



HERBERT
SMITH
FREEHILLS

**OPEN
INNOVATION:
COLLABORATE
TO INNOVATE**

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Collaborate to innovate

Innovation ecosystems are becoming ever more complex and diverse. Technology is connecting individuals and businesses, across sectors, and it is easier than ever before for anyone, anywhere to innovate. There is also a sense that there is a need for increasingly rapid innovation, as organisations try to stay ahead of the curve. All of which means that there is a compelling imperative for organisations to look externally when it comes to innovation.

Whilst collaborative innovation presents exciting opportunities, allows greater access to talent, and implies reduced costs and greater sharing of risk, it requires a flow of information into and out of the business. The traditional rules of engagement around research and development, collaboration, and innovation, will not always apply. This sort of engagement can leave a business more vulnerable, its boundaries more permeable and ownership of intellectual property less certain. So how can organisations both deliver and safeguard future value?

In this report, we bring together conclusions from a number of interviews we have conducted with clients across multiple sectors and geographies which explored their various approaches to and experiences of innovation by collaboration, whether internal or external. We give particular focus to 'open innovation' and consider the legal implications, with practical steps for conquering the challenges that emerge. By sharing these first-hand insights, which will resonate with many organisations, big and small, we hope to provide a clear routemap with which to navigate the dynamic and rapidly evolving innovation landscape.

Open innovation

“Open innovation is the use of purposive inflows and outflows of knowledge to accelerate internal innovation, and expand the markets for external use of innovation, respectively. [This paradigm] assumes that firms can and should use external ideas, as well as internal ideas, and internal and external paths to market, as they look to advance their technology.”

Professor Henry Chesbrough coined the term 'Open Innovation' in 2003. His revised definition is taken from *Open Innovation: Researching a New Paradigm*, 2006

Changing innovation behaviours

The days in which innovation was achieved solely within an organisation's defined and often siloed internal R&D team are long gone. Knowledge and technology might still come from more traditional collaboration partners – universities, research organisations, trusted suppliers, but, increasingly, these partners now take on a number of guises, even that of a direct competitor. In January 2019, for instance, car giants Ford and VW announced a global alliance to develop zero-emission vans and pick-up trucks. In the longer term, they may venture into electric and autonomous vehicles together.

Often, innovation partners include start-ups and scale-up businesses, consumers and not-for-profit organisations. They might come from related sectors. In technology-based innovations, which depend on niche expertise, they might derive from multiple non-related sectors. Parkinsons UK for example have collaborated with Benevolent AI to solve specific research challenges. Ideas and technologies may also be co-created by the value chain, or fostered in group forums or via innovation competitions.

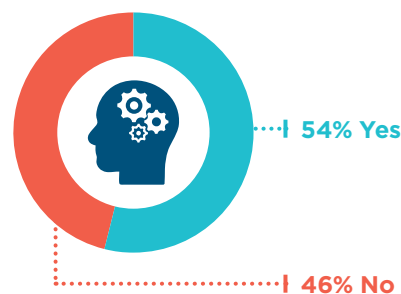
In theory, this is all great for pushing the boundaries of possibility. But, not all open innovation pursuits are successful. Effective innovation requires clear and properly executed strategies, discipline, leadership and a genuine innovation culture; it will involve skills, tools and expertise – and it takes time to embed. Not surprisingly, that means that while most companies understand the importance of innovation to their business, far fewer report

that they are satisfied with their performance in this regard.¹

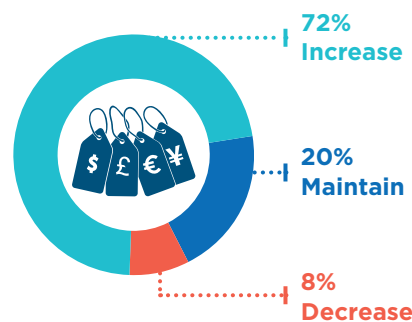
The rapid change in approaches to innovation has meant that many organisations are playing catch up. For those who have developed an innovation strategy, it may be this is not in tune with the business strategy.² New approaches to innovation can be met with considerable internal resistance due to a lack of buy-in at a management level, an internal mindset that continues to focus on traditional approaches to R&D, or a lack of the cross-disciplinary skills (and cooperation) needed for successful innovation.

How are businesses managing these challenges, and how are in-house legal teams grappling with them? Is the rapidly changing and diversifying innovation ecosystem forcing legal teams to reconsider how they support their organisation's innovation strategies? And if so, how?

Does your organisation have a clear innovation strategy?



Does your organisation plan to increase/decrease/maintain its innovation spend in the next financial year?



1. <http://www.mckinsey.com/business-functions/strategy-and-corporate-finance/how-we-help-clients/growth-and-innovation>

2. A recent study found that 54% of businesses surveyed struggle to bridge the gap between innovation strategy and business strategy: PWC, Reinventing innovation: Five findings to guide strategy through execution, 2017.

Themes from our conversations

Open innovation - open to interpretation?

It is clear that across sectors, as businesses look to innovate by collaborating with a broader and more diverse range of partners, many are seeing “open innovation” as being particularly helpful in providing organisations with quick access to new ideas and technology. Despite this, there is not necessarily a clear understanding of what “open innovation” is, and many organisations seem to have developed their own sense of what it actually involves.

Innovation models can be seen as a spectrum from “closed innovation” when a business develops and commercialises new products in-house, through to what may be termed ‘free innovation’ in which ideas and information are shared freely and with no restriction on their use. Between these two extremes sit a range of approaches to innovation with varying levels of collaboration, structural flexibility and openness to external parties.

The term “open innovation”, originally coined by organisational theorist, Professor Henry Chesbrough in 2003, has since been characterised as “a distributed innovation process based on purposively managed knowledge flows across organizational boundaries”.³ It has come to encompass a number of different ways of improving efficiency, utilising new technology and allowing organisations to gather multiple ideas from a range of sources.

The pharma sector is one that has seen significant shifts from an introverted approach to a more external focus in its innovation strategies, ranging from the integration of external innovations, early and diverse alliances relating to new drug candidates, and even crowdsourcing. This has seen a corresponding awareness of a greater need for flexibility on the legal and IP side, but accompanied by a clear position on the non-negotiables.

