



# How U.S. Companies Select International Outside Counsel

In association with legal marketing and communications consultant  
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**I**nternational trade continues to be on the rise and U.S. businesses have never been more international than today. The vast majority of companies in the U.S. no longer compete only domestically but in the global marketplace.

According to the International Trade Administration of the Department of Commerce, U.S. global exports in 2005 exceeded US\$ 904 billion - compared to US\$ 583 billion ten years earlier, while imports accounted for over US\$ 1,670 billion, up from US\$ 743 billion in 1995 ([www.trade.gov](http://www.trade.gov)).

Such international economic activity clearly portends the increased need for overseas legal advice. U.S. businesses, like never before, have to find and select law firms in the countries in which they have operations or have import-export activity. Little is known, however, about how U.S. companies and division select their overseas legal counsel.

To shed light on this exceptionally relevant issue, ALM conducted research among corporate legal counsel.

The findings of this study will help overseas legal service providers develop more effective and efficient marketing plans that convert marketing stimuli into purchase responses from U.S. companies and also help stimulate referrals from U.S. attorneys who represent clients and often are asked to recommend overseas counsel.



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## EXECUTIVE SUMMARY:

U.S. companies and divisions present a great opportunity for law firms around the globe:

- **GROWING MARKET**

U.S. businesses already need a wide variety of legal services and expect an increase in volume in the future.

- **VARIETY OF PLAYERS ACCEPTED**

While complex cross-jurisdictional corporate and commercial matters are often outsourced to large international law firms due to perceived necessary capacity, U.S. businesses “cherry pick” their overseas legal advisors in “niche” areas.

- **SHUFFLING DECKS**

Very few U.S. businesses maintain formal or informal lists for their overseas legal advisors. This means that smaller firms with limited jurisdictional reach have a chance to get chosen, providing their reputation and/or communications efforts give them visibility with U.S. counsel and that they are able to demonstrate the necessary expertise.

- **REFERRALS**

A lot of the selection takes place through personal referrals and recommendations instead of formal RFPs (Requests for Proposal). Firms wanting to be considered and chosen need to use a mix of marketing tools including events and advertising in print and online, and focus on maintaining a high level of expertise and build a great network that spreads the news.

- **REDUCE PERCEIVED RISK**

Choosing overseas law firms is a big challenge for many U.S. businesses as they have little knowledge about firms in relevant jurisdictions. They find it hard to judge the level of a firm’s expertise as not all countries use the same reporting systems that U.S. counsel consult when doing diligence on a lawyer. Firms will win if they are able to communicate and demonstrate their expertise, thus reducing the perceived risk for the buyer in the U.S.

# METHODOLOGY & DEMOGRAPHICS:

This research is based on a quantitative study which was carried out in May of 2006 among 219 US key corporate decision-makers involved in the purchasing of overseas legal services.

To enrich the findings and probe answers, the respondents were asked to participate in subsequent in-depth telephone interviews and a number did so. This qualitative phase took place in January and February 2007.

## *Companies and Divisions*

The respondents in the study worked for companies or divisions headquartered in the U.S.

Although the sample draws from all regions in the US, over half (54 percent) of the participants came from seven states (California, New York, Illinois, Texas, New Jersey, Massachusetts, and Pennsylvania).

To further qualify for the study, the companies had to be engaged in economic activities outside the U.S. market. Such businesses included direct sales or shipment to other countries, overseas operations and/or licensing agreements with entities in other countries.

The industry sectors of the responding companies were fairly diverse, ranging from manufacturing, finance and insurance, technology, professional services, healthcare, other services, information, and retail, in addition to energy, oil & gas.

