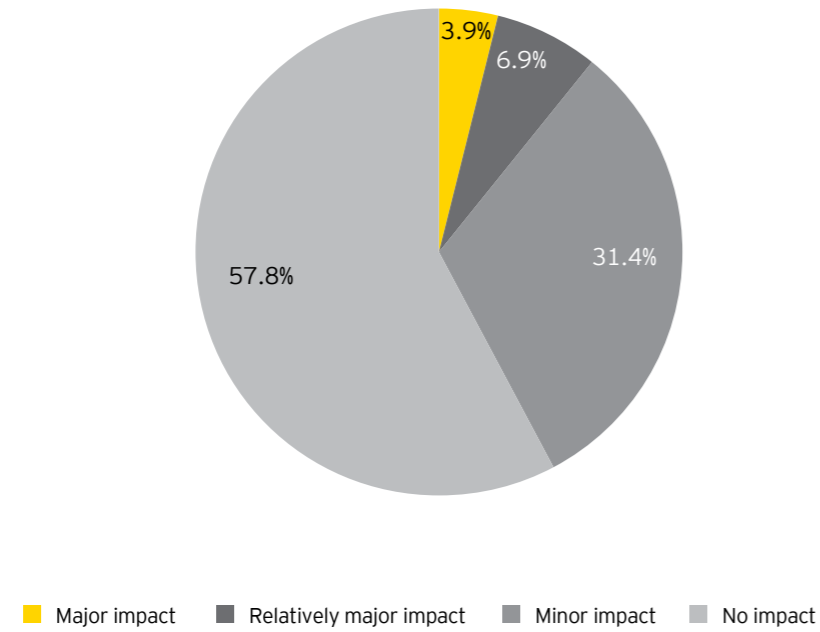
In view of the far-reaching implications of the recent amendments to labor law for most organizations and the fact that in some respects the new regulations are simply incompatible with today's work reality, it seems surprising that such a large share of in-house legal departments appear to assume that their internal practice already complies with the new requirements.

# 3. Labor law



### Little impact from bots and AI so far

*Has the introduction of bots or artificial intelligence in your company had any legally relevant impact on the working conditions of your employees (e.g., changes to job descriptions, data protection)?*



The use of bots or artificial intelligence has had no impact on working conditions from a legal perspective according to the legal departments of almost 60% of surveyed companies.

However, as solutions driven by bots and artificial intelligence gain traction in different industries, they will inevitably have implications for a range

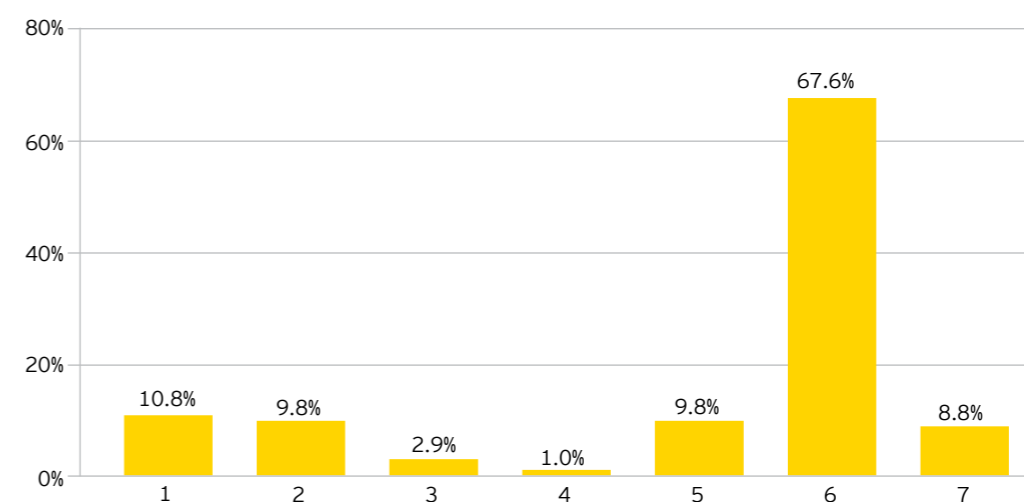
of topics in the ambit of labor law, not least data protection or the adjustment of job profiles. And the workplace of the (not so distant) future in which robots, AI solutions and humans will work side by side - and not necessarily with humans in the supervisory role - will certainly pose new fundamental challenges, especially for labor lawyers.





### Even small companies poised to move abroad

The legal environment for Swiss companies has seen significant changes in the wake of recent political decisions (the Minder initiative, the mass immigration initiative, uncertainty due to the rejection of Corporate Tax Reform III, etc.). Does the group your company belongs to have any plans to restructure as a result?