It seems that open innovation is sometimes used to describe a way in which organisations can gather and develop ideas and technologies from within, in addition to a process involving external collaboration.

Through internal open innovation, organisations seek contributions from their existing employee talent pool, rather than relying on a dedicated R&D or “innovation” team, separate “ideas units” or external consultants. This often involves incentivising and rewarding employees to innovate, as well as providing simple mechanisms that encourage the submission of ideas.

Some have attributed this so-called “insourcing” to the constant pressure to reduce costs, while others simply see their employees as previously untapped resources already attuned to the business and potentially valuable improvements. These companies are therefore investing in systems to connect employees with the expertise and frameworks that they need to develop ideas as they emerge.

External open innovation can take the form of collaborations with third parties through individual arrangements or arrangements with curated communities of specialists in a given field, interacting on agreed terms and conditions within a “community” with whom problems requiring innovation can be shared. Other approaches are even more open, such as those which use a public facing platform to float issues and collect ideas from a community of patients, carers and clinicians.

What is “Open Innovation”?

“Open innovation is about creating partnerships with fintechs and leveraging on new ideas for innovative solutions”

SocGen

“Open innovation is being where you can find the infrastructure and environment for anyone to innovate. It’s about openness, a common language and the ability to set standards and provide well-governed platforms”

Oxford University Innovation

“It is about decluttering innovation”

Circle of Intrapreneurs

3. “H. Chesbrough, W Vanhaverbeke & J West (eds), Open Innovation: Researching a New Paradigm, Oxford University Press, 2006”.



Many businesses we spoke to have adopted the approach of opening up challenges or contests to the public at large such as by posting them on their websites or through "hackathons", which allow them to identify potential innovation partners with the right skills.

Many also reported an almost inevitable expansion in the range of their external collaborators, with the active sharing of non-core assets with competitors, as well as an expansion out from a business' traditional remit in order to sponsor, and thereby harness, a more diverse range of technologies generated internally. Sometimes these collaborations are with external start-ups which are effectively incubated by the business with the successful ones later being fully integrated. Others then may be spun-out. In some cases internal "start-ups" are encouraged and the best concepts retained (although this can sometimes lead to a loss of innovative talent where employees' ideas are not taken up by the business in the longer term and those staff then leave to continue to develop the project independently).

Others we interviewed spoke of posing questions or challenges internally on their intranets so that anyone in the business could interact and submit ideas or solutions.

Anglo American's "FutureSmart Mining™", Rio Tinto's "Mine of the Future™", and Iluka Resource's partnership with the Unearthed hackathon are just a few examples of the ways in which the mining sector have been looking to facilitate external collaborations and a more open approach to innovation.

There were also trends to industry-wide participation towards the creation of common platforms. An exploration of blockchain for example being used in the energy sector for contributions to national grids. Clients in other sectors felt more restricted due to their heavily regulated nature, often using start-ups or independent ventures to innovate in a less restrictive environment, before absorbing successful innovations back into the main business in a fashion acceptable to its regulators.

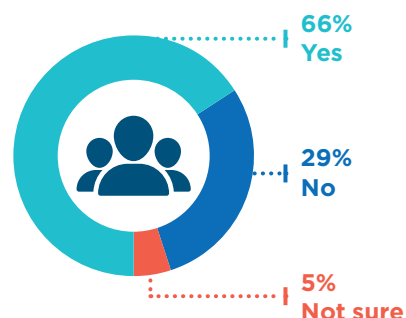
Whilst organisations define open innovation in a variety of ways it is almost always based on the fundamental idea and realisation that knowledge is spread throughout a business, industry or society rather than just being held internally. By accessing both internal and external knowledge, organisations are able to exploit a wealth of information and create a bigger pool of ideas in order to seek the best solution to a specific problem which they are facing.

"We've focussed on creating an ecosystem of collaboration whether internally or externally"
BARCLAYS

"Open Innovation is an open remit to think outside the box for individuals and teams - it's a change of approach which can add efficiency and robustness"
MAN GROUP

"Facilitate ideas from wherever they're generated - not just the innovation division"
PARKINSON'S UK

Does your organisation have a dedicated innovation team?



Starting blocks for collaboration

While there may be differing views as to what open innovation is, it is clear that most businesses are becoming more receptive to new forms of collaboration to stay ahead of the curve, or at least to prevent being left behind. In doing so, they are looking to implement processes and structures that are built on three fundamentals: speed, flexibility, and trust.

Speed, flexibility, and trust

Speed

Clients have stressed the importance of getting access to market first; if the collaboration is slow, it loses value. In the race to innovate, first mover advantage is key; missing out on a technological development can freeze a business out of important slices of the market. This commercial driver (which some described as overriding almost everything else) has focussed clients towards efficiency rather than perfection, even if it makes the initiative riskier. With that in mind, in-house legal teams across multiple sectors have recognised that they need to support their businesses in assessing and understanding risk, rather than being focused on hammering out the intricacies of the perfect deal.

At least one client from the mining sector observed that the sector recognises that "a more open, collaborative approach to innovation is more effective" and drives better outcomes. But a more open approach requires agility from the legal team – legal needs to be "focusing on the material aspects" rather than "having red pen over the contract."

Flexibility

As one of our interviewees said, the key is to "declutter innovation". As with any project, it is not always clear at the outset whether it will gather traction and interest. It is important to be flexible in order to be able to reach the best outcome collaboratively. After all, technology transfer is the "art of the possible" said a client

involved in academic partnering, it needs to work for both partners.

Moreover, businesses need to be light on their feet to allow a collaboration to gather momentum. The reality is that not every project is taken forward, and a more flexible approach means businesses can avoid wasting time on the details of initiatives that do not progress. To address this, a staged approach to new projects has been suggested by clients from various sectors. Multiple clients, in sectors as diverse as mining and pharmaceuticals also identified that having a clear, upfront, understanding of your baseline position on key issues, such as IP, can give you flexibility on the rest of the deal at an early stage.

