Baker McKenzie.

2021/2022 Digital Transformation & Cloud Survey:
A Wave of Change

Contents

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Foreword

Digital transformation is here to stay. Anyone that has joined a video conference or used a new application has experienced this firsthand, and respondents to Baker McKenzie's 2021/2022 Digital Transformation & Cloud Survey indicate digital transformation is now an integral part of enterprise thinking and planning. In this report, we share insights and results from our annual Digital Transformation & Cloud Survey, grounded in nearly a decade's worth of data gathered surveying the marketplace and leadership in Digital Transformation (DT) and cloud.

In 2020, **58%** of digital leaders said that COVID-19 had accelerated their plans for DT and cloud — with particular investments in cybersecurity, talent and customer insight. One year on, we have taken the pulse of 500 leaders from across the globe and sectors to explore the progress of these efforts and new challenges on the horizon.

The latest data shows DT has evolved from an urgent effort to a permanent part of the enterprise — with organizations launching and scaling DT activities and tackling cybersecurity as a priority. Cybersecurity (**46%**), cloud computing (**44%**) and AI (artificial intelligence) (**40%**) are the top three strategically important technologies to organizations' DT strategies. Additionally, investment in cloud computing remains strong as most organizations are pursuing back-office transformation as one of the key areas of DT. Our respondents indicate that cloud remains a critical component of transformation due to its potential to enable greater agility, operational efficiency, data storage and security.

Legal and regulatory frameworks continue to evolve with increasing DT, but the pace of technological adaptation will only accelerate as organizations follow through on their plans to implement more sophisticated technology as part of their DT journey (blockchain, predictive analytics, AI, etc.). Organizations that have found the most success in navigating the overlap of emerging tech and evolving legal frameworks are those with strong collaboration between the commercial and legal teams across functions within the enterprise.

While leaders understand that the next evolution of digital transformation is not without legal and commercial risk, progress will depend on how successfully organizations are able to:

- balance value creation and risk mitigation;
- evolve governance to manage new technology; and
- address an evolving legal and regulatory landscape.

Adam Aft
Global Co-Lead Technology
Transactions, Chicago

In this report we explore:

Shifting mindsets on DT and cloud investments

The evolving legal and regulatory environment impacting all aspects of DT and cloud

Cross-border regulation, tax, cybersecurity and governance as top-of-mind issues

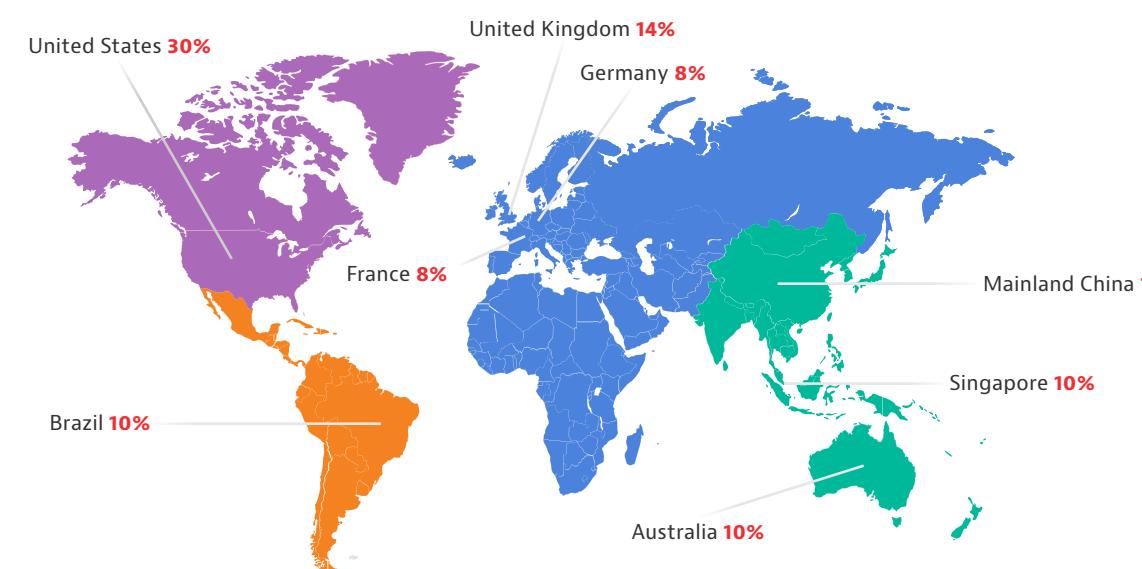Key considerations for DT and cloud and what is coming around the corner

Cloud contracting terms

DT as a permanent part of doing business globally continues to create exciting opportunities as well as key risks to consider and manage. We intend for our insights to help you stay ahead of the continued DT and cloud evolution.

About the Survey

Organizational Profile

We interviewed senior buyers of digital services and cloud computing in 500 global organizations, representing 11 key markets.

United States **30%**

United Kingdom **14%**

Germany **8%**

France **8%**

Mainland China **10%**

Singapore **10%**

Brazil **10%**

Australia **10%**

The majority of respondents work for large enterprises with over 1,000 employees. Six key sectors are represented evenly in our data:

In which sector does your company primarily operate?

17% 17% 17% 17% 17% 17%
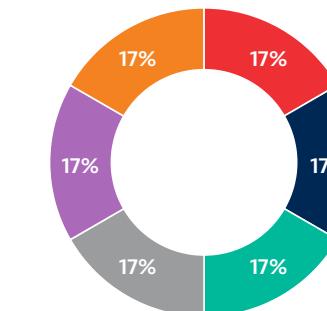
- Industries, Manufacturing & Transportation (IMT)
- Consumer Goods & Retail (CGR)
- Healthcare & Life Sciences (HLS)
- Energy, Mining & Infrastructure (EMI)
- Financial Institutions (FI)
- Technology, Media & Telecomunications (TMT)

How many employees does your company have globally?

24% 55% 21%
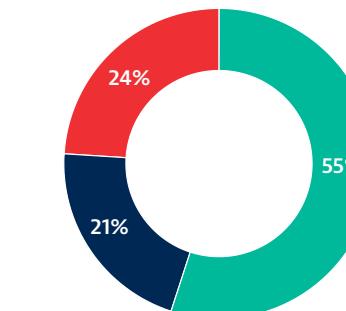
- Small Enterprise (50-249)
- Mid-sized Enterprise (250-999)
- Large Enterprise (1000+)

Key themes:

Scaling Up on Cybersecurity
Organizations are launching and scaling activities, tackling cybersecurity as a priority.

Enduring Clout of Cloud
Benefits to agility, operational efficiency, data storage and security emphasize cloud as a critical component of DT.

Ramping Up AI Efforts
Positive impact on communications, customer engagement, revenue streams and business agility is driving interest in AI.

A Watershed Moment
Organizations are looking to adopt more sophisticated technology and to develop their own products and services to reduce reliance on third-party vendors.
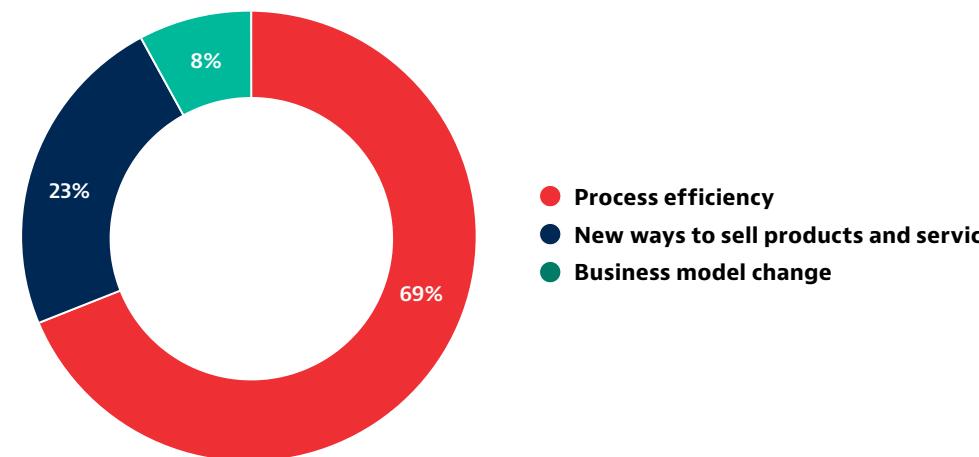
1   The Digital Transformation Landscape

1.1 Defining Digital Transformation

The majority of respondents say digital transformation is a tool for improving process efficiency rather than fundamental business change.

Our data shows that the majority (**69%**) of organizations define DT as a tool for operational efficiency: taking an existing business process and seeking to improve or expand it with the use of technology.

What Does Digital Transformation Mean to Your Enterprise? *(% of Respondents)*

- ● Process efficiency
- ● New ways to sell products and services
- ● Business model change