- 1 Companies will be relocated abroad from Switzerland
- 2 Functions (e.g., treasury) or assets (e.g., intellectual property rights) will be transferred abroad from Switzerland
- 3 Functions (e.g., treasury) or assets (e.g., intellectual property rights) will be transferred to Switzerland from abroad
- 4 Companies will be relocated to Switzerland from abroad
- 5 Other
- 6 No
- 7 Do not know

More than two-thirds of the companies surveyed are not allowing the increased volatility in the Swiss economic policy arena to influence their organizational structuring plans. That said, over 20% of respondents plan to respond to the increased instability in the economic policy climate by relocating functions or entities abroad.

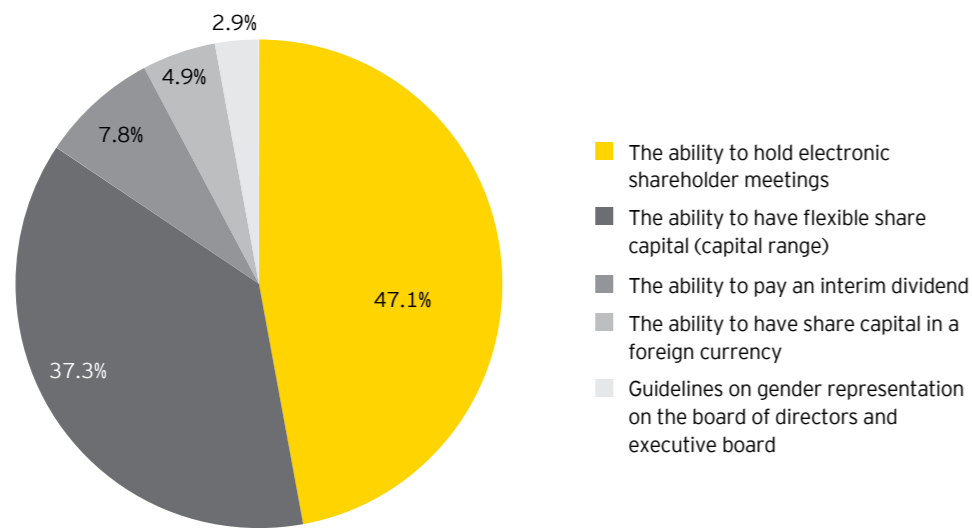
With respect to the organizational size of respondents, it comes as no surprise that many large companies are considering relocation. What is interesting, however, is that 10% of smaller

businesses (with 100 to 200 employees) are likewise considering moving operations and/or assets abroad. It appears that these organizations have sufficient structural agility to move abroad as a reaction to heightened uncertainty in economic policy. This seems to be coupled with an inability, or perhaps an unwillingness, to absorb the negative consequences of the new economic policy climate. In any event, a return to stability and predictability in the economic policy arena would certainly benefit Switzerland's international standing as a business hub and help secure jobs.

# 4 Company law

### Companies keen on electronic shareholder meetings

Parliament has been working for some time on an extensive revision of stock corporation law. Which of the following amendments would you welcome most? (Please select one only.)

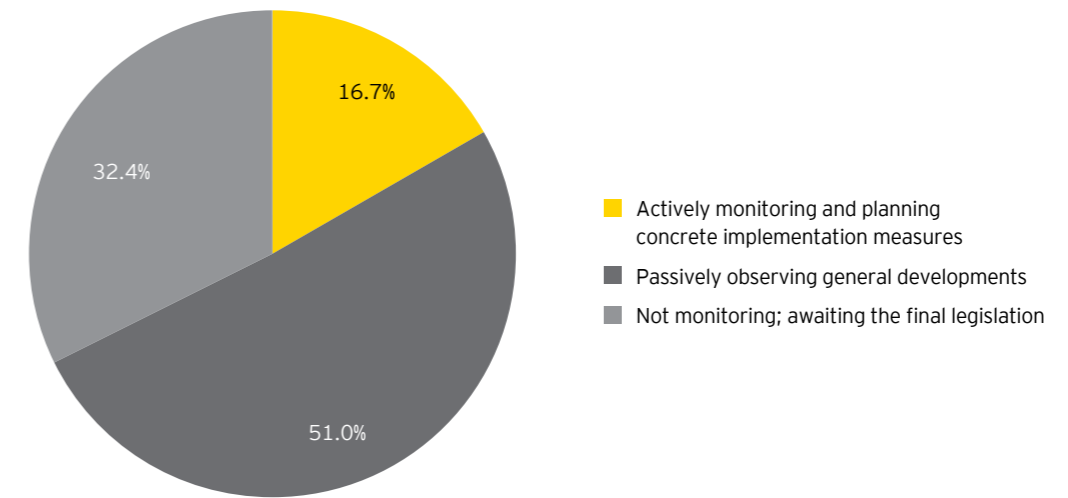


Almost half of respondents would welcome the prospect of electronic shareholder meetings. Flexible share capital is also a popular idea, at 37%. In contrast, the interim dividend (i.e., distributions out of accrued profits of the current fiscal year), a practice especially common in Anglo-American jurisdictions, does not appear to feature high on

the list of priorities. This result possibly reflects the fact that many group entities already effectively draw on advance distributions of profit during the year in the form of loans, which essentially has an equivalent economic outcome. It should be noted, however, that this practice is not without its legal pitfalls.