Companies who report the greatest confidence in these new forms of innovation are those who emphasise communication between innovators and legal teams early and regularly so that all teams are on board with the project, and emphasise flexibility and adaptability throughout the development process.

Trust

Clients have also identified that a major stumbling block for innovation collaborations can be whether you look at people as competitors or as partners and whether things end up being collaborative or adversarial.

Here, it is possible to draw a parallel to the open source software community within which there is an expectation that participants will do the right thing even if it is not strictly legally required. A failure to comply with that expectation runs the risk of falling out of favour with the community. The position is similar when it comes to open innovation – you have to

"It's a shift in brand values – more from a model where the charity does everything, to one where it wants to facilitate the best out there"

PARKINSON'S UK

"[We're seeing] increasing use of 'early' use technology, under a more flexible agreement, such as for early development work or non-commercial research. Overall, I see tech transfer as the art of the possible – it needs to work for both partners, so flexibility is the key."

OXFORD UNIVERSITY INNOVATION

"On a macro level it's creating the right culture; on a micro level it's finding the resources and capacity to drive the initiatives forward; and to go even more granular, it's having the right framework in place".

SKY



be more upfront, more open, and clearer about what you want and where you are going. Our interviewees spoke of this in terms of openness and “speaking the same language” as your collaboration partners. You need to act quickly but also in a way which preserves long-term reputation and goodwill to avoid becoming an undesirable collaborator in future projects.

Talent and diversity

The battle to attract the best talent has intensified, as a critical part of driving internal innovation and creativity within the business. This is coupled with most companies’ burgeoning investment in technology and a heavy demand for software and systems development (and, in particular, input around data science, AI, machine learning and blockchain). However, there was widespread recognition that this brought new challenges to ensure that a diverse pool of talent was being recruited, to ensure that teams would maximise the range of ideas, contributions and skillsets available to harness innovation.

Structures and obstacles

Hurdles to structural success

While recognising that speed, flexibility, and trust are key, ultimately, there is still a need to decide how to frame each collaboration – some sort of structure is required after all, and there is no “one size fits all” approach.

Particular hurdles in establishing an ideal structure might include: collaboration with

academia where there might be a clash of interests or priorities; the approaches and histories of different jurisdictions or subsidiaries; striking a balance between the profit and charity elements of social entrepreneurship; and the need for compliance in heavily regulated sectors, such as financial services.

In this regard, start-ups or newer businesses might be more likely to be comfortable with the idea of open innovation, while mature companies may be more inclined to run with policy-driven approaches to ensure consistency and efficiency.

Ownership

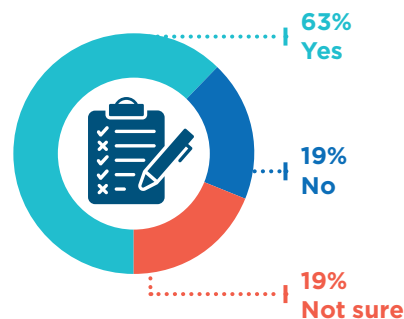
At least one of the reasons that start-ups or newer businesses may be more aligned with the drivers of open innovation is their shift in thinking around ownership of rights. Clients have told us that while the emphasis has historically been on owning and protecting the products of innovation (such as intellectual property), this is no longer the case. Now, the focus is on collaborating with a more flexible approach to ensuring access to technology.

That does not mean that nothing is worth owning. To the contrary, more than ever before, intellectual property is core to the value of many businesses. However, the way in which it is used and valued is shifting – it is used to facilitate collaboration through access regimes ranging from licensing to open source platforms, rather than being used to lock

others out of the market – it is used “to make love not war”.⁴ Clients also report a shift away from their traditional focus on ownership of all potential IP assets to ownership of ‘core’ or ‘end game’ assets, or securing rights through licensing.

Investors in start-ups still look for IP rights as a form of security and collaborators for ownership or unrestricted use of the results of collaboration, but the approach is becoming more flexible with licensing often taking the place of ownership in order to provide the flexibility and collaborative environment with which to get ahead in the market.

Does your organisation have a framework or process in place to handle innovation?



4. W Backler, T Heikkilä, D Kennedy, ‘The New IP Strategy: Make Love, Not War’, Boston Consulting Group, 6 June 2018 at <https://www.bcg.com/en-au/publications/2018/new-ip-strategy-make-love-not-war.aspx> (accessed 24 May 2019).

The legal side of open innovation

The tension between legal and business

The alignment of legal and business desires is crucial to drive innovation. As lawyers are fundamentally risk advisers, some clients feel that their mindset is inherently traditional. By approaching innovation from a legal angle, lawyers may be tempted to "play it safe" and reduce the flexibility and security of collaboration arrangements. To avoid this, parts of some businesses may not consult their legal teams at all, or may do so, say at a deliberately late stage in the project, when it is too late to go back.

This may be because of an in-house legal requirement for strict compliance with standard non-disclosure agreements ('NDAs'), the negotiation of a full collaboration agreement before any work can get started and even a take-it-or-leave-it attitude on terms and conditions. This is particularly pertinent in heavily regulated sectors, such as banks or charities. The consequence of this misalignment is that flexibility and cooperation are affected and often simple legal solutions can be missed.

Resolving the tension

Some of those we interviewed solved this problem by integrating the legal function into the innovative areas of the business, so that the in-house legal teams were in at the start of new projects and could appreciate the commercial needs as well as being able to identify the legal ones at an early stage. This approach also allowed commercial and R&D teams to appreciate the legal issues and help

in developing a joint approach that works from both a commercial and legal perspective.

