



Managing future disputes risks

A global study into the readiness of business
for the challenges that lie ahead

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Foreword

Disputes risks are an ever-present part of doing business.

Indeed, for some, these risks are built into their business model.

They like to move fast and accept they may break some things.

Disputes are part of the cost of achieving their goals.

For most, however, there is a resigned acceptance that disputes – although best avoided – will inevitably arise at some point.

Whatever view a business takes of risks, with forethought there is much that can be done to anticipate and mitigate the downsides that disputes can bring, and provide the legal resilience needed to navigate the future confidently.

Yet, according to our research, relatively few businesses today are likely to have devoted significant time and resource to identifying and managing the future disputes risks that may hinder, or even derail their plans.

Impact of innovation and change – the inevitability of disputes

Recent events have demonstrated how businesses can be exposed rapidly and unexpectedly to disputes risks. Whether it is Covid-19, the existential threat posed by climate change, the war in Ukraine, the increasing vulnerability of our supply chains and critical infrastructure to cyberattacks or geopolitical tensions, the list of catalysts for disputes can seem endless.

The next few years promise to be even more unpredictable. In addition to these existing threats, a new wave of disruption is already taking shape, bringing with it opportunity and challenge in equal measure.

Technologies such as artificial intelligence (AI) and virtual and augmented reality hold extraordinary promise if used responsibly. But the speed of change has meant that

policymakers and regulators are having to work at pace to develop rules and guidelines to address the range of perceived risks.

In parallel, established sectors are continuing to undergo radical change, driven by an influx of new investment and new entrants looking to create value and profit with their innovative ideas and lower-cost operating models.

Innovation and change often bring with them a variety of novel disputes risks.

While it will never be possible to operate in a world that is free from disputes, businesses that quickly and effectively anticipate and mitigate the risks that may arise in the future will invariably have a significant competitive advantage over those that do not.

Understanding future disputes risks

In response to this increasingly important area of risk management, we have undertaken a programme of study into the anatomy and lifecycle of future disputes risks.

We have focused initially on two distinct case studies: emerging technology – specifically AI and virtual worlds – and the commercialisation of the space sector. In our view, both provide engaging and effective illustrations of the variety, complexity and scale of issues that businesses will have to assess.

Our analysis highlights practical insights for all businesses, irrespective of whether they are in the space sector or have any immediate plans to invest in these specific emerging technologies.

Moreover, we have built a visual model – the Allen & Overy Disputes Risk Tide – to show how in any sector and under any business model the risk of a dispute is likely to emerge, develop and eventually evolve into an established and manageable challenge.

As part of our research, we have also conducted a global survey of senior business and legal executives to find

out their perspectives on future disputes risks. We have focused in particular on their confidence in their organisation's preparedness to deal with future disputes and their views on the threats that pose the greatest disputes risks to their business in the short to medium term.

Investing in capability building

We hope that this report and the wider body of materials that we have produced stimulate thinking and debate among boards, senior management and their legal, risk and compliance teams and help them consider the business case for investing in the skills and capabilities needed to identify and mitigate future disputes risks.



Andrew Denny

Partner, Allen & Overy



Part One: Research into business attitudes

Introduction

Allen & Overy has commissioned research into businesses' understanding of – and attitude to – present and emerging disputes risks, along with their readiness to deal with them. The purpose was to identify potential exposures and evaluate the business case for disputes risk management. 750 business leaders and senior legal executives were surveyed from across a broad range of industries around the world.

The study focused on three main themes: respondents' perceptions of future disputes risks, their confidence in the protections their organisations have in place to mitigate those risks, and their ability to identify and assess new and emerging threats.

Disputes risks are business risks, and the findings indicate limitations in awareness of and preparedness for future disputes that could prevent companies from effectively innovating ahead of their competitors or hamper their business continuity.

The majority of respondents believe their organisations are prepared to take risks,

including disputes risks, to gain a competitive advantage. The ambition should be to avoid disputes, win them or limit the damage associated with them.

Yet most respondents currently lack the capabilities to deliver these outcomes reliably. They are not fully confident in their contractual protections or their ability to predict or control where their disputes will be heard. What's more, the visibility they have of future disputes risks is limited due to a lack of effective horizon scanning.



Headline findings

99%

Almost all respondents (99%) acknowledge that they **will be exposed to some degree of disputes risk** within the next three to five years

57%

of survey respondents **accept that legal disputes arising from risk taking and innovation are a price worth paying**

90%

of respondents from businesses with revenues above USD50bn **see disputes as a price worth paying to get ahead of the competition**, compared with just 43% of those from businesses with revenues between USD1bn and USD5bn

64%

There are also significant regional differences in disputes risk appetite, with 64% of respondents at **U.S. businesses being inclined to accept future disputes risks** compared with 47% of respondents from UK businesses

30%

of General Counsel and Heads or Directors of Legal are moderately (or more) **confident in the contractual protections** they currently have in place

77%

of respondents agree that **investing resources into identifying disputes risks over the next five or more years will enable value creation**. However, slightly more than half (53%) do not currently have any form of horizon scanning in place

41%

Only 41% of respondents based at companies with less than USD 26bn of revenue **claim to have invested in horizon scanning capabilities**, compared with 83% of respondents at businesses with revenues over USD26bn

11%

Only 11% of respondents say their business has a clear and consistent approach to horizon scanning. This indicates that horizon scanning for disputes risks is still in its infancy and that there are barriers within organisations

