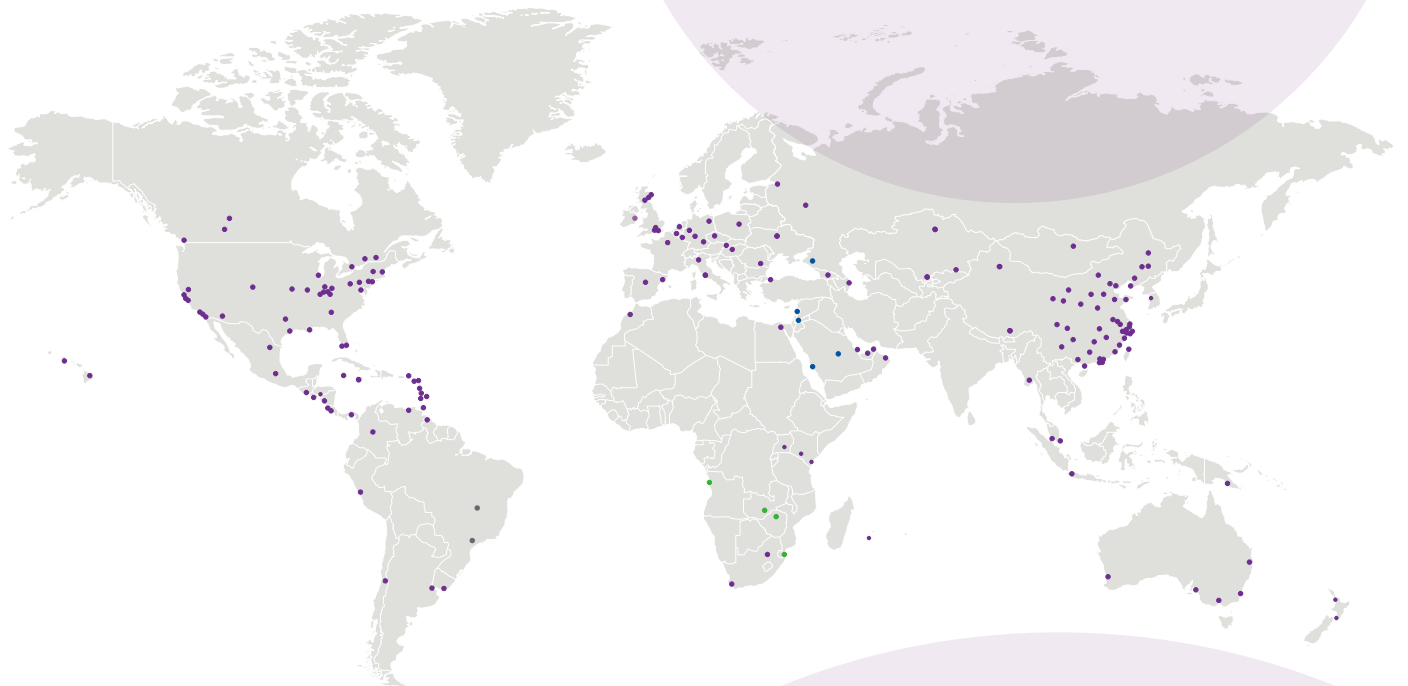# The New Dynamic
# From surviving to thriving

A toolkit for
General Counsel
& in-house legal teams

# Always the law firm of the future



**Locations in purple represent Dentons offices.**
**Office opening in 2020.**
**Locations in blue represent associate firms, offices and special alliances.**
**Locations in green represent proposed combinations that have not yet been formalized.**
**Locations in gray represent Brazil Strategic Alliance.**

This toolkit represents a diverse and inclusive collaboration from experts across Dentons' regions and teams, under the editorial leadership of Judith Prime. The team would also like to thank Catherine Austin and Paul Johnston for their contributions.

# Foreword

## The New Dynamic
### The Global Chairman's Perspective

**Joe Andrew**
Global Chairman

**With nearly 20,000 members of Dentons in 184 offices and 76 countries, one of the many things I have learned as we move through the global pandemic and into the global economic crisis in different ways in different places and different businesses, is that there is not only no going back to normal for anyone anywhere, there is no sense that there will even be a "next new normal" any time soon.**

That is why "New Dynamic" is probably a better term for our future than "New Normal." Rather than a steady state, we are likely going to face constant, accelerating change. While we never know what will happen next, we now know that the challenge of our times is how we adapt to what happens next.

And as our clients and communities adapt to this new dynamic, we want to make sure we are there to support them. This is why we have created this toolkit – to enable ideas, suggestions, new perspectives and the experience of colleagues from across Dentons to be leveraged to benefit you.

We have ourselves quickly pivoted team members to address new priorities and collaborated to provide global client solutions on business-critical issues. We have changed some of our points of focus (and remained robustly committed to others), we have scenario planned, digitalized where we could and obviously, reviewed risks. But as the first female GC of a Fortune 500 company recently said to me – leaders create change, they do not simply react to it. As a leader, I, together with Dentons leaders from

across the word, have also used this time to progress change – not only in our delivery model, locations and offerings but also in the way we are engaging our people on our values. This has been a time to amplify our commitment and commentary on inclusion and diversity; provide practical support to charities and NGOs and feel united as a global team like never before.

I share the above to reflect both the challenge and opportunity the new dynamic presents to both law firms and in-house legal teams, and to remind us all how much we have in common, and that through true collaboration and sharing of ideas, comes lasting success.

Combining the insights of former General Counsel, technology, legal operations, innovation, clients & markets professionals – and yes – practicing lawyers – we have identified six themes that are worthy of being on your radar right now. I sincerely hope you find these insights helpful at this time. And if you have time, I've also included my thoughts on why this time most certainly isn't a new normal!

# Contents

# Toolkit overview
## Ready or not!

Whether you are ready for the new dynamic will depend on how quickly you and your team are able to absorb the changes your organization needs to make and the new risks you need to manage. To add to this, if you have not thought about your team and its needs – or its new dynamic (at least for the next 6 months), you will need to do so and quickly.

Combining the insights of former General Counsel, technology, legal operations, innovation, clients & markets professionals – and yes – practicing lawyers – we have identified six themes that should be on the radar of the legal function of any organization – right now.

### Leading your in-house legal team

In the rush to respond to the challenges being thrown at you, don't forget to take time out to reflect on how to lead effectively during this period of change.

### Scenario planning

Resilience and robust decision making is enhanced through effective scenario planning. Use our insights to determine the scenarios you should focus on and how to assess priorities at this time.

### Quick pivots

Experienced ex-GC insights on the quick pivots you might want to consider making at this time.

### Focus on digital

If COVID-19 is accelerating your organization's digital investment then make sure the legal function is part of that conversation. See our guidance for how to approach and implement a digital strategy at this time.

### Supply chain resilience

Practical insights and strategies that will help you assess your organization's risk and resilience moving forward, with a particular focus on the acceleration of the digital agenda (and subsequent purchasing) at this time.