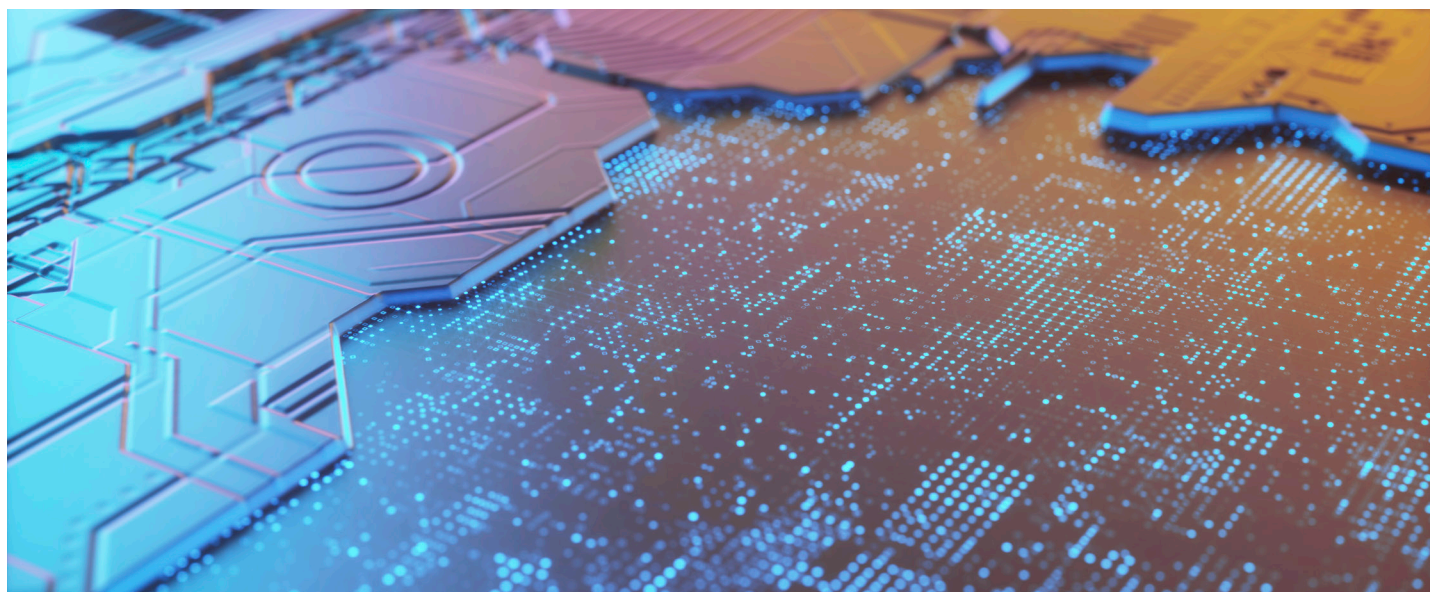
The key message from most of our client conversations is that the earlier that legal gets involved, the more successful an innovation project is likely to be. Creating a legal framework around open innovation will emphasise the outer limits or 'red lines' of projects, and crucially, provide an overall structure.

It is within this overall structure that any tension can be resolved more comfortably. Clients suggestions included considering termination provisions in joint venture scenarios; providing a checklist to cover all legal aspects for start-ups, spin-outs, or entrepreneurs; and undertaking formal training listing legal do's and don'ts. By setting out the kinds of legal protection that may be available in a particular sector at the outset, such as intellectual property rights or contractual protections, businesses will be better placed to understand the legal context within which they launch innovation projects.

Clients realise that this may require a shift in culture within legal teams, with the inclusion of different backgrounds, generations, and perspectives to push innovation forward. When creating risk models, which lawyers inevitably do, it is important to challenge norms, and change the psychology of teams over time. Rather than having a single approach to any and all contracts which the business enters into in respect of structure, terms, conditions and levels of risk which are acceptable, in-house lawyers should adopt their approach to fit the nature of the collaboration, taking into account what the business ultimately wants to achieve and the level of risk that it is willing to take on.

"Innovation is a science not an art. Just like a human all businesses need to work at having a healthy BMI - and by that I mean "Business Model Innovation" pipeline, which should be kept trim, lean and smart. Smart IP management provides the narrative and backbone to those innovation journeys."

BARCLAYS



Pessimists have to be engaged with early, and the legal team must be seen as a contributor (protecting and adding value) rather than an obstacle ("always saying no"). At the end of the day, what is evident is that a balance of pragmatism and flexibility will be needed for the legal team to support the business, as innovation continues to become more diverse and flexible process.

What key words would you use to describe 'Open Innovation'?



"Engage with the pessimists early on ..."

CIRCLE OF INTRAPRENEURS

"People create risk models. We need to rethink them, look afresh. Do we have to do it the traditional way? Then challenge the norm - any structure is possible."

SKY

Legal considerations

Intellectual property issues in open innovation

In any collaboration the parties will need to consider:

- the existing legal rights of the parties;
- the rights and obligations of the parties created under the collaboration;
- the exploitation of the results of the collaboration; and
- the legal rights of the parties following any termination of the collaboration.

Prior to the collaboration: The parties may consider the following agreements:

- confidentiality and non-disclosure agreements;
- memorandum of understanding or heads of terms to capture in writing the overall intention and spirit of the proposed arrangement and some of its key terms; and
- some form of exclusivity agreement so that neither party will enter into similar negotiations with a third party during the exclusivity period.

Commencement of the collaboration: Intellectual property will be at the heart of any innovation project and at the start of any collaboration the parties will need to:

- identify the IP rights or other resources or funding which each party will contribute to the collaboration;
- determine whether any third party consent is required for the transfer or the licensing of the IP for the innovation project;
- if a new joint venture vehicle is created to undertake the collaborative work, then decide whether each party will transfer or license IP rights to the JV.

During the life of the collaboration: The parties will need to determine from the outset who will own any IP created as a result of the collaboration. There are a number of options:

- each of the collaborating parties owns any intellectual property that it creates;
- joint ownership of IP (which can be cumbersome and unattractive);
- the party best placed to exploit the resulting IP owns the relevant IP and accounts to the other parties in relation to the revenue it generates from exploitation; or
- If JV creates IP itself then it may own that IP, alternatively one of the contributing parties could own such IP and license it to the JV.

At the end of the collaboration: The collaborating parties should determine from the outset:

- the IP rights that the parties will own and/or have the right to use at the end of the alliance;
- the ownership of IP that was created during the collaboration;
- whether licences of background IP owned by each of the collaborating parties are needed; and
- whether the parties should agree to using clean teams (ie personnel that have had no involvement in the collaboration) for ongoing development after the end of the collaboration.