52%

The most common barrier to investment in horizon scanning is the cost, with more than half (52%) of respondents **identifying cost as a challenge**

Perceived risks

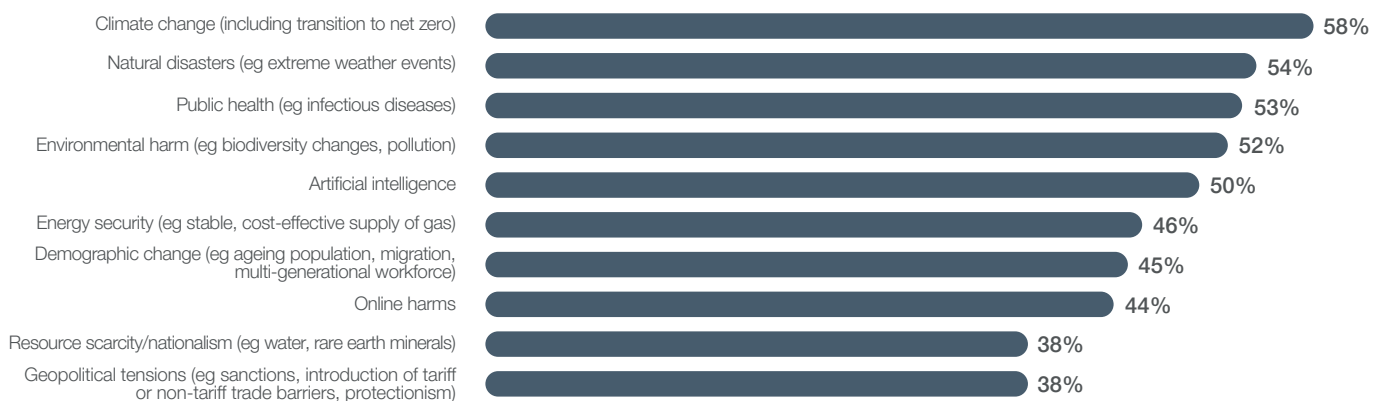
The disputes risks that respondents see on the horizon are an insight into how their organisations view the world. They are also indicators of where businesses should focus their risk mitigation. Respondents were asked which factors or events were most likely to result in disputes in the next five to ten years, although their predictions equally reflect present-day threats.

Notably, AI ranks as the fifth most commonly identified factor or event – above energy security and geopolitical tensions. It is hard to imagine it would have ranked so highly a year ago. The increasing impact of AI on business and the volume of recent publicity surrounding the implications of its adoption have no doubt played a role in it being cited by so many respondents. AI is now firmly on the radar as a significant disputes risk.

Of the 30 options presented to respondents, the most anticipated source of disputes risks is climate change, including the transition to net zero – 58% of respondents identify it as a disputes risk factor over the five to ten-year horizon.

Natural disasters (54%) and public health (53%) are the second and third most commonly identified factors or events. Over the past few years, the news agenda has been dominated by high-profile natural disasters, unfavourable weather patterns and the global Covid-19 pandemic – as with AI, this may well have informed the way that respondents perceive future disputes risks.

Figure 1. Top ten factors/events leading to future disputes risks in five to ten years' time



It is understandable that the factors and events that were identified by the largest numbers of respondents as giving rise to future disputes risks are those that are currently in the headlines. Attempting to predict the future is extremely difficult for any business. As we discuss later, it is even harder for those who do not invest in the structures and resources required to try to do so.

Interestingly, the four most anticipated future disputes risk factors (climate change, natural disasters, public health and environmental harm) are all capable of having wide-ranging impacts on businesses themselves, the markets in which they operate and their relationships with others. They are likely to give rise to a much wider range of disputes with a much broader group of counterparties than those arising from ordinary commercial activity.

There may be little that businesses can do to stop these events from happening. But identifying and articulating these (and other) future disputes risks can help ensure appropriately tailored legal and practical mitigants are put in place to increase resilience. In other words, looking ahead allows for a more targeted allocation today of resources and efforts.

Ensuring contractual protections (such as force majeure clauses) align with and operate to mitigate perceived risks is one way to do this. For example, businesses that

see natural disasters as a significant future disputes risk may want to build in bespoke provisions permitting deferral of performance should a natural disaster occur, in addition to including the usual well thought out generic provisions. The aftermath of the Covid-19 pandemic certainly led to a renewed focus on the precise drafting of force majeure provisions because their utility was really put to the test.

Compliance is another area where businesses can develop a more customised approach to disputes risk mitigation if they have a better sense of what is on the horizon. For example, if a business identifies climate change as a significant future disputes risk, focusing time and resources specifically on ensuring compliance with climate-related obligations will be crucial, whether those are around supply chain due diligence, corporate reporting or otherwise.

For those who identify AI as an important disputes risk, tailored mitigation over the next few years will be as much about tracking and responding appropriately to legal developments (which will likely come at pace over the next few years) as about building in contractual or other protections to avoid liability.



A price worth paying

Legal disputes arising from risk-taking and innovation are accepted as a price worth paying by 57% of survey respondents. To gain a competitive advantage, many will accept the risk of disputes and litigation.