### Reticent response to reform of stock corporation law

How is your legal department monitoring the development of the stock corporation law reform?



Only 17% of surveyed legal counsel departments are already actively addressing the reform of stock corporation law, while half of the companies in our sample are merely passively observing developments.

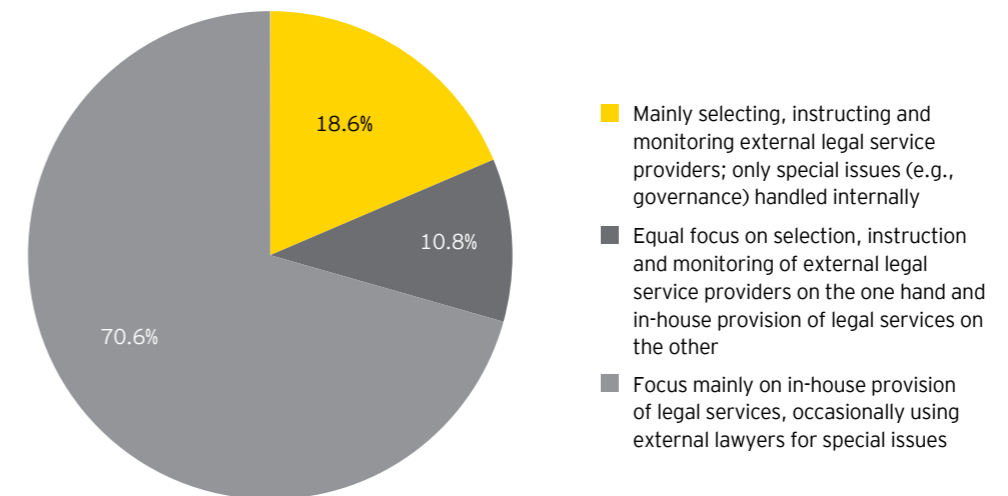
This apparent disinterest probably masks a wait-and-see stance due to the lack of clarity on how the legislative process will ultimately develop in a large number of key points.





### Big workload for small in-house teams

*How do you see and manage your department's role in providing legal services for your company?*



A surprisingly large share of legal departments (over 70%) see themselves as “in-house law firms” that largely render internally the legal services their organizations need. This share is more or less constant across all organizational size categories. Only in the category of smallest companies in our survey (between 100 and 200 employees) do we see substantially fewer in-house counsels rendering internal legal advice services themselves for the most part (55%). In this cluster of companies, over one-third of surveyed legal departments instead see their primary role as procurers of external services.

This is a remarkable result, given that 90% of surveyed respondents reported that their legal

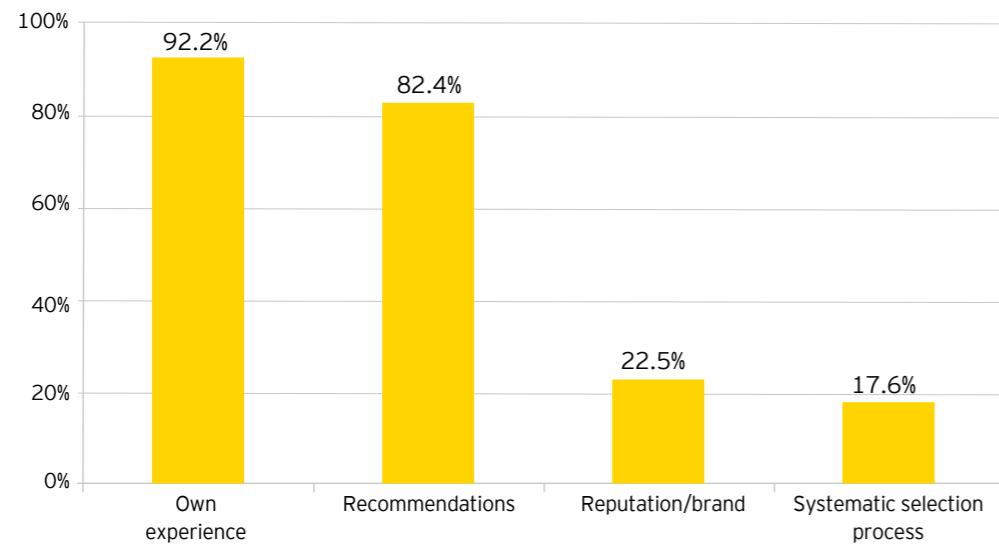
departments only had between one and five employees. Such small legal departments are also common in the biggest companies we surveyed (over 5,000 employees): 63% of respondents. It is difficult to conceive how large organizations in particular can handle the full gamut and sheer volume of legal counsel work internally with such small teams, especially in light of the low uptake of digital solutions so far (see chapter 2. Digitization). The good news may be that Switzerland still has a legislative framework that demands relatively little focus on legal details in day-to-day work. Nevertheless, companies intent on handling all legal tasks internally risk overlooking, or failing to respond early enough, to new developments.