Other issues to consider:

- Any IP created by a secondees is likely to be owned by his or her employer not by the entity to whom he or she is seconded;
- If collaborating with an academic institution manage any proposed publication by the institution;
- Obtain advice on competition law issues owned; and
- Seek early advice on the tax aspects of the proposed structure.

Data – The oil in the Innovation machine?

Much technological innovation will generate data, for example via the Internet of Things or within a more closed system. The data fed back will often be key to building the next generation product or the data itself may be the most marketable/leverage-able product of the innovation.

Where collaborations are creating innovation, be that either with the public or a third party business, who collects and controls the data and the uses to which it can be put or leveraged by each party will, increasingly, become a paramount consideration.

Data, of course, comes with many issues in relation to its control and protection:

- Data is not easily protectable via intellectual property rights in and of itself, although database rights, copyright and trade secrets can be employed to protect it, in particular if appropriate processes are put in place;
- Contractual protections need to be used to ensure data is protected and control retained and to clarify the rights of the parties involved in relation to its use and to ensure its confidentiality where this is significant to its protection;
- Considerations should be given to employee access to key data and measures put in place to limit and control extractions; and
- Data privacy issues will arise where personal data is being stored, shared or used.

For more information on data issues, read our feature article in the May 2019 of PLC Magazine: [Data Assets – protecting and driving value in a digital age.](#)

Other areas for consideration

Employee issues – incentives to innovate; rewards and restrictions

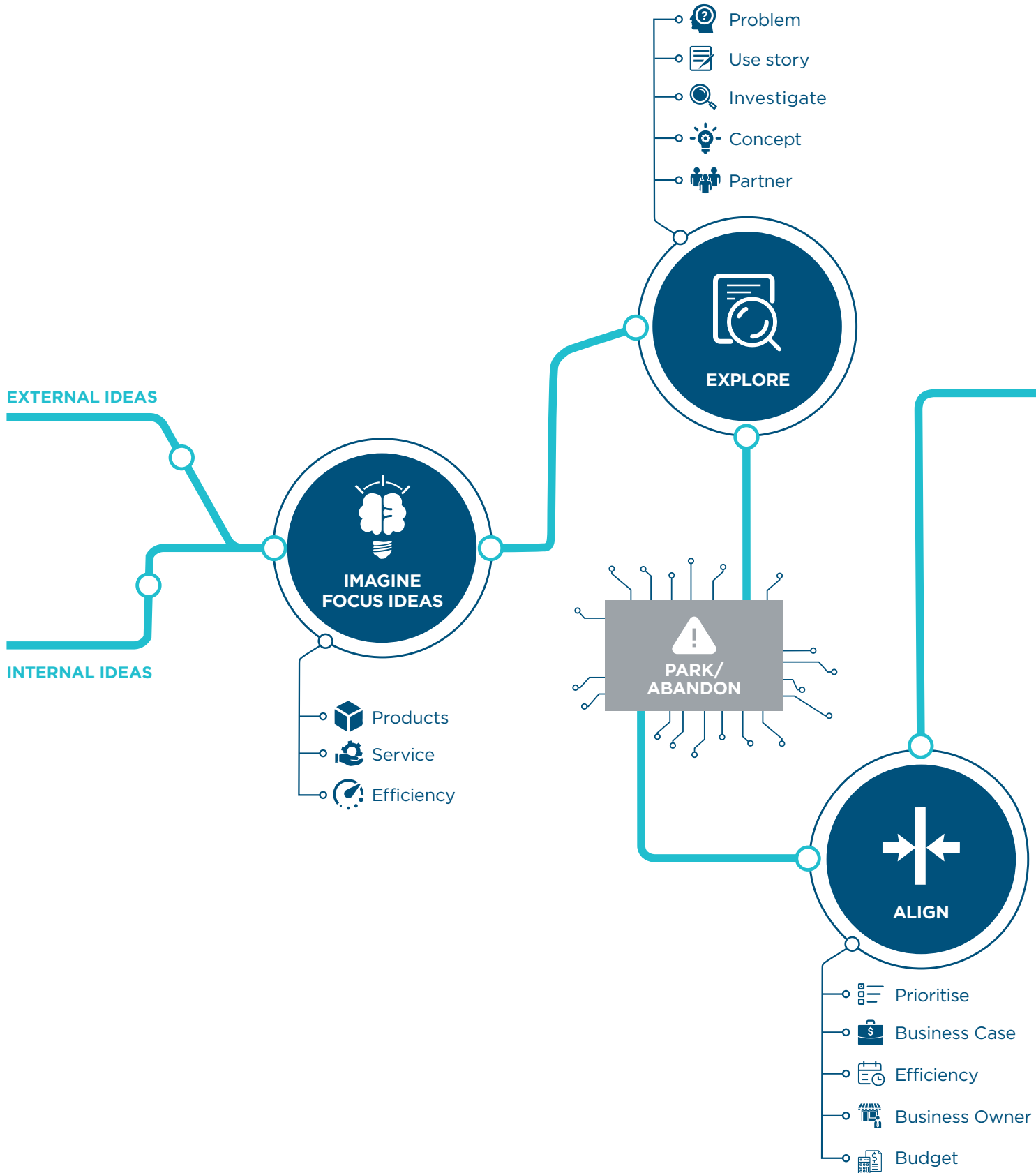
Competition law – limitations to collaborative innovation with competitors