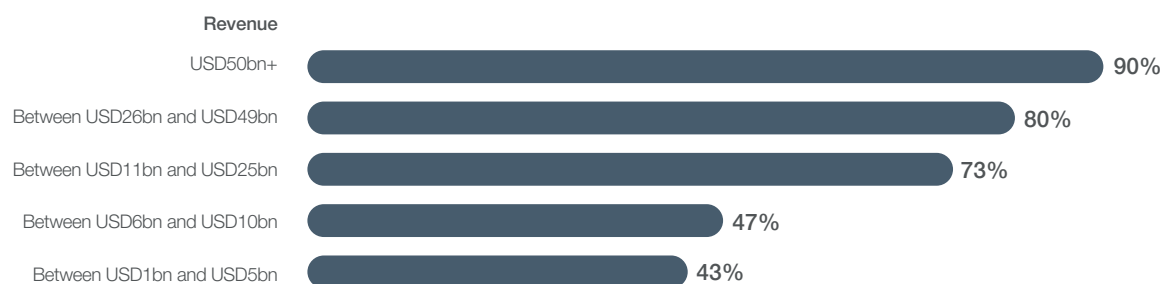
Interestingly, disputes risk appetite varies inversely with the size of the organisation: respondents in businesses with a turnover of more than USD10bn are much more likely to favour risk-taking than those in businesses in the turnover bracket of USD1bn to USD10bn.

Respondents in the largest companies, those with USD50bn+ in revenue, are more than twice as likely to agree that disputes are a price worth paying for innovation as those in businesses with revenues of USD1-5bn – 90%, compared to 43%.

Willingness to take on future disputes risks is also markedly higher in the United States (U.S.) than the rest of the world. Almost two-thirds (64%) of respondents in the U.S. consider disputes or enforcement a price worth paying for innovation compared with just 47% in the UK. This may reflect differences in business culture.

There is also sectoral divergence, with respondents in the private capital sector being the most accepting of disputes risk.

Figure 2. “Innovating to get ahead of the competition can result in disputes or enforcement but it’s a price worth paying” (% agree)



Type of question: Rating question. Scale: Rank on scale where 1 = strongly disagree and 5 = strongly agree. Results show the percentage of respondents who chose the two most favourable options on scale

These findings indicate that size does not dampen entrepreneurial spirit, an attitude perhaps more commonly associated with start-ups. It may be that deeper pockets enable larger businesses to take on these risks and be more bullish. The attitude of respondents from the biggest businesses may also be affected by their more systemic approach to horizon scanning (see [page 13](#)), suggesting there is much to be gained by trying to identify and assess future disputes risks to build the legal resilience required to weather them best.

Business exposure

Although most business leaders (99%) anticipate they will have at least some exposure to disputes risks over the next 3-5 years, overall they are predisposed to focus on the most pressing and immediate risks facing them.

While 43% of respondents believe their organisations are at least moderately exposed to future disputes risks in the next twelve months, under a quarter (24%) perceive this level of exposure over the next three to five years. This indicates that most businesses are concentrating on their present-day challenges.

Only a small percentage have an awareness of disputes that may develop in the medium to long term. This suggests there is work for businesses to do if they want to predict the types of disputes they may face in the medium to long term, to enable them to take steps to mitigate those risks now (see [page 13](#)).



Confidence in stakeholder relationships

Most disputes risks stem from relationships. Confidence in these relationships is an indicator of the ability to mitigate the risk of future disputes.

Businesses could gain by improving weaker relationships.

Respondents express confidence in their relationships with influential stakeholders such as regulators (81%) and shareholders (75%), suggesting that these relationships are strong enough to help avoid or resolve future disputes.

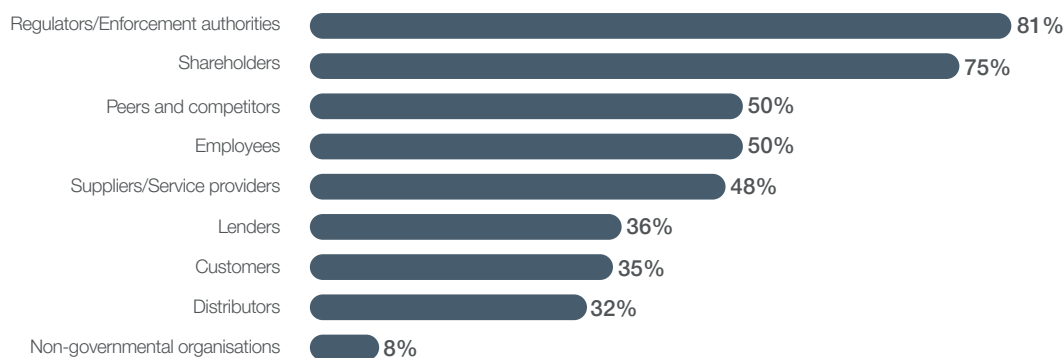
However, confidence declines when it comes to external stakeholders whose behaviour can be harder to predict. Only 35% of respondents are confident in their relationships with customers. For respondents in the retail sector, it may reflect the growing influence of consumer rights and the increasing use of class actions as a litigation strategy in some parts of the world. Equally, less than a third (32%) of respondents are confident in their relationships with distributors. This is perhaps not surprising in a period where supply chains

are increasingly heavily regulated and subject to unprecedented levels of external scrutiny.

There are particular concerns about relationships with non-governmental organisations (NGOs). Only 8% of respondents are confident that their relationships with these parties will help them tackle future disputes.

