



BRIEFING

THE SURVEY

FOLLOWING its study on the factors by which in-house counsel in Central and Eastern Europe (CEE) select and retain external counsel, LexisNexis Martindale-Hubbell held panel discussions in Moscow, Warsaw and Kiev to address issues on points of billing, hiring preferences (local and foreign law firms), selecting, retaining and removing external counsels. The survey discovered that both in Russia and the region as a whole, the chief motive for removing external law firms was poor service and lack of responsiveness. This ranked higher than lack of confidentiality and conflicts of interest. (M.M.D.P.)

IN-HOUSE COUNSEL

RUSSIANS WANT THE LAW TO WORK

External advisers risk overlooking the significance of priorities at company legal departments

BY JEFFREY FORBES*

WHEN it comes to preferred billing terms and the billable hour in particular, in-house counsel in CEE are strongly echoing their colleagues in Western European jurisdictions. However in Russia, there is a significant difference in terms of billing preferences.

Throughout the region, more than 90% want more predictable legal expenses. In Russia, 64%

of heads of legal departments surveyed preferred a fixed fee agreed in advance. This compares with 53% for the region as a whole who prefer this form of billing (see figure 1). The head of a legal department for a major energy company summed it up by saying: “Before 1990, law firms charged a fixed price and got a bonus for results. But when foreign law firms began to enter

Figure 1
Preferred billing terms (Russia and CEE)

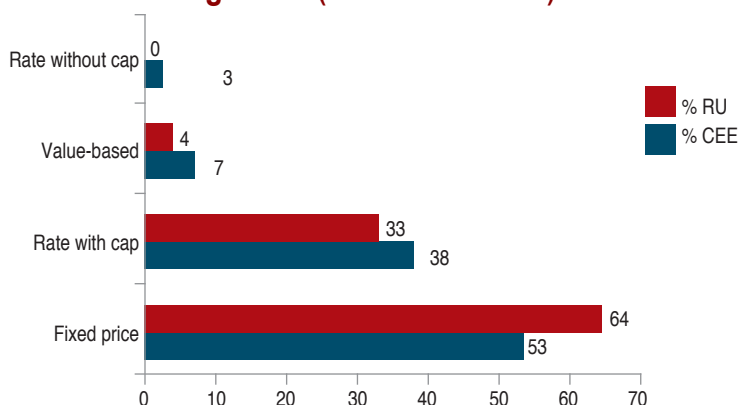


Figure 2
Why hire foreign law firms

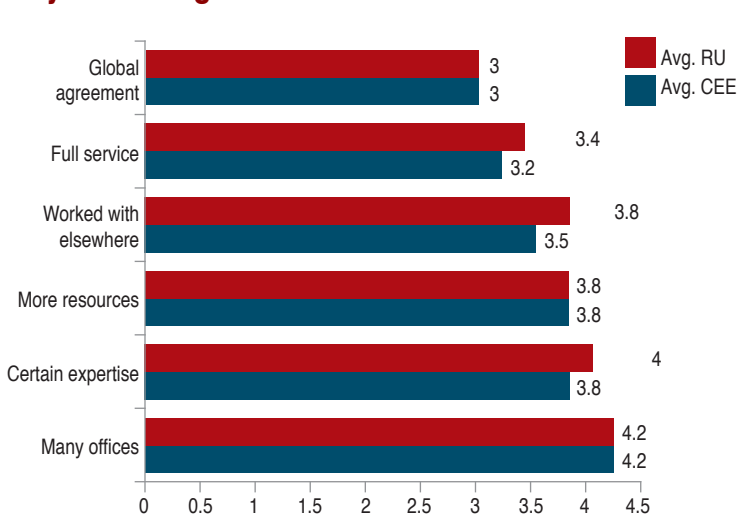
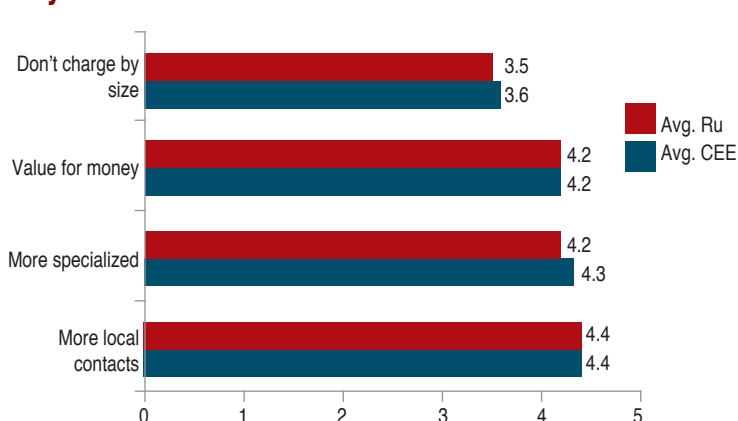


Figure 3
Why hire local law firms



our market, they started to spoil local firms by charging billable hours.”