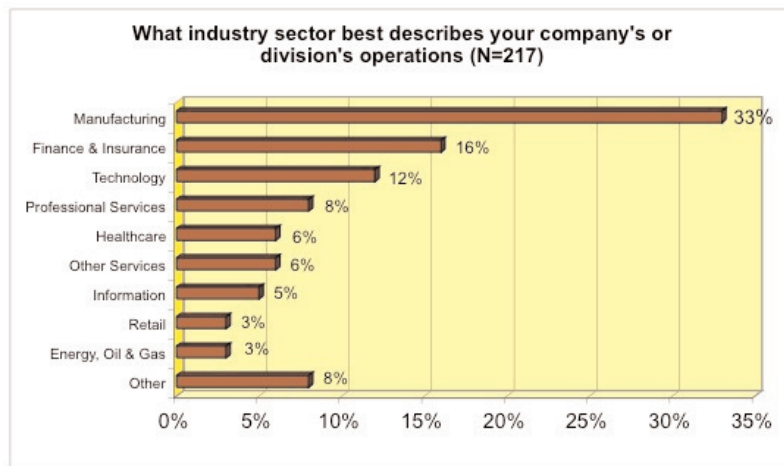
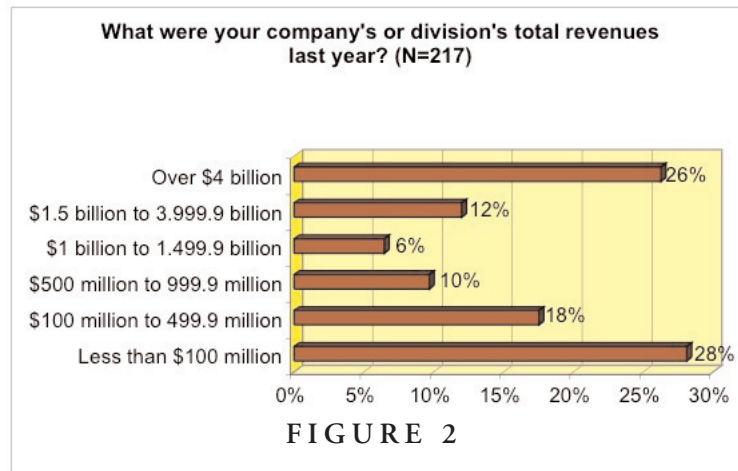
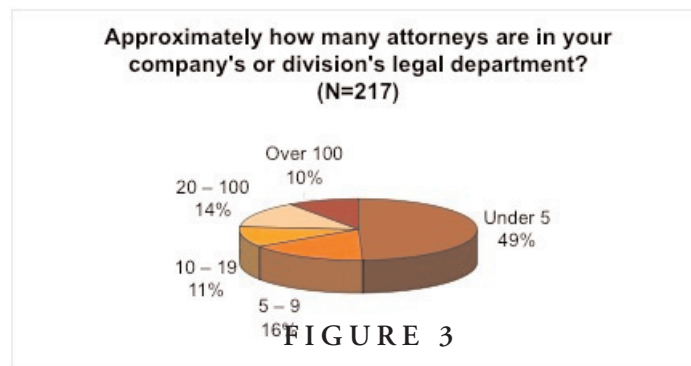


FIGURE 1

The study included a wide range of companies and divisions in terms of size, representing the diversity of internationally active U.S. businesses. While almost half (44 percent) can be classified as Fortune 1000 companies in terms of revenue, and over a quarter (26 percent) as Fortune 500 companies, more than a quarter (28 percent) are smaller companies or divisions with less than \$100 million in revenue.



The range of businesses in terms of size is also reflected in the range of legal department sizes. Although 10 percent of the participating companies and divisions had legal departments with over 100 attorneys, most in-house departments were relatively small: the majority (74 percent) had less than 20 lawyers and almost half (49 percent) less than five attorneys.



## Decision Makers

The majority of respondents (75 percent) were key legal decision makers, and were comprised of senior legal executives such as general counsel, chief legal officers, vice presidents legal, assistant/deputy general counsel or chief practice area counsel.

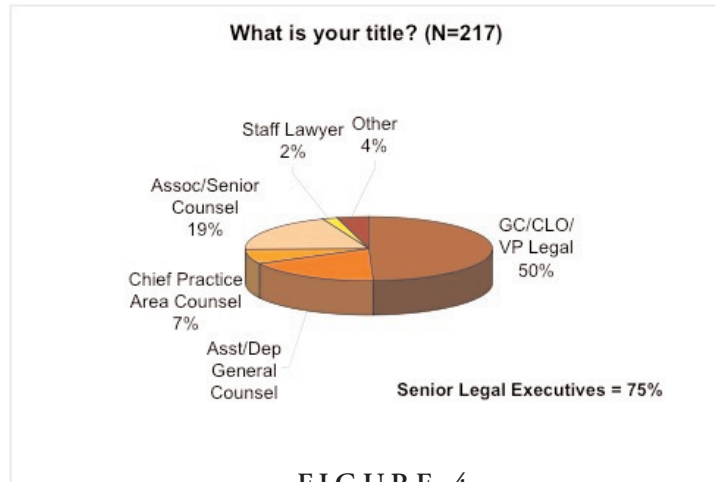


FIGURE 4

All participants in the study had sole or partial responsibility for matters requiring the hiring of outside counsel in another country during the last 12 months. In fact, well over half (58 percent) of the respondents were involved in hiring overseas outside counsel on a fairly regular basis, that is, a minimum of five times in that period.