These stakeholders are growing in influence in many sectors as social and cultural issues become increasingly prominent in the public discourse around business activity and corporate behaviours. The top factors respondents identify as leading to disputes risks in five to ten years' time are all areas in which NGOs have loud voices and a growing appetite to litigate to achieve their aims.

Figure 3. Level of confidence in the relationship with stakeholders



Type of question: Rating question. Scale: Rank on scale where 1 = not at all confident and 7 = fully confident. Results show the percentage of respondents who chose the three most favourable options on scale

Businesses that see the management of stakeholder relationships as part of a holistic approach to risk management, and forge closer partnerships where advantageous, are likely to be less exposed to disputes risks when something goes wrong. Knowing how to deal with different types of stakeholders is crucial. NGOs are increasingly turning to litigation as a strategy to draw public attention to the issues that matter to them and try to influence corporate behaviour rather than necessarily to win in any claim. Listening and responding appropriately to these stakeholders and maintaining a longer-term dialogue with them can play a crucial role in helping to reduce the risk of escalation into a formal claim and all the associated costs and reputational risk.

Confidence in contractual protections

Where contractual relationships are concerned, a principal way of managing risk is in the drafting of appropriate contractual terms, including those that seek to manage how any dispute will be resolved if it arises.

Questions posed specifically to General Counsel and Heads or Directors of Legal focused on their confidence in these areas. This can be taken as an indicator of whether or not they expect favourable outcomes from disputes. There are perceived gaps in legal readiness.

When asked how confident they were in the robustness of the contractual protections that their organisations currently have in place, 57% were at best slightly confident. 30% were moderately or very confident.

Similarly, 50% of legal respondents had at best only slight confidence in their ability to ascertain quickly which courts or tribunals would resolve a future dispute (with around a third being more optimistic). And 54% were at best only slightly confident about the suitability of the choice of forum in their contracts.

These findings suggest a mixed picture on confidence in contractual protections. Those organisations that lack confidence in their protections may wish to review and manage their precedent agreements or revisit their approach to negotiations to tighten their protections on future deals.

A regular review of policies and approaches is also important even for those who do have confidence in existing arrangements. Perceptions as to future disputes risks will change over time, and drafting specific contractual risk mitigants that are tailored closely to specific perceived risks may provide additional protection alongside more generic protections.

The findings on confidence in choice of forum also indicate scope for greater focus on the drafting and negotiation of these provisions, which too often are considered to be 'boilerplate'.

The forum in which a dispute is resolved can have a significant impact on the time and cost burden of resolving the dispute as well as the outcome of the dispute itself, so getting the choice right can significantly reduce litigation risk.

Horizon scanning

Horizon scanning is the practice of having systems, resources and processes in place to ensure access to reliable and relevant data about new and emerging risks. Effective horizon scanning enables more effective risk mitigation, but it is not always an area of focus.

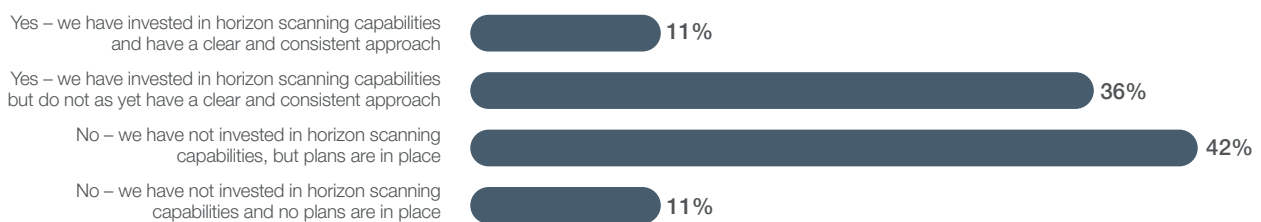
There is a clear case for developing these capabilities. More than three quarters (77%) of respondents agree that investing resources in identifying disputes risks over the next five or more years will enable value creation. By contrast, only 11% say they have invested in horizon scanning and have a clear and consistent approach to using it. The rest are limited in their ability to identify future disputes risks.

Overall, more than half (53%) of respondents have yet to invest in horizon scanning and 11% say they have no plans to do so. Investment levels vary depending on the size of businesses.

Businesses with revenues of USD26bn and above are the most likely to have invested in horizon scanning: more than 80% confirm investment in this kind of strategy.

The most common barrier to investment is the cost, with more than half (52%) agreeing that it is an issue. Budgetary limitations are especially pronounced within smaller organisations – 62% of respondents in businesses with revenues between USD1bn and USD5bn cited this as a barrier. In addition, just over a third (34%) of all respondents said a lack of in-house skills hampered investment in horizon scanning.

Figure 4. Investment in a 'horizon scanning' strategy



Avoiding investment in horizon scanning to save on costs is a missed opportunity. In the medium to long term, having the capacity to identify and assess disputes risks will not only prevent business disruption but also deliver a range of competitive advantages.