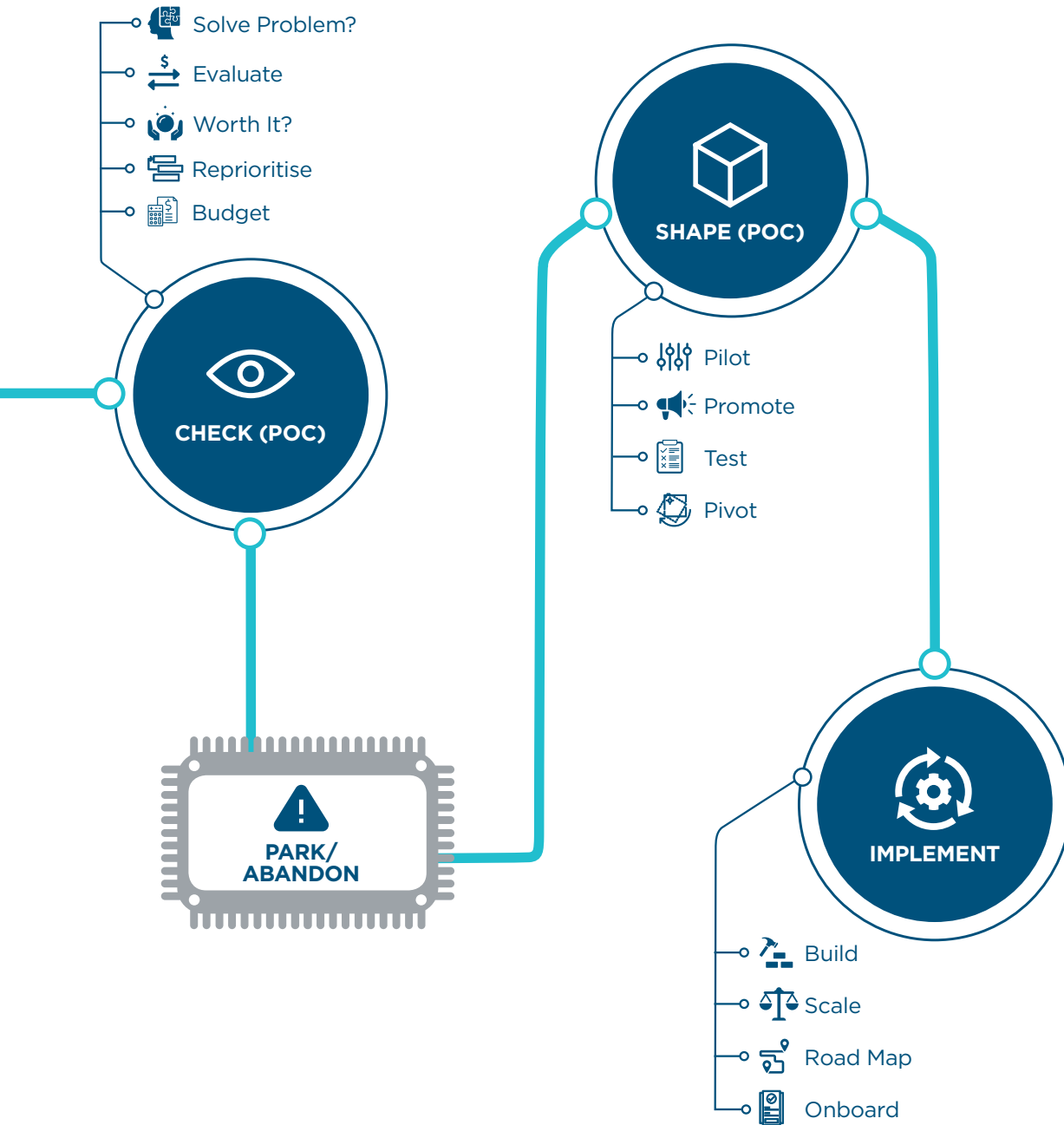
Regulatory restrictions – sector specific limitations on the reach of and process of innovation

Commercial structures and licensing – including strategic considerations, joint ventures, start-ups, investment and venture capital structures

Risk assessment – due diligence around disputes and licensing terms; crisis and reputation management

The innovation process





Example outputs of the innovation process

The Francis Crick Institute – open innovation is at its heart

The Crick is a unique partnership founded by a number of the UK's leading research organisations and universities. It is focussed on world-class research, discovery and translation into new treatments and technologies that benefit patients in the fields of oncology, HIV treatment and beyond. It is housed in a state of the art building, with over 1500 scientists under one roof, making it the largest biomedical research facility in Europe.

It has a unique structure to facilitate collaboration and innovation. Instead of working in disciplinary groups, the scientists are arranged in small "interest groups" along open corridors. There are also large areas of open plan working areas to facilitate cross-fertilisation of ideas and techniques. The large facility therefore gives access to scientists of immense depth of expertise and facilities across biomedicine, as well as in aligned disciplines of physics, chemistry, engineering and computer sciences. Tenure for the scientists is also different, with group leaders given no longer than 12 years at the Crick, before making way for fresh knowledge, new ideas and upcoming talent.

The Crick's Strategic Plan titled "Discovery without boundaries" (2013) in many ways reflect the vision and culture of open innovation, as "It epitomises the way we will operate to bring together the expertise of our six founders; integrate research and its translation into the clinical and commercial spheres; and foster interaction across a wide range of scientific disciplines and disease areas."

www.crick.ac.uk

Barclays – setting up an innovation community

Barclays' deep commitment to transform itself, the banking industry and the communities it serves, through innovation to ensure that the UK economy can thrive in an increasingly digital world is evidenced by it establishing Eagle Labs – a national platform that connects and supports the entrepreneurial ecosystem by creating opportunities for business founders and by giving them access to a broad range of skills and services to help their businesses grow.

Eagle Labs started by taking over under-used Barclays branches and offices and converting them into thriving community and business spaces that are tailored to the needs of the local business community - creating a hub for sharing ideas and experiences and encouraging collaboration and innovation. Alongside this, Eagle Labs provide access to a network of mentors, partners and experts - all positioned to help the founders' businesses to grow. They also provide exposure and access to the technologies that make up Industry 4.0 to enable future skills development and to support businesses and individuals with rapid prototyping and product development to help get products to market quicker.

They have grown to 24 Labs by partnering with like-minded organisations who are equally as passionate about creating thriving digitally-enhanced local communities and currently have more than 500 businesses working from their spaces across the UK, made up of 1,630 individuals, with members and alumni having raised more than £420m in funding.

With many industries ripe for transformation through the adoption of new technologies, Eagle Labs seeks to bring together 'best-in-class' partners and thought leaders including industry bodies, universities, key corporate organisations and start-ups to help accelerate this transformation. A prime example is 'Eagle Lab in partnership with the Law Society' launched in 2018. This national programme includes a dedicated centre of excellence that incubates Lawtech businesses and is supported by the Law Society, 15 law firms, 2 universities and a dedicated Lawtech events partner.