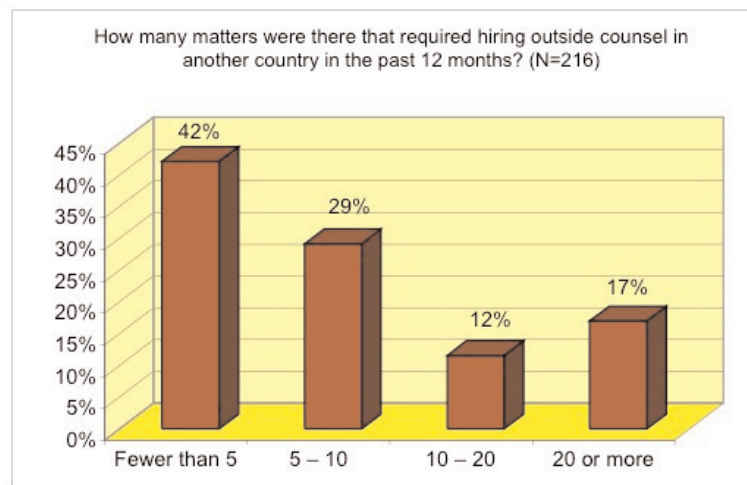


FIGURE 5

# SURVEY RESULTS:

## *Outsourced Overseas Legal Advice*

The U.S. companies and divisions in the study required a wide range of practice area expertise in overseas matters. Although the majority (67 percent) bought intellectual property (IP) counsel (e.g. licensing, trademarks, and patents), about half sought advice in the areas of labor and employment law (58 percent), litigation or arbitration (56 percent), mergers & acquisitions (48 percent) and tax (47 percent). Real estate and anti-trust/competition matters were outsourced by a third (34 and 31 percent respectively) of the participating firms.

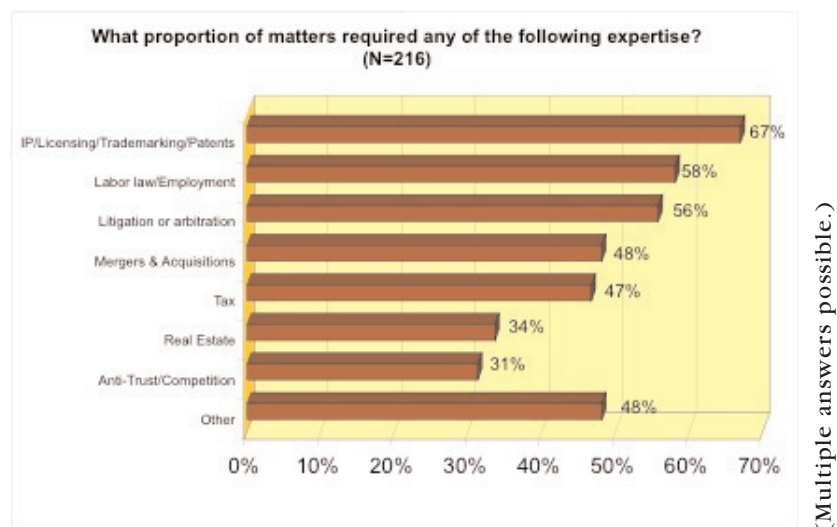


FIGURE 6

The good news for overseas law firms is that more than half (54 percent) predicted their needs for legal advice to grow over the next twelve months. About a third (38 percent) expected their legal needs to stay the same and only 4 percent foresaw outsourcing less work.

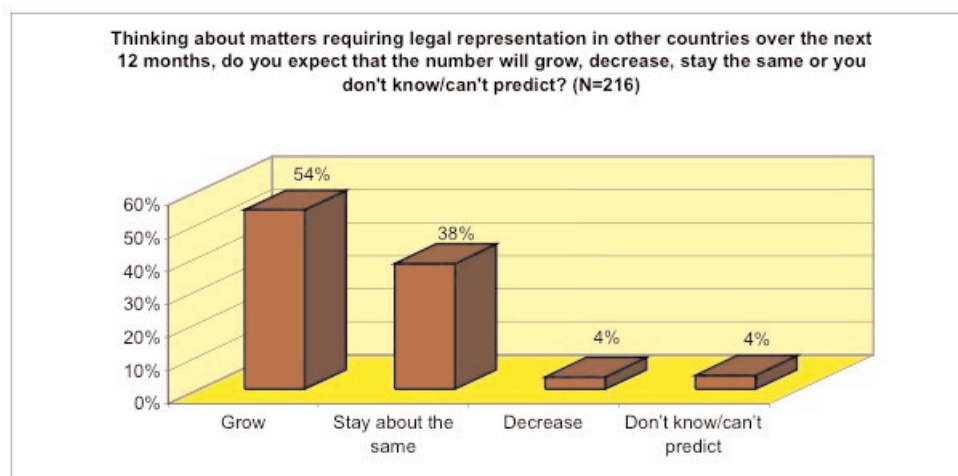


FIGURE 7

## Geographic Location

Despite the economic attraction of Asia's rapid growth, the surveyed U.S. companies and divisions sought outside counsel most frequently in Europe, led by the UK (59 percent). Neighboring Canada (50 percent) and the rising economic power China (46 percent) followed closely as the most requested individual countries.