Part Two: The Allen & Overy Disputes Risk Tide

Introducing The Allen & Overy Disputes Risk Tide

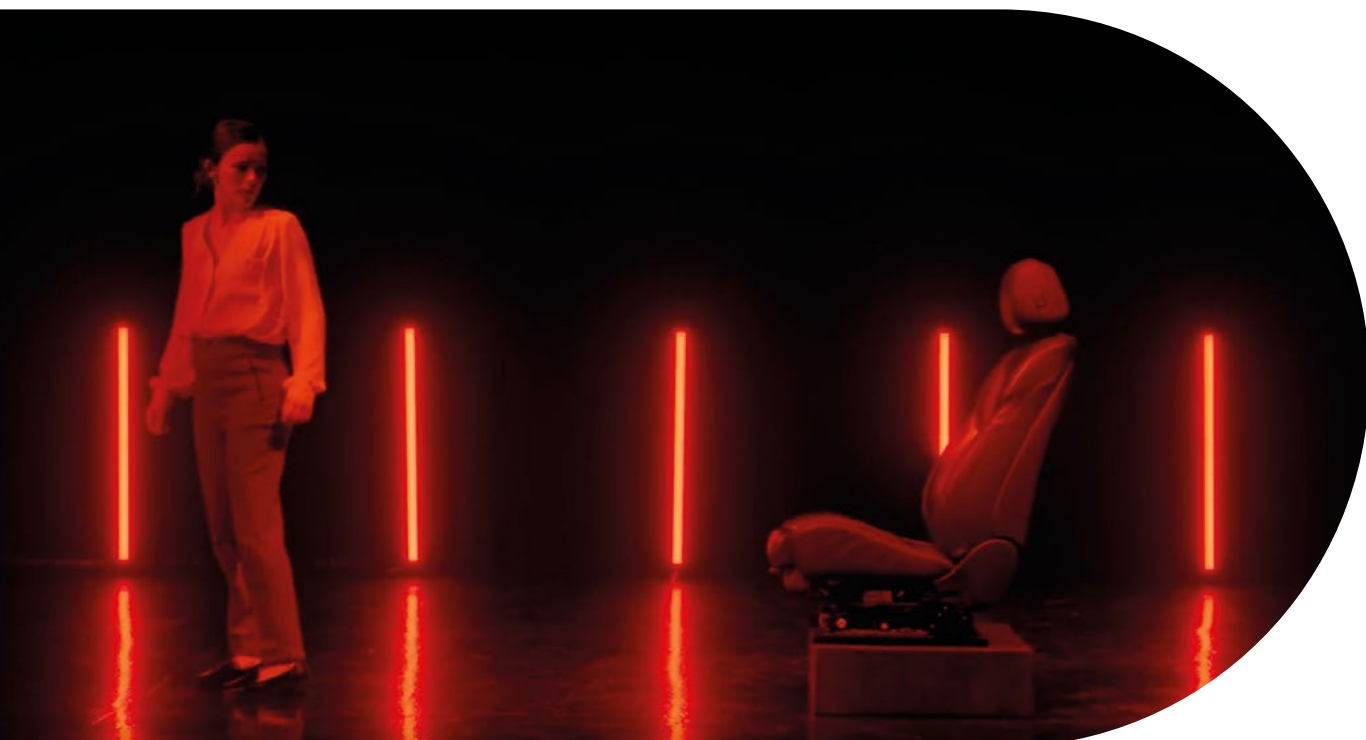
The Allen & Overy Disputes Risk Tide is a model for understanding how disputes risks associated with new and emerging business areas evolve over time. In rapidly-changing industries, this helps decision makers understand their exposure to disputes risks at any given point in time and the opportune moments to take action.

The timeline identifies seven key moments of interest, which can be used to track the likelihood of disputes. The risks of disputes are often relatively low in the early stages of development of a new area of business. The risks then tend to increase over time before tapering off once a new regime becomes firmly established.

The optimum time to innovate and take risks – the “Golden Window” – commonly lies in advance of legislation being proposed and put in place. For some businesses, acting during this window will give them a

