

# Increasing Legal Risk Visibility

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## 2015 Functional Risk Profiles

### Preview Report

# OBJECTIVE

## Context for This Report

In 2014, we researched the behavior of corporate employees as it relates to legal decision making. Specifically, we sought to determine whether employees understand the ramifications of legally sensitive actions and whether they consult Legal when uncertain.

Through our research, we found that:

- Eighty percent of all employees made a decision or completed an activity with significant legal implications in the past year.
- Seventy-five percent of decisions with legal implications were made by middle managers.

Although decision-making authority has shifted from executives to middle managers, employee awareness has not. Sixty percent of middle managers make business decisions without understanding their legal implications. Even fewer employees consult Legal when making these decisions.

## Objectives of This Report

The full report highlights the decision-making process for core corporate functions—the groups Legal depends on to establish controls and enforce corporate standards. Functional Legal Risk Profiles identify and analyze functional decision making, perceptions, and risk creation that legal departments can use to:

- Identify when and where employees make critical business decisions,
- Assess the legal acumen of key functional partners,
- Identify pockets of heightened risk taking, and
- Improve relationships with key partners across functions.

This study offers a guide to improving relationships with key functional partners and minimizing the creation of unnecessary legal risk.

# OVERVIEW OF FULL REPORT

## Executive Summary

Through insights collected from member discussions, the Corporate Legal Decision-Making Survey, and other CEB research, the full report highlights findings for the following 17 functions:

- Communications
- Corporate (Strategy, Legal, and Real Estate)
- Customer Service and Call Center
- Engineering and Design (Excluding Software Engineering) Finance and Accounting
- Human Resources, Education, and Training
- Information Technology and Systems (Including Software Engineering)
- Manufacturing
- Marketing and Market Research
- Operations (Service and Product Delivery)
- Procurement
- Quality Assurance and Quality Control
- Research and Development
- Retail (In-Store Sales and Management)
- Sales (B2B)
- Sales (B2C)
- Supply Chain and Logistics

In response to the technological change and collaborative decision making that have spread legal risk creation further and deeper throughout organizations, the Functional Risk Profiles help the legal department gain visibility into functional decision making. This report highlights the types of decisions made in each function, how they are made, and how they relate to legal acumen. The Risk Assessment Questionnaires will help the legal department identify the areas in which it can improve relationships with business partners and further understand how it can engage functional employees throughout the decision-making process.