In which regions did you seek outside counsel over the last 12 months? (N=219) (In general rank order)		
<b>Europe</b>	UK	59%
	Germany	40%
	Italy	25%
	Ireland	18%
	Western Europe other than UK, Ireland, Germany, Italy	51%
	Eastern Europe incl. Russia	27%
	<b>North America</b>	Canada
<b>Asia</b>	China	46%
	India	31%
	Asia other than China, India	38%
<b>South America</b>		41%
<b>Central America incl. Mexico</b>		37%
<b>Australia/New Zealand</b>		27%
<b>Africa</b>	Middle East	20%
	Africa other than Middle East	15%
<b>Caribbean</b>		14%

(Multiple answers possible.)

FIGURE 8

## *Search and Selection*

According to interview participants, the search process for overseas legal counsel appears to differ considerably from the search for domestic legal advice, and the respondents find it a significantly greater challenge.

Depending on the geographic location and the jurisdiction's legal system, U.S. companies and divisions identified a lack of available information and thus higher perceived risk:

“Finding an overseas law firm is a very difficult process, especially outside Common Law countries. It is almost impossible to check lawyers in Civil Law countries. In the US, the reporting system is great. I can virtually see every case an attorney has ever been involved in, which gives me some peace of mind. I have had great difficulties finding information about specific lawyers in some [Civil Law] European countries. This is really worrying - I basically have no idea if he is capable or not.”

“It is really a ‘sorting the wheat from the chaff’ process that can take quite some time. It is a constant challenge for us.”

“Common Law countries like Canada, the UK, Australia, and Singapore, and Northern European countries are relatively easy [when searching for law firms]. South America, Africa, the Middle East, and Asia are quite challenging because the reporting capabilities are very limited. There is no published information readily available. How can I know if a lawyer is good?”

“It so much depends on the subject matter, but it is usually easier to find law firms in Europe, than say, in Latin America or Asia.”

“It is so much riskier for me working with firms outside the US. I have basically no control over the quality of their work, and I can't supervise it or check it. And I do not have recourse if they miss a deadline. What would I do? Sue them? In the US, it is much less risky, I have much more power over the firms - and I can find them easier.”

U.S. in-house counsel strongly expressed a need for information, as more than half (51 percent) only feel “somewhat comfortable” with their knowledge of law firms in the jurisdictions of interest. When they started the search process, almost a third (29 percent) even felt “uncomfortable in most situations” or had “no knowledge” of local law firms in any of the countries where they sought outside counsel. Only 19 percent of respondents expressed a sufficient level of comfort with their knowledge of the local marketplace which clearly shows considerable room for improvement.

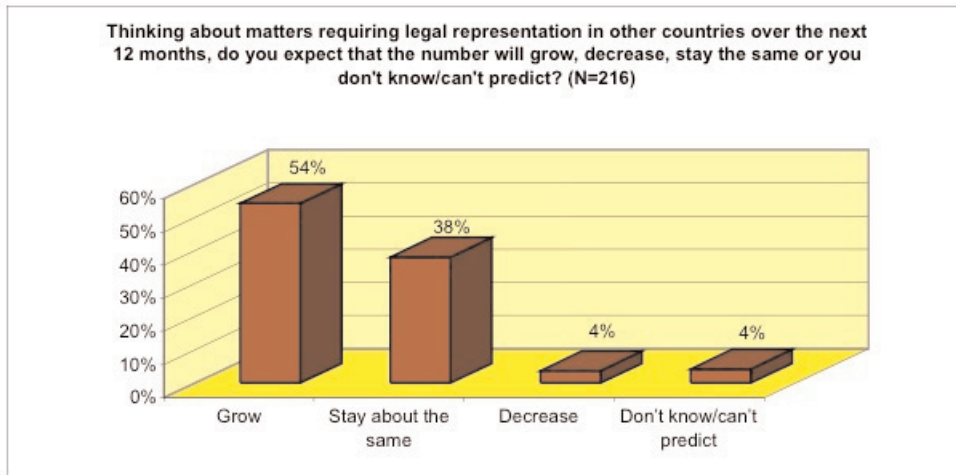


FIGURE 9

### *Decision Making*

Perhaps because choosing overseas legal counsel is not part of the day-to-day business of all U.S. legal departments and overseas firms appear to not pro-actively market their services to the U.S. market, key decision makers perceive to have only limited knowledge of overseas legal markets and often make decisions jointly. Almost half (47 percent) of the respondents in U.S. companies and divisions shared authority with others, either in the legal department or other parts of the company or division. While 24 percent of the respondents stated that the process varied depending on the importance or risk exposure, 39 percent had sole decision-making authority.