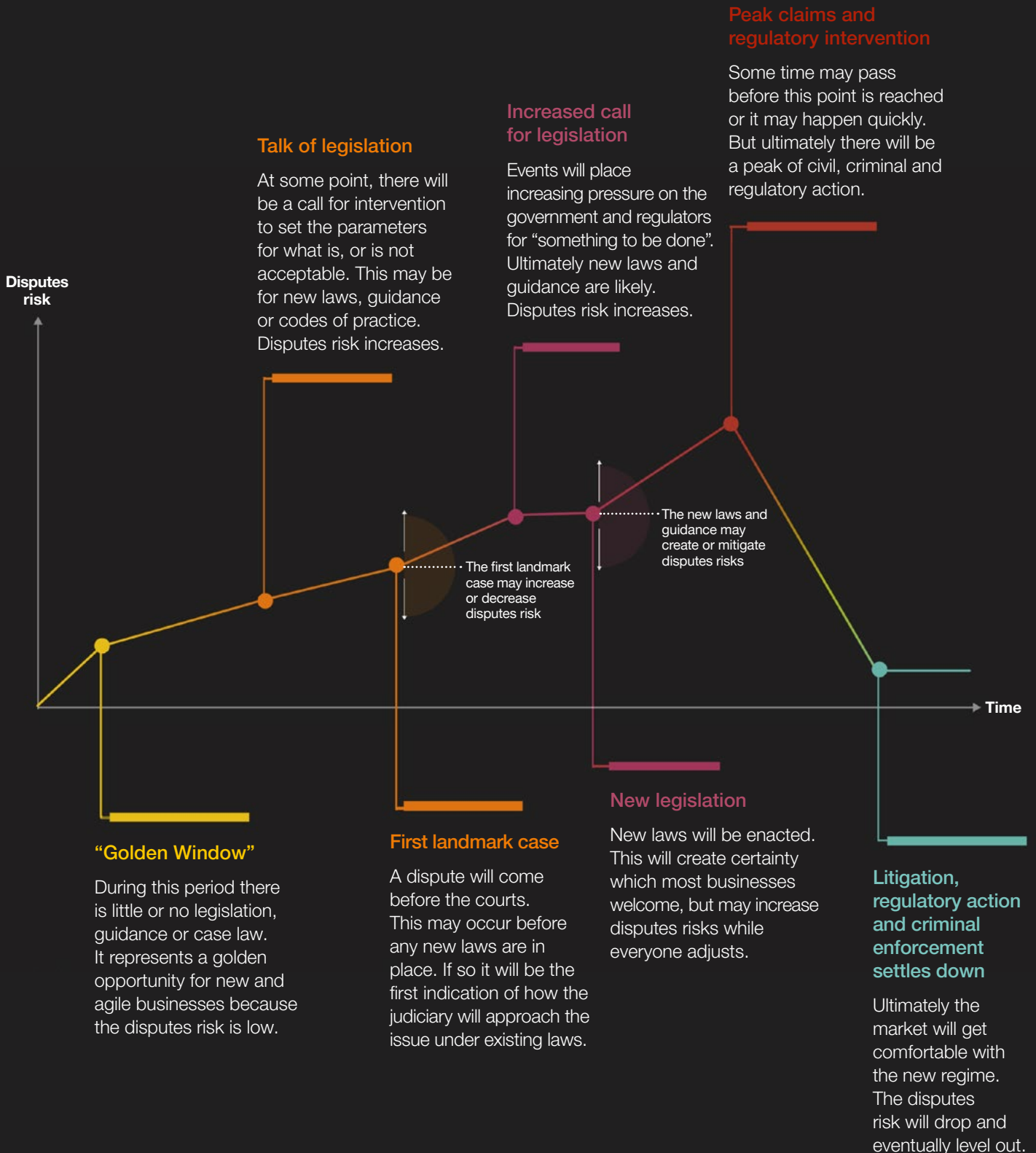
head start and ensure they are well positioned to navigate challenges and embrace opportunities as their industries evolve.

The precise path and timeline of the A&O Disputes Risk Tide varies depending on the dispute risk in question. Some landmark cases may lead to an escalation in disputes risk, while others may reduce it. The same goes for the introduction of new laws or guidance.



The Allen & Overy Disputes Risk Tide

The law constantly has to deal with new things. It tends to follow a similar pattern when doing so. This graphic represents the impact of that evolution on the risk of a dispute at a given time. This form is similar to a tidal wave.



Emerging technologies

Emerging technologies, like AI and virtual reality, are constantly evolving, have the scope to disrupt industries, and do not necessarily fit easily into existing legal regimes. The result is legal uncertainty and increasing disputes risks.

AI is approaching the point in the Allen & Overy Disputes Risk Tide where it will be under maximum pressure from regulators and other stakeholders.

Virtual worlds are not currently at risk of facing the same regulatory onslaught but are having to navigate how old law applies to new tech.

Indeed, almost all (98%) respondents to our survey expect technology and data to pose a disputes risk to their organisations within the next five to ten years. More than 80% think they will present the greatest legal risk.

Read our perspectives

Regulating AI: Businesses need to prepare for increasing risk of future disputes

With AI we face both rapidly accelerating technological development and, depending on the jurisdiction, a greater or lesser degree of legislative intervention. Whichever way you cut it, this particular “Golden Window” of opportunity is closing. We are heading, inevitably, towards the crest of the Allen & Overy Disputes Risk Tide where litigation and regulatory enforcement action peaks as new legislation is applied.

[Read the full article on \[allenoverly.com\]\(https://www.allenoverly.com\)](#)

Legal liability of AI: Dealing with minds immeasurably superior to ours

How should decisions made by AI be evaluated in a bid to ascertain and attribute legal liability when things go wrong, given we may not be capable of understanding how those decisions were made? Businesses, governments, regulators and the courts need to work together to try to answer this difficult question and set appropriate parameters to provide legal certainty for businesses and users of AI in the future.

[Read the full article on \[allenoverly.com\]\(https://www.allenoverly.com\)](#)

Real-world disputes in the virtual world

The laws that govern the metaverse are very much grounded in those of Planet Earth. Private civil laws relating to contract, tort, intellectual property and data privacy all bite, as do criminal and regulatory laws. Several jurisdictions are introducing legislation to address online harms, but it is largely a legal regime we are used to. Where the difference lies is in the application of these familiar regimes to a new environment.

[Read the full article on \[allenoverly.com\]\(https://www.allenoverly.com\)](#)

Space

A vertical rocket launch is shown against a sunset sky. The rocket's plume is a dark, vertical line extending from the bottom right towards the top right, where it meets a bright, glowing sun. The sky transitions from a deep blue at the top to a vibrant orange and yellow near the horizon. In the upper portion of the image, numerous small white stars are scattered across the dark blue background, suggesting a transition from Earth's atmosphere to space.

The “final frontier” has been reached. Space is now as much the domain of private actors as it is that of states, and the combination of increased investment and rapid technological advances has opened up significant new opportunities to explore and exploit space in a way that has never been possible in the past.

The limited extent of the regulatory regimes and legal precedents applicable to those operating in the new “space race” typifies the legal risk landscape that all businesses must navigate when they break new ground.