8%
23%
69%

🔍 **Sector Spotlight:
TMT vs IMT**

Only **4%** of fast-paced TMT companies characterize digital transformation as a fundamental change to the way they do business, compared to a high of **14%** of IMT businesses.
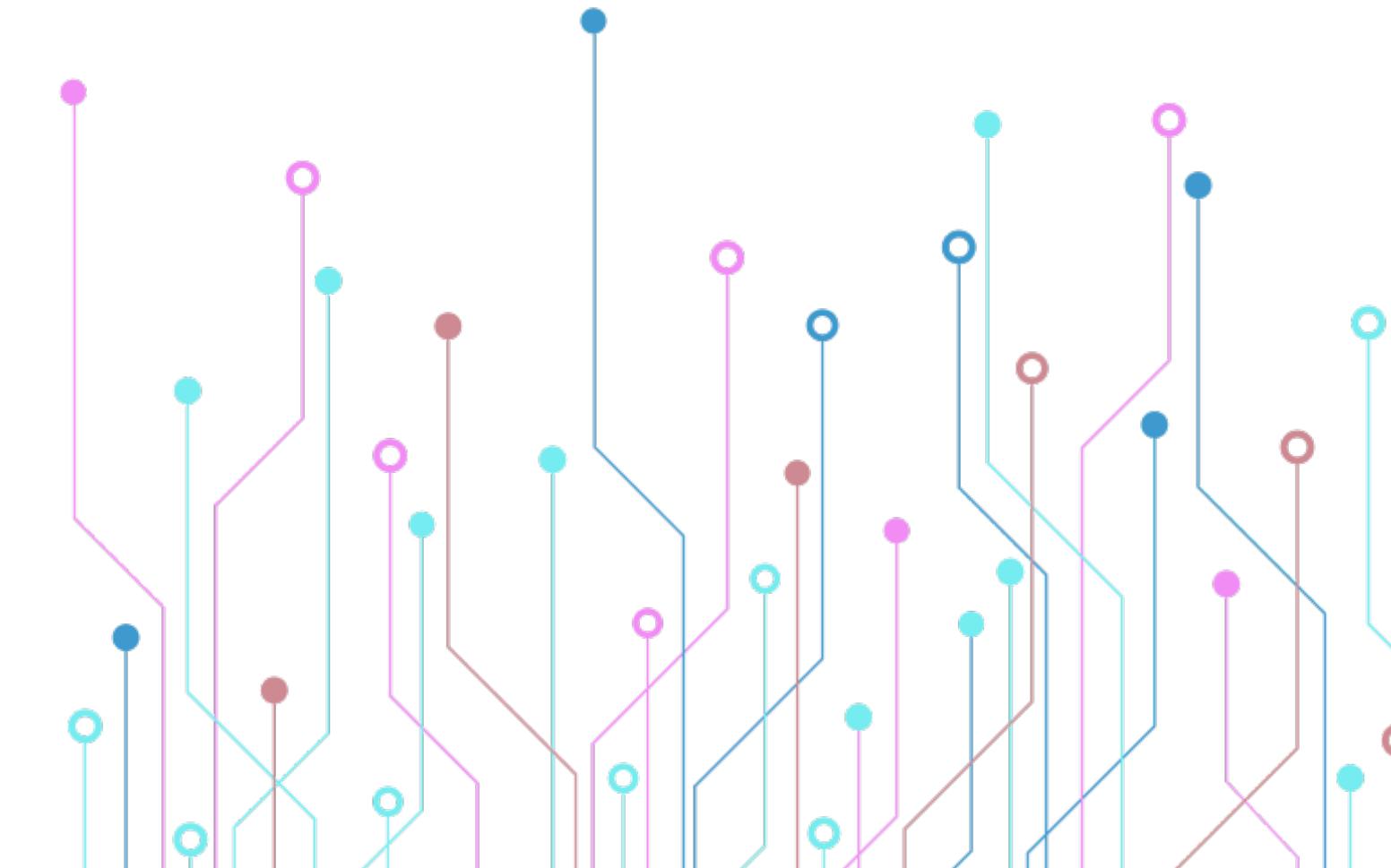
1.2 Digital Transformation Program Maturity

Digital transformation programs have matured rapidly since our last survey in 2020. Where previously **37%** of organizations had yet to begin, most (**77%**) are now accelerating and scaling efforts, indicating the further acceleration of DT.

Stages of the Digital Transformation Journey
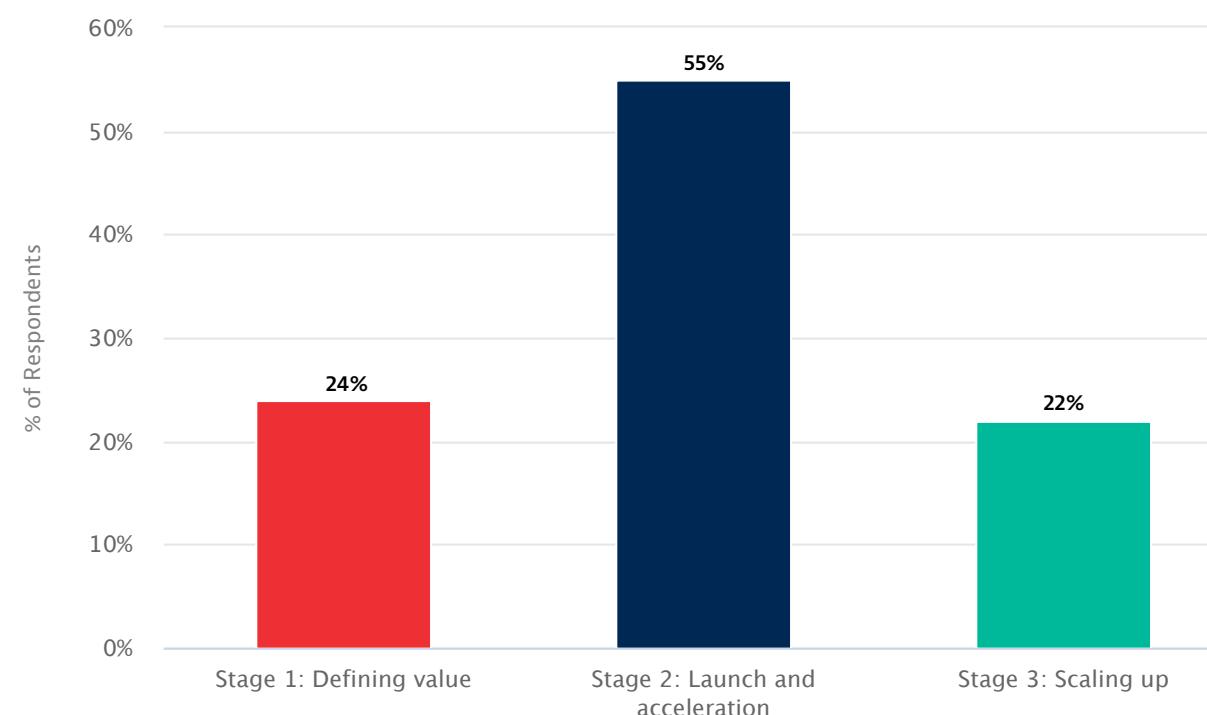
Nearly half (**52%**) of organizations are currently focused on smaller scale projects, while **45%** are focused on building personnel infrastructure, **40%** on promoting new and agile ways of working and **28%** on creating the culture needed to deliver transformational projects.

Sector Spotlight: TMT vs EMI

54% of TMT organizations are managing multiple high-value initiatives, and **45%** are adopting new operating models.

By contrast, **34%** of EMI organizations are still securing senior management commitment, and **35%** are setting goals for their digital transformation programs.

> "
>
> The pandemic situation forced organizations to digitalize in a very rapid speed and for digital meetings. This has brought new solutions and tools, but also a new way in which people access networks of organization (mostly remote and outside the secure 'fence' within the organizations' premises). This calls for additional cybersecurity and tools and processes to safeguard such new 'flanks'. However, such changes to work and collaboration increase the risk of loss of data, data breaches and cyberattacks."

Florian Tannen
**IT, Privacy and Outsourcing Partner, Munich**

1.3 Current Digital Transformation Priorities

Storing, mining and securing data are current priorities for investment in Digital Transformation.

Research shows that the top three areas of investment currently are related to storing, mining/ monetizing and securing data — cloud computing (**85%**), AI and machine learning (**80%**) and cybersecurity (**71%**). Given the nature of technology deployment and risks in these industries, IMT and EMI organizations have prioritized investment in Internet of Things (IoT), smart devices and automation and sensors over cybersecurity.