# 5. External collaboration



### Few companies use systematic provider selection process

How do you select external legal service providers?



Well over 90% of survey respondents rely on their experience and 82% on recommendations when choosing external legal service providers. In contrast, only 22% of legal departments consider the brand of external providers to be a relevant criterion for their collaboration decisions (although for large and largest companies this value lies higher at 30%).

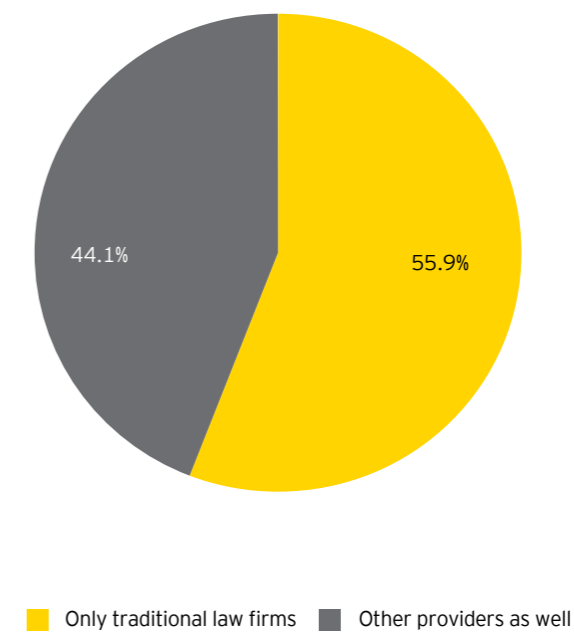
More interestingly, a mere 18% of respondents reported that they evaluated external legal service providers using a systematic (pitch-based) selection process. Granted, this value climbs to 30% in the cluster of companies with over 2,500 employees and still further to 37% if we restrict

our analysis to those companies with over 5,000 employees. However, the value remains strikingly low on balance.

Considering the significance of external legal counsel, both as a cost factor and as a key service, it is surprising that so few companies have a systematic selection process in place designed to optimize both the cost and quality of their procurement activities. It appears that softer factors such as established personal relationships and word-of-mouth referrals continue to be the predominant determinants of the choice of service providers.

### Traditional law firms still preferred providers, but newcomers making compelling case

When you take external legal advice, do you only consider traditional law firms or are other providers (multidisciplinary firms like the Big Four or other providers like Axiom) also a possibility?



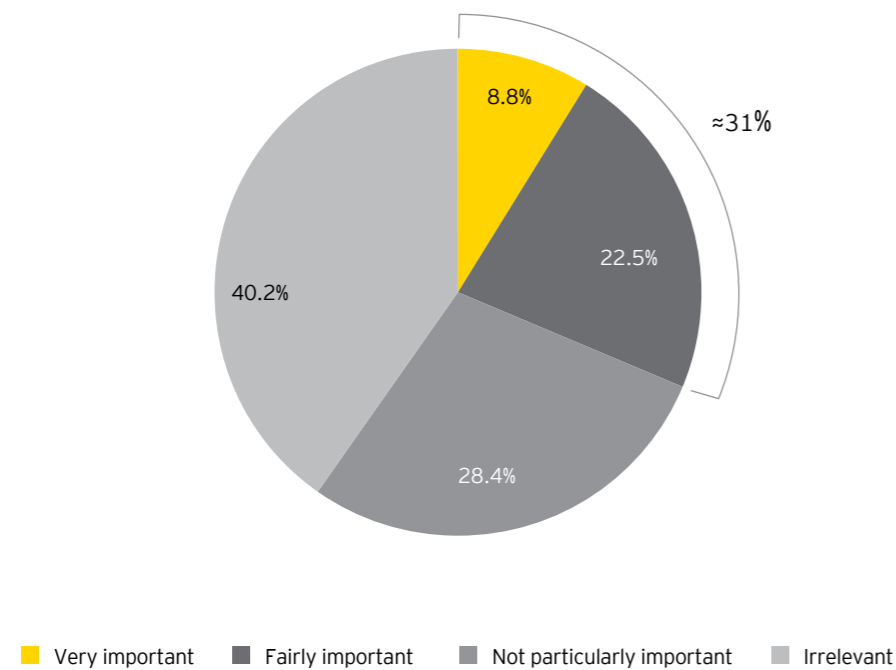
More than half of survey respondents award contracts for external legal services exclusively to traditional law firms. It seems that newcomers still have to convince the in-house community that they can be a valuable (and in some cases a better) alternative to the established law firms.

