

# ALIXPARTNERS' 2020 LITIGATION AND CORPORATE COMPLIANCE SURVEY

Our annual survey of corporate counsel, legal, and compliance officers at companies based in the US, Europe, and Asia found that data security is top-of-mind, and litigation and compliance risks remain constant.

## AT A GLANCE

- 1 Litigation risks are prevalent, and bet-the-company litigation persists.** One in eight of our respondents was involved in bet-the-company litigation, consistent with the last several years of survey results. In response, 85% of in-house legal departments have increased in size or maintained; 80% have increased or maintained their use of outside counsel.
- 2 Data breaches and cyberattacks are the biggest threat** to the organizations surveyed. Accordingly, data security and information governance is an issue that is top-of-mind for in-house counsel. The one area where technology is not playing a significant role is in how they are combatting litigation risk – approximately 80% of respondents were not using technology or data analytics to do so.
- 3 Political change and economic threats will be disruptive.** Brexit, tariffs, and turmoil in emerging markets were cited by 40% or more of our respondents as factors that will increase litigation globally.
- 4 Financial institutions are considering their transition away from LIBOR.** While 51% of respondents in the financial services industry said their organizations have a task force dedicated toward the LIBOR transition, only 33% say they are fully ready for the phase-out at the end of 2021.

Our 2020 Litigation and Corporate Compliance Survey was conducted before the rise of COVID-19 outside of Asia. While the ramifications of the virus are difficult to quantify at this point in time, we anticipate that this will be a major driver of litigation and disputes. At the time of publication of this survey, it is threatening supply chains, challenging contracts, and changing how companies are doing business.

Despite a softening of the regulatory environment, particularly in the United States, litigation remains strong. Approximately 92% of respondents said the number of commercial disputes they faced over the last year stayed the same or increased, consistent with the past three years.

### WHAT ISSUES ARE LOOMING THAT MAY CAUSE LITIGATION?

- Data breaches/cyberattacks.. **36%**
- Regulation..... **31%**
- Contract disputes..... **29%**

### LIBOR TRANSITION

The London Inter-Bank Offered Rate (LIBOR) benchmark will be phased out by the end of 2021. The value of contracts and derivatives held by financial institutions that reference LIBOR totals over US\$200 trillion.

We asked respondents in the financial services industries how they were preparing. While 51% said they have a LIBOR Transition Task Force, only 33% said they are fully ready for the phase-out.



**1 in 5** have not assessed their exposure

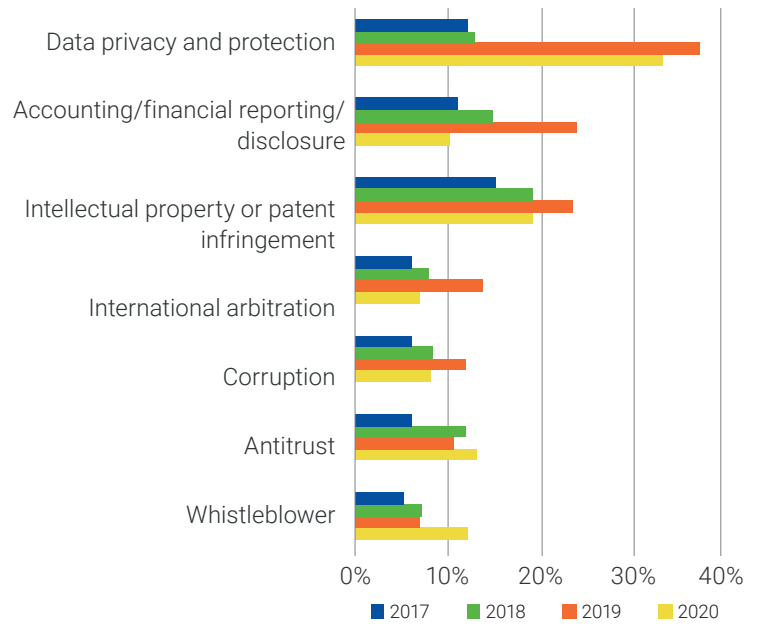


Half of respondents (**52%**) do not know how many of their contracts contain LIBOR-related language