Tannen notes that while "IMT organizations may lag a little in cybersecurity investment, we do see that the key players are picking this up more and more, and in particular, the pandemic has shed even more light on this. The need to prioritize can be explained simply: introducing more digitalization and DT leads to more IT tools, solutions, cross-border data sharing, etc. that needs to protected against loss of data and know-how, hence a need for a robust cybersecurity regime."
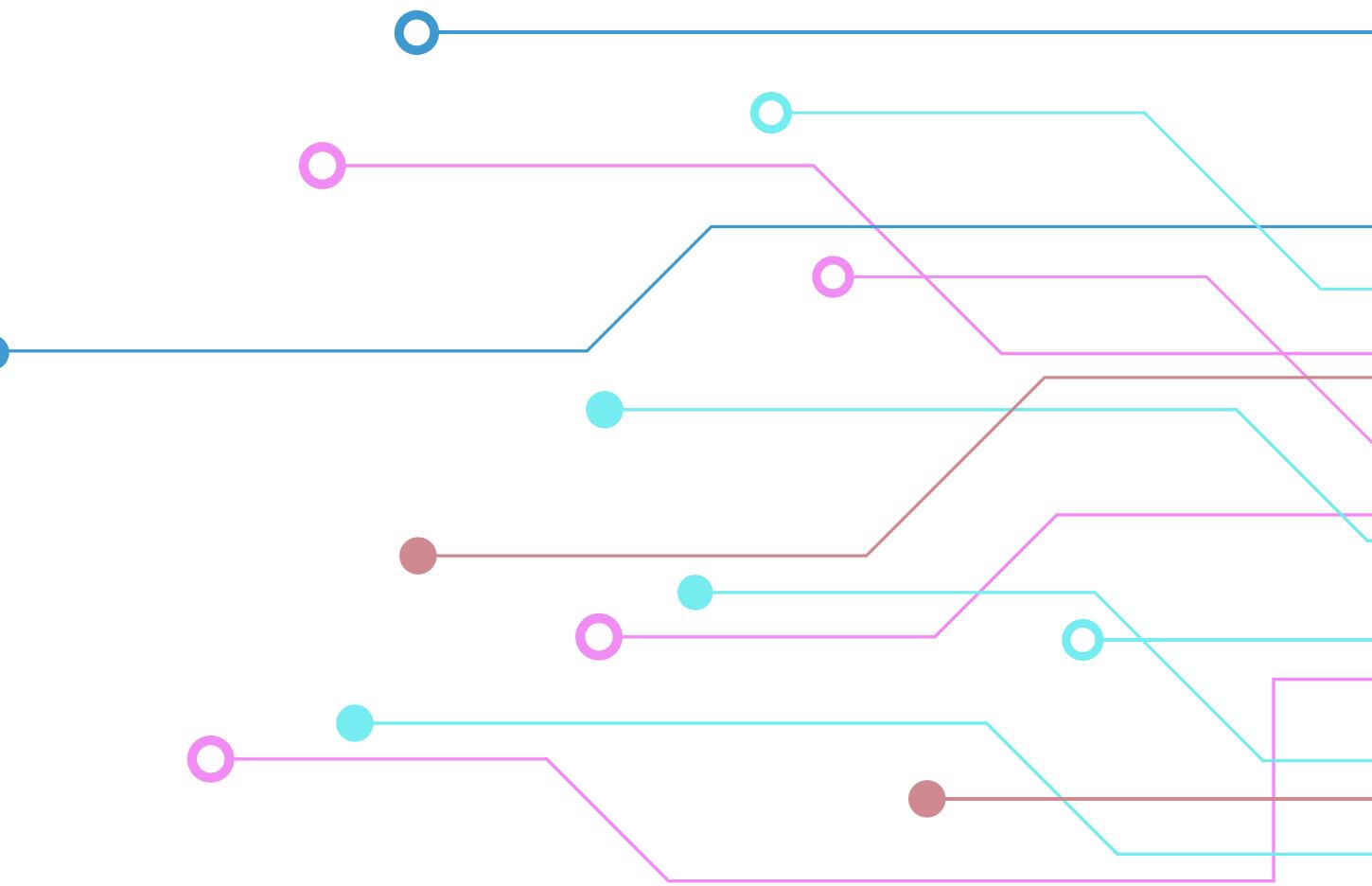
Current Digital Transformation Investment Areas *(% ranked as top three)*
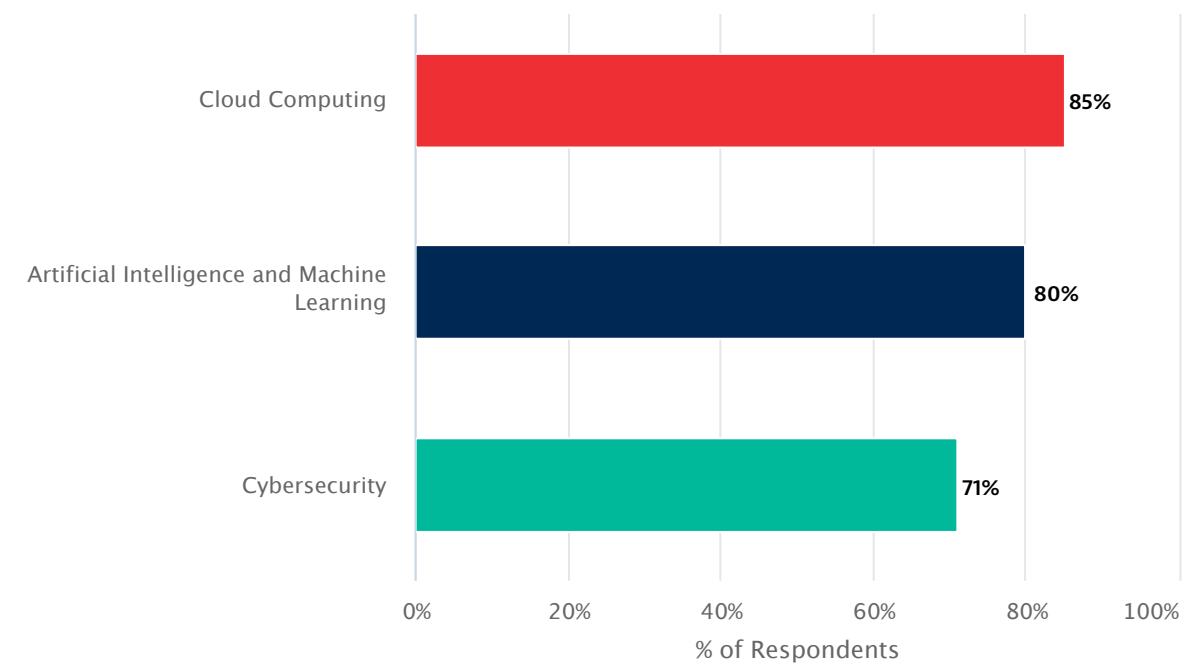
Sector Spotlight: IMT & EMI

A relatively low **40%** of IMT and **41%** of EMI businesses are investing in cybersecurity.

A lack of investment in key protections could expose businesses to significant commercial risk and reputational damage if a breach were to occur.

1.4 Reaping Digital Transformation Benefits

Improved security is the leading benefit of digital transformation, according to the digital transformation leaders that we surveyed. The impact of COVID-19 on business performance also looms large — digital transformation will play a key role in business process improvement and cost reduction. The shift is from agility to process efficiency as digital transformation evolves from a scramble to meet an overnight need to a long-term way of achieving process improvements and additional organizational efficiency.

Top Three Benefits of Digital Transformation Implementation
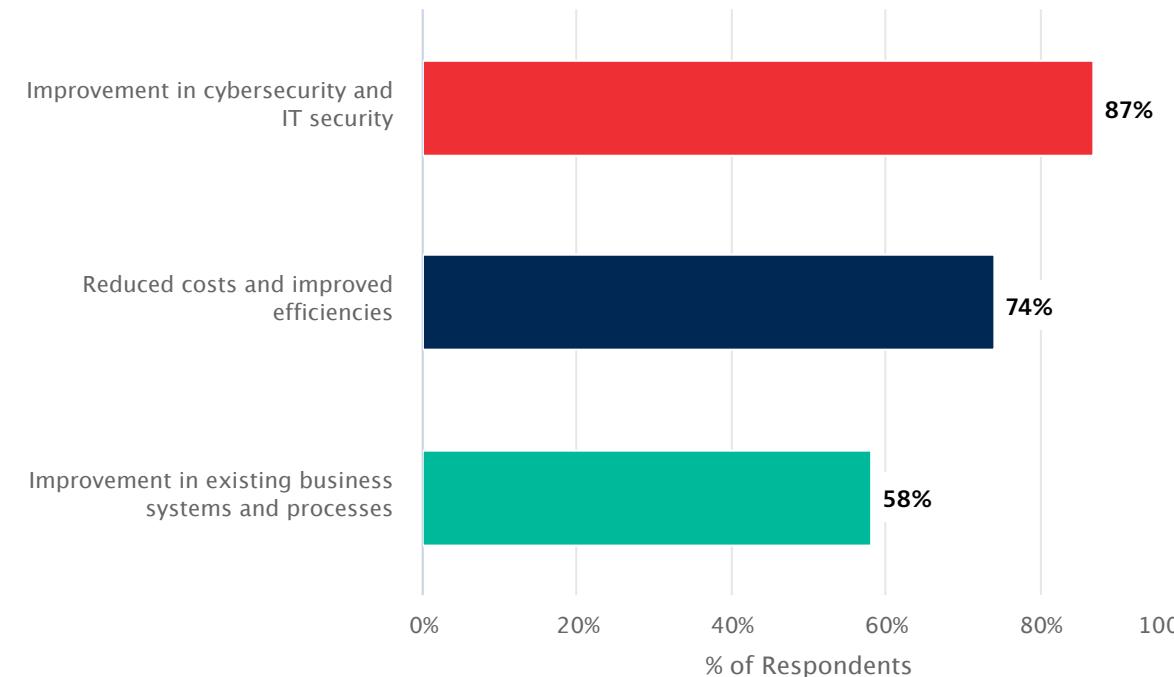

Cybersecurity Risks Are Front and Center

In 2020, survey respondents cited agility as the top benefit of digital transformation. Now, the focus is firmly on digital transformation as providing tools for protection and efficiency.

2 The Age of AI, Cybersecurity and Cloud

We continue to see investments across various aspects of DT and cloud.

Top 5 Strategic Technologies for Digital Transformation:
% of Respondents indicating these technologies as strategic to DT (multiple responses allowed)

47% **Cybersecurity**

45% **Cloud Computing**

43% **Artificial Intelligence (AI)**

33% **Data Analytics**
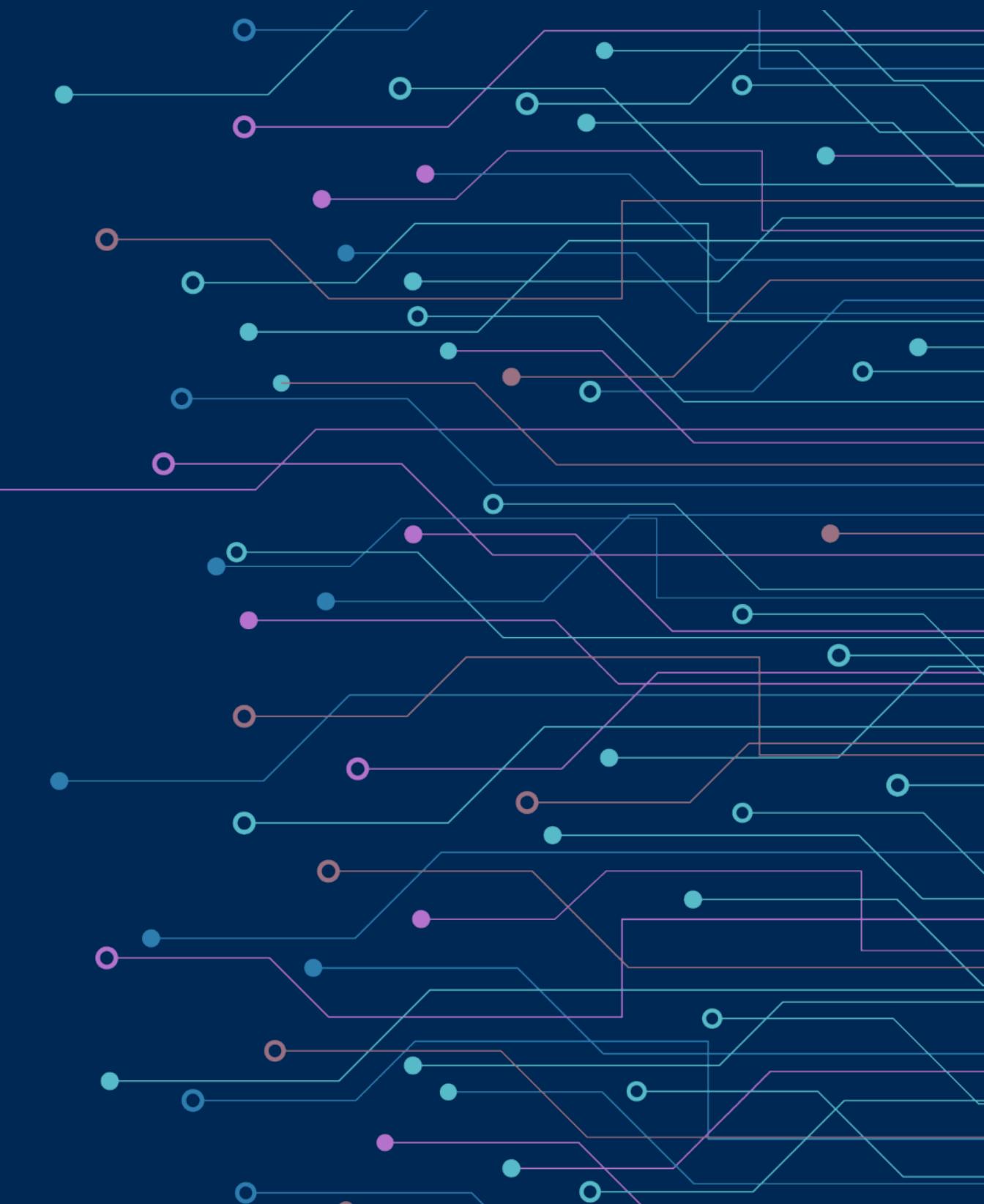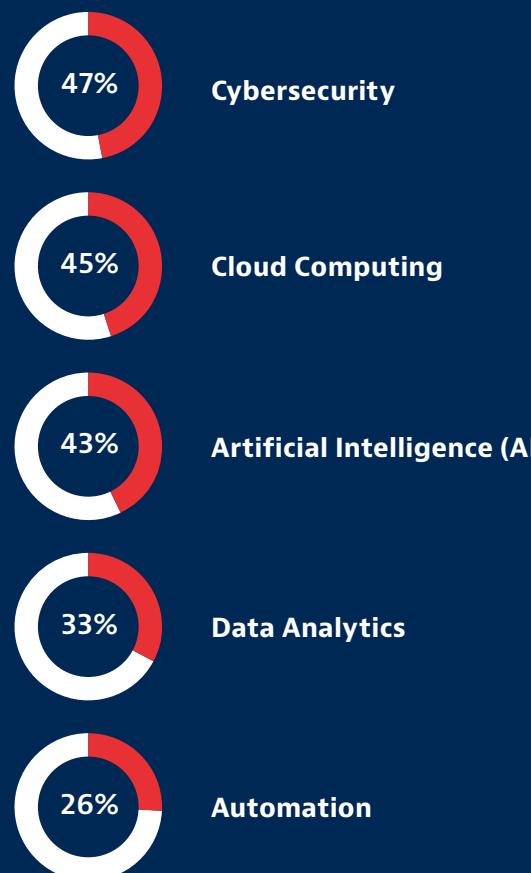
26% **Automation**