Find out more about Barclays Eagle Labs at: <https://labs.uk.barclays>

Centrica

Operating in the energy supply space, Centrica's two innovation arms, Centrica Ventures and Centrica Labs, play a key role in its innovation strategy.

"We want to find the best ideas, work with truly pioneering technologies and invest in companies committed to the best solutions. What's your innovation?"

Centrica Ventures is focused on start-up businesses that are seeking venture capital investment and have proprietary technologies or innovative new business models in areas that will allow Centrica to explore and develop new businesses: "Centrica is innovating, collaborating with change makers, seeking new ideas for homes and businesses, to transform the way we live work and move." <https://www.centrica.com/innovation/centrica-innovations-ventures>

Centrica Labs runs innovation programmes which look to address big problems with the potential for positive social impact. A recent programme identified the needs of an aging population as "one of society's biggest challenges". Centrica scouted for tech solutions to meet the needs of the over 60s both day to day and enabling them to meet their ambitions: "Our Active Ageing global start-up challenge was dedicated to exploring the role that technology can play as we age. We looked for technology solutions to help people thrive as they get older and we see a huge opportunity to collaborate with the start-up community to drive innovation and create new services and products for our customers." In 2018, this culminated in an Active Aging Pitch Day, where ten finalists from 125 applications pitched their ideas - including IoT-enabled cooker controls, smart locks, and digital healthcare assistants - to a team of industry experts. <https://www.centrica.com/news/helping-people-thrive-older-age> .

The Centrica Labs team has also created an 'Ideas Lab' to tap into the entrepreneurial creativity of Centrica's workforce to identify and develop new business opportunities.

Société Générale

"More than ever, I'm convinced that the most successful banks in the coming years will be those that knew how to best combine innovation and responsibility." Frédéric Oudéa, CEO, Société Générale

Societe Generale is developing its open innovation policy, by strengthening its relationship with startups and FinTech, increasing the number of exchanges and collaborations. In doing so, the Group has two aims: to offer them its expertise, and to benefit from their knowledge in terms of user experience, new technologies and methods. Societe Generale says that improving cooperation with these players means that it can identify, from thousands of innovative startups, those which will add value to its activities.

The acceleration of Societe Generale's open innovation strategy is based on close cooperation with the global Fintech ecosystem. It was the first French bank to acquire a Fintech back in 2015 with Fiducéo, and in 2019, in line with its Transform to Grow strategic plan, the Group has created **Societe Generale Ventures**, a €150 million cross-business fund for investing in internal and external start-ups. Investment areas such as payments and e-commerce, Open Banking, and services to small and medium-sized companies, as well as more forward-looking areas, have been identified to support the development of the business lines, "to build the bank of tomorrow".

SocGen is also promoting internal innovation through its **Internal Startup Call** a major intrapreneurship programme launched by SocGen in 2017, which in its first round included 60 internal startups.

<https://www.societegenerale.com/en/digital-and-innovation/open-innovation>

Our journey

At Herbert Smith Freehills like many of the clients interviewed, we are on a journey with our innovation programme. In the past few years, our approach has developed and broadened in line with the fast-paced changes our industry is experiencing and the challenges our clients are facing.

How we think about innovation

Innovation is one of the 5 work streams of Herbert Smith Freehills' Beyond 2020 strategy. We aim to foster a culture of innovation and smarter use of technology. This culture is a core part of our value proposition both internally: to attract, develop and retain the best staff; and externally: to achieve the best results for our clients. Specifically, we think the right mix of people, process and technology can both deliver efficient service to our clients and help streamline or solve their challenges.

We are crafting a diverse portfolio of initiatives. These initiatives fall into 5 categories: culture, clients, products & services, data and technology, with opportunities to get involved no matter what our staffs' skills, experience or available time. We have also been involving clients in the process. We ensure our portfolio of initiatives is spread across all 3 of the Horizons, launched in 2009 by McKinsey. We have translated them to mean the following:

Horizon 1 focuses on making improvements to the current business: updating processes, creating shortcuts and efficiencies; "sustaining innovations", as innovation guru Clayton Christensen (Professor of Business Administration at the Harvard Business School and published author on the subject) calls it.

Horizon 2 looks to more disruptive innovation, developing new products and services or enhanced client solutions. For us, this has involved building data science machine learning tools to leverage our wealth of legal data to better advise clients, or identify efficiencies. What this means is that we choose an area of law, we clean and classify

the data to put some standardisation and structure around it and then data scientists build models from which we can gain insights as to cause and effect, or spot trends, or which can be used to predict the pricing of different phases of a matter.

Horizon 3 is the future ... there are still more questions than answers here. What is the future of law as a business; of digital legal services? How can we transform through digitalisation? One of our innovation initiatives in this space is blockchain and smart legal contracts*, which we have initially launched in Australia partnering with IBM and Data 61.

*A smart legal contract is one which is digital and contains 'smart clauses' which are codified, machine readable expressions of contractual obligations, that enable them to be automated. This means the clause can 'self-execute' ensuring that the relevant party's obligations under the contract are met.

Our process of innovation

There is a common misconception that innovating is all about blue sky thinking and being entrepreneurial and that people are excited by, or understand innovation. In fact it is often a very uncomfortable exercise for a lot of people, who sometimes prefer to cling on to what they know. To take people on the journey with you, a psychological awareness is needed, to understand that different people have different requirements and motivations and in particular differing levels of risk acceptance. All these need to be acknowledged and explored before people can start to embrace change.

Investment in good project and change management is crucial to successful innovation. There is a surprising amount of process and project management involved for it to work well. The process of gathering ideas, testing them and putting those 'with legs' through the funnel to (budget) approval and pilot may appear standard in some industries but not all and not necessarily in the legal industry in the past.

Also key is to engage with clients, our customers, to ask the questions and get to the nub of their problems, to ensure we are working on initiatives which have real value to our clients, rather than those we think they will value. In our recent innovation projects, we have included clients in the very first stages of the innovation process and returned to them regularly for consideration of the outputs and to ensure the products being generated are entirely relevant to them and their interactions with us.