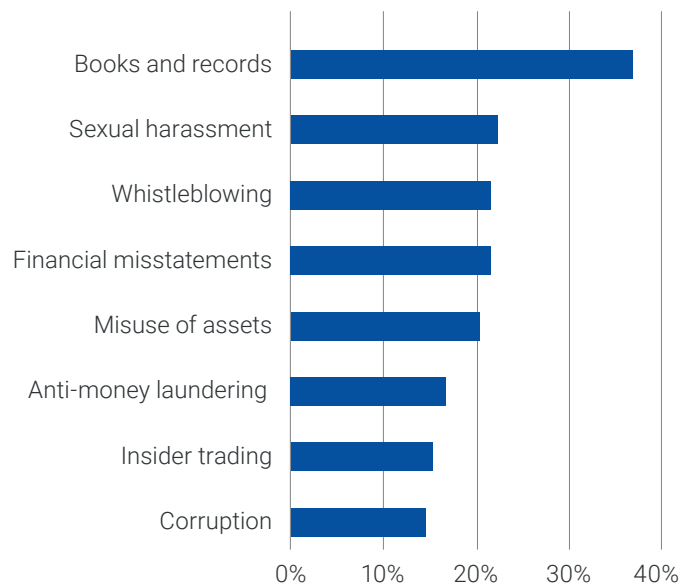


**47%** said the transition affects over five of their organizations' business lines

**FIGURE 1: WHAT TYPES OF LITIGATION HAS YOUR ORGANIZATION BEEN INVOLVED IN THE PAST 12 MONTHS?**

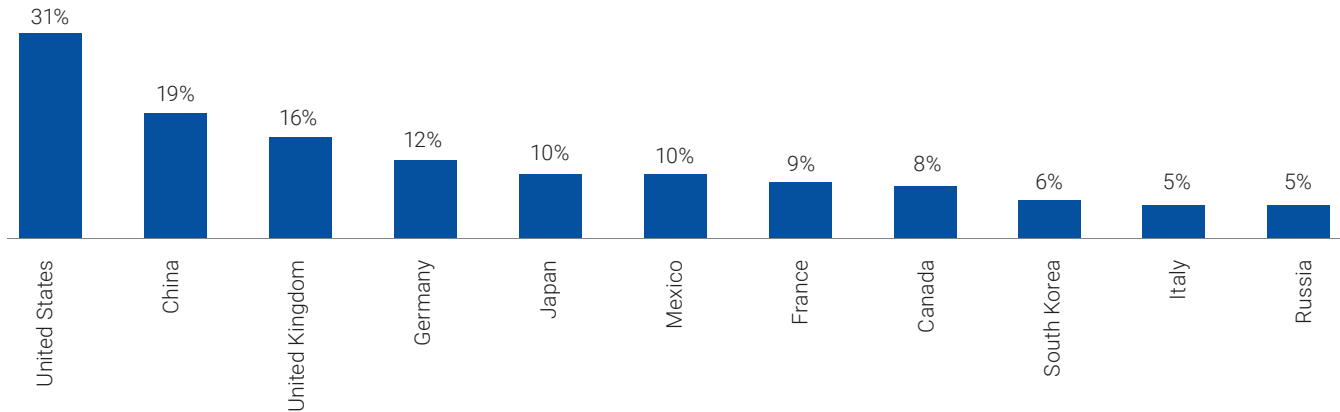


**FIGURE 2: WHAT TYPES OF COMPLIANCE ISSUES DO YOU REGULARLY FACE?**



**FIGURE 3: CROSS-BORDER DATA CHALLENGES**

Where do you expect to see regulatory challenges related to cross-border data issues in 2020?



**CROSS-BORDER**

The cost of doing business globally is often an increase in disputes. Our respondents continue to see cross-border litigation with their overseas business partners. Of our global respondents, 21% saw an increase.



