

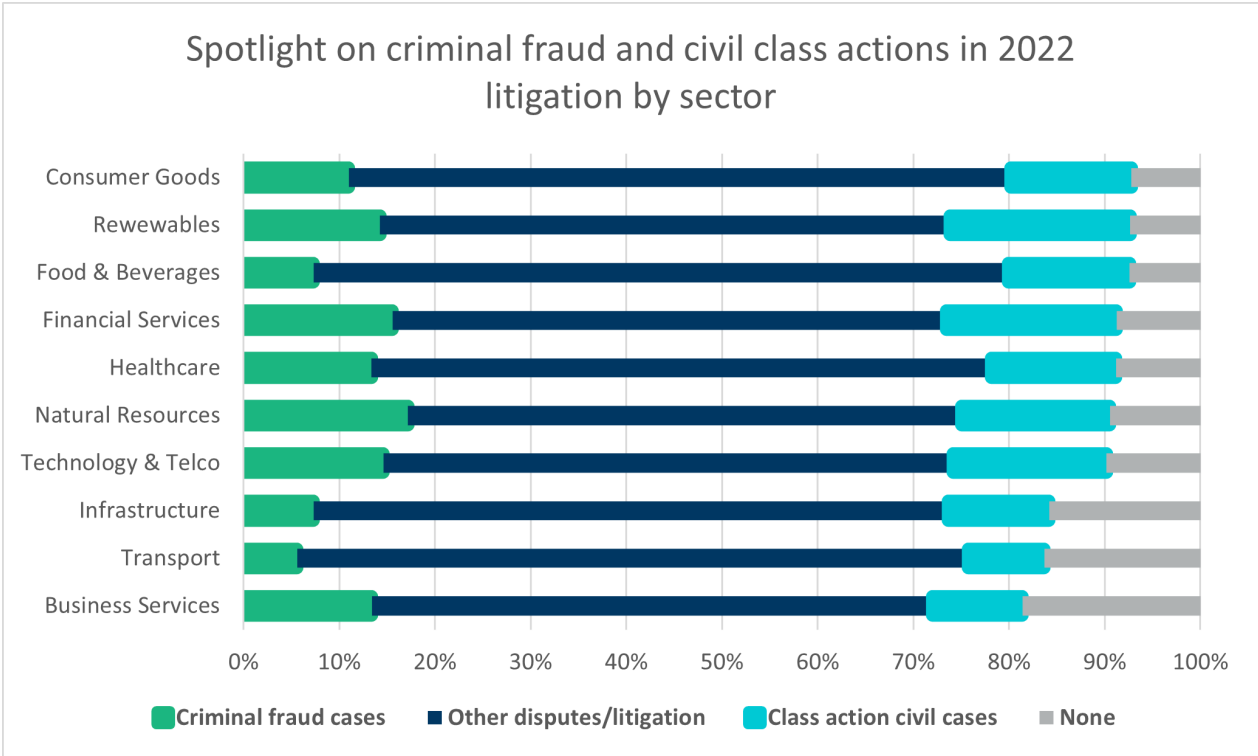


ARTICLE

# The Decade of Disputes

Class actions, financial disputes and fraud dominate the litigation landscape facing media scrutiny in 2022

Litigation is once again in the media spotlight and the next chapter of the “Decade of Disputes” may see an increase in financial fraud cases brought before the courts and reported in the press. FTI Consulting's January 2022 Resilience Barometer® incorporates the views of over 3,000 senior decision-makers in large companies across the G20. Research found that the majority (51%) of litigation experienced at the companies surveyed has been reported externally in the press, and this is higher in cases of fraud or financial crime.



Looking to the year ahead, 24% of companies surveyed expect media scrutiny around cases of financial fraud, a trend also seen in commercial litigation. Last year, [FTI Consulting identified that third-party litigation funding is driving an increase in high-profile claims](#) with 89% of institutional investors expecting at least one company in their portfolio to face legal proceedings with claimants backed by litigation funding. In this year’s research, 17% of companies surveyed expect media scrutiny from class actions or group litigation – typically backed by third-party funding.

Acknowledging the nature of such class action cases - typically high-profile claims with a proposed class representative litigating on behalf of consumers - FTI Consulting’s research also sought to ascertain the business impact that the mere existence of a claim may have on a company, with the potential for customer relationships to be harmed. Approximately one third of companies facing class action cases reported a customer impact for their business expressed in lost turnover, with the average business impact equating to 2.35% of revenue.