## Navigating the Results

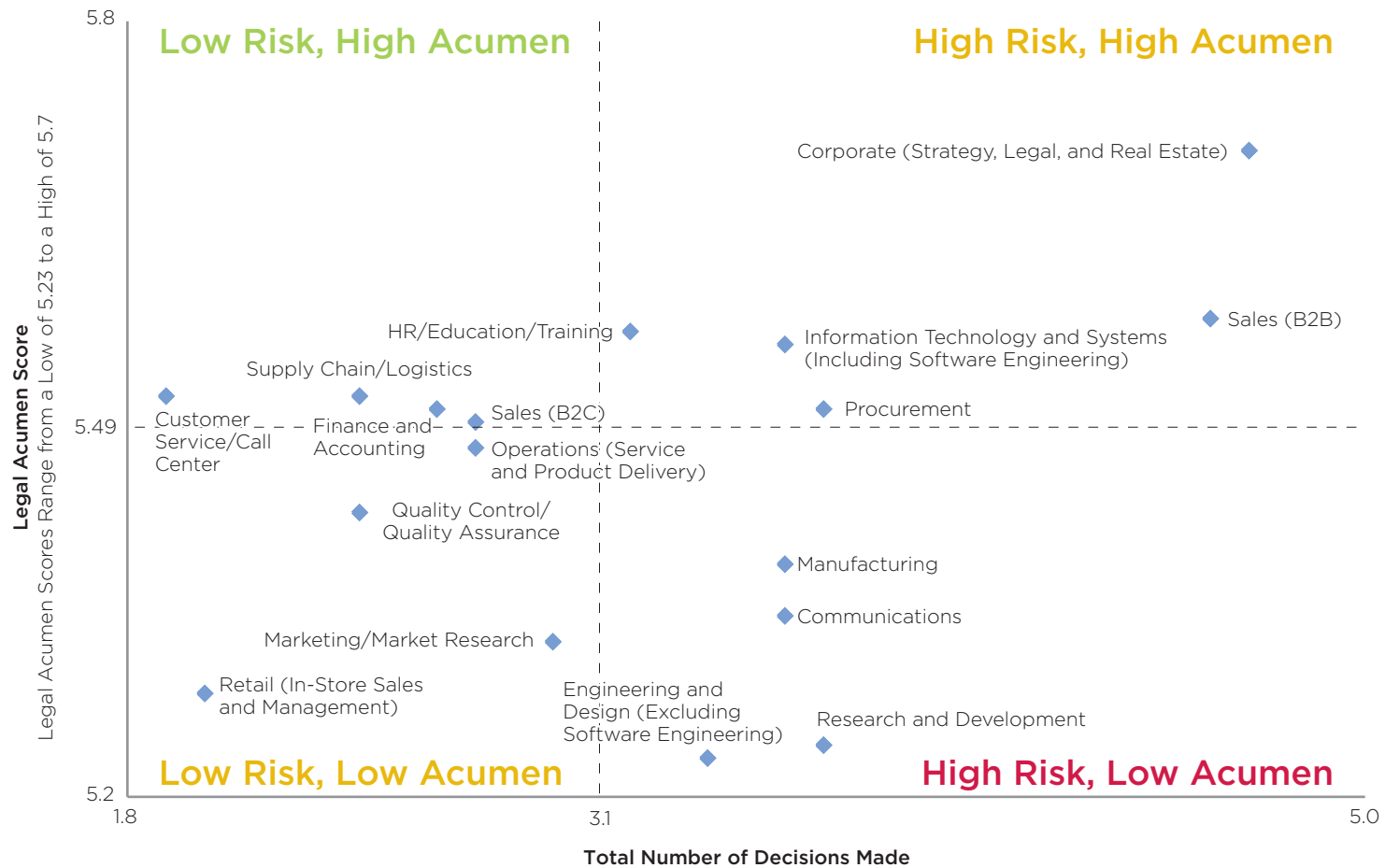
This report summarizes specific findings for each of the 17 functions using data and insight from the Corporate Legal Decision-Making Survey. Each functional profile is divided into two sections:

- The Functional Risk Profile covers employee decision making, function-specific sources of legal risk, and legal acumen.
- The Risk Assessment Questionnaire provides a series of questions that the legal department may use to assess and understand the risk-taking behaviors and legal acumen of the organization's key functions. The questionnaires can also be used in conversations with heads of functions and other key stakeholders.