Developing good ideas and collaborative internal innovation at Herbert Smith Freehills



involves engagement with our staff and giving them the time and skills to come up with the ideas in the first place. We encourage questioning of things which 'have always been done this way' to bring about new ideas.

Any ideas that we take forward are tested by bringing together a multi-disciplinary team of practising lawyers, IT, Legal Operations, Finance, Know how, Business development etc. We believe that a diversity of thought, skills and background is essential to the effective collaboration and development of ideas. We include our more junior staff in these processes as well as the more well established members of staff, in order to capture a multi-generational set of views and approaches and find matches to the varieties of cultures we encounter in our clients' operations.

Another important factor is to have a very tightly controlled pilot. No matter what it is that is being piloted, it is essential that there are success factors in place, a core group of people to pilot and provide feedback and that the minimum product/service is piloted and reviewed against the success criteria before any further investment of time or budget is made.

Creating an environment where people can test ideas flexibly and speedily in a large organisation is challenging. Process and an over-abundance of key stakeholders, who have an interest in innovation projects, can delay the testing of ideas to a point of arresting any further development (or people lose interest). Additionally, creating a trusting environment, where people feel comfortable taking risks and where a risk of failure will not be penalised is crucial to the success of any innovation project.

Examples of our innovations for clients

Decision Analysis Tool

Herbert Smith Freehills has introduced a new software-enabled risk modelling service to help clients quantify, visualise and evaluate the risks inherent in a dispute - enabling them to make better informed commercial decisions. This analysis can be applied wherever decisions need to be taken in the face of uncertainty, including: determining whether to commence proceedings; legal risk management and provisioning; seeking external funding; and considering whether to make or accept a settlement offer. See here for more information: <https://www.herbertysmithfreehills.com/news/herbert-smith-freehills-introduces-software-enabled-decision-analysis-service-to-help-clients>

Australia National Blockchain

Herbert Smith Freehills, CSIRO's Data61, and IBM have formed a consortium to build Australia's first cross-industry, large-scale, digital platform to enable Australian businesses to collaborate using the IBM Blockchain Platform and blockchain-based smart legal contracts. Known as the Australian National Blockchain (ANB), the new platform will represent a significant new piece of infrastructure in Australia's digital economy, enabling companies nationwide to join the network to use

digitised contracts, exchange data and confirm the authenticity and status of legal contracts. See here for more information: <https://www.herbertysmithfreehills.com/latest-thinking/herbert-smith-freehills-data61-and-ibm-create-consortium-to-deliver-smart-legal>

Data breach software

Herbert Smith Freehills has developed software to help clients respond to data leaks quickly and reduce the financial impact of a cyber-attack. When a client finds itself victim to a data breach they have to assess firstly the risk to the individuals. The software identifies personal data, and assists in linking the information back to the data subject with an indication of geographic location to help understand which regulatory regimes will apply. See here for more information: <https://www.herbertysmithfreehills.com/news/herbert-smith-freehills-develops-in-house-data-breach-software>

The future of open innovation

Despite teething difficulties, the organisations and businesses we have interviewed for this report are seeing significant benefits from open innovation, much of which outweighs the risks of leaving behind more traditional approaches. They report that their pool of external collaborators is expanding and non-core assets are being shared more widely, creating routes into increasingly diverse technologies. External collaborations are often seen as essential to ensure the speed with which innovation needs to happen. Exclusivity and rights ownership may sometimes be worth sacrificing to ensure a "first to market" position or simply to keep pace with the sector.

Insourcing, using their own personnel to come up with ideas, rather than relying solely on their R&D teams and consultants, is also gaining traction. Businesses generally rate their existing internal talent as a pool of untapped potential, intimately connected with the business and well placed to discern

innovative solutions. As a consequence, businesses are investing in systems to connect employee innovators with the appropriate expertise and frameworks to develop their ideas.

As the ways in which businesses innovate and collaborate, and the range of internal and external innovators and collaborators rapidly expands, in-house legal teams have had to adapt. Open innovation is an entirely new ball game for many legal teams and warrants a shift in culture and make-up. Risk models must reflect the emerging collaborative landscape and challenge long-standing norms and protocols.

This has not always been an easy process and our clients continue to report on the challenges of moving from more rigid, policy-driven approaches to strategies which provide speed and flexibility, and are built on trust – now seen as essential to accommodate



effective innovation and collaboration. In-house legal teams who are agile, educating their businesses on risk rather than simply saying no, and who are brought into the innovation process report the most success.

Rather than attempting to circumvent "Legal", as seemed to be a problem in a few businesses, most agreed that Legal's involvement early in the open innovation project promotes a better overall outcome. "Man-marking" was a phrase used by some to describe the involvement in innovative areas of the business. Having a known/dedicated lawyer for each project or business sub-group, was seen as a distinct advantage.

The early provisions of a legal framework within which both inter- and intra- organisational tensions can be addressed and resolved, and ownership issues identified and clarified, arose as an essential part of a smooth innovation process. Flexibility is also key. Non-negotiable red-lines can provide barriers to collaboration

and slow down vital innovations. Close involvement allows Legal to become enablers of innovation, rather than potential obstacles, helping the business to pursue first-mover advantage.

Intellectual property continues to be a key area, both as a motivator of innovation and a dictator of the structure of collaborations. Other areas such as regulatory restrictions, competition law and employee incentives are also intimately involved. We will develop these ideas further in our subsequent publications on innovation and collaboration.

We would be delighted to discuss any of the issues raised in this report with you, as we want to continue a dialogue and sharing of ideas and best practice. We hope it serves as a useful guide to navigate your own innovation journey. To get in touch, please see the list of contacts for your most appropriate or convenient contact.



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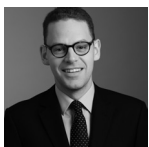
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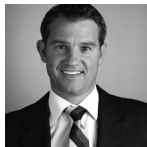


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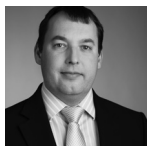


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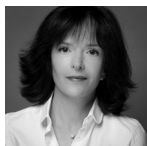
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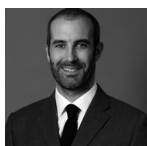
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