It will be interesting to see the extent to which the new challengers that have increasingly been entering the Swiss market in the last few years will be able to tip the balance in their favor in future.

While they may still have to overcome reputational issues, their service offerings in certain areas are more flexible and cost-effective. The Big Four in particular have the advantage of being able to offer legal services as a “package” together with services from other professionals. In practice, many companies already purchase legal services from alternative providers, albeit not necessarily through their legal departments, but rather directly through tax, treasury or HR.

### Importance of international legal counsel networks modest, but set to increase

How important is it for an external legal services provider to belong to an international network (e.g., international firms like CMS or Baker McKenzie or the legal service lines of the Big Four)?



Only about 30% of all legal departments view formalized international connections as very or fairly important, whereas 40% consider them irrelevant.

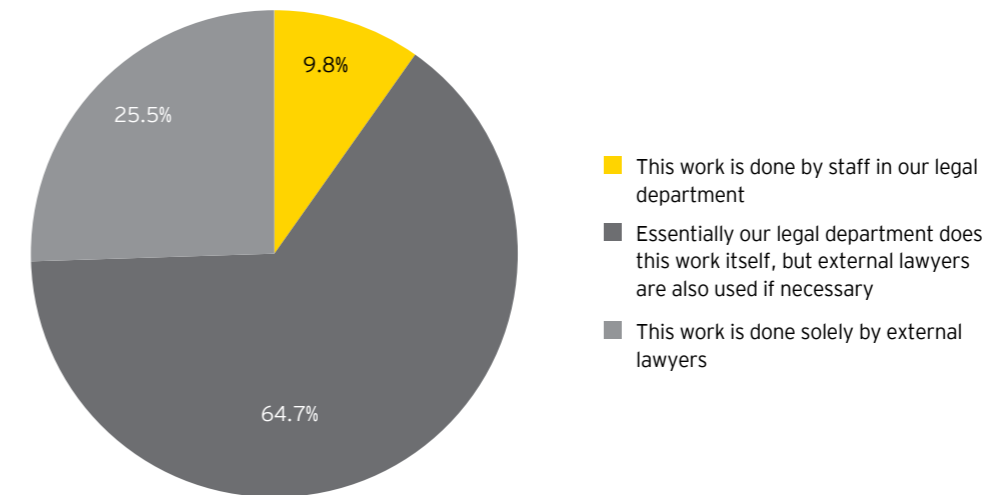
As can be expected, this distribution shifts with increasing organizational size: a not insignificant 55% of general counsels in companies with over 5,000 employees deem international integration an important factor.

In view of the ever-growing complexity of business ties across borders and the heightened volatility

of the economic policy climate around the globe, the importance of legal counsel services capable of addressing multiple jurisdictions will inevitably increase going forward. In capturing this new demand, the Big Four and other alternative legal service providers who have made considerable investments in their international legal networks in recent years will be at an advantage over traditional law firms that so often struggle with formal integration in larger organizations.