The uncertainty associated with this poorly charted legal territory – in addition to the significant commercial, political and technological risks of operating in space – creates considerable disputes risks.

It is therefore no surprise that respondents to our survey from the aviation and space industries register the lowest level of confidence in legal risk contingency planning for future disputes. Only 29% say they are confident in their present capabilities. These respondents are also least likely to say they have invested in horizon scanning, with less than a third (32%) committing resources to this function.

Yet three quarters (75%) of aviation and space industry respondents agree that investing resources in identifying legal risks within the next five or more years would deliver value and a competitive advantage.



Read our perspectives

The new space race: Managing disputes risks in a lawless and limitless environment

Space is a complex landscape for commercial parties to navigate. The dynamics of the new space race significantly increase disputes risks as space becomes increasingly congested and the competition to get ahead intensifies. This is compounded by the fact that legal regimes around the world have not developed at the same pace as these developments in the market. Claims arising from debris and collisions are among those most clearly on the disputes horizon for those operating in this sector.

[Read the full article on **allenovery.com**](#)

Mining and manufacturing in outer space: The new frontier in disputes risks

Exploiting natural resources, manufacturing products and growing food in space may not be on the immediate horizon, but are now well within the realms of possibility. The challenge in identifying, assessing and mitigating disputes risks arising from these activities (including around ownership, environmental harm and intellectual property) is significant given the relative legal vacuum in which parties will be operating.

[Read the full article on **allenovery.com**](#)

About Allen & Overy

As one of the world's leading disputes practices, Allen & Overy has vast experience of litigating, arbitrating, investigating and resolving disputes across multiple sectors and jurisdictions.

In an increasingly volatile world, our understanding of the different legal and political landscapes in which our clients operate drives our approach to litigation and dispute resolution. We handle high-stakes, complex cases for some of the world's most recognisable companies.

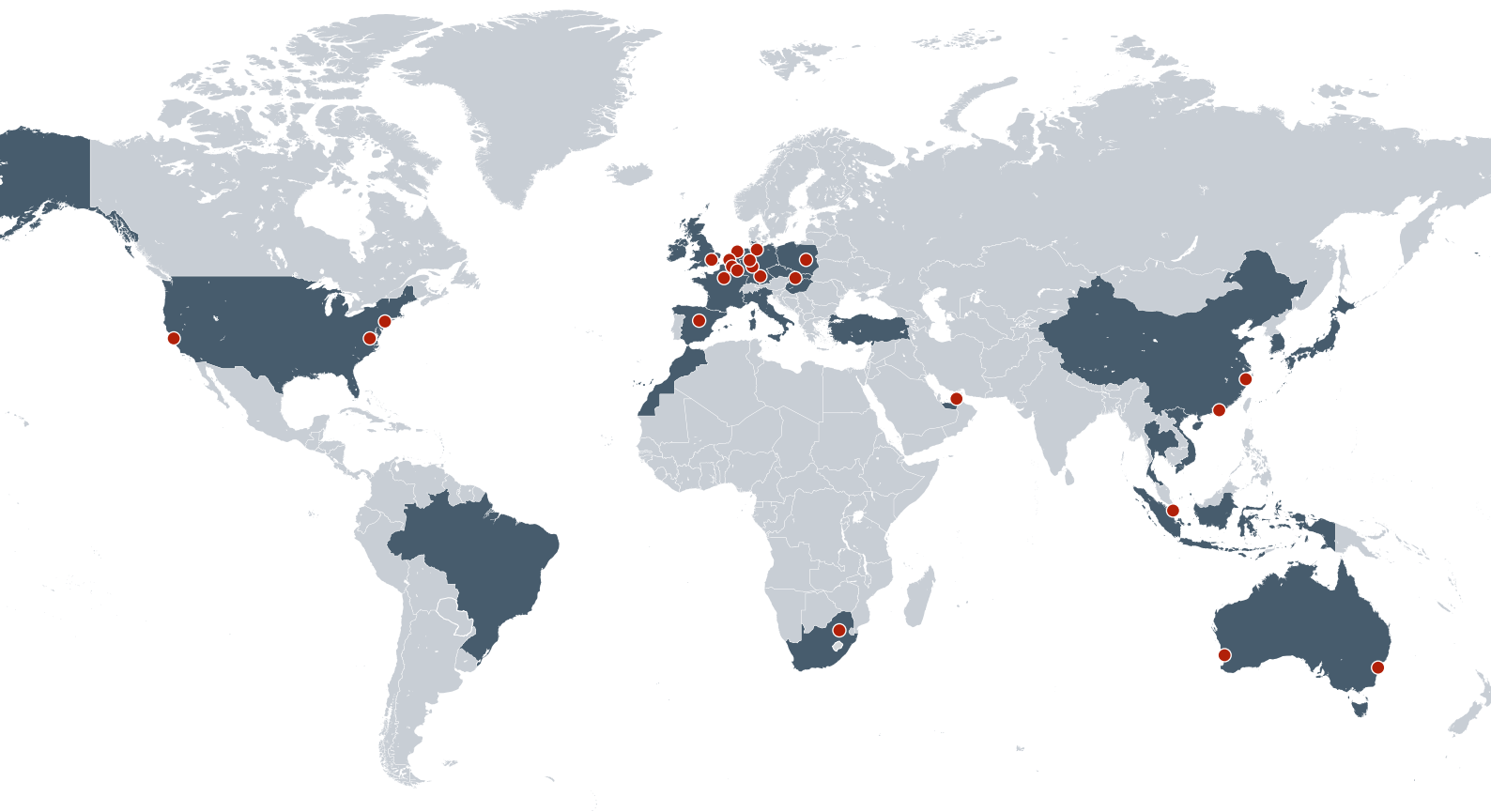
Our experience of complex and novel disputes allows us to identify patterns in how new areas of disputes arise, and also what clients can do to prepare for them, and ideally avoid them altogether.