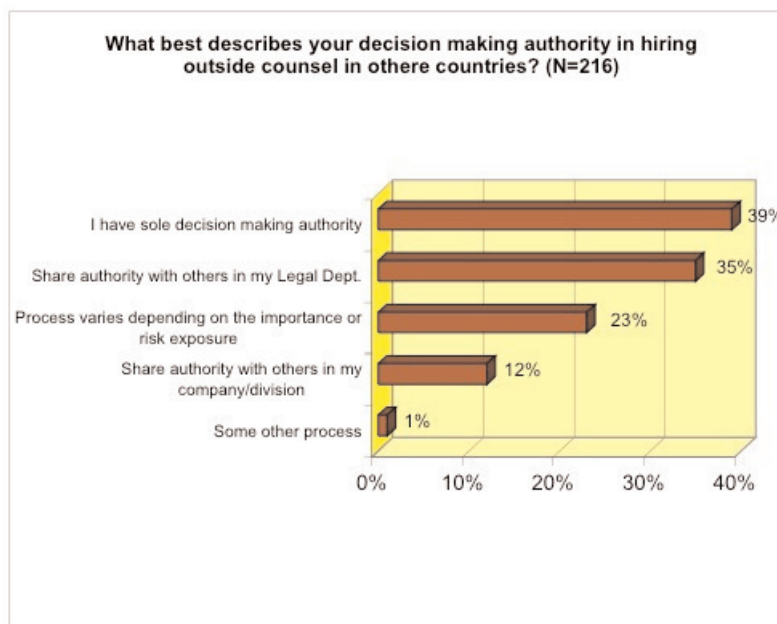


FIGURE 10

### *One-Stop Shopping vs. Picking Cherries*

Several respondents expressed that they had attempted to reduce the difficulty of the search process by working with a limited number of law firms, networks or alliances who offered extensive international capabilities. This “one-stop-shop” appears to work particularly well in general corporate and commercial matters.

Some U.S. in-house counsel, however, indicated a preference to “cherry-pick” the best overseas firms in niche areas (e.g. intellectual property).

“For normal corporate matters, I usually go with the ‘one-stop shop’ if the firm is large enough to handle multiple work.”

“I’d rather ‘one-stop shop’. For our commercial work I usually need a firm that has sufficient scale and size. Unfortunately, the lack of consistency of quality between the different offices of large firms is often a problem. The good news is that I have more power there. It doesn’t mean that they have the best lawyers in all their offices, but when I don’t like what they do, I can hold my US lawyers’ feet in the fire to make sure things run well overseas.”

“I guess I do a bit of both [cherry-picking and one-stop shopping]. I like working with alliances and multi-jurisdictional firms. So far, they have not disappointed me. When a firm does a good job, I generally don’t switch. But I ‘cherry-pick’ when it doesn’t work out with a firm, even if they are a member of the network I usually work with.”

“It depends on the matter. For IP, I usually ‘cherry-pick’ the firms. Expertise is so important. They need to have the know-how, not just general knowledge. Large firms often do not have it in IP.”

Some interview participants showed a preference for long-term relationships with their legal services providers, as they perceive it to be advantageous both in terms of the learning curve and reduced risk.

Making one trusted lawyer –domestic or overseas– responsible for the advancement of the matter was mentioned by a number of participants in the study as a remedy to reduce perceived risk.

“If I am comfortable with a law firm and trust their lawyers, I will probably work with them in other countries as well, as long as they are good and have an office in the jurisdiction I need.”

“I don’t like changing firms a lot. Starting fresh with a law firm, getting them up to speed -the whole learning curve- takes so much time. It is often better if I just fly out a lawyer who is brilliant and knows my company. I make him responsible to get the very best lawyer in another country.”

“When we work on a multi-national matter, I like one firm to be the coordinator, whether it is within the same law firm or network or not. I make one lawyer responsible for the whole thing. Putting one lawyer in charge usually works. She makes sure everything gets done.”

### *Changing Choice*

Despite favoring continuity, the choice of overseas law firms is not set in stone: Only a small number (15 percent) of U.S. companies and divisions maintain a formal preferred list of firms and/or foreign lawyers. 29 percent have an informal preferred list and 30 percent have an informal list, while 26 percent do not maintain a list of firms or individual legal service providers.