2.1 Spotlight on AI

Positive impact on communications, customer engagement, revenue streams and business agility is driving interest in AI.

AI has huge potential, as demonstrated by Robotic Process Automation (RPA), chatbots, and other AI currently being implemented. As with any emerging tech, there is some risk of the hype being bigger than reality, but respondents cited the impact of AI as significant and far-reaching.

AI is Newly Important

In 2020, only **14%** of survey respondents were heavily investing in AI. Today, **nearly half** of leaders believe AI is core to digital transformation.

However, FI organizations have a different perspective. Just **32%** of respondents in these sectors rank AI as a core technology. They also believe cloud computing will have significant impact on business agility, cost reduction, customer engagement, operations and new revenue generation.

Sector Spotlight: IMT & EMI

43% of IMT and **29%** of EMI businesses will prioritize cybersecurity over the next 12 months as they pivot from current investments in IoT and automation to protecting their digital assets.

Sector Spotlight: HLS

98% of HLS respondents surveyed said cybersecurity is a current area of investment.

Artificial Intelligence is the technology expected to have the greatest impact in relation to:

% of Respondents indicating these technologies as strategic to DT (multiple responses allowed)
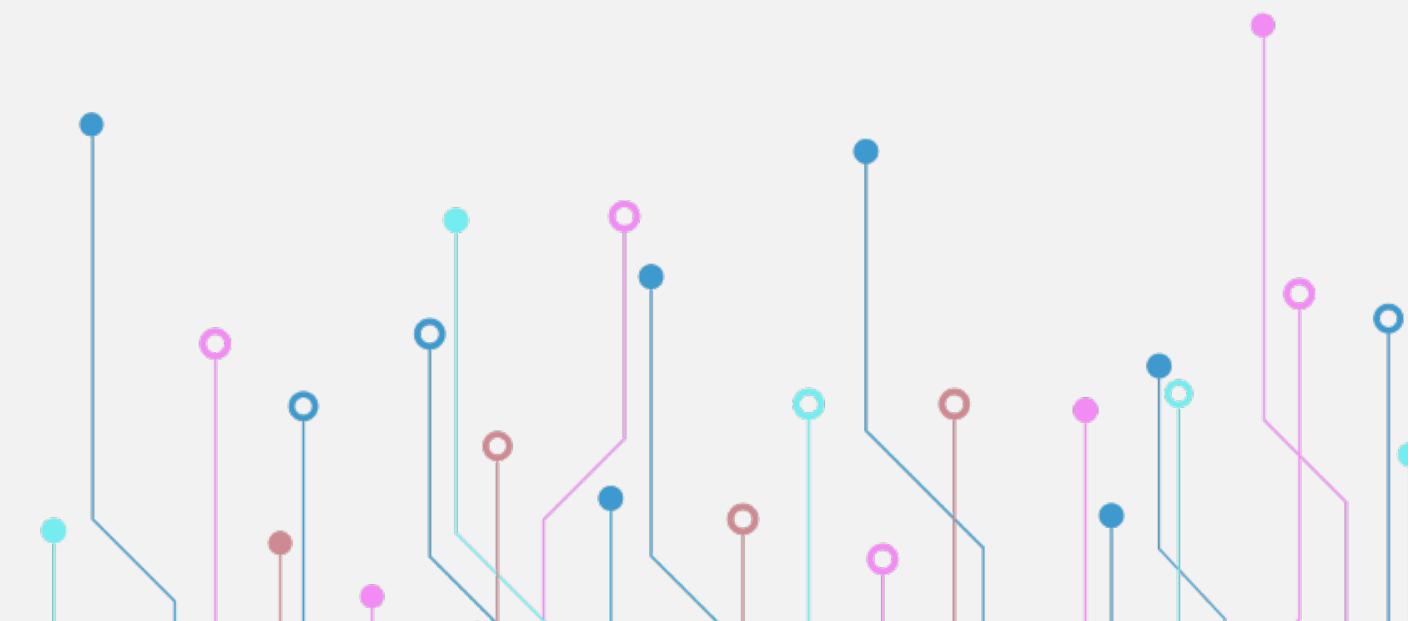
Improved internal communications (46%)

New revenue streams (42%)

Better customer engagement (42%)

Greater business agility (41%)

Improved operational efficiency (41%)

2.2 Cloud is Critical: Benefits, Risks and Provisions

Benefits to agility, operational effciency, data storage and security mean cloud is a critical component of digital transformation. Cost reduction remains a key driver and security continues to be a prominent concern for respondents. Respondents indicate that transitioning from CAPEX to OPEX was one area realized from the use of cloud, which could be due to continued transformation brought about by the end of life for legacy on-premises infrastructure.

Top 3 Benefits of Cloud Computing:
% Respondents citing this area as a benefit of cloud computing (multiple responses allowed)

59% Cost reduction

36% Increased security

31% Increased data storage space

Top 3 Concerns of Cloud Computing:
% Respondents citing this area as a concern in relation to cloud computing (multiple responses allowed)

53% Data privacy

47% Cybersecurity
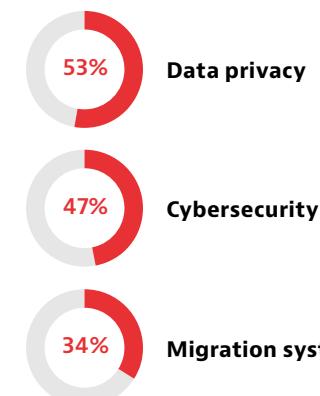
34% Migration systems

Mindful of security and data control, **46%** of organizations are using a private cloud. **29%** of organizations use a combination of public and private cloud, and **25%** exclusively use public cloud. These figures are also reflected in whether cloud is hosted on or off premises: **45%** of organizations use cloud hosted on premises, **26%** use cloud hosted exclusively off premises, and **30%** use a mixture of cloud hosted on and off premises.

Despite the reported benefits in increased data security resulting from cloud investment, concerns around data privacy and cybersecurity keep digital transformation leaders awake at night. The wider application of cloud computing functionality is also driving new concerns. In 2020, the migration from legacy systems was not a significant concern for digital transformation leaders. However, **37%** ranked migration as a top three concern currently.

Another notable difference from our 2020 survey is the easing of concerns around data control. In 2020, **47%** of digital transformation leaders were concerned about the control of data (including the location of data policies) compared to just **19%** in our latest survey. However, as organizations start to process and monetize data in more sophisticated ways, the practical issues regarding use of cloud such as control of data and availability will remain top of mind.

🔍 Sector Spotlight: IMT, CGR & EMI

Outages/downtime is a top three concern when it comes to using cloud computing for IMT (**39%**), CGR (**46%**) and EMI (**53%**) organizations, compared to only **26%** of all respondents.

🔍 Sector Spotlight: HLS, TMT & FI

Data privacy and cybersecurity are ranked as top concerns around cloud adoption for HLS, TMT and FI organizations.

"

In the context of cloud agreements, suppliers may store and process a customer organization's data on infrastructure in a range of different locations. The privacy/data sovereignty/data localization analysis may be complex depending on where the organization, the supplier, service infrastructure and data are located, as well as relevant data flows. Where predictive and data analytics are involved, consideration should be given to what rights each party may have to use the underlying data — or insights derived from it — for other purposes and on what basis; for example, would it be acceptable if the data were fully anonymized, etc."

Anne-Marie Allgrove
Global Chair, Intellectual Property, Data & Technology, Sydney

On Cloud Agreements

We continue to see convergence of cloud contracting terms, with exceptions such as with respect to customer data security terms. We asked respondents to best describe their legal cloud agreement in terms of whether it was primarily based on the provider's or customer's terms.