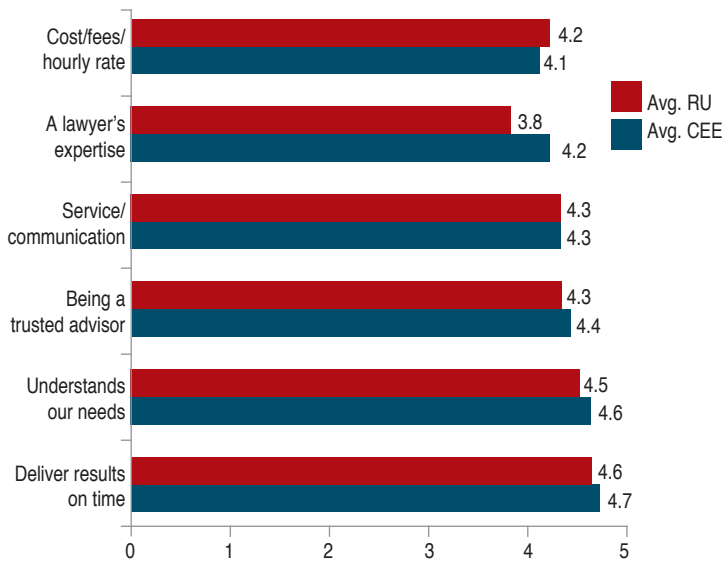
Local versus foreign firms

As with their colleagues throughout CEE, Russian heads of legal departments tended to hire foreign law firms on more complex cross-border matters, while preferring to work with local firms when certain “local market knowledge” was important or when the matter involved less risk. The four main reasons given for hiring foreign firm were: (4.2/5) they tend to have offices in many jurisdictions to handle cross-border matter; (4.0) they can have expertise that local law firms don’t; (3.8) they can have more capacity and resources to handle matters; and (3.8) they sometimes have a track record of working with the same company in different jurisdictions in the region or world (see figure 2).

For these four major reasons, the Russian data was identical except for slight increases regarding “certain expertise” and “working with the same firm in other jurisdictions”. This might be explained by the size and sophistication of the Russian market compared with the others in the CEE region.

Regarding hiring local law firms over foreign law firms, again the Russian data was virtually identical to the data from the region. Four main reasons emerged for hiring local as opposed to foreign law firms: (4.4/5) they are perceived to have more local market knowledge, experience and contacts; (4.2) they tend to be more specialized in a particular area of law; (4.2) in-house counsel believe they can get the same level of expertise at a lower cost; and (3.5) in-house

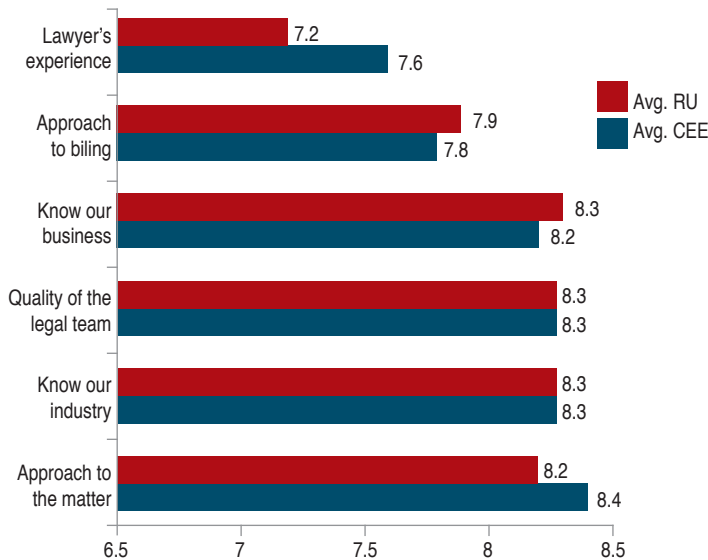
Figure 4
Selecting external counsel



ing our business and needs; (4.4) being a trusted advisor and not just a legal technician; (4.3) client service, being responsive and good communications; (4.2) an individual lawyer's expertise or reputation; and finally (4.1) cost, fees and hourly rates (see figure 4).