### Environmental, social & governance (ESG) performance

Managing the legal risk inherent in ESG performance is emerging as an imperative for business integrity in the midst of COVID-19. See our suggestions for how you anticipate, measure and manage your ESG agenda in the new dynamic.
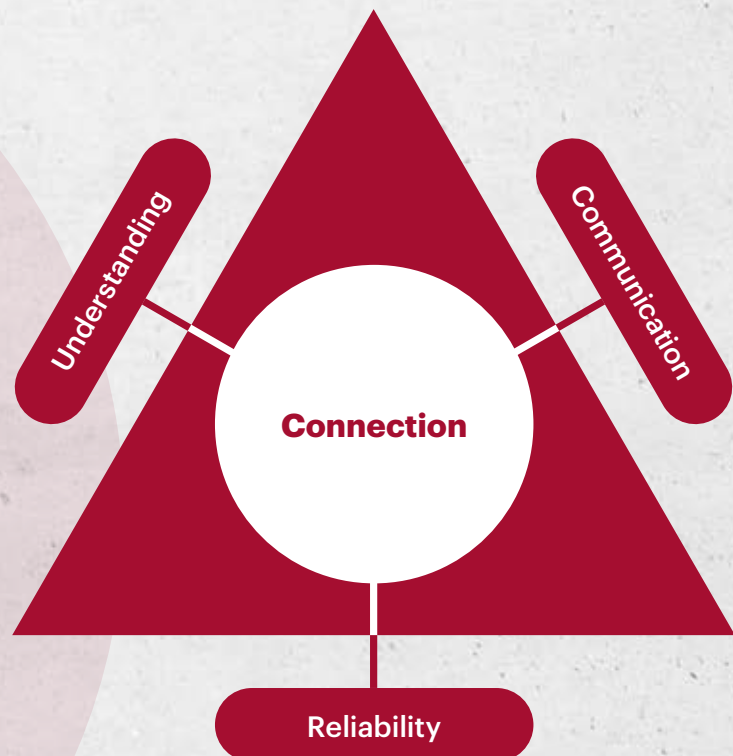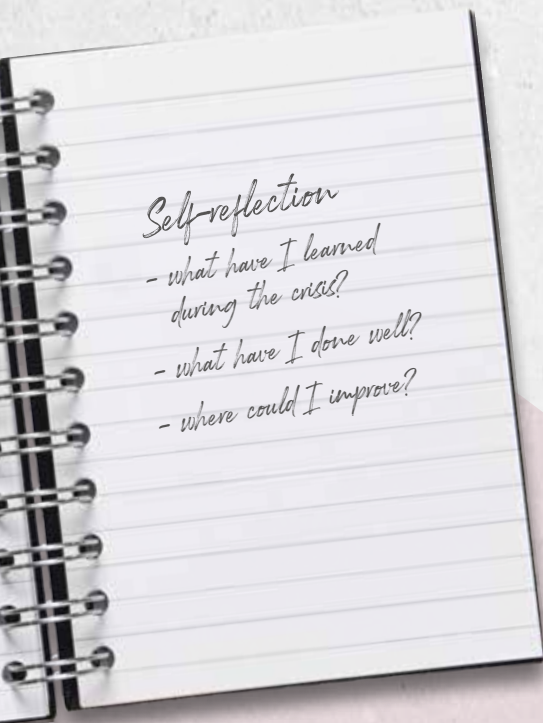
# Leading your in-house legal team

In terms of where to start – why not yourself first? What have you learned about yourself and the team through this crisis? What have you done well – and where could you improve?

**At its core, this is a question of how to lead, and we have identified two key elements: sound judgement and connection.**

People want to follow leaders who have sound judgement and use their experience to make decisions that achieve successful outcomes. However, in these unprecedented times we need more from leaders. Our leaders must connect with their teams to build the followership, support, and importantly the trust needed for strong results.

**Connection has three core elements: understanding; reliability; and communication.**

*Self-reflection*
- what have I learned during the crisis?
- what have I done well?
- where could I improve?

Understanding

Communication

**Connection**

Reliability

## Understanding

Understanding is the ability to really listen, hear what may be unsaid, read the situation, drill down and capture the pulse of those around you. It requires spending time with people, and not just those typically around you as new ideas can come from anyone and anywhere. At this time you cannot easily have informal conversations in the office – so you will need to initiate more calls or Zoom meetings to assess what is going on with you team. While this takes more time, your decision making will be the stronger for it.

**Enhance your understanding through:**

1. Asking open questions, and then continue to ask follow-up questions. It may need three or four questions to really get to some insights.

2. Mapping out who you have spent time with, and then importantly ensure you proactively follow up with those you have not - to build a full understanding, you need input from your entire team.

3. Being present with people - it is obvious when you are not and focusing on the next email, or task is not going to enhance your leadership and build connection and trust.

## Reliability

Once you commit to something, do it. Be present and consistent in how you act; sudden changes in direction are unsettling, and people see what you do not do - you are more visible than you realize. Trust is built by reliability, follow-through and consistency.

**Enhance your reliability by:**

1. Articulating you plan and tracking your progress. Write your goals down and focus on actions so you can share and demonstrate progress.

2. Being visible - even if through your digital presence. Your leadership is needed not just when things are going well; it is especially important when things are not going well. Build a regular cadence of communication.

## Communication

The key is to share your intent - invite people to join you on the journey by communicating your rationale and plan, and not just actions required. You may not have all of the answers, and that is to be expected. Sharing vulnerability and asking others to do the same can be very powerful.

**Enhance your communication by:**

1. Telling the story and sharing your intent - this is far more compelling. It will build support, understanding, and help people re-share with others why the necessary actions are important.

2. Talking about what success will look like; paint that picture in your communication – engage people by spelling out what their roles will be in the future.

3. Your honesty builds trust, and honestly, you are not going to have all the answers all of the time. Say when you don't. You will need plans on next steps, and who to involve. Some uncertainty also demonstrates you are human and may make you more approachable to your team.

We need to consciously take action to build all three of these core connection elements each day. The foundations of connection, and creating trust, takes time and effort to develop.

Navigating out of the current pandemic, including the resulting economic impact and organizational challenges, will require us to build trust with those we lead in new ways.

Our world has changed, so your plans and how you lead, must also adapt. Understand the challenges and opportunities; be consistent and yet open to new ideas, be reliable in your actions; and talk about your intent. Pause and reflect on your approach as you can enhance your leadership impact during this challenging period with conscious, focused steps.

# Executive decision making

You will likely need to make some tough calls at this time. The business is going to ask questions of you that you have not encountered before, and there is no obvious precedent or easy path. And frankly, many of the questions posed will not be strictly legal. Here are some thoughts on robust decision making at this time.

**Understanding**

**1.** As with the connectivity point above – really listening and understanding the organization goal is critical. Addressing Risk early saves precious time with misdirection, opens new doors and prevents Legal from being perceived as "Dr No". Be sure your business stakeholders are asking for your view on a strategy/end goal versus a specific tactic. Try, as much as possible, to be included in strategic discussions from the start. Work out the key meetings that are happening – and ask to be included.

**Collective wisdom**

**2.** Once you have an issue/goal to consider, canvas views of your team: map out how the scenarios might play out and whether there are any quick wins to weave in to new contracts, agreements, discussions with competitors – that might mitigate risk (see the scenario planning section of this toolkit).

**Leverage law firm relationships**

**3.** Use your law firm relationship partners to help you take a consistent strategic approach worldwide. Ask them for input on your operation issues and risks. Client privilege may also be helpful to you when discussing approaches. If a law firm partner really knows your business, then they should have some useful insights and perspectives to share. They should be able to share how other organizations are managing similar issues.

**Sense check with trusted peers**

**4.** Peer perspective. Consider who you can trust in your personal network to give you a useful perspective. Another option is to call upon the 60+ former General Counsel within Dentons. Many of these lawyers have relevant experience and can share insights on approaches and tactics you can use for introducing and executing change within your organization.

**Mentor for the moment**

**5.** Find a mentor for this time. You might not need them for the long-term, but having the support of someone who has ridden out a crisis before (ideally many times over) at your side right now could be very helpful and powerful. Look for someone with crisis experience and who is street-savvy and Board-level smart – how things may look in your organization in a few months' time will be driven by your decisions today. If need be, pay for this perspective. It will be a smart personal investment for your career.