Statement Which Best Describes Respondents' Legal Cloud Agreement
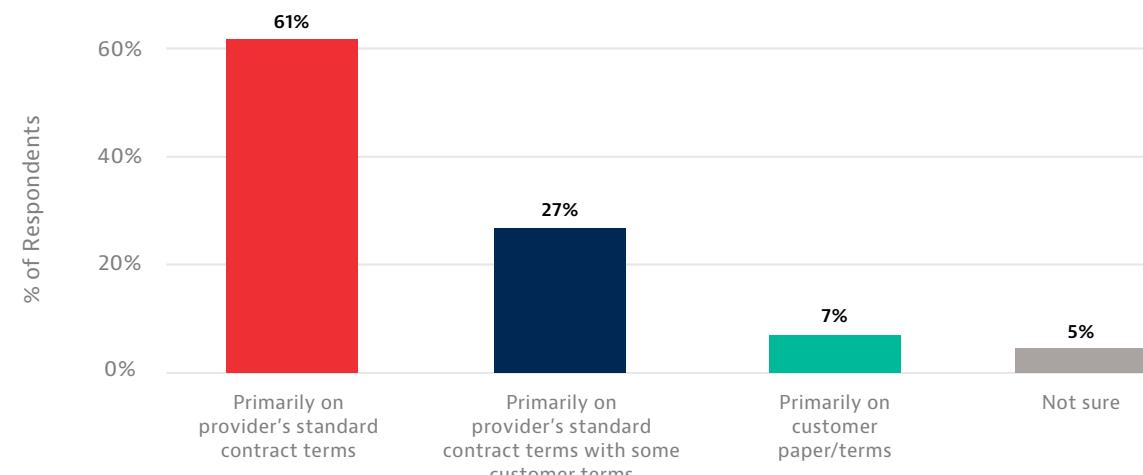
On Cloud Contract Provisions

We asked our respondents what they viewed as most negotiable in cloud contracting. Interestingly, we saw an increase in the negotiability of service levels as compared to past surveys. This may be consistent with what our survey respondents told us: adoption of private (or at least public/private) cloud solutions is increasing.
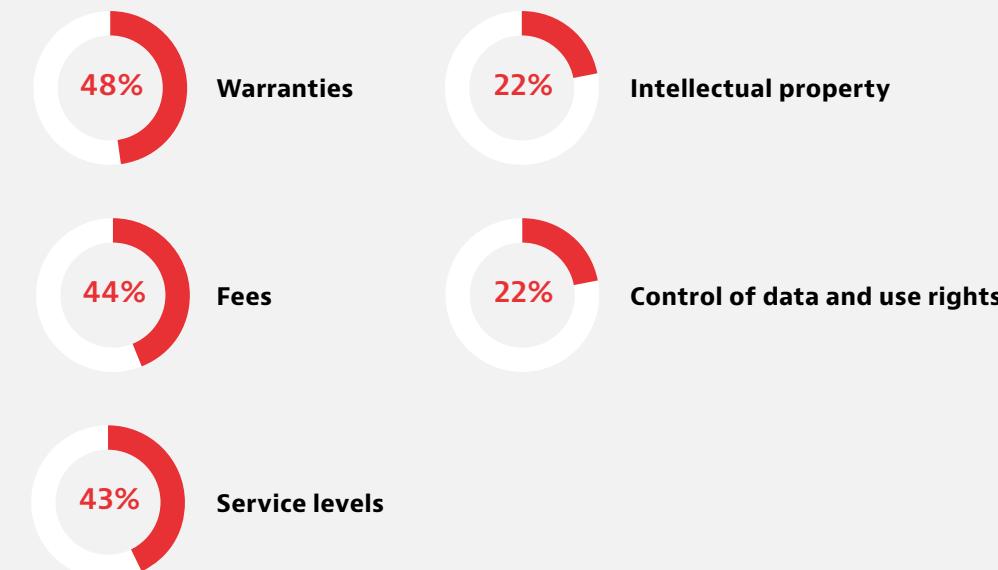
On Liability Caps

83% of respondents agree that liability caps are based on the preceding 12 months of service fees. Our respondents indicate there remain carve-outs or higher caps for issues such as data privacy and security.

Top Five Most Negotiable Contract Provisions:

% of Respondents who cite these provisions as being negotiable (multiple answers allowed)

48% Warranties

22% Intellectual property

44% Fees

22% Control of data and use rights

43% Service levels

☁ Consider:

78% of leaders do not regard control of data and use rights as a negotiable provision.

??? What's Needed:

It is essential for organizations seeking to create value from cloud data to bake in appropriate protections up front.

# 3 The Road Ahead: Digital Transformation for Future Enterprise Goals

3.1 Future Investment

Future investment suggests that organizations are gearing up for a continued evolution in DT. Future priorities reflect other potential aspects of enterprise strategy, from security and efficiency to new revenue streams and customer and employee experience. Future investment priorites center on communication (5G), customer engagement (e-commerce) and remote work.

Future Digital Transformation Investment Area *(% of Respondents ranked as top three)*
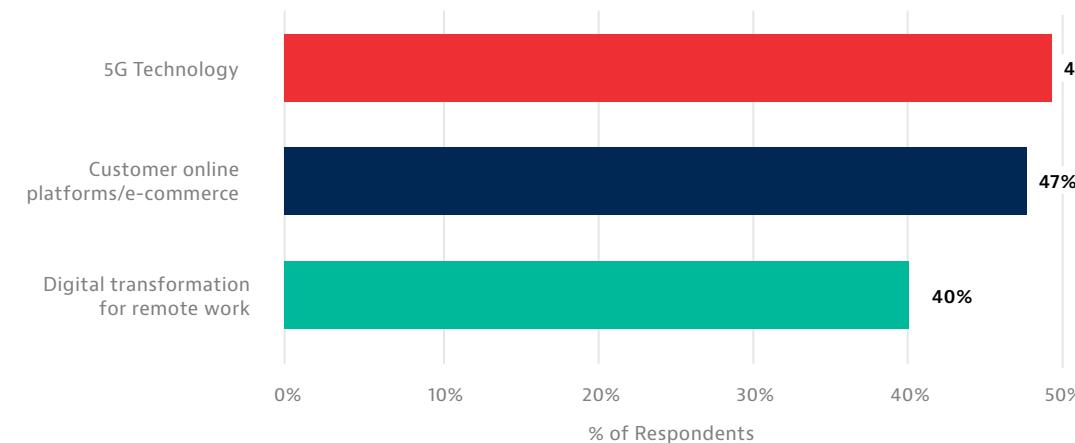
Expected Benefits in Next 12 Months
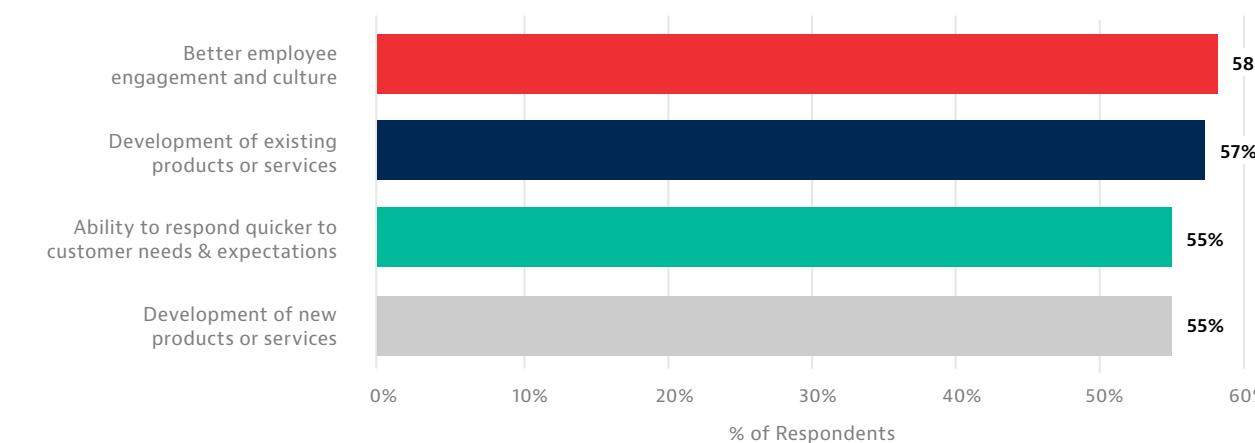
For all organizations, more sophisticated transformation is on the horizon, as indicated by the majority of survey respondents indicating that their organizations are targeting new and different technologies and high-value initiatives. Organizations will place greater emphasis on future-proofing and improving the customer experience, with long term investment planned for 5G (**48%**) and customer/e-commerce online platforms (**47%**).

People remain key. As the global war for talent grows and customer expectations continue to evolve, digital transformation can help organizations compete. Many will also be investing in technologies that support new ways of working/digital transformation for remote working (**40%**). With these investments in hand, more than half of respondents anticipate improvements over the coming 12 months in: employee engagement and culture (**58%**), existing product or service development (**57%**), ability to respond quickly to customer needs and expectations (**55%**) and development of new products or services (**55%**).

> Digital transformation has taken center stage in restructuring and growth strategies in boardrooms globally as companies reinvent themselves for the future. As businesses seek renewal whilst balancing current risks, value creation from digital transformation activities is also key. To reap the benefits of digital transformation, businesses must strengthen capabilities in managing data privacy risks, the future of work as well as distribution and supply chain channels."