### External support sought for M&A

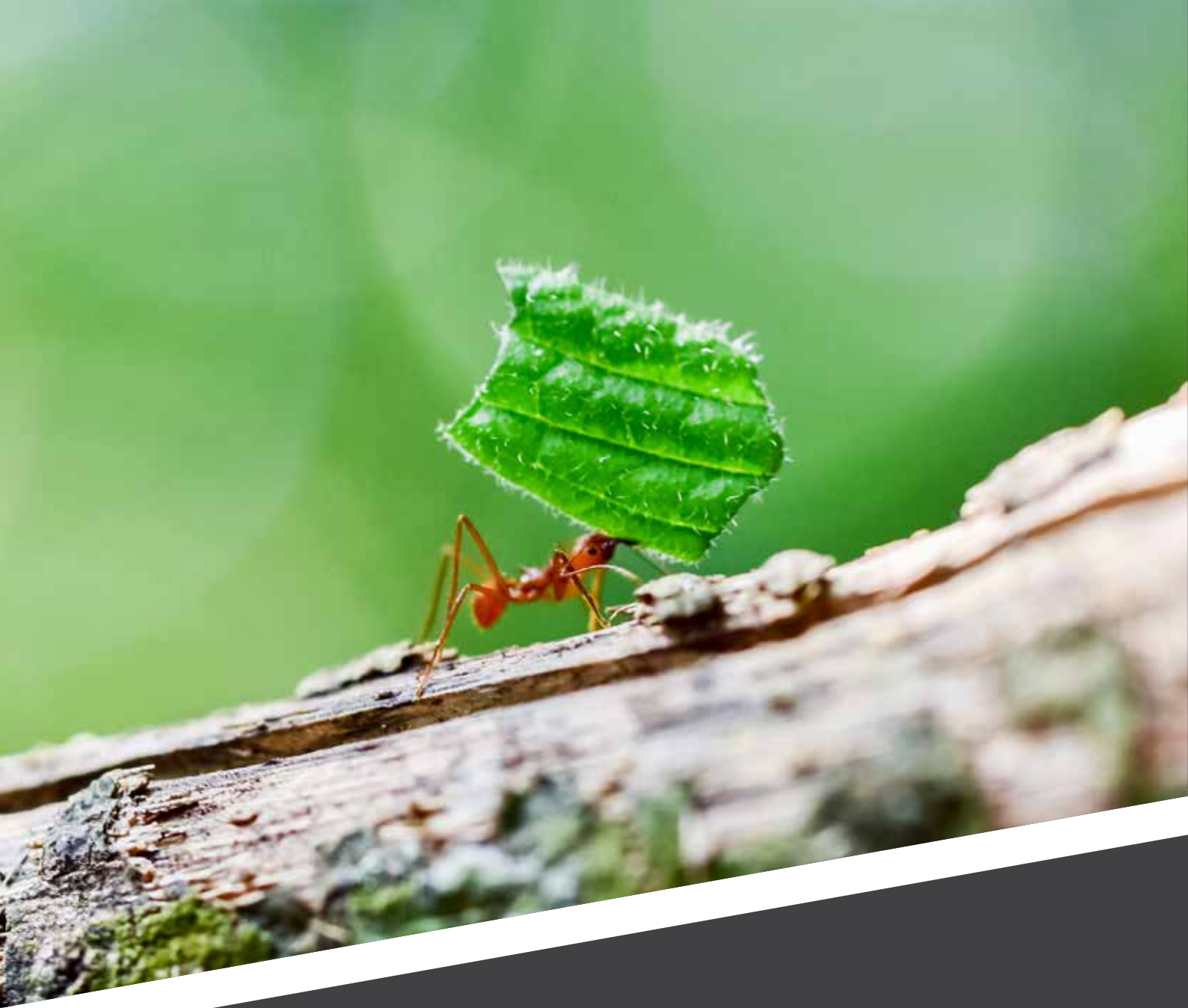
How does your company handle corporate development work, such as growth by acquisition?



Only 10% of respondents handle M&A transactions and similar processes exclusively in-house. Two-thirds do most of the work and additionally engage external lawyers as needed.

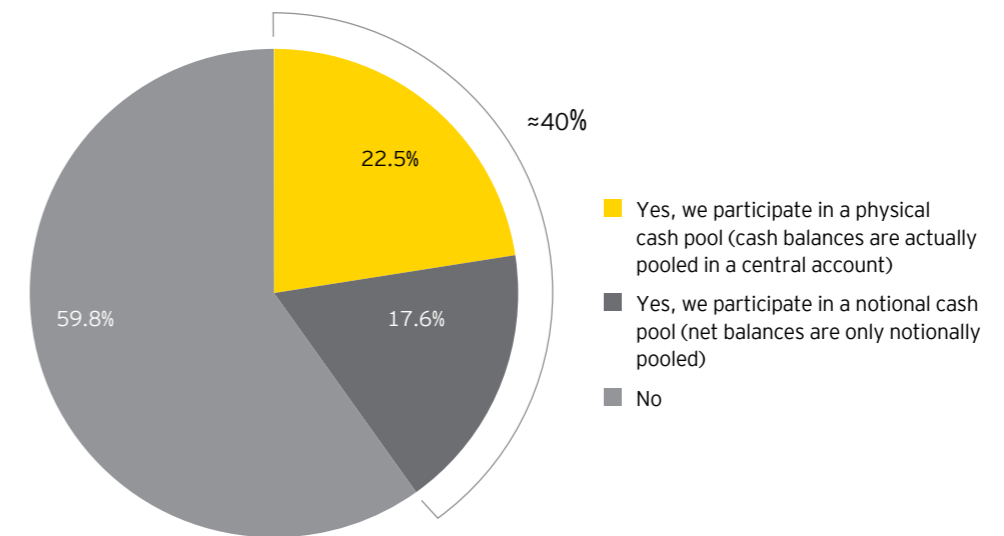
It makes perfect sense to draw on external help to handle non-recurring or irregular tasks that can tie up substantial resources for concentrated

periods of time. This is especially the case for M&A transactions. So would legal departments, particularly those of smaller and medium-sized organizations, not be better off outsourcing even more of the work to specialists at external providers, who would inevitably have more M&A experience than the typical in-house counsel?



### Physical cash pooling more common than notional despite risk

Does your company participate in an intragroup cash pooling system?