# Scenario planning

The rapid adoption of remote collaboration, agile working and other digital solutions have forced law departments (and their law firms) to re-think long-standing processes and technology infrastructure. As one in-house counsel recently shared, *"Now more than ever, we are going to have to manage doing more with less. Proper information flow and organization of work is going to be extremely important."*
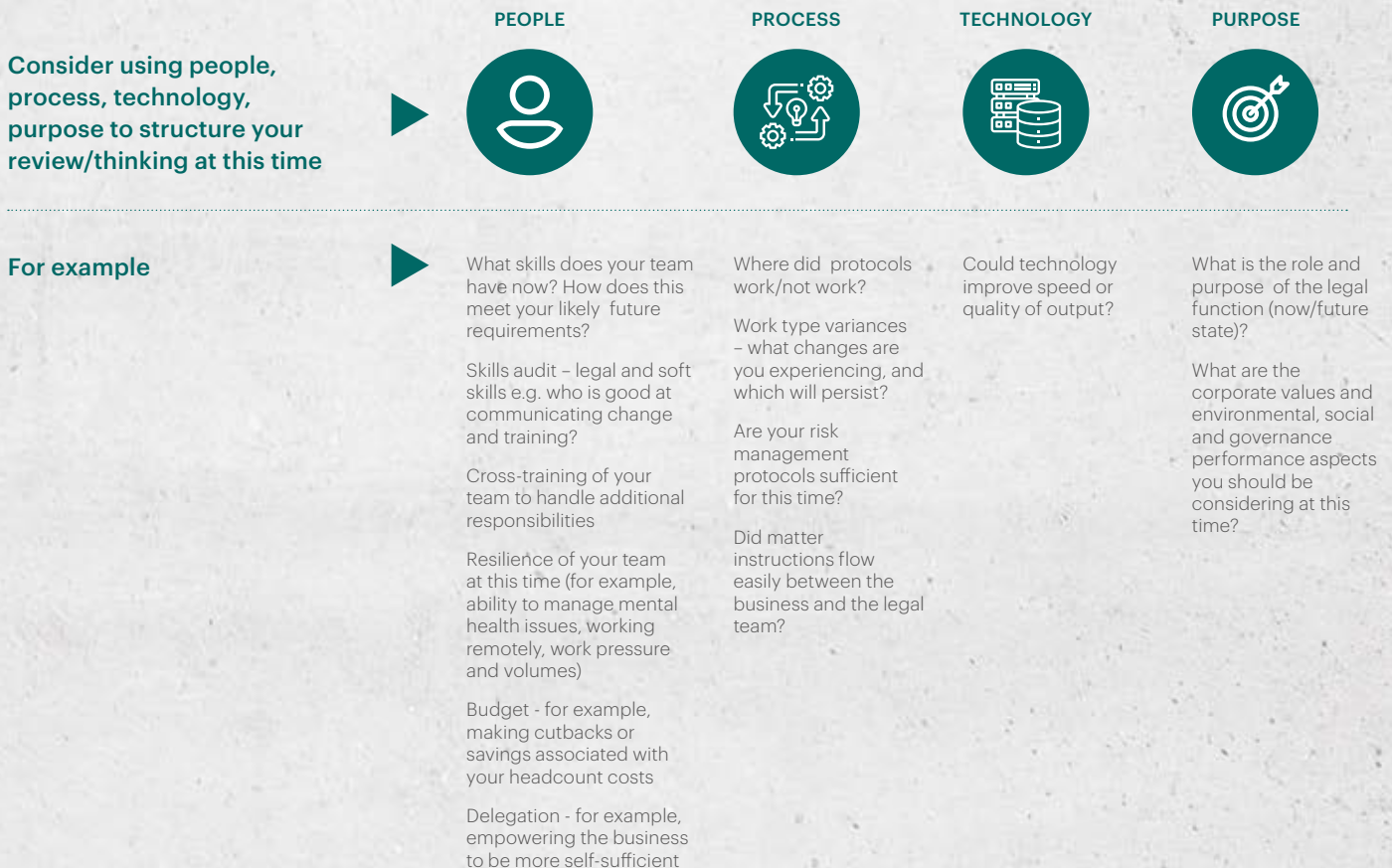
Those processes that were in place prior to the pandemic are now being tested even further, perhaps exposing gaps or opportunities for improvement.

It can be overwhelming to digest all of the projects on your list. So now is the time to:

- step back and assess critical pain points

- review lessons learned to date regarding changing business requirements and the team's ability to respond and flex accordingly

- project the likely challenges ahead.

## What problems are you trying to fix?

Taking a moment to understand the specific pain points and challenges is key. What bottlenecks do members of the team see? You can canvas your department through a virtual team meeting, quick survey or have a third-party do a deep dive assessment. Importantly, check-in with key internal stakeholders to capture their views on possible inefficiencies and their suggestions for improvement. By engaging with your team and key stakeholders, you are paving the path toward future engagement and buy-in.

| | PEOPLE | PROCESS | TECHNOLOGY | PURPOSE |
|---|---|---|---|---|
| **Consider using people, process, technology, purpose to structure your review/thinking at this time** | | | | |
| **For example** | What skills does your team have now? How does this meet your likely future requirements?<br><br>Skills audit – legal and soft skills e.g. who is good at communicating change and training?<br><br>Cross-training of your team to handle additional responsibilities<br><br>Resilience of your team at this time (for example, ability to manage mental health issues, working remotely, work pressure and volumes)<br><br>Budget - for example, making cutbacks or savings associated with your headcount costs<br><br>Delegation - for example, empowering the business to be more self-sufficient | Where did protocols work/not work?<br><br>Work type variances – what changes are you experiencing, and which will persist?<br><br>Are your risk management protocols sufficient for this time?<br><br>Did matter instructions flow easily between the business and the legal team? | Could technology improve speed or quality of output? | What is the role and purpose of the legal function (now/future state)?<br><br>What are the corporate values and environmental, social and governance performance aspects you should be considering at this time? |

# Looking ahead – some factors to consider

| Sample organizational scenarios | Examples of the critical questions to apply to scenarios |
|---|---|
| **If revenue increases** | What are the consequences of increased business confidence? Further investment/expansion? |
| **If revenue decreases** | What might this mean for your team? How might you respond to a 10/20/30% budget reduction requirement?  What can you do now to prepare to do more with less in the future?<br><br>What might this mean for the business, e.g. squeezing suppliers/renegotiating contract terms?<br><br>Will your business seek to be acquired/merge with another?<br><br>If insolvency could be a possibility – are you prepared? Do you know who to lean on? |
| **Risk appetite changes** | What happens if your organization becomes more risk adverse – what would this mean in terms of the protections you put in place/require? Would this change decision-making authorization protocols?<br><br>What happens if your organization's risk appetite increases? How do you manage the associated risk accordingly?  How will you communicate the new potential risks to the business and seek to manage them? |
| **Profile of suppliers changes** | If management now wishes to diversify its supply chain to ensure some near-sourcing, what pressure would that put on your team to support contract renegotiation, etc.? What clauses or protections would you ideally want in place for the future? |
| **Investment in digital** | As above, what supplier risks do you anticipate? How can you help protect the business in terms of your IP? |
| **Customer profile changes** | Are there risks clients no longer will carry?  What options might you suggest in those circumstances? Can you make your ultimate customer experience more efficient/better e.g. in your approach to contracting? |
| **Need for speed** | What will you do if your organization needs responses more quickly? How can you scale your resourcing model/leverage outside help quickly? |
| **What moves might your competitors make?** | If competitors change their position on risk matters, pricing and so forth, what will your organization want to do? Can you adapt quickly to match your competitors? |
| **Organizational values** | The legal team often has a key role to play in living your organization's values through your employee, customer and supplier engagement.  Are there scenarios where the values might be threatened or there is a conflict? |

## Assessment criteria

While it can be tempting to boil the ocean, there is a discipline required to assess projects (and even time spent on scenarios) to ensure you maximize your investment of time and resources. Ask yourself:

- What will have the greatest benefit to the department and the company?

- How do these projects rank in terms of complexity to implement and change required?