# LEGAL RISK HOT SPOTS

## Legal Risk Profiles

Average Number of Employee Decisions and Average Legal Acumen by Function

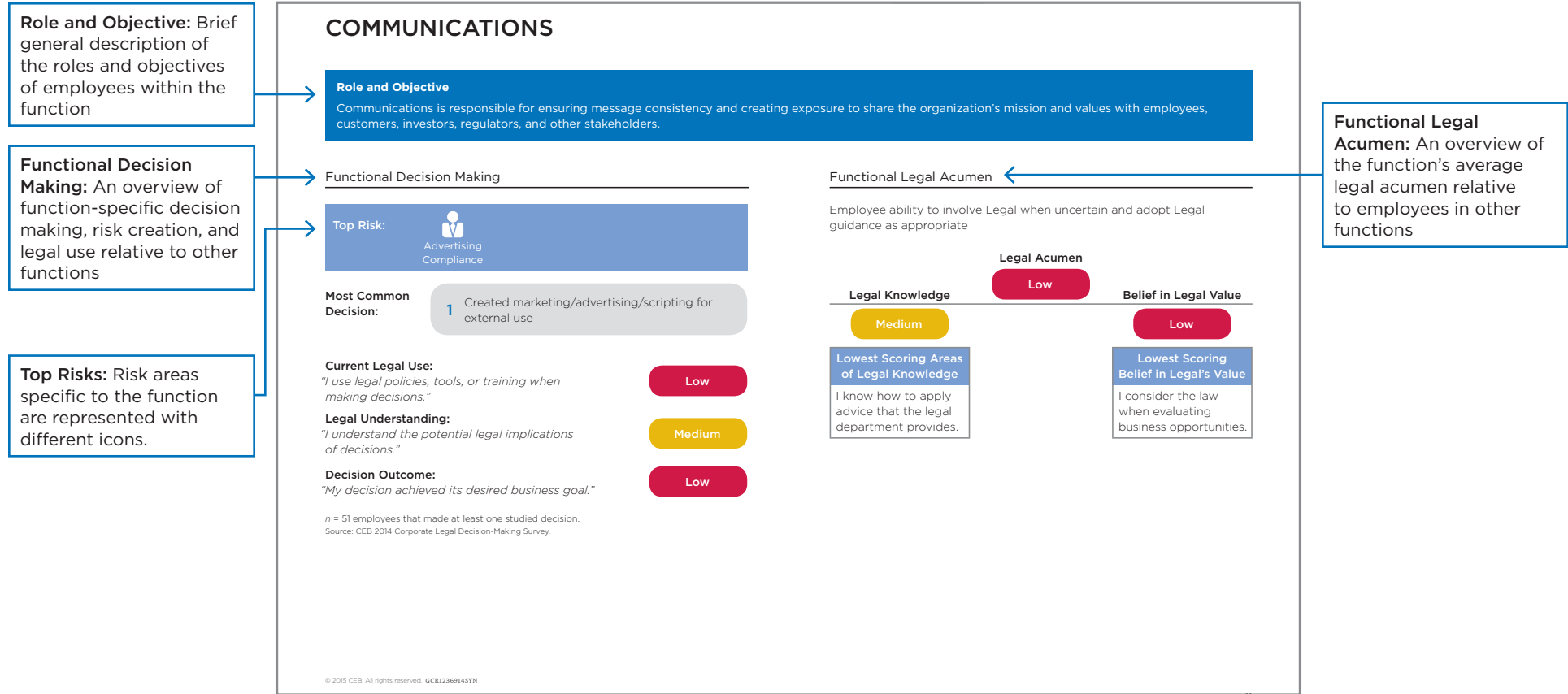


n = 2,244 respondents.

Source: CEB 2014 Corporate Legal Decision-Making Survey.

<sup>a</sup> The legal acumen scores represent the average employee agreement with statements judged on a seven-point scale. Agreement scores range from 1 to 7, with 1 indicating "strong disagreement" and 7 indicating "strong agreement" with the proposed statement.

# HOW TO READ FUNCTIONAL RISK PROFILES




# RESEARCH AND DEVELOPMENT

## Role and Objective


Research and development employees lead the design and development of new and improved products. Employees also make recommendations to improve existing products and reduce the cost of production.

## Functional Decision Making

**Top Risks:**



Intellectual Property



Antitrust/  
M&A

**Most Common Decisions:**

- 1 Created a new corporate product for use, distribution, or sale
- 2 Contributed to or created corporate intellectual property
- 3 Attended professional or industry conferences or events where individuals from competitor organizations were present

### Current Legal Use:

*"I use legal policies, tools, or training when making decisions."*

Low

### Legal Understanding:

*"I understand the potential legal implications of decisions."*

Low

### Decision Outcome:

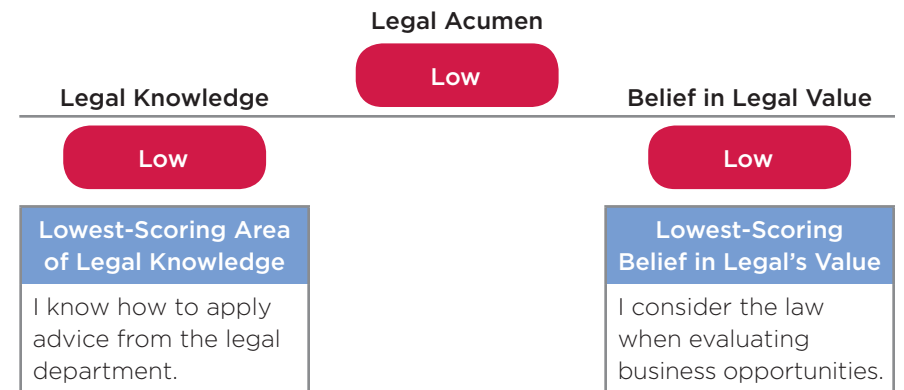
*"My decision achieved its desired business goal."*

Low

*n* = 91 employees who made at least one studied decision.  
Source: CEB 2014 Corporate Legal Decision-Making Survey.