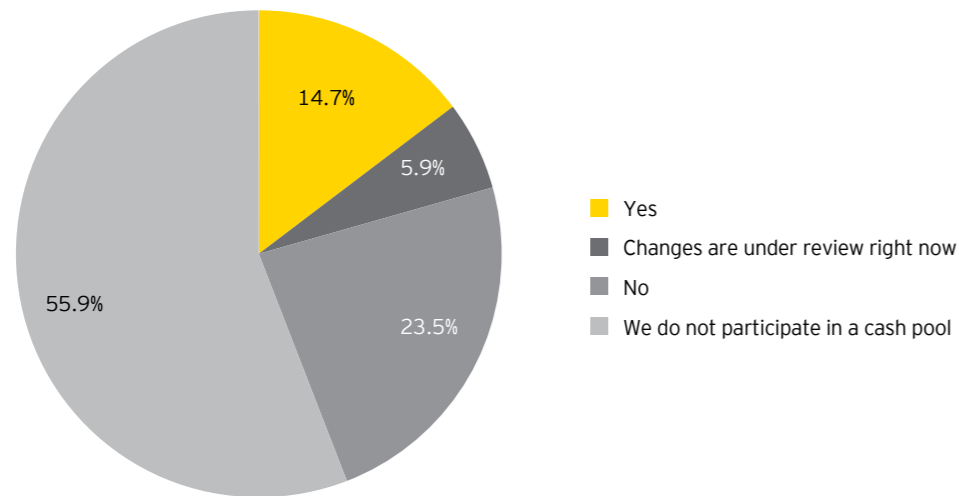
In the sample of companies in our survey, 40% take part in a cash pooling system. Physical cash pooling is more common than notional variants, despite the greater legal risks.

In the case of large (over 2,500 employees) and very large companies (over 5,000 employees) as many as 50% of survey respondents have their cash balances managed centrally.

# 6 Focus topics 2017

### Many organizations are seemingly neglecting Swissport repercussions

*In response to the "Swissport" court rulings (stricter rules for corporate loans at below-market terms), have you made any amendments to the cash pool agreements or the practical handling of the cash pool?*



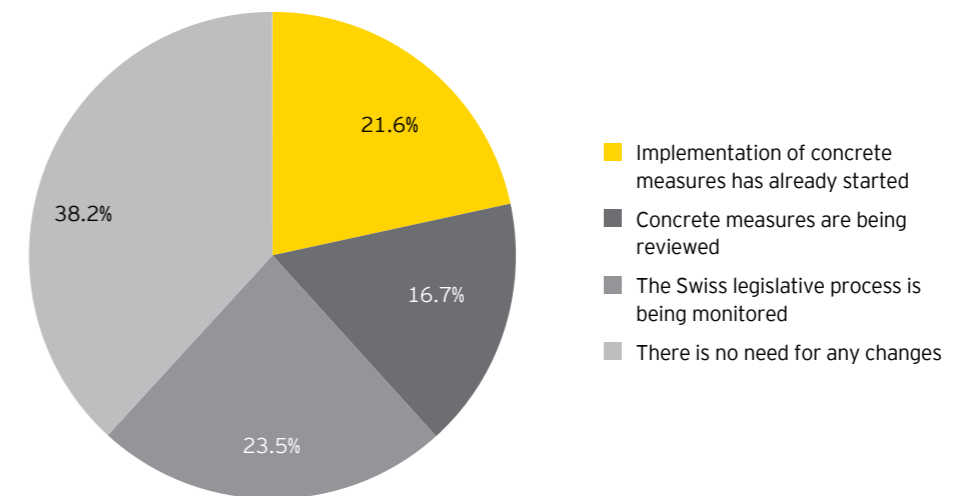
The "Swissport" court rulings of the Zurich Commercial Court and the Federal Court have imposed considerably stricter criteria for the "market conditions test" applicable to intragroup loans, and have made it essentially impracticable to configure physical cash pools in a way that would permit the loans granted under them to pass the market test.

Of those respondents whose organizations operate cash pools, roughly one in two have reacted to the courts' stricter application of the law by modifying their systems, or are at least reviewing whether to make any such changes.

This result raises the question of whether the other half of survey respondents is aware of the fact that, under the new court practice, it is almost impossible to operate physical cash pools that are fully compliant. In addition, urgent amendments are needed for notional cash pools where participants have to reciprocally pledge security to the pool bank for their respective debit balances. Companies would be well advised to scrutinize their cash pools against this backdrop.

### Smaller companies lag behind larger peers in data protection compliance

*The new EU General Data Protection Regulation comes into force in May 2018. Swiss data protection law is currently being revised to reflect the EU rules. Is your company making preparations for this?*



This question provoked the greatest discrepancies in our survey between companies of different sizes. Almost 90% of the largest companies have already begun to implement measures or are reviewing possible measures. In sharp contrast, the value drops to 13% in the case of companies with between 100 and 200 employees. Conversely, more than half of respondents in the latter group see no need for adjustment, whereas only 6% of legal departments of the largest organizations take that stance.