- What can we manage in terms of costs? Developing clear criteria (see example below) for how you and your team will assess the pipeline of potential scenarios/solutions will ensure that your plans for the new dynamic are robust and clear. How you measure benefit, complexity and cost will depend on your organization, culture, people, existing tools and budget.

### Assessment criteria might include:

| Value to our business | Value to our stakeholders | Value to our team | Ease to implement |
|---|---|---|---|
| Benefits end customer | Improves delivery timeline | Ease of use | Speed to delivery |
| Increases/enables revenue growth | Improves quality of advice | Speed | Investment requirements |
| Reduces cost | Improves decision making | Improves morale | Change management |
| Reduces risk | | Improves contribution | Technical and operational feasibility |
| Supports organizational values | | | Resource availability |

Once you identify your priorities and/or the scenarios to plan for, you will want to use this as an opportunity to communicate your direction both within your team and with key internal stakeholders. Frequent communications are important to establish early buy-in and engagement across the team while creating a momentum for your change agenda.

# Quick pivots

It's difficult to find a management consultant article that doesn't reference the importance of being agile during this crisis – and by this, they typically mean an organization's ability to quickly pivot the focus of the business, the allocation of resource and the allocation of budget to the challenges (and opportunities) at hand. It might be relatively easy for all of us to recognize the importance of being agile at this time, but identifying and executing quick pivots may be a challenge for many. Two former General Counsel share their views on quick pivots legal leaders may wish to consider at this time.

**Five quick pivots for the legal function**

Prioritization

Empowerment & delegation

Risk review

Doing more with less

Leading & influencing

## 2. Empowerment & delegation

This period is all about change – so consider how you might empower your team and business stakeholders at this time. Try to avoid defining people and their skills by their current roles, and think laterally about the skills the team (and business stakeholders) have that you could optimize. For example, which team members are good at explaining change? This skill will be much needed as you pivot the activities your team undertakes and need to explain to the business the change in focus or change in allocation of responsibilities and tasks. Along with change management and communication skills, which of your team is a natural project manager? Or is there a project manager within a business unit that could help you at this time?

Central to empowerment is a delegation mindset. Encourage your team to delegate to business units where possible. Further, can you empower your team to implement new protocols and approaches without your involvement? Can you empower business stakeholders to take decisions without the involvement of your team (within parameters) – for example, can they negotiate contracts on their own without your engagement – unless they want to change certain provisions like indemnification or term of the contract? Now is the time to explore the skills of your team and others throughout the organization to identify how they can be optimized to enable your organization to not only survive, but thrive.

## 1. Prioritization

It should be pretty clear where your pressure points are right now as a result of the crisis. If it's not – then immediately implement a method of tracking all work requests e.g. via a single group email address if you don't have the technology available for anything more sophisticated.

Review the work requests to identify themes and then also consider some of the scenarios your organization could face in the next 12 months based on what you know about the organization's current thinking, financial resilience and culture. Share your thoughts and insights with other business stakeholders, and together define what your team's priorities should be moving forward (see our toolkit on scenario planning for ideas as well as tools to help with prioritization).

Beyond charting legal challenges, leadership and ethics should also be front and center for GCs. GCs are a compass for the company and can accordingly strongly influence C Suite and Board discussions and decisions at this time.

Once you know what your priorities are – make sure you quickly align resource and protocols to address the new dynamic. Communicate simply and clearly what the priorities are and ensure your wider business stakeholders and team understand the plan.

# 3. Risk review

If your organization is undergoing change, then your risk profile is also likely to be changing. Unite with other business stakeholders (Legal/Compliance/Finance/Tech/Others) to review how you might adapt your organization's Risk Management Framework to help you quickly identify where the risk dynamic is changing – and who has ownership for that risk. For example, remote-working might heighten the potential for a cyber-security incident. Who and how is this being managed? Is your IP being impacted by this crisis? How are you ensuring your supply chain's resilience (see supply chain resilience toolkit)? Senior management should convene to discuss the risks that are increasing or diminishing and to confirm prioritization and response.

In any crisis, communication is key. In the business's enthusiasm to be agile and pivot quickly, do they have enough awareness about the legal/compliance/commercial risks to avoid at this time? If not, perhaps consider communicating a risk checklist, reminders and/or webinars.

And, train your constituents on compliance and proper documentation. Standards change rapidly in this environment so you need to contemporaneously document what you did; why you did it; and that it was best practice at the time. This is because in any future litigation, you will be judged three years down the line when memories are blurred.

**Enterprise Risk Management**

**Remind business stakeholders on key risk scenarios and protocols**

**Evaluate whether current risk assessment/framework remains vaild - or needs updating**

**Agree/promote roles and responsibilities between Legal/Compliance/Finance/Business**

**Scenario plan with compliance/ business colleagues on risks that could develop or diminish; engage senior business leaders to confirm prioritization**

## 4. Doing more with less

There are very few businesses and sectors that have been untouched by COVID-19.  So, it's likely that you, like most, are needing to manage budgets down at this time.  What can you do quickly to cut costs? Some options to consider:

1.  Assess the priorities of the legal team, and how they dovetail with your organization's imperatives; spend time and money on what counts.

2.  Establish financial/risk thresholds regarding what the department should be engaged with.

3.  If you do not have a panel of outside law firms, look to establish one. To speed things up, suggest to law firms a charging structure you would like them to follow – in exchange for predictable volumes of work/loyalty.

4.  Set up a self-serve system to automate key legal documents for business stakeholders to use without intervention from the legal team.

5.  Train business stakeholders on common legal risks and pitfalls – so they can appraise the basics of a situation– and in turn, be more self-sufficient.

6.  Explore the value of your intellectual property. Could you generate revenue by reviewing your IP portfolio for licensing or sale opportunities?

7.  Other revenue stream opportunities might arise at this time by reviewing insurance policies to see what recoveries might be available as result of this pandemic.

**About the authors:**

This toolkit was written by Judith Prime, Dentons Global Client Development Director under the direction of two former GCs that are part of the Dentons Nextlaw In-House Solutions team.  Both Gail and Mary Ann frequently leverage their deep experience to help mentor current GCs with a wide range of challenges. Contact them directly if you are interested in accessing their perspective on a challenge you are facing now.

**Gail Lione**

For more than 23 years, Gail served as General Counsel of three companies in three different industries: global marketing/manufacturing; publishing, printing and digital imaging; and insurance, banking and financial services. Most recently, she was the Executive Vice President, General Counsel, Secretary and Chief Compliance Officer of Harley-Davidson, Inc.

**Mary Ann Hynes**

Known for her many firsts in the industry, Mary Ann was the first female general counsel for a Fortune 500 company while at CCH Inc., she was also the first female officer of Sundstrand Corporation, the first female member of the North Shore General Counsel Association and the first female officer of the Chicago Crime Commission.

## 5. Leading & influencing

Strong leadership is vital at this time – as we explore in our toolkit on leading your in-house legal team.  Of all the skills good leaders present, meaningfully connecting with team members, the C-Suite and Board is critical.  As you address challenges, keep your team engaged in your decision making and problem solving.  Communicate often and be as inclusive as you can be.  Reach out beyond your obvious circle of reference to challenge your understanding and perspective and to discuss the obstacles they are facing and observing. This will strengthen your problem-solving abilities. And use COVID-19 to re-establish (if need be) the legal team's role and purpose and influence. This crisis plays to a lawyer's skill set – communication, strategy, risk assessment and compliance – and as such provides GCs with a platform to influence and lead like no other. GCs can direct the re-examination of risks and the realignment of the corporate strategy, partnering with others in the C-Suite.

This is a time for agility, creative thought and problem solving.  Leaders create change, they do not simply react to it.  As such, this new dynamic, while bringing uncertainty, can also bring opportunity for legal functions to redefine their skills, purpose and contribution to their organization.