For one head of legal in Moscow, delivering results on time means delivering results hours — or even days — ahead of time. Counsel pointed out that a law firm who delivered their advice a few hours ahead of an early morning meeting was not being helpful. "I need time to review a firm's advice, and consider their options before meeting with my bosses or company management," they said.

Figure 5
Retaining external counsel



Retaining external counsel

With respect to retaining external counsel, the number one criterion in the region was "approach to the matter". But the reason this was rated so highly may not be immediately clear to the external observer. What this criterion indicates is how good the lawyer is at making the law work for the client. In some jurisdictions, some laws are either too new or not well thought out. So it is not uncommon for lawyers to consult judges and academics first to see how they interpret the law. Some jurisdictions might also not have legislation in place to deal with, for example, very sophisticated financial instruments. But a good lawyer — and thus his or her approach to the matter — can achieve the same result by different means. "I don't like external counsel who are too cautious and don't want to take any risk by just confirming an opinion created by my internal team," said the head of

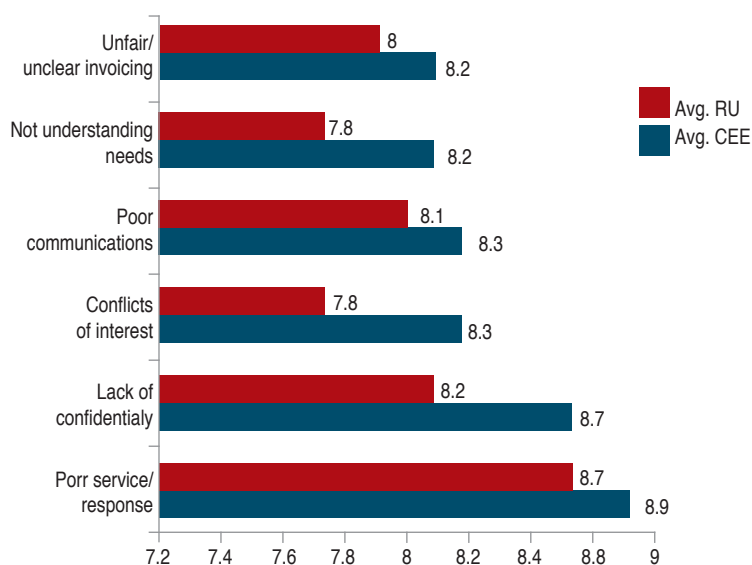
counsel perceive that foreign law firms charge higher fees to foreign companies (see figure 3).

Selecting external counsel

The survey results indicated that

the key criterion for selecting an external law firm, be it foreign or local, was the belief that the firm would "deliver results on time". The top six criteria for Russia were: (4.7/5) the ability to deliver results on time; (4.6) understand-

Figure 6
Removing external counsel



a major energy company with offices in Moscow. However, the data for Russia showed a slight divergence with this criterion.

The four main criteria for Russian in-house counsel to retain external counsel were: (8.3/10) know our industry; (8.3) know our business; (8.3) quality of the legal team; and (8.2) approach to the matter (see figure 5).

both in Russia and the region as a whole, the number one reason for removing external law firms was poor service and lack of responsiveness. Surprisingly, this ranked higher than lack of confidentiality and conflicts of interest (see figure 6).

For some outside observers it seems odd to include such reasons on this list because they

should be a given. However, some legal environments in CEE countries that regulate attorneys still have weak ethical standards or no effective disciplinary mechanism. And since providing good service was not a requirement in a planned economy, it does not come as such a surprise that given a choice in-house counsel will demand a high level of service for higher fees from their external counsel. So besides poor legal performance, the six most important reasons in Russia why outside counsel would get removed from a preferred list are: (8.7/10) poor service, not being responsive, or paying little attention to detail; (8.2) not maintaining confidentiality with client information; (8.1) poor communication; (8.0) unfair or unclear invoicing or padding bills with costs; (7.8) conflicts of interest not revealed by external counsel in advance or being inflexible to client needs. ■

**The author is a leading authority on Central and Eastern Europe and practice development and consulting for global and international law firms*

Firing external counsel

Of all the major findings in this survey, the data comparing Russia against CEE for criteria in removing external counsel showed the greatest diversion. To begin with, the ratings for the Russian data overall were much lower than for the region. Secondly, poor communications and unfair or unclear invoicing was rated much higher in Russia compared with the region. However, the most surprising result was that