Adrian Lawrence
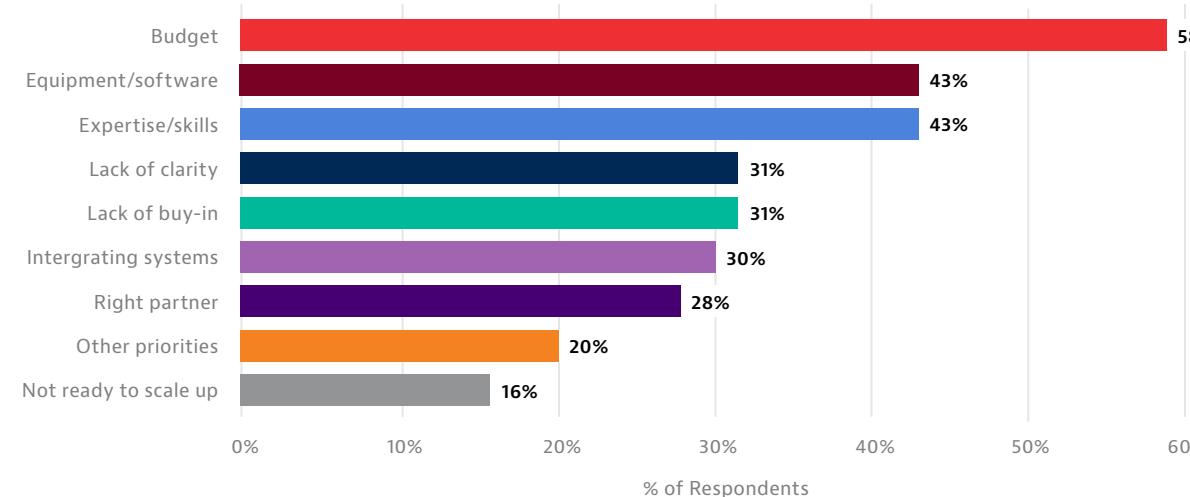**Asia Pacific Head of Technology, Media and Telecommunications, Sydney**

4 Overcoming Roadblocks: What Determines Future Success?

4.1 Question of Resource

A fundamental resource gap is slowing the progress of digital transformation as organizations struggle to access what they need to make digital transformation a reality. Lack of expertise and skills, as well as lack of equipment and software are critical barriers holding organizations back from accelerating their programs. Moreover, organizations' abilities to address these issues could be hampered by a lack of funds or budget, as well as a lack of buy-in or clarity with regard to digitial transformation programs.

While budget is understandably a challenge, lack of clarity and buy-in are also important factors, especially when considering what role the legal function can play in empowering the organization — using legal skills to help bring clarity in a way that enables buy-in.

Barriers to Scaling Up and Accelerating Digital Transformation

Category	%
Budget	58%
Equipment/software	43%
Expertise/skills	43%
Lack of clarity	31%
Lack of buy-in	31%
Intergrating systems	30%
Right partner	28%
Other priorities	20%
Not ready to scale up	16%

% of Respondents

🔍 Sector Spotlight: IMT

41% of IMT organizations say that other more important strategic initiatives are taking priority over digital transformation initiatives, which is holding them back from scaling and accelerating digital transformation.

> "Financial services institutions are increasingly aware that they need to partner with a wider range of technology companies in order to accelerate their digital transformation efforts. They also appreciate that their procurement processes make it difficult to on-board new tech providers, particularly smaller providers, quickly and efficiently, so there is a lot of internal focus on improving the innovation lifecycle. Compliance remains front and center, of course, but it's important to assess the risks carefully for each vendor and implement contractual, technical and operational mitigations in a proportionate way to enable the institution to embrace the new technologies that are available."

Sue McLean
Co-Chair Financial Services, EMEA, London

> "We do see room for improvement in skills and in talent upgrade/update which are critical for the progress of digital transformation. The transformation of skills required for certain positions in healthcare and life sciences (HLS) companies occurred quite abruptly and became a barrier for digital transformation advancement. Precisely in a sort of catch up game, we see many HLS companies partnering with tech companies rather than tackling digital transformation by themselves. This results in increased M&A activity and licensing and collaboration deals between HLS companies and tech companies. While these are two very different worlds, both of which need help bridging the gaps, the opportunities are massive in terms of what this means for the transformation of healthcare and patients' treatments and wellbeing. Digital transformation is critical for our sector and will revolutionize how all stakeholders understand the concept of healthcare."
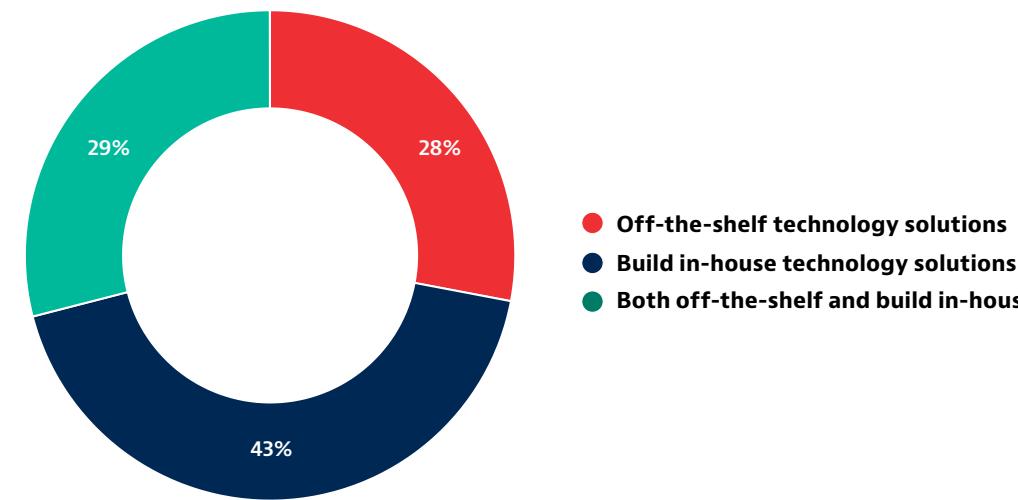
Vanina Caniza
Global Chair, Healthcare and Life Sciences, Buenos Aires

4.2 To Build or to Buy?

A key decision related to procuring the talent and technology necessary to enable DT is determining whether an organization should build or buy the technology it needs for DT. More than two-thirds of our respondents indicated that they externally sourced at least some aspects of their technology. From new, key considerations in mergers and acquisitions (such as how to diligence and contract regarding data) to managing multiple-provider environment and third-party/in-house hybrid development, effective contracting and governance remain more important than ever to facilitate DT success.

Choosing Whether to Build or Buy
% of Respondents whose organization chooses to build, buy, or both

29%   28%   43%

● Off-the-shelf technology solutions
● Build in-house technology solutions
● Both off-the-shelf and build in-house

These efforts will require significant investment, which respondents say is a barrier to digital transformation. Similarly, clarity of direction and buy-in are essential for these investments to be successful. This means that plans to buy or build new technology could be ineffective or fail to anticipate risks that could have been better managed in advance.

Consider:

A lack of executive buy-in and clear strategic direction could lead organizations into investments without effective risk management mechanisms in place.

What's Needed:

Clarity on input and output is essential to managing confidentiality provisions and licensing scope, identifying and protecting newly created IP and managing and enforcing rights protections up front.

Sector Spotlight: M&A

"Two out of three respondents indicate that buying off-the-shelf technology solutions is at least a part of their DT plan. Despite lofty valuations, deal-making has happened at a record pace this year and shows no signs of slowing down. Buyers are continually refreshing their pipelines and hunting for deals that position them to scale their existing offerings and drive innovation."

Kathryn Strong
Corporate and Securities Partner, Chicago

"Contracting for and implementing the right governance and controls to manage hybrid digital transformation requires pragmatic product counseling and cross-functional legal counseling in ways that continue to evolve beyond traditional legal advice."

Peter George
Global Co-Lead, Technology Transactions, Chicago

4.3 Mapping Control

New technology means new risk for organizations, with particular concerns around data storage, security and exposure to cross-border data processing regulations. Digital leaders believe technology can be a double-edged sword. As digital transformation programs grow in sophistication, technology creates both new opportunities and new areas of exposure.

Based on previous years' survey data, more and more organizations have obtained cyber insurance each year as new opportunities to present new risks that organization must seek to manage. Most recently, **79%** of organizations reported having some form of cyber insurance.

When It Comes to Collecting and Using Data...

79% of respondents say potential mismanagement of data security practices increases a company's risk of a data breach

74% of respondents say potential mismanagement of data storage practices increases a company's risk of a data breach

68% of respondents say increased cross-border regulation related to data is causing confusion

Digital Technologies and Legal Developments

"

Reasons for adoption of technology vary from company to company, but many are buying digital capabilities to future-proof their business, as organic build-out of tech capabilities for large organizations is perceived to be too slow. The speed of technology advancement has largely outpaced legal developments. Take AI for example — there is still no unified definition of AI, hence evolving questions as basic as whether an AI can claim ownership of works created or inventions made.

The EU is generally seen as leading in legal framework developments that regulate the digital economy arising from digital transformation. For example, the proposed Digital Services Act and Digital Markets Act by the European Commission seek to increase the transparency of large online platforms and to enhance the EU's regulatory environment for digital technologies. Other legislation in the pipeline includes the Digitalization Act in Germany, which seeks to create a new antitrust framework for the digital economy.

In Mainland China, with the shift to e-commerce in recent years and the unprecedented growth of digital technology companies, the government's focus has similarly been to limit the power of digital technology companies, to improve cybersecurity and data security, as well as to enhance personal information protection with the recent introduction of the Personal Information Protection Law. Businesses are advised to align internal work flow (which can be multi-jurisdictional) and undertake thorough risk and impact assessments of the adoption of any new digital technology to work through the relevant legal and regulatory issues."

Isabella Liu
Asia Pacific Head of Intellectual Property and Technology, Hong Kong

Spotlight: Managing Data and Cybersecurity

Data Governance

"

Good data governance requires an understanding of the data, data flows and each party's role in relation to the data, followed by a legal and operational risk assessment as to the importance of the data and what rights are needed to enable a business to be able to extract the full value of the data so as to ensure in any negotiations the parties are clear as to what they need in respect of rights in the data.

A key aspect of data governance is putting in place robust contract terms that regulate the handling of that data, effectively spelling out each party's rights and obligations with respect to the data. Clear contract drafting is essential to achieve the best outcomes."

Anne-Marie Allgrove
Global Head of Intellectual Property,
Data and Technology, Sydney

Cybersecurity

"

It is not surprising that cybersecurity is top of mind for respondents of this survey. Unfortunately, cyber-criminals have exploited the COVID-19 pandemic and organizations' accelerated needs for digital transformation to pursue increasing costly and disruptive cyber-attacks such as ransomware, business email compromise and fund transfer fraud. During these times, it is even more important for leaders to prioritize cybersecurity as organizations are transformed to account for such needs as larger remote workforces and shifts to cloud technology."

Stephen Reynolds
Data & Technology Partner, Chicago

Data Input and Output

"

Understanding the inputs, what is being created, and outputs is key. This will enable considering how to manage inbound IP (whether confidentiality provisions or license scope/restrictions), identify and protect newly created IP, and manage and enforce rights in the resulting output."

Adam Aft
Global Co-Lead Technology
Transactions, Chicago

Cyber and Privacy Risks

"

A mistake that some organizations make is that they believe that cyber and privacy are risks that are dealt with by IT and security. These two functional areas are just the tip of the spear for this important issue, but it is truly an all-enterprise issue for establishing appropriate protections, and more fundamentally, for responding to actual cyber incidents."