# Focus on digital

"Industry 4.0" or the "Fourth Industrial Revolution" has been in motion for a while but COVID-19 has clearly propelled digital transformation and accelerated its importance to business as there is an increased pressure to do "more for less" and to make business easier to do remotely. As Harvard Business Review points out, a company's competitive advantage will increasingly be defined by its ability to shape and control digital networks. The companies that excel at connecting businesses, aggregating data and extracting its value through analytics and AI will have the upper hand. In other words, digital transformation will drive the overall future value of an organization. To compete in the ever-increasing digital space, companies need to understand how to adapt their current operating models to embrace technology now more than ever.

Lawyers must collaboratively enable digital changes rather than be seen to be creators of barriers to innovation. And as your organization looks to accelerate its digital plans – Dentons has identified key themes for general counsel and the legal function to consider to support their company's digital transformations. These themes demonstrate how in-house legal teams are shifting their focus from evaluating risks of new technology investments at their companies through digitalisation of the business to positive engagement in their own digital industrial revolution.

"We have vaulted five years forward in consumer and business digital adoption in a matter of around eight weeks."

McKinsey Digital, May 14 2020

**The themes to be discussed in this Focus on Digital are:**

**Developing a digital strategy for the legal function to support the business**

**Implementing the legal function's own digital strategy**

**Assessing whether to adopt artificial intelligence solutions for legal processes - including understanding AI, its cost, purpose and relevance in the aftermath of COVID-19**

# Developing a digital strategy for the legal function

Traditionally, in-house legal teams have viewed their roles as largely one of protecting the organization from risk. In our toolkit on supply chain issues, we explore the key resilience and vendor management challenges the in-house legal team will need to address, particularly in relation to technology procurement.

### Why should a digital strategy be on the general counsel's action list?

General counsels are now commonly the company's chief legal diagnostician as well as legal purchasing agent - determining the company's legal needs and how these fit into the company's overall strategy and goals.

However, as in-house legal costs rise, the legal team is under pressure to find lower-cost options to the work performed in-house or which is outsourced to external lawyers. With workloads getting larger and technology constantly changing, innovation by the legal team is necessary.

It should come as no surprise that general counsels are spearheading their own deployment of the same accelerators for productivity as their

corporate employers are using to generally reduce costs and drive productivity across the business. Legal innovation may be achieved by outsourcing or offshoring low-value repetitive legal tasks to independent entities or by engaging in a digital transformation of the legal function. The focus of this article is on that latter strategy - the digital revolution of the in-house legal function.

With the rest of the world (and your organization) likely talking about increasing focus on 'digital' – it is important the legal team also leverages this point of focus for two reasons:

- to demonstrate to your organization your commercial awareness of how increasing investment in technology could bring efficiency and service improvements to your stakeholders – and possibly your customer base too; and

- to campaign for a share of the digital budget directed toward digital initiatives in the organization as it emerges into a post pandemic era.

## What is a digital-first strategy?

Every legal department is part of a broader entity that itself is on a digital journey. The legal team should not be an outlier on that journey and must pave its path in coordination. Broadly speaking, digital transformation for many legal functions means the integration of digital technology across the function to assist with solving the organization's issues, managing its risks or delivery of goals.

A digital-first strategy is much more than the automation of certain tasks to enable efficiencies. It is also more than understanding information technology, privacy law, or using technology to perform the role of in-house counsel.

A digital-first strategy will set forth the vision and philosophy of the legal department toward more general digitization of the department's work and operations, while defining the specific goals and timelines for making strides in digital transformation.

To develop a digital strategy, the key is to think creatively how the legal team can bring greater benefit to its internal and external clients – perhaps through clarity and execution. Your organization should put the customer at the heart of its digital strategy – and the legal team should do the same.

## What are the key components of a digital strategy?

At a minimum, the strategy should include the following three components.

- **Develop digital skills:** Legal departments will need to consider how they are digitally skilled - that is able to support the company's digital project initiatives. Preparing a legal function to skill up for digital transformation within the wider organization should result in lawyers who are able to manage their role within various large stakeholder groups. Other benefits include an in-house team who are able to understand the technology to be deployed and its risks, and to consider data flows and networks - whether within the company, or more widely with external service providers engaged in the digital transformation.

As business technologies change, the nature of the legal work will also evolve. This means that legal skills development is not simply a matter of recruiting an expert technology lawyer. It is ensuring the entire legal team has a foundation of understanding where and how the company plans to invest in technology - and how lawyers can service those initiatives.

Contracts are the mainstream of legal work. As business transactions are digitalized, contracts must be created to accompany them. Gaining a basic understanding of how legal technology contracts work - their common clauses, market positions and how service level agreements operate would be a solid start for a legal skills development program. We explore some of the key issues to consider in our chapter on Supply Chain issues.



**Develop digital skills**

**Develop digital networks**

**The key components of a digital strategy**

**Assess how legal technology can assist legal processes and budget for it**

**Understand the technology available**

It is important that the legal team and business stakeholders both understand that new vendors come with risk - they have not yet withstood the rigor of extensive compliance reviews and the test of time with your organization.

- **Develop digital networks:** A company's digital transformation is unlikely be achieved without the IT department or other key operations stakeholders. Breaking down the barriers between the legal function, operations and the IT functions is a necessary part of the digital industrial revolution.

  Each function aims to minimize risk - whether security risks, operational/commercial risks or legal risks. Fostering networks with IT and other stakeholders through regular project meetings and coordinated management is an important step to promoting the legal function's role as an enabler of digital transformation. It is also critical the team is engaged at the beginning of projects to minimize the risk that the company's IT investments do not address fundamental issues. These decisions often require data be reviewed on a holistic basis, which needs cross-functional coordination to assess the balance of costs and benefits.

  The legal function must work with the various IT and operations stakeholders in a collaborative way if information related risks are to be appropriately understood and managed.

- **Assess how legal technology can assist legal processes and budget for it:** Many in-house counsels are overworked and have too much administrative work with few tools to assist. Support on the adoption of technology should be part of any digital first strategy. Benchmarking your issues and solutions against the technology choices of your peers is a useful start.

  Most teams will need to build a business case - and most business cases focus on how technology can reduce legal costs or support wider strategic initiatives of the company. A digital strategy will need to evaluate the costs of performing various tasks and how technology can reduce costs, increase speed, manage risks, etc. Understanding the value of processes and the fit of the technology solutions is the necessary start to getting the budget for the investment.

## Your starting position is to understand the available legal technology

A lack of digital awareness and understanding of the transformative effect of legal technology is a serious issue. Digital transformation of the legal function is not just artificial intelligence, data or platforms. Gaining a better understanding of internal clients and analyzing interactions with them to get insight into their needs will be the first steps to take to find new, more efficient, ways of working.

Technology should be selected for its capacity to transform how work is done internally, or how it improves productivity or collaboration. If the right technology is coupled with change management and culture change, then the legal function can transform how they operate.

1. As artificial intelligence ("AI") continues to evolve, it will become a more effective enabler of legal services as a capable tool to be used by lawyers providing complex legal advice and work product – not a replacement for lawyers.

2. Not all legal technology is based on AI. There is other great technology that provides real value, some of which has existed for some time. Much of the legal technology solutions do more than enable more efficiency for paper processes - they allow, for example, electronic files, sharing of documents, self-service platforms for advice, or other solutions that disrupt the way of doing the business of law such as solutions to automate form filling.

3. You do not need to use the latest and great legal technology to be innovative, but you should be knowledgeable about the possibilities technology can bring. Some systems provide platforms to streamline document management, collaboration, management or workflows. Others improve knowledge management - which can accelerate productivity and facilitate better decisions.

# Mapping a digital strategy for the legal function

No digital transformation journey should commence without robust change management processes. Making sure your legal teams are sufficiently prepared for the new technology adoption is crucial to its success.  Getting buy in from the beginning will assist you to achieve the goal.