## Functional Legal Acumen

Employee ability to involve Legal when uncertain and adopt legal guidance as needed:



# RESEARCH AND DEVELOPMENT: RISK ASSESSMENT QUESTIONNAIRE

## **Legal Acumen: Do research and development employees have strong legal acumen?**

1. Do employees and senior managers understand the function-specific decisions that have significant legal implications?
2. Can employees differentiate between low- and high-risk decisions?
3. Do employees actively share legal knowledge (e.g., documents and best practices for engaging legal ideas across teams)?
4. In general, do employees value current legal department services?
5. In the past year, how many issues did employees bring to the legal department's attention?
6. Do employees believe that using the legal department increases the quality of their decisions?

## **Training and Policies: Do research and development employees receive the appropriate legal and compliance training for their roles?**

1. Have research and development employees received relevant legal and compliance training (e.g., antitrust, intellectual property)?
2. Do employees have access to policies and procedures to guide them when making legally sensitive decisions?
3. Do employees apply legal and compliance training when making decisions?
4. Has the function worked with the legal department to understand the rules and procedures for opening new offices and factories in jurisdictions not currently within the organization's operating footprint?

## **Accountability Mechanisms: Do research and development employees feel accountable for making legally sensitive decisions?**

1. Are employees held accountable for using legal services as required?
2. Has the function implemented incentives for the appropriate use of legal resources?

## **Risk Assessment: What legal risks do research and development employees create?**

### **Antitrust and M&A**

1. How does the function prepare employees who have contact with other companies' sales teams?
2. Do employees follow appropriate due diligence procedures to control document trails and public statements?
3. Do employee interactions comply with the organization's antitrust policy?

### **Intellectual Property**

1. How do employees track relevant intellectual property rights and patent changes?
2. How do employees track patent and trademark filing?
3. What procedures exist for drafting intellectual property agreements?
4. Do employees work with the legal department to draft intellectual property agreements?

# CORPORATE (Strategy, Legal, and Real Estate):

## Role and Objective

Corporate employees identify and devise solutions to overcome business challenges and achieve company goals. Employees from these areas work together to create a unified company vision and work toward attaining firm-wide objectives.

## Functional Decision Making

**Top Risks:<sup>a</sup>**

- Anti-Corruption/ Bribery
- Reputational Damage
- Privacy

**Most Common Decisions:**

- 1 Interacted with government officials (of any country)
- 2 Represented company in a public forum
- 3 Interacted with a regulatory agency/official

### Current Legal Use:

*"I use legal policies, tools, or training when making decisions."*

Medium

### Legal Understanding:

*"I understand the potential legal implications of decisions."*

High

### Decision Outcome:

*"My decision achieved its desired business goal."*

High

n = 85 employees who made at least one studied decision.

Source: CEB 2014 Corporate Legal Decision-Making Survey.

<sup>a</sup> Top three risks above the mean.

## Functional Legal Acumen

Employee ability to involve Legal when uncertain and adopt legal guidance as needed:

Legal Knowledge	Legal Acumen	Belief in Legal Value
High	High	High
<b>Lowest-Scoring Areas of Legal Knowledge</b> I know how to apply advice from the legal department. I know when legal issues are present in a decision.		<b>Lowest-Scoring Belief in Legal's Value</b> I consider the law when evaluating business opportunities.



# CORPORATE (Strategy, Legal, and Real Estate): RISK ASSESSMENT QUESTIONNAIRE

## **Legal Acumen: Do Corporate employees have strong legal acumen?**

1. Do employees and senior managers understand the function-specific decisions that have significant legal implications?
2. Can employees differentiate between low- and high-risk decisions?
3. Do employees actively share legal knowledge (e.g., documents and best practices for engaging legal ideas across teams)?
4. In general, do employees value current legal department services?
5. In the past year, how many issues did employees bring to the legal department's attention?
6. Do employees believe that using the legal department improves the quality of their decisions?