Brian Hengesbaugh
Global Chair, Data Privacy and
Security, Chicago

4.4 Data Residency Laws Impede Data Strategy

Data residency continues to be top of mind, prompting organizations to spend time and resources to be thoughtful about compliance by design from the back-end systems throughout the organization. This is an area in which we expect to see increasing regulation and resulting complexity, but an area that can be managed with early and effective planning.

We asked respondents if laws requiring data residency (i.e. laws requiring the maintenance of certain data within a jurisdiction) or restrictions on cross-border transfers vis-à-vis strategy for storage of data had an impact on their business. An overwhelming majority say their business is impacted by local legislation or maintaining data with specific jurisdictions.

Have local data residency laws had an impact your business?
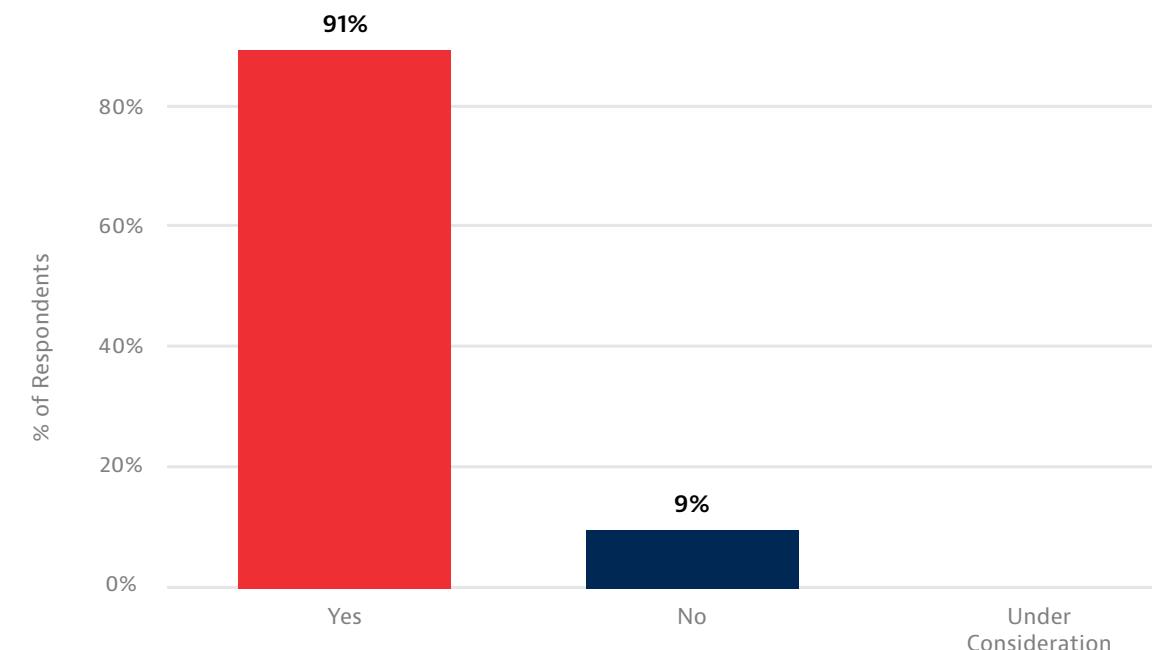
☁️ Consider:

Complying with often complex and prohibitive local legislation can slow digital transformation progress and international growth plans.

For some, maintaining data within jurisdiction or complying with restrictions on cross-border transfer means investing in costly, local data centers. For others, they will elect to avoid the complex legislation in some markets altogether.
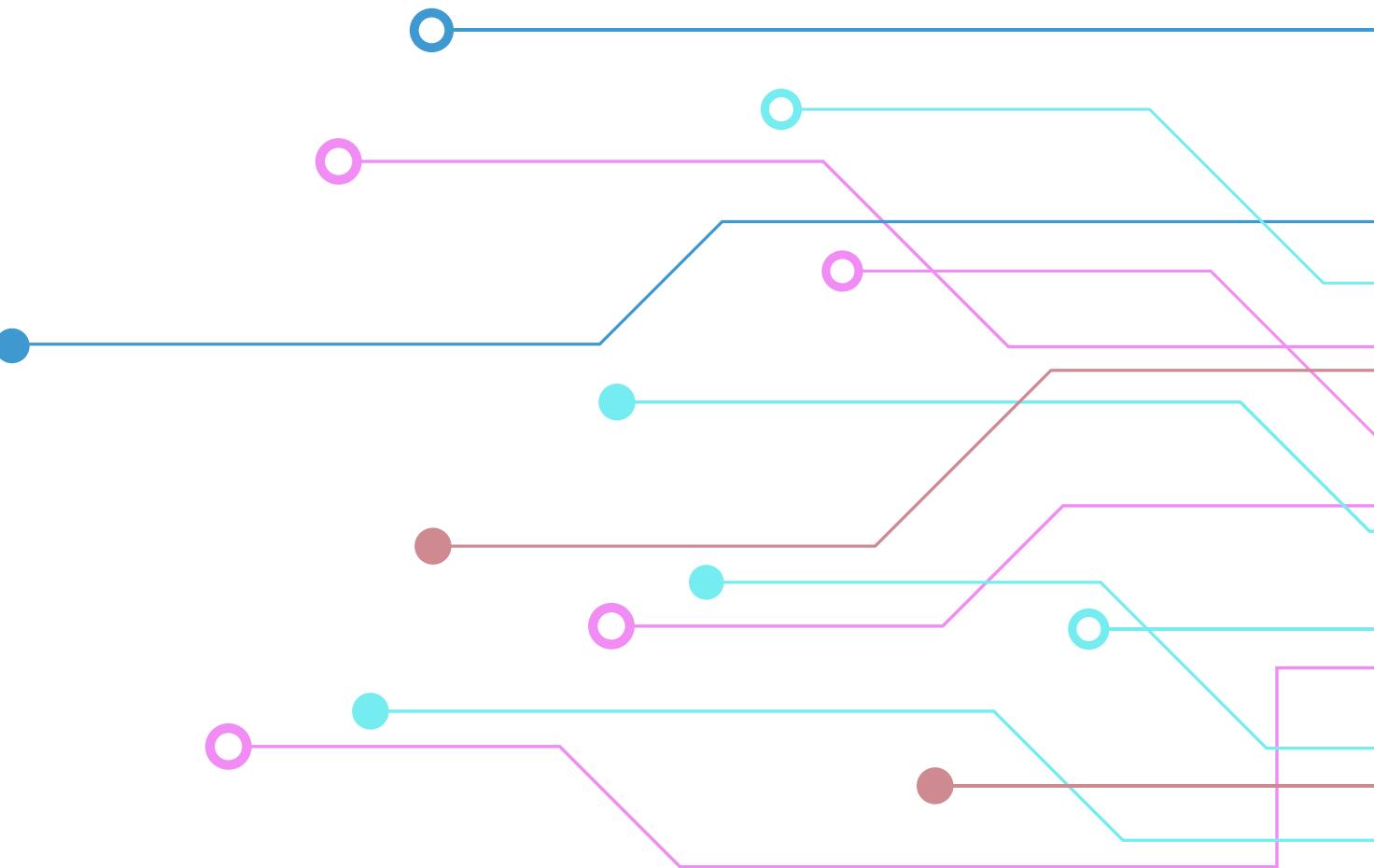
4.5 Eye on Governance

Governance should come into sharper focus as organizations make key investments, but legal and sourcing teams may find themselves left out of important governance decisions and conversations. In addition to ensuring that all relevant stakeholders are involved in such governance matters, businesses will also need to work with and advocate for the evolution of governance and control frameworks in alignment with the development and implementation of new technology.

1 in 3 respondents believe that with a clear governance plan they could achieve greater success.

Consider:

While legal frameworks are changing and developing in response to changes in markets and industries, this is not happening as quickly as technology is evolving.

What's Needed:

To bridge the gap between the pace of legal development versus technology evolution, strong collaboration between commercial and legal teams can empower businesses to use new technology with thoughtful planning rather than only when reacting to discrete issues.

Healthcare and Life Sciences Governance

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To a certain extent, the lack of improved governance and controls could actually expose Healthcare and Life Sciences industry players to increased risks. In our industry we are talking about people — life, death and wellbeing of human beings, the right to privacy and the right to healthcare. Although increased controls can certainly be cumbersome, they are necessary if the goal is to create sustainable products and services.

Enhanced controls should be designed by looking into the future. What will patients, governments and investors look for and choose when selecting targets or products? How will companies differentiate themselves from competitors in exponentially growing ecosystems? Fortunately, in the United States, compliance with the Health Insurance Portability and Accountability Act (HIPAA) adds a layer of regulation that would make it difficult for the industry not to put a magnifying lens on governance and control frameworks related to digital technologies and digital transformation. Whether this discussion is perceived as an additional burden on the industry or as an opportunity to craft sustainable compliance frameworks in advance and avoid some problems that the data giants currently face is a different problem."

Vanina Caniza
**Global Chair, Healthcare and Life Sciences, Buenos Aires**
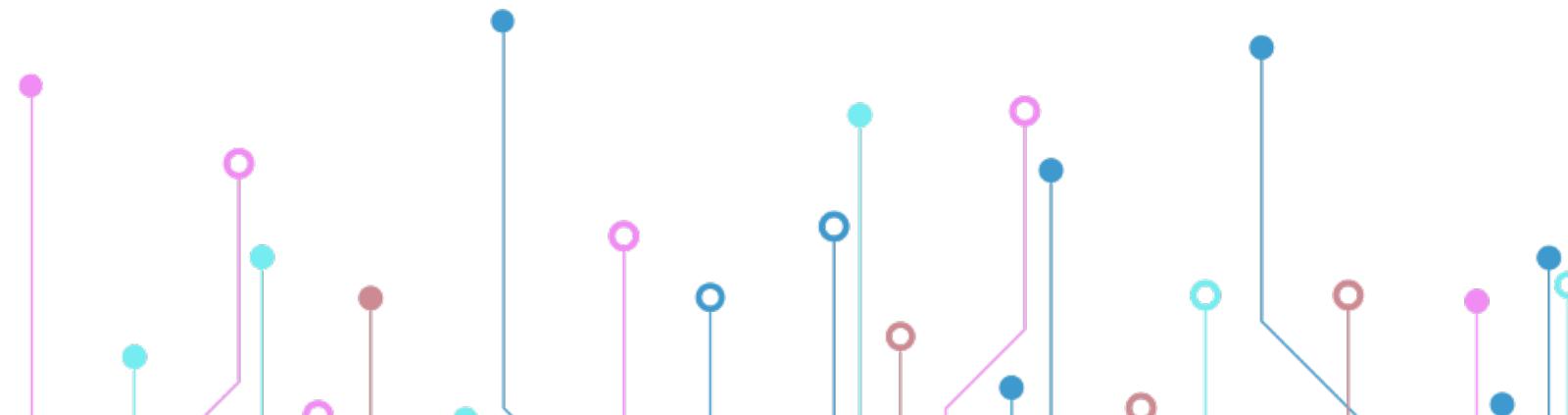
4.6 Manage Tax Complexity

More complex and restrictive tax regimes mean growing concerns around permanent establishment status, digital services taxes and withholding taxes for organizations. The tax landscape continues to shift, with a substantial portion of our respondents indicating significant focus on permanent establishment/tax planning and digital services taxes.