## Mapping out a plan

**Problem Statement** → **Current and Future State**

**Clarify your vision** ← **Prioritize**

**Road map and budget**

## Problem Statement

It is important to understand what problem or pain points you are trying to solve. Where are the greatest inefficiencies across the team or bottlenecks preventing the optimal delivery of legal services to the business? Be very specific and intentional about the problem you are trying to solve with technology and you are likely to have a highly successful experience with new technology.

## Current and Future State

It is a best practice to first review and optimize processes before embarking on an automation journey. There is little value in automating inefficient processes. You should understand the current process and what you envision for the future state. As part of this process, you will want to understand what technology you may already have available, either within the law department or across your organization.

Think about seconding someone in your team to this project to help you with this assessment and to provide you with facts and a fresh perspective on what you have, its potential, how it is/isn't being used – and the associated costs (if you are paying annual license fees for something no one is using).

## Research Tips

1. **Internally**

- Understand what pressure/pain points exist currently within the team

- Where is there obvious inefficiency?

- Do process, technology or behaviors need to change? It is not appropriate to assume all issues may be solved by technology.

2. **Externally**

- Understand what legal technology is available and how it can be applied to your specific problem(s).

- Management information (to facilitate better understanding of your legal spend/project cost allocation/management of law firms/ management of team)

- Work intake processes – to help triage requests from the business and assign the work effectively internally/externally

- Document management and sharing

- Knowledge management – ranging from precedent documents to 'help yourself portals' for business stakeholders

- Workload management, including using document automation to reduce workload

Connect with peers about their experiences with technology or talk to Dentons about supporting you to get an overview of these tools and key providers, or explore the market and talk to vendors to get a sense of cost, the purpose and benefits of these tools.

### Prioritize

Do not try to fix everything all at once.  Start by prioritizing – you may wish to include a number of factors in your prioritization, for example some of the evaluation tools we reference in the chapter on Scenario Planning.

### Clarify Your Vision

A digital strategy should start with the internal assessment described above, but it also must identify stretch goals and long-term vision for the department. It must be a future-looking statement of where the department wants to be. More importantly, it has to define HOW the department will get there, WHO should be involved and WHAT are the biggest areas of opportunity.

1.  HOW:  How will the changes be managed, and how will those changes impact the department?

2.  WHO: Which additional skillsets and capabilities does the legal department need to successfully assess and implement technology?

3.  WHAT: What is the biggest area of opportunity to reduce pain points and increase effectiveness with technology?

### Draw a roadmap – and indicative budget

You may need to look at securing additional budget or resources to support your vision. It is a much easier conversation if you:

•   Understand what you have or don't have available

•   Have a vision

•   Have the reference points you need

•   Can clearly articulate the rationale and benefits

## Assessing if AI is right for you - springboard from the Dentons experience

In 2016, AI-for-legal burst onto the scene with promises of ultra-fast, super-accurate contract review that would be replacing lawyers more quickly than you could say 'limitation of liability'.

Alas, what followed was more of an 'AI winter', as the aforementioned promises did not bear out.  Fast forward to 2020, and there is  more of a middle ground – and many law firms and in-house counsel are now coming to grips witha realistic understanding of what AI can bring to the table and how to use the underlying technology.

At Dentons we use all of the main legal AI platforms in the market – Luminance, Kira, Leverton and more.

**Here are six insights to help accelerate your AI understanding based on our experience at the leading and largest law firm in the world.**

**Set-up timeframe**

**1**

As with all procurement, it will take a week or two to get all of the paperwork and IT security in place. As all of these providers are cloud based, there is no need to build or maintain any of your own IT hardware which makes it quite a painless process to get up and running. Document uploads themselves are relatively quick with all platforms – but to be safe we often leave our datasets processing overnight so we can be sure they'll be ready to start the review the next morning.

**2**

**What is the charging model - per document or GB?**

All the main AI platforms come at a cost. Some charge per GB of data in the platform per day, while others simply charge per document uploaded. The actual prices will vary per customer but expect to see around $63 per GB of data or $12-$19 per document. In our experience, the disparity between these pricing models means that for shorter-term projects the data model can be less expensive than for longer-term projects where the documents will need to be in the system longer.

**3**

**There are some rules of thumb regarding size**

So, if the platform is charging per GB – what does that actually mean? Well, a typical 30 page PDF contract is around 5MB (although there can be a lot of variation) – so around 200 of those makes up 1GB. Note that the pricing models that charge per document are the same flat rate for 1 page or 500 page documents.

Despite the different cost models, we use these tools in the exact same way – to put the relevant contract information in the hands of our lawyers faster so they can carry out their legal analysis without the manual drudgery of having to open multiple documents. We try not to delegate any decision making to the AI as there is a reliance on both the correct extraction of the data and the applicable logic. The outputs are simply extracted clause text or datapoints that may be filtered in a number of ways. We recommend our lawyers run keyword (or other) searches alongside the AI recognition to make sure nothing has been missed.

**Are use cases right for your circumstances?**

**4**

**5**

**Return on investment - COVID-19 example**

In the context of the above – how has AI been helpful in a COVID-19 context? There are the obvious benefits of scanning all of your contracts for potentially relevant clauses like rights to terminate for convenience or force majeure. Now might also be a good time to identify which contracts expire when, or which have break clauses - as there may be potential for renegotiation. AI should be able to help with this, significantly reducing the time it would take to get that information.

When you upload a large dataset, it can be really interesting to see the languages contained and the governing law within them. However, there is a difference between the platform identifying what a language is and understanding what it means. While the tools can correctly identify most languages, the governing law feature requires the contract to be written in a language that the AI understands (typically English, German, Spanish, Italian and French), so the outputs may not be a true representation of your dataset. For example, AI platforms should correctly identify the governing law behind 100 contracts in English. Similarly, it would recognize the language itself if the contract were in Mandarin – but because the AI does not understand Mandarin, the program would not be able to detect the governing law behind those clauses and there would not be any results.

**6**

**Assessment of language and governing law can be useful**

## Conclusion

In conclusion, legal functions are now proactively leading their own digital transformations to drive value for their organizations. Dentons has seen proactive engagement and advancement of the legal function through leveraging advances in legal technology - including artificial intelligence and other legal process automation.

COVID-19 has propelled digital transformation and there will be even more pressure, post-pandemic, for the legal function to do more for less. Dentons is seeing the shape of the legal function changing as more legal counsel adopt a digital first mind-set.

In this article, we have covered the forces that will push lawyers into collaboratively enabling digital changes - and how the legal function can develop and implement their own digital industrial revolution. We have also discussed Dentons' own experiences with artificial intelligence solutions for legal processes to enable our clients to short circuit their own learning.

In short, the lawyers who are engaged with digital transformation or ready to ramp up quickly to become more proactive and innovative will lead the pack.

This toolkit was written by Robyn Chatwood, Partner (Australia), Martin Fanning, Partner (UK&ME), Lucy Bassli and JoAnne Wakeford from our Nextlaw In-House Solutions team and Joe Cohen, Practice Development & Innovation Manager for UK&ME.

**About Dentons Nextlaw In-House Solutions:**

Leveraging the experience of former General and in-house counsel, the team provide consultancy and support to GCs and legal teams on a wide range of strategic and operational issues. Lucy Bassli (former Assistant GC of Microsoft) and JoAnne Wakeford (Chief Client Officer or Nextlaw In-House Solutions) can help you develop further the digital strategy for your team.

# Supply chain resilience

If you cast an eye at Google Analytics during the first weeks of the crisis, it probably wouldn't surprise you to know that force majeure trended high as a search phrase. It didn't take businesses long to realise that COVID-19 was going to significantly impact supply chains, and in-house legal teams (and law firms) were approached with queries around disruption and whether this pandemic would be considered as a force majeure or frustration event.