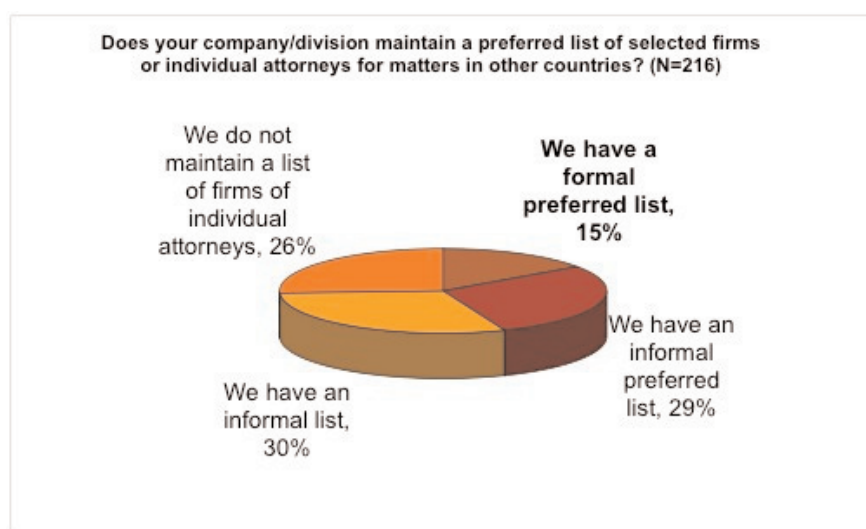


FIGURE 11

### *Tools and Resources*

Respondents use many tools and resources to identify and select overseas outside counsel, although the majority (87 percent) turn to their regular outside counsel in the U.S. for recommendations. In fact, visibility with major U.S. law firms is a critical source for maintaining a steady flow of referrals.

“When I look for a new firm, I speak with other General Counsel or our U.S. attorneys. I ask them who they have used, and if they were happy with that firm. Yes? No? If not, why not?”

“When I need a firm in another country, I usually use referrals from other GCs or my lawyers. Over the years, we have established a pretty good network. Sometimes, I go to larger firms: even when they don’t have an office in that particular country I need, they might have a partnering firms or best friends.”

**What tools and resources do you use in identifying and selecting outside counsel in another country.**  
*Select all that apply. (N=216)*

Referrals from outside counsel in the US	87%
Firm's website	66%
Referrals from outside counsel in the overseas region	63%
Firm interviews	57%
Referrals from in-house lawyers in the US	56%
Referrals from in-house lawyers at other companies	45%
Referrals from in-house lawyers overseas	34%
Referrals from company management	32%
Seminars/conferences/events	26%
Online search engines	20%
Firm articles/newsletters	16%
Legal networks like Lex Mundi	16%
Legal publications	16%
Bar directories	13%
Online directories	13%
Print directories other than bar directories	4%
Other sources	4%

(Multiple answers possible.)

**FIGURE 12**

A convincing online presence appears to be important for law firms as 66 percent check the firm’s website, and use online search engines (20 percent) or online directories (13 percent).

Once a prospective overseas firm has been identified, another powerful tool is making a good impression by being able to demonstrate expertise, as 57 percent use interviews with potential legal service providers.

“When we identify a firm, I usually send a preliminary email. I ask the firm to provide us with some info. If that looks good, I set up a phone conference. Then we go from there. When I talk with them it is clear pretty much right away if they know what they are talking about or not.”

Other traditional marketing tools and resources such as seminars, conferences and events, articles and newsletters, legal publications and directories can be effective as respondents indicate that they consider such material when identifying and selecting overseas law firms.

“Lawyers need to get their name out. Speaking at a conference is a great way to become known in an industry, plus you meet people who potentially hire you.”

“I found a firm I often work with when I met one of their attorneys at a conference. Such one-on-one meetings are good opportunities to get a feeling for what they’re like. That attorney made a good impression on me and I hired him.”

The key role that U.S. law firms play when looking for overseas counsel is also confirmed by 60 percent of the respondents who “frequently” or “always” turn to their long-term counsel in the U.S. or their preferred providers. Another 34 percent “sometimes” check with their U.S. attorneys, while only 6 percent never ask their domestic attorneys when searching for outside counsel in other countries.