Where Tax Positions Have Changed

We asked respondents whether recent digital-related changes in selling or procuring goods and services changed their tax positions.
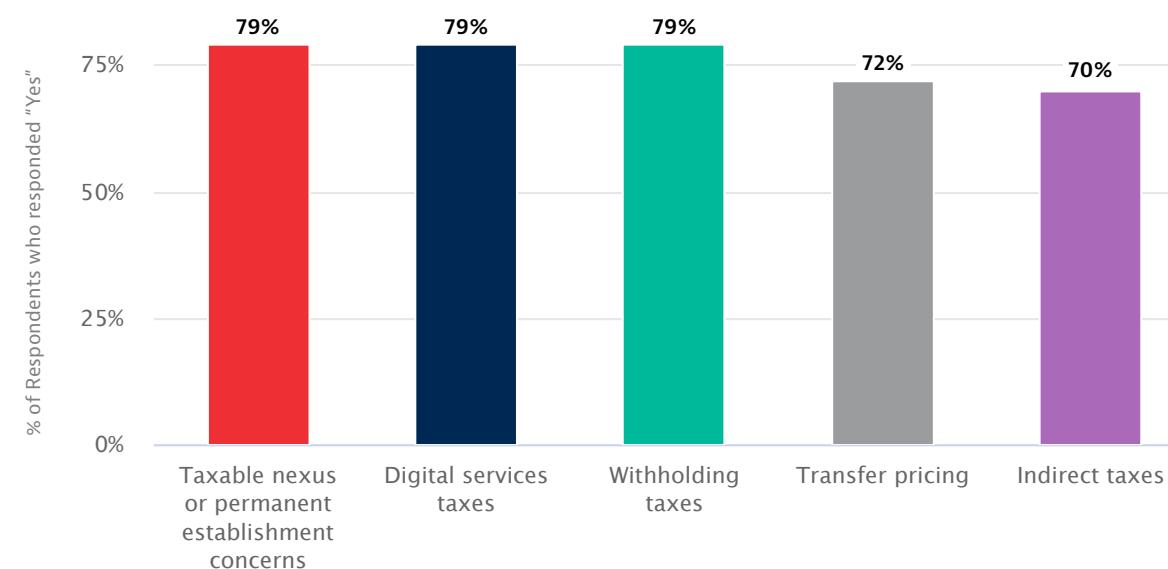
Development of digital products also means that organizations face more complex and restricted tax regimes. The taxation of digital products and servces, which impacts how consumers and businesses buy and sell digital goods, has continued to be the focus of debate and regulatory change. In July 2021, the European Union (EU) changed the way Value-Added Tax (VAT) is handled for online sales from businesses worldwide to consumers in the EU. As a result, leaders report wide-reaching changes to their tax positions, with the heaviest impacts on taxable nexus or permanent establishment concerns (**79%**), digital services taxes and compliance/invoicing requirements (**79%**) and withholding taxes (**79%**).

"

Understanding the key aspects of uses of data/data flows also are essential to addressing a number of other issues such as data privacy/security, tax impacts (such as due to changes in the character of income derived from uses of the data), compliance and investigations considerations (such as antitrust), and additional opportunities (such as data monetization)."

Adam Aft
Global Co-Lead Technology Transactions, Chicago

"

There is a perception among local taxing authorities and tax policymakers and legislators that traditional approaches to Nexus and sourcing of income do not adequately address the digital economy, in particular remote sales of digital goods and services or alternatively platform or online sales of more traditional items. The response is a patchwork quilt of both unilateral measures imposed by various governments around the world as well as a more comprehensive and consensus effort by the Organisation for Economic Co-operation and Development (OECD) to modernize the overall design of International tax."

Erik Christenson
Tax Partner, San Francisco

5 Conclusion

As organizations look to advance their digital transformation programs, managing a greater number of high-value initiatives will require balancing agility with better governance.

We asked respondents to look back and consider what their organizations could have done better or differently when implementing DT initiatives. Respondents recognized that faster identification of and reaction to problems and better management of unexpected third-party costs would have resulted in greater success for previous DT initiatives. Respondents also cited that in retrospect, DT implementation would have benefited from earlier involvement of subject matter teams in compliance and tax as well as the development of a clear governance plan.

Key Lessons Learned

Respondents observed that engaging in the following activities would have improved the effectiveness of DT intiatives. *(% of Respondents)*

55% **Faster identification and reaction to problems**
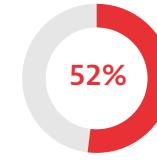
52% **Better management of unexpected third-party costs**

39% **Earlier involvement of subject matter teams in compliance & tax**

35% **Development of a clear governance plan**

Moving forward, consider these four key concepts to help advance your DT and cloud initiatives:

New Internal Organization for Transformation

Digital transformation leaders should identify how their organizations are pursuing DT and evaluate how to empower proactive rather than reactive approaches to new developments.

Cloud Remains Prominent

Cloud continues to be a main driver of, and enabling technology for, digital transformation.

Data Opportunities and Risk

Increased availability of data and improved means for processing data present new opportuniites, from operational improvements to monetization. However, these also bring new risks both internally and externally.

People

In a digitally transforming world with increasing availability of new tools and advanced technology such as AI, people are still central to the development and delivery of products and services.

6 Key Contacts by Region

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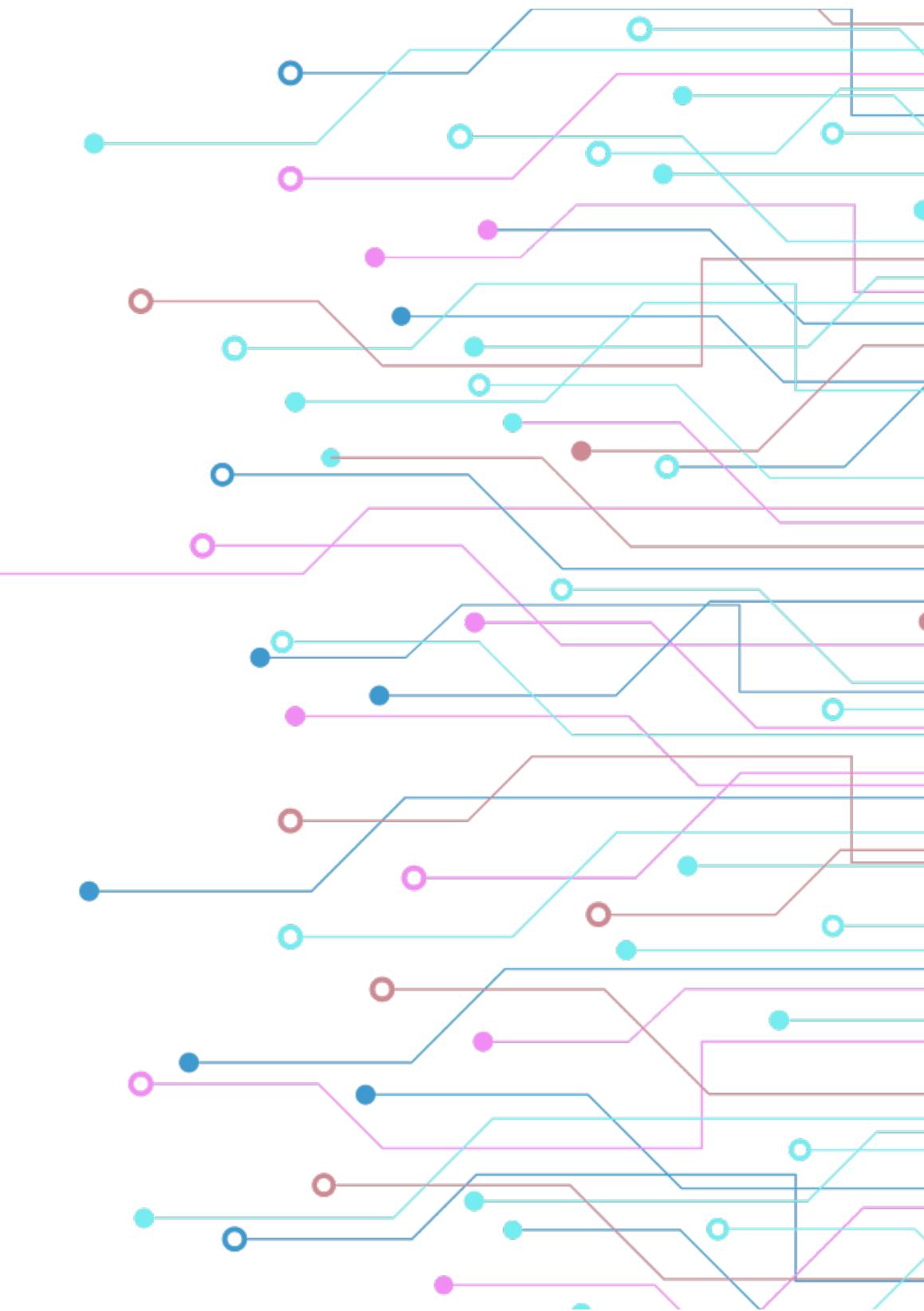isabella.liu@bakermckenzie.com

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Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law.

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