**INTERNATIONAL ARBITRATION**

International arbitration continues to be an effective and favorable means of dispute resolution, and multinational companies should consider provisions for arbitration when they enter into contracts. Additionally, precedent in the international arbitration space continues to grow, resulting in established expectations for results and awards. Our respondents thought that companies in the technology (28%) and financial services (23%) industries would see an uptick.

**INTELLECTUAL PROPERTY/PATENT LITIGATION**

- We asked respondents if they had been involved in a “bet the company” lawsuit in the past year. Of the 13% of respondents who said yes, approximately one-third of those matters (34%) involved intellectual property or patent issues. Additionally, 21% of respondents selected intellectual property as the biggest threat to their organization.
- While most of the respondents did not regularly face IP disputes, those that did faced multiple matters. Eleven percent of respondents were involved in over six IP matters in the past year.
- The top three industries involved IP litigation over the last 12 months were information technology (28%), high technology/telecom (25%), and healthcare/life sciences (22%). These industry choices reflect the trend of data and trade secret disputes.

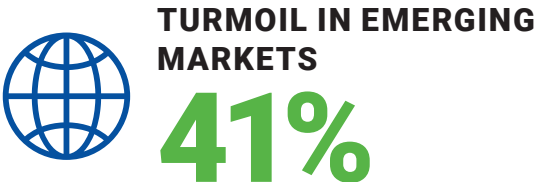
**ANTITRUST**

Nearly one-third (30%) of respondents were involved in at least one antitrust/competition dispute, with six percent involved in more than three. Merger approval (42%) and monopolization/abuse of dominance (38%) represented much of the antitrust/competition disputes over the past 12 months. Collusion cases represented the last 20%.

# LITIGATION AS A RESPONSE TO DISRUPTION?

The top events/trends identified as affecting litigation are no surprise. Data breaches remain top-of-mind as drivers of class action lawsuits. Disruptive technology, while typically designed to make processes more efficient, often causes unforeseen glitches. Brexit and tariffs touch on the unknowns involved in international relations, while turmoil in emerging markets can have residual economic effects.

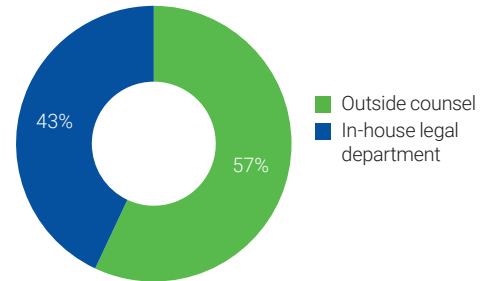
We asked respondents about events that may affect the litigation environment in 2020.



# IN-HOUSE LEGAL DEPARTMENTS

In-house legal departments are ready to confront litigation and compliance challenges. Over the last 12 months, 85% of in-house legal departments have increased or maintained their size; 80% increased or maintained their use of outside counsel.

**FIGURE 4: LITIGATION SPENDING**



## How do in-house counsel select outside counsel?

**89%**

Subject matter expertise

**69%**

Prior relationship

**62%**

Size of firm

**60%**

Global capabilities

**57%**

Responsiveness

**56%**

Rates/fees

**50%**

Professional certifications

## What's top-of-mind for in-house counsel?

**94%**

Data security

**87%**

Information governance

**85%**

Early case assessment

**86%**

Controlling costs

**71%**

Retaining more litigation-related work in-house

**67%**

Global compliance issues

**57%**

Alternative fee arrangements

## REDUCING LITIGATION RISK

We asked respondents how they reduced risks related to litigation.

**1**

Reviewing existing compliance programs and identifying gaps

**2**

Education and training

**3**

Enhancing due diligence procedures

AlixPartners' 2020 Litigation and Corporate Compliance Survey was conducted from February 3, 2020, through February 22, 2020. The survey polled more than 250 corporate counsel, legal, and compliance officers at companies based in the US, UK, Europe and Asia with annual revenues of \$100 million or more.

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