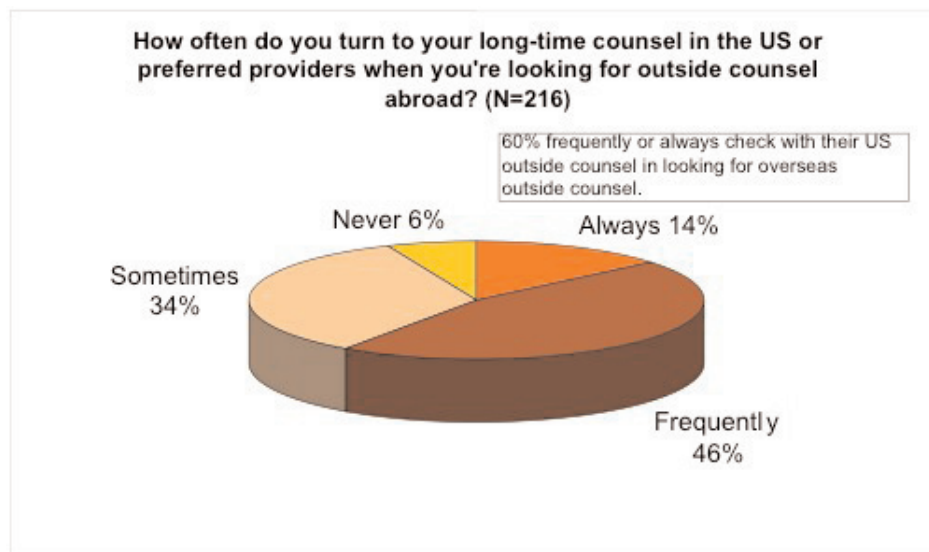


FIGURE 13

Attorneys are well advised to give honest recommendations rather than trying to cross-sell within the firm, network or alliance at all costs, as it might ultimately hurt the trust relationship between lawyer and client:

“The problem with larger firms is that when you ask them for a specialist they recommend, they will almost always first try to sell me the lawyers from their own firm who happen to be in that country. But these are not necessarily the best ones.”

“The partners I really trust and respect know better than just selling me their colleague in another country rather than the best expert in a specific area.”

Although RFPs (requests for proposal) are often used when hiring U.S. law firms, surprisingly few companies and divisions use an RFP for hiring overseas legal counsel: only 6 percent “always use an RFP process”, and 17 percent use it in “specific situations” compared to the 60 percent majority who “do not use an RFP process”.

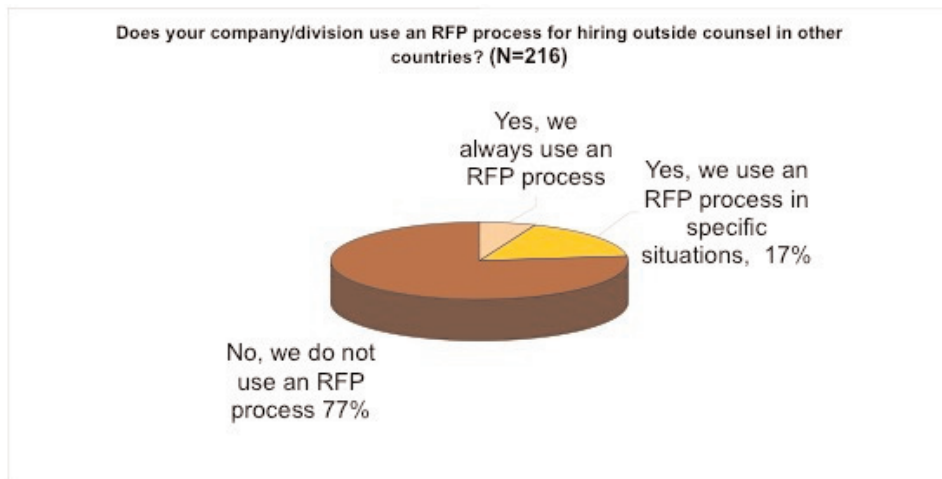


FIGURE 14

### Key Criteria

To be hired by U.S. companies and divisions for overseas legal advice, firms and lawyers must be able to instill confidence in multiple ways: Lawyer expertise was quoted as the single most important criteria, with 94 percent rating it as “extremely” or “very important”. Almost equally significant was client service (88 percent) and firm expertise (84 percent). Reputation of the individual lawyer or the firm shared the 4th rank at 78 percent. Somewhat less important was the firm’s geographic location (64 percent). Interestingly, fees and budgeting was the least often mentioned criterion when selecting overseas firms or lawyers (63 percent).