Now is the time, with the benefit of hindsight and lessons learned, to help your organization forge a new road ahead with regard to your procurement strategy. For many sectors this is no longer desirable, rather a critical business imperative.

We document below some of the key themes we believe it is helpful for in-house legal teams to consider at this time.

"In every year over the past several years, at least one company in twenty has suffered a supply-chain disruption costing at least $100 million."

McKinsey Digital, May 14 2020

## Why "resilience"?

Post COVID-19 recovery will place new demands on how businesses organize their resources. Some businesses (such as the retail and fast-moving consumer goods (FMCG) sectors) may embark on, or accelerate, end to end digitization programs and others may take the opportunity to tackle their Environmental, Social and Governance (ESG) agendas and embed sustainability in the enterprise. Nearly all businesses will examine virtual working and customer service patterns and re-assess their procurement and production strategies (and in particular whether key outsourced functions should be on-shored/near-shored). These "new dynamics", on the one hand defensive – necessary to secure market share or shore up profitability – are also offensive – necessary to unlock internal efficiencies and target new and developing marketplaces.

Either way supply chain agility, and dynamic vendor management, will be central to the organization response. And the in-house legal team will be at the heart of this activity.

## Supply chain resilience – scenario test

Traditionally, in-house legal teams have viewed their role as largely one of protecting the organization from risk. Post COVID-19, however, their role will also be accretive – key enablers of resilience and agility.

It therefore makes sense for General Counsel and their teams, to be part of the debate with regard to how their organization's procurement strategy should evolve at this time. Key to making this decision will be scenario planning (perhaps leveraging COVID-19 experience) with regard to the ease and cost of switching suppliers (and transportation methods). Teams will also need to consider scenarios beyond pandemics that could impact their business – such as war, sanctions, economic or environmental disasters.

This exercise should be multi-disciplinary – linking procurement and IT teams with internal compliance, commercial and legal teams. The regulatory context will also be important – many sectors (for example financial services) already have a strong focus on resilience – but there are other regulatory drivers to be considered - for example, good GDPR and cyber accountability frameworks should incorporate organizational and technical security and resilience measures and, in relation to technology arrangements, may have implications regarding data residency/sovereignty.

With a variety of resourcing/procuring models available, weigh the pros and cons of plug-and-play/commoditized arrangements as opposed to long-term strategic partnerings. Part of this will be weighing up the benefits of being able to swiftly scale/port arrangements against the likely pricing premium (and potential disruption risk) in doing so and the possibility of vendor lock-in or vendor concentration risk.

## It's not just a question of commercial need and regulation

Increasingly organizations are not only driven by what they have to do (to comply with regulation) but by a deeper sense of purpose and a commitment to 'living their values'. As we explore in our chapter on environment and societal law, your organization's values will also drive a new dynamic in procurement and contracting arrangements.

# Existing vendors – key steps

Without a vendor assessment exercise of some sort, only a small number of organizations are likely to be confident that their risks are appropriately covered across all their supply contracts. Therefore, project legal teams should examine (possibly with the help of AI tools – as referenced in the Focus on Digital chapter) conducting an audit of all their existing vendor arrangements with a focus on the following:

**Original commercial drivers remain true:** factors to be considered, for example, may include the extent to which the existing procurement structure (prime, multi, hybrid etc) continue to offer agility and drive supplier incentivization; whether any existing vendors are distressed or need enhanced monitoring; whether the locations for production / supply / hosting do not give rise to undue risk to business continuity in the event of future pandemics or other material interruption events etc.

**Existing / new regulatory constraints:** assess the local or regional regulatory context affecting the arrangement – has this changed or attracted a higher cost or risk overhead in light of the COVID-19 experience? For example what are the physical controls? (tariffs / embargos / customs constraints) organizational challenges? (Lockdowns / commuting restrictions? Immigration challenges? New technical constraints? Export control requirements or data-related considerations (data residency considerations, employee monitoring etc.)?)

**Baseline existing contractual terms:** this process may have already occurred as part of the immediate COVID-19 response but an assessment should be undertaken of key contractual terms affecting resilience: for example force majeure, MAC, HR, change control, pricing and exit clauses.

**A suggested approach:** A program should be put in place to document the above findings in a single tracker, along with other material information, such as:

- Commercial drivers / enhanced commercial risks
- Constraints imposed by existing terms and / or regulatory context
- A difficulty rating with regard to the procuring of an alternative supplier
- Details of the contract value / business materiality
- Other material points that might impact your decision making.

With all the above data stored into a contract management tracker (which could simply be an Excel spreadsheet if you don't have other options available), you would then have a resource that can be easily manipulated to answer questions your organization and team might have at this time in terms of:

1. Volume of non-optimal supply contracts (from a risk mitigation perspective) currently in play.

2. Business "owner"

3. Risk posed to business in the event of pandemic/ material interruption event

4. Existing mitigants

5. Prioritization scoring for remediation

## With new vendors

In addition to reviewing the existing supply chain, thought should be given to re-engineering your procurement processes to ensure they are optimized for delivering organizational resilience.  For example:

### Procurement strategy

If as a result of your resilience review, your organization decides it needs to diversify its supply chain model, then you have the opportunity to:

- **Risk transfer at the outset:** amend your ITT / RFP documentation to require future suppliers to fully address identified risks and proactively configure their own resilience measures to meet your enterprise requirements – for example, setting out specific resilience requirements and specifications as part of the ITT / RFP pro-formas

- **Optimising vendor models:** much will depend on the business's risk exposure (and tolerance) for future business interruption.  For those businesses that have outsourced to third party locations, they may have experienced significant product movement, resource procurement and / or workflow availability issues.  Therefore if the change in procurement strategy is driven by a near-shore imperative, consider optimal vendor model (prime, multi-source or hybrid?). For businesses seeking always-on tech-driven services that are quickly scaleable, they may be attacted to infrastructural/cloud or Software-as-a-Service offerings, but these can give risk to privacy considerations (international transfers, residency, incident risk etc) as well as potential vendor concentration risks.

### Agility at a price?

Vendor and supplier markets are likely to evolve to offer certain resilience tools within their core offerings, where bespoke controls are required (for example sub-contracting control/collateral arrangements, vendor swap-out regimes, mandating specific production or hosting locations, accelerated rights of early termination etc).  These may well only be achievable in the short-term at a price premium.

### Template refresh

Review/upgrade your precedent clauses around force majeure, cost control, change management, sub-contracting, compliance with law etc. to ensure they reflect your lessons learned from this pandemic. For tech or data heavy procurements, further considerations are set out below.

"New vendors have not withstood the rigor of extensive compliance reviews and the test of time. This is a big risk that should also be considered."

Mary Ann Hynes, former General Counsel of several global companies

## New technologies: fresh contracting approaches

With COVID-19 accelerating the digital investments/ digital strategy implementation of some organizations (which may include a pivot towards AI / MLP technologies, automation and big data tools), in-house legal teams should consider what new legal issues are posed when procuring these platforms. careful thought should be given to:

- new licensing scope and usage considerations (for example, when an AI or RPA tool interacts with another software application, does that count as use?)

- enhanced availability and performance requirements from SaaS partners, including mandatory swap-out regimes

- appropriate risk allocation with the vendor, not least around down-stream resilience, fitness for purpose and IP infringement / data risks

- accountability for innovation and continuous improvement commitments (lined to service resilience as well as business outputs)

- IPR exploitation – from open source issues to consideration of rights of exploitation of any newly developed or derivative IPRs etc

Often the data to be processed is as critical as the technology deployed. From a GDPR perspective for example, the following should be considered: cookies/online behavior; processing transparency/ lawful bases; impact assessments; data residency/ international transfers; processor management; cyber and information security management, general accountability and compliance frameworks.