We believe that large companies are justified in taking the impending changes to data protection rules seriously, as the ramifications will be far-reaching. One can only hope that smaller companies will likewise develop a keener sense of the difficulties involved and challenges on the horizon before the new EU and Swiss data protection rules enter into force.



A photograph of an ant carrying a large, green leaf fragment on its back, walking across a mossy surface. The background is a soft, out-of-focus green.

# 7

## ○ Key messages

### Operations

A growing number of big players already make extensive use of *digital tools* for legal work. Even if it is not explicitly expected of them, legal service providers will also have to stay abreast of technology developments to remain competitive. Reciprocal effects between technologies can also be expected: for instance, as digital solutions for the legal market advance, the move toward electronic archiving, as a valuable source of digital information for automated analysis, will accelerate. It is often larger companies that stand to gain the most from new technologies (e.g., blockchain).

### Legal profession

Many in-house legal services departments expect software solutions to increasingly replace *people* in their sector. Although highly qualified and specialized professionals are less likely to be replaced than younger and less qualified colleagues, they may have to contend with even higher caseloads as expectations on speed, accuracy and output change. It may also become more difficult to hire new talent, who might be dissuaded by deteriorating career prospects.

Solutions driven by bots and artificial intelligence will inevitably have implications for labor law (e.g., data protection, job profiles), affecting both the legal profession and the broader economy. As the *job profiles* of legal workers evolve, the focus is likely to shift to skill in using new tools and excellence in performing the tasks that technology is still unable to assume.

### Strategy and organization

An increasing number of companies, large and small, are unable or unwilling to absorb the negative consequences of the prevailing, uncertain economic policy climate, and are considering their *relocation* options. A return to stability and predictability in the economic policy arena would benefit Switzerland's international standing as a business hub and help secure jobs.

Switzerland's business-friendly legislative framework possibly lures legal departments into defining their role too broadly as "*in-house law firms*". Companies intent on handling all legal tasks internally risk overlooking, or failing to respond early enough, to new developments. For instance, many wisely draw on external help to handle non-recurring or irregular tasks that can tie up substantial resources for concentrated periods of time (e.g., M&A transactions). Overall, the results

of our survey indicate that a sizeable number of in-house counsels underestimates the need for action following recent developments in the areas of cash pooling, the recording of working time and data protection.

Organizations that do regularly engage external legal service providers ought to have a *formal selection process* in place in view of the significance of external legal counsel, both as a cost factor and as a key service.

*New service providers* are increasingly entering the Swiss market with value propositions around more flexible and cost-effective service offerings. The Big Four professional services firms, for instance, have the advantage of offering legal services as a "package" together with other services, from tax, to audit, to transaction advisory. In addition, by covering multiple jurisdictions, they are better able to address the ever-growing complexity of business ties across borders and the heightened political volatility worldwide.

### Legislative developments

One in five companies have not taken any action so far in response to the new legal requirements governing the *recording of working hours*. In view of the far-reaching implications for most organizations from the recent amendments to

labor law and the fact that the new rules are often incompatible with today's work reality, in-house legal departments urgently need to review their current internal practice.

Most companies are adopting a wait-and-see approach to the reform of *stock corporation law*, for the time being. Of the proposed amendments, electronic shareholder meetings and flexible share capital are the most popular. Interim dividends, in contrast, are not a priority, possibly because profits are already regularly distributed in advance in the form of loans, despite the legal risks of this practice.

Since the "*Swissport*" court rulings, it is practically impossible to operate physical cash pools that are fully compliant. In addition, urgent amendments are needed for notional cash pools. Companies would be well advised to scrutinize their cash pools against this backdrop.

Large companies are justifiably taking the impending changes to *data protection* rules seriously, as the ramifications will be far-reaching. In contrast, smaller companies appear to be neglecting the topic, and ought to develop a keener sense of the difficulties involved and challenges on the horizon before the new EU and Swiss data protection rules enter into force.





# 8 Contact

**Oliver Blum**  
Partner  
Head of Legal Services  
Zurich, Switzerland  
+41 58 286 45 82  
oliver.blum@ch.ey.com

**Dr. Maja Krapf**  
Partner  
Legal Services  
Zurich, Switzerland  
+41 58 286 43 28  
maja.krapf@ch.ey.com

**Aurélien Muller**  
Partner  
Legal Services  
Geneva, Switzerland  
+41 58 286 57 35  
aurelien.muller@ch.ey.com

**Michael Cadisch**  
Partner  
Head Private Clients  
Zurich, Switzerland  
+41 58 286 33 76  
michael.cadisch@ch.ey.com

**Melven Malgiaritta**  
Senior Consultant  
Data Protection Law  
Zurich, Switzerland  
+41 58 286 36 65  
melven.malgiaritta@ch.ey.com

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