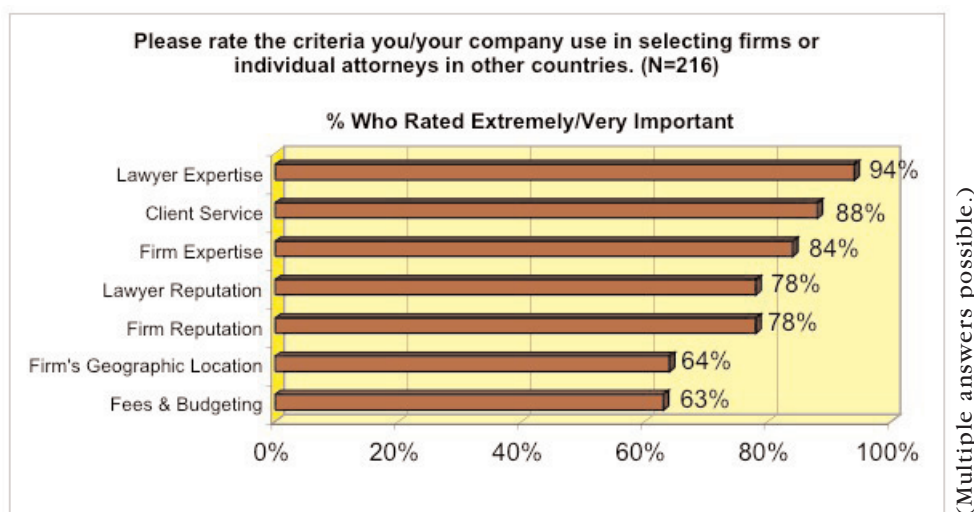


FIGURE 15

“We need firms that have a specialist knowledge-base. They must already be doing that kind of work.”

“Law is a personal service business. It really comes down to how someone’s mind works. I ask myself: ‘Can that person handle the case?’ That’s what counts.”

“I am frustrated by firms that first promise you the world and then can’t deliver. Expertise and honesty about it is key.”

### *Must-Haves*

Beyond knowledge of the specific jurisdiction, what are other “must have” qualities U.S. companies and divisions expect from overseas law firms? When asked –without prompting– the respondents most frequently cited English language skills and the ability to communicate with the U.S. (30 percent), followed by subject matter knowledge (22 percent).

17 percent stated that they expect work to be prompt, timely and responsive to U.S. timeframes. Reasonable fees and cost effectiveness were mentioned by 15 percent, and understanding of U.S. business practices and law by 12 percent.

Further “must have” criteria included local knowledge, expertise, or influences (7 percent); communication skills in the sense of keeping the client informed (6 percent); ethics/integrity (3 percent) and practical vs. theoretical advice (3 percent).

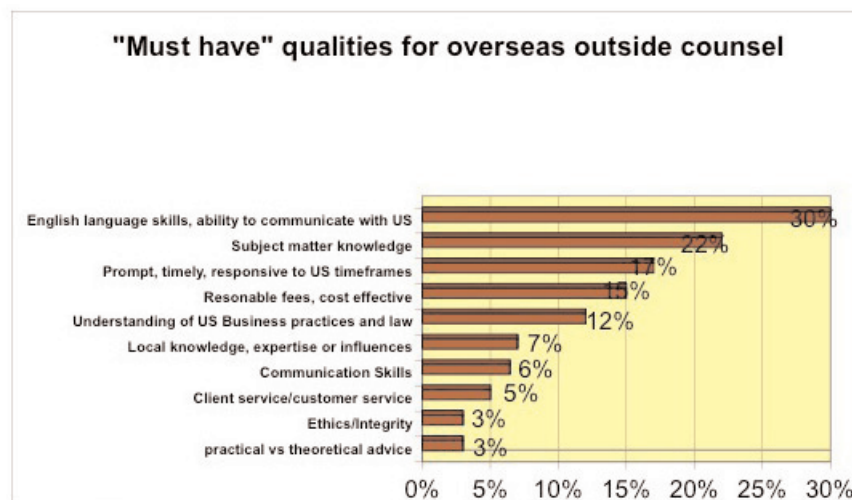


FIGURE 16



## KEY TAKE-AWAYS:

- Pro-actively market your services to U.S. businesses and law firms -- communicate your capabilities. Become known as a problem solver in a certain area of specialty!
- Be honest about your expertise and capabilities. If you do not have the know-how needed, say so right away. Do not waste anyone's time: not theirs, not yours. Plus, U.S. businesses are "once bitten, twice shy"; they might tell their friends, who are often other potential buyers of legal services!
- When working on international projects, be a good team player and collaborate well with firms in other countries. If appropriate, take the responsibility for making sure the matter runs smoothly. U.S. counsel will appreciate this.
- Be "easy-to-work-with": Make your U.S. clients' lives easier by speaking English well and being aware of what U.S. clients expect from you in terms of service delivery, time frames, and client care. If in doubt, ask! Seeking clients' feedback is, in fact, always a good idea!
- Overseas firms can add real value by not only being a great domestic lawyer but by having a good understanding of the U.S. legal system. Pro-actively point out differences and their consequences to your clients, they might not be aware of them!
- Transparency is key: Be as open about pricing as your jurisdiction allows. U.S. counsel might not consider you if they are unable to estimate how much your services will cost.
- "When in Rome ..." U.S. businesses are used to certain ways of billing by law firms. Not only should you stay within the agreed budget, as no one likes surprises when it comes to billing, but you should also make an effort to understand how your U.S. clients would like their bills to look. It probably pays!

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