## **Training and Policies: Do Corporate employees receive the appropriate legal and compliance training for their roles?**

1. Have Corporate employees received relevant legal and compliance training (e.g., advertising compliance rules and standards)?
2. Do employees have access to policies and procedures to guide them when making legally sensitive decisions?
3. Do employees apply legal and compliance training when making decisions?
4. Has the function worked with the legal department to understand the rules and procedures for opening new offices and factories in jurisdictions not currently within the organization's operating footprint?

## **Accountability Mechanisms: Do Corporate employees feel accountable for making legally sensitive decisions?**

1. How are employees held accountable for using legal services as required?
2. Has the function implemented incentives for the appropriate use of legal resources?

## **Risk Assessment: What legal risks do Corporate employees create?**

### **Anti-Corruption and Bribery**

1. Do employees follow appropriate due diligence procedures when the function contracts with a third party?
2. Are transactions entered and tested to ensure accurate bookkeeping?
3. Is the legal department consulted before any foreign portfolio investment is made?
4. How does the function ensure representatives comply with Foreign Corrupt Practices Act (FCPA) requirements or other anti-corruption and bribery laws when conducting business with government officials?

### **Antitrust and M&A**

1. How does the function prepare employees who have contact with other companies' sales teams?
2. Do employees follow appropriate due diligence procedures to control document trails and public statements?
3. Do employee interactions comply with the organization's antitrust policy?

### **Privacy**

1. When contracting with third parties, do employees follow appropriate due diligence procedures to ensure compliance with data controls, processes, and necessary certifications?
2. Do employees understand the obligations surrounding the collection and use of sensitive data?
3. Does the function follow legal guidance when conducting market research and gathering data?
4. What protocols are in place to handle contractor and employee privacy breaches?
5. Does the function comply with the company's data management approach?

### **Reputational Damage**

1. Does the function consider the potential reputational impact of its decisions and communications?
2. Does the function have a formal response plan in place for litigation or reputational damage?

### **Trade Compliance**

1. Do employees understand and follow appropriate screening processes and required documentation for sales and contracting?
2. If the function contracts with third parties to perform logistic services, do employees follow appropriate due diligence procedures to ensure compliance with trade requirements?
3. Have functional trade procedures been audited in the past 12 months?

# TOP RISK AREAS SUMMARY

	Advertising Compliance	Anti-Corruption/ Bribery	Antitrust/ M&A	Contracts	IP	Privacy	Reputational Damage	Quality and Production Liability	Trade Compliance
Communications ( <i>n</i> = 51.)	x								
Corporate (Strategy, Legal, and Real Estate) ( <i>n</i> = 85.)		x	x			x	x		x
Customer Service/Call Center ( <i>n</i> = 115.)		x							
Engineering and Design (Excluding Software Engineering) ( <i>n</i> = 189.)			x		x				
Finance and Accounting ( <i>n</i> = 189.)			x						
HR/Education/Training ( <i>n</i> = 131.)		x				x			
IT and Systems (Including Software Engineering) ( <i>n</i> = 509.)			x		x				
Manufacturing ( <i>n</i> = 163.)			x					x	x
Marketing/Market Research ( <i>n</i> = 69.)	x								
Operations (Service and Product Delivery) ( <i>n</i> = 221.)						x			
Procurement ( <i>n</i> = 52.)				x		x			x
Quality Assurance and Quality Control ( <i>n</i> = 91.)								x	
Research and Development ( <i>n</i> = 91.)			x		x				
Retail (In-Store Sales and Management) ( <i>n</i> = 61.)		x							
Sales (B2B) ( <i>n</i> = 104.)	x		x	x	x	x	x		x
Sales (B2C) ( <i>n</i> = 81.)				x					
Supply Chain and Logistics ( <i>n</i> = 42.)									x

Source: CEB analysis.

**Contact us directly to dig deeper into the full report and learn how CEB can help you assess the legal acumen of your functional partners and identify heightened risk taking areas in your organization.**