With a global offering of more than 40 offices across 31 countries, covering Europe, the U.S., the Middle East, Africa and

Asia-Pacific, our strength in handling multi-jurisdictional cases sets us apart from our competitors – be that concurrent investigations in multiple markets, significant litigation, international arbitration, or pre-emptive advice on risk mitigation and compliance with ever-evolving regulation.

We pursue all avenues of dispute resolution and advise clients on the method most appropriate to achieving their commercial objectives and the specifics of a matter. At the heart of our approach is a focus on resolving disputes quickly and effectively with as little disruption to business as possible.

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Emerging technologies



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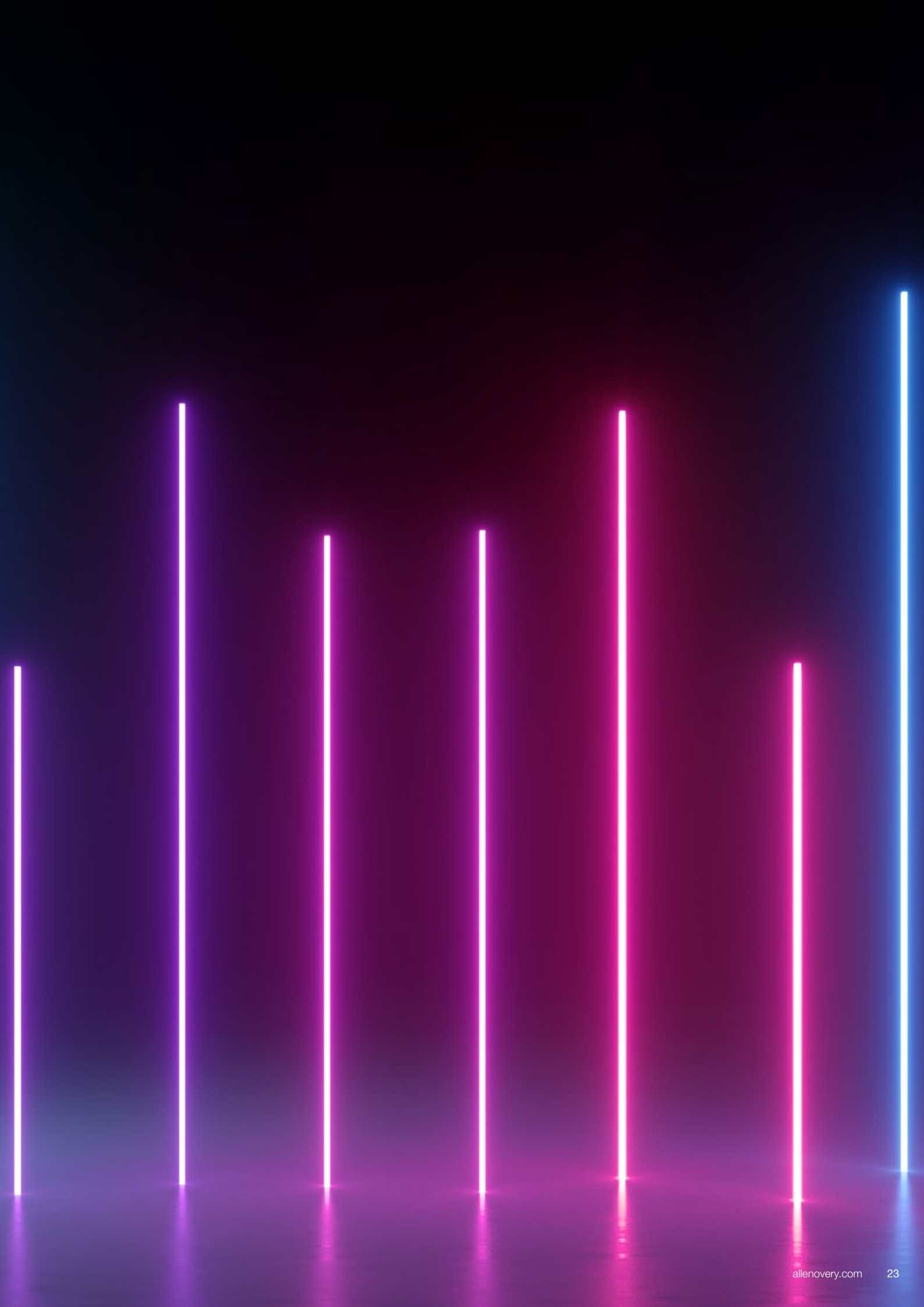
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About the research

750 business leaders representing 500 large enterprise companies globally were surveyed, with fieldwork conducted between May and June 2023. Respondents were senior decision makers with a responsibility for risk and compliance, drawn from 10 key sectors including automotive, finance, technology, telecommunications and aviation. All companies have revenues between USD1bn and USD50bn+.



Global presence

Allen & Overy is an international legal practice with approximately 5,800 people, including some 590 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at www.allenoverly.com/global_coverage.

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