## Business process optimization

Any operational resilience agenda, especially one which is reliant on technological transformation, will likely require accompanying organizational change. Indeed, most business efficiencies and transformations are not delivered by technology alone – and so in-house legal teams will need to support their business stakeholders to consider how the relevant solution(s) map into existing human and organizational processes and whether any such processes need repurposing alongside (or ahead of) the technology deployment.

Clearly there is much to consider, review and implement in terms of your organization's vendor management strategy. However, this is also a period of opportunity – an opportunity to review existing supply chains and optimize future procurements so that your business emerges stronger and with greater agility in the event of future disruption – by pandemics or otherwise. The legal team's role should not be underestimated by business leadership – this team is a core enabler for future enterprise resilience.

# Environmental, social and governance (ESG) performance

As companies emerge from the containment phase of the COVID-19 pandemic, an unexpected new item is on the GC's priority list – ESG. ESG performance is critical to businesses that are under the spotlight of stakeholder activism and related court actions and Boards are focusing on this topic.  GCs have been focused on corporate governance for some time, and whilst compliance remains extremely important, we are now seeing an increase in the focus on the 'E' and 'S' of ESG. These exposures as well as the advent of national laws with extraterritorial reach are elevating ESG to a legal risk management issue.  The very human challenge of re-starting operations during a global pandemic has accelerated this process as stakeholders, including employees, contractors, communities and supply chains, have found their voice.

Whilst the importance of ESG to business strategy grew throughout 2018 and 2019, managing the legal risk inherent in ESG performance is emerging as an imperative for business integrity in the midst of COVID-19.

# Anticipate-Measure-Manage: a methodology and mindset for how to approach ESG challenges

**Anticipate**

**Measure**

**Manage**

## Employee welfare

GCs must now ANTICIPATE the societal response from the way that their companies manage the health, safety and welfare of an anxious returning workforce.

Once imagined, a GC can implement a system to MEASURE health, safety and welfare impacts. Testing regimes can be established and self-certification data recorded to underscore confidence alongside the business specific protections that are implemented.

Having seen the risk, and measured the response, the GC is now equipped to MANAGE the legal liability risk that may arise from regulators' questioning a business' approach to PPE or employees' claims for workplace related illness.

## Support to contractors

GCs must now ANTICIPATE the societal response from past use of contractors and the unequal position of casual labor in the gig economy.

Having seen this as a risk factor, systems can be implemented to MEASURE the reliance on contracted labor. The protections, health and wellbeing as well as job security, can be considered across this group of stakeholders and where possible given equivalent treatment to employees

This will equip the GC to MANAGE adverse stakeholder actions from consumers or investors based on the application of the UN Sustainable Development Goals.

## Insolvency

GCs must now ANTICIPATE the societal response to closing bankrupt business units and the consequences for communities built around these enterprises. In imagining the broader social consequences, the GC can insist on programs to re-train and re-equip redundant employees.

The GC can then MEASURE the development of new skills and the transition afforded to these communities.

This will ensure the GC can MANAGE adverse stakeholder actions from consumers or NGOs.

## Supply chain disruption

GCs must now ANTICIPATE the societal response to managing supply chain disruption and the consequences for smaller links in the chain. By working with suppliers to identify problems early, flexible solutions are given a greater chance of success.

The GC can then MEASURE the suppliers that have been supported as against those where relationships have broken down.

Through taking a longer term relationship based approach, GCs can MANAGE the number of contentious claims that arise out of non-performance of contracts during the pandemic.

## Environmental

And on the other side of re-starting operations and managing COVID-19 related stakeholder issues awaits the climate emergency and the need for GCs to ANTICIPATE the environmental impact of emissions and broader sustainability. Prior to COVID-19 commentators observed an emphasis on environmental factors of ESG over societal impacts. Many also questioned how ESG under-performance would bite in the form of legal liabilities. The COVID-19 pandemic has answered these questions. The human element of this global crisis has balanced the E and S and its stakeholders will be well equipped to drive home legal responsibility for corporate mis-steps.

So, as the business contemplates its re-start and then broader recovery, the GC must MEASURE its environmental and social performance.

This data will empower the GC to MANAGE the legal liability exposures that will hold purpose driven companies to account for their actions as they emerge from the COVID-19 recovery.

With regulation also increasingly reflecting the ESG agenda - such as the Duty of Vigilance in France or the new environmental and social EU Regulation under consideration – the need for ESG awareness and anticipation is going to rise up the GC and organizational agenda.  GCs that consider (anticipate) these scenarios and solutions sooner vs later, will significantly help the resilience, reputation and ultimately, revenue, of their organization.

This toolkit was written by Stephen Shergold, Partner and Leader of environmental, societal and governance initiatives.

For more information and resources on the 'new dynamic' please visit dentons.com where you will be able to access multiple insights and tools for this next phase of the COVID-19 crisis.
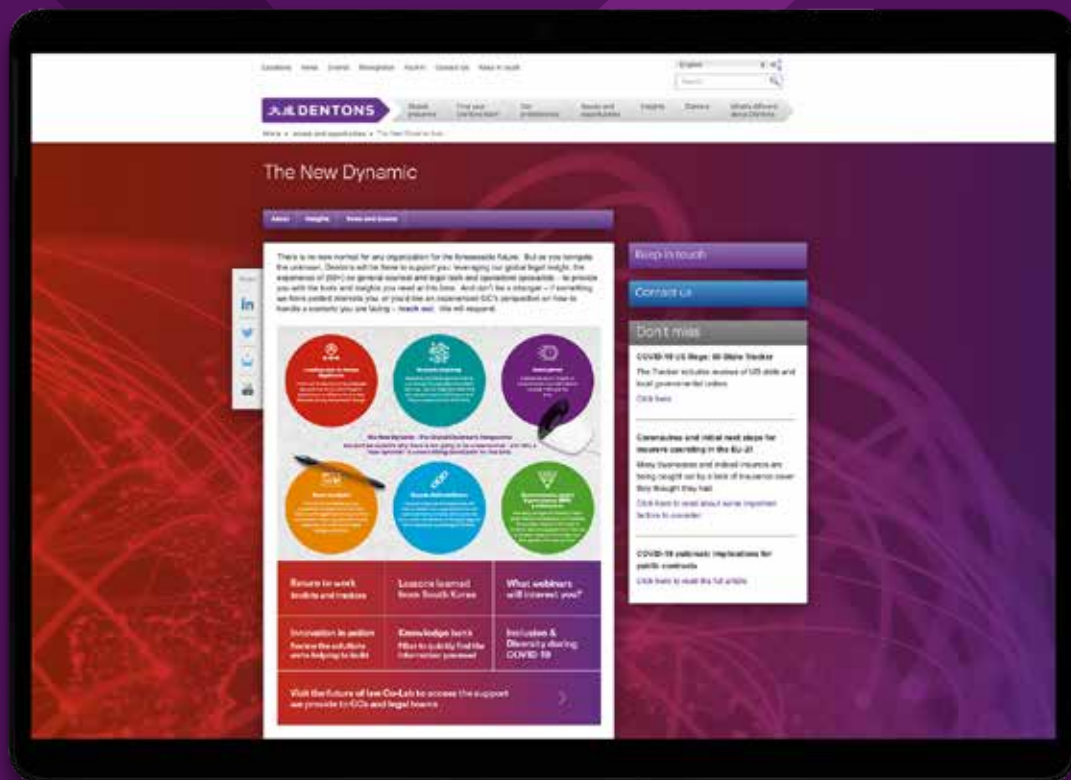
**ABOUT DENTONS**

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Enterprise, Dentons' wholly owned subsidiary of innovation, advisory and technology operating units. Dentons' polycentric approach, commitment to inclusion and diversity and world-class talent challenge the status quo to advance client interests in the communities in which we live and work.

**dentons.com**