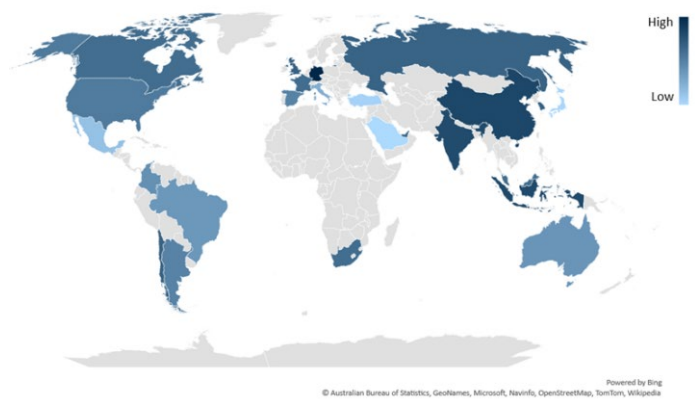
It is therefore unsurprising that the vast majority of companies (81%) are taking steps to prepare for such cases, including the potential reputational damage they can entail, and on the whole managing these risks on a proactive rather than reactive basis.

**An issue at the Board agenda and leading to regulatory activity**

One area of recent interest for collective action is data privacy – a topic found to be high-up on the CEO agenda with 41% of Chief Executives surveyed anticipating media scrutiny around use of data. The risk of litigation nonetheless remains principally a concern for the General Counsel, with 28% expecting this to bring further scrutiny. When it comes to the risk from financial crime, this is felt equally across the C-Suite. CEOs, CFOs, COOs, General Counsels and those in senior Strategy or Compliance roles all responded broadly in-line when asked about media scrutiny from fraudulent practices or financial misstatements expected in the next 12 months, within the range of 27% - 30%. Other areas on the General Counsel agenda were the risk of investigation for tax, securities violations and environmental harm.

Research also found a correlation between media scrutiny of key corporate issues with the expectation of investigation by a regulator or enforcement agency. Among the key subjects for public investigation was competition or antitrust, where 22% of companies anticipate facing an investigation in the next 12 months.

G20 perception of antitrust scrutiny



**Financial disputes arising from the Covid-19 pandemic – spotlight on debt**

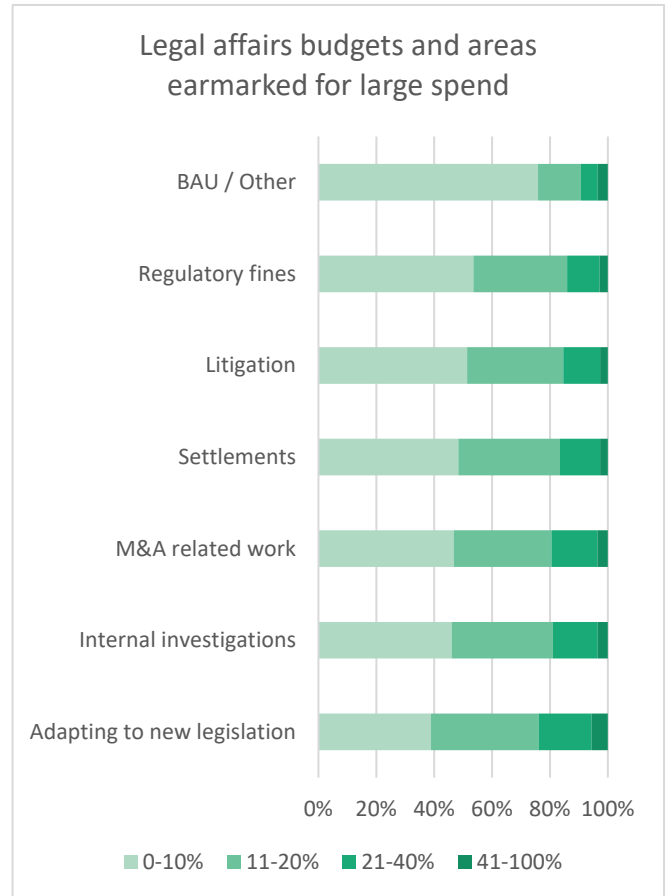
Research undertaken by FTI Consulting in 2021 identified [a surge of supply chain disputes arising from the Covid-19 pandemic](#). One in every four businesses surveyed indicated that since the beginning of the COVID-19 pandemic, their company faced a supplier related dispute or disruption. In 2022 however, the area of notable increase in litigation was identified as debt-related disputes with 62% of G20 respondents expecting to be in, or are already in, debt-related disputes. Unsurprisingly, this was a particularly prominent trend within financial services, with businesses in the sector approximately 10% more likely to be in a debt-related dispute than the average respondent and up to 25% more likely for companies in the Asset Management, Brokerage and Consumer Finance industries.

Amid rising energy prices across international markets, this trend was also seen in the Utilities sector – particularly for companies involved in the supply of gas. As analysed by FTI Consulting Capital Market Services, [renewed economic activity following significant contraction in the early stages of the pandemic has led to a disrupted environment across many commodity and energy products](#). Increased demand in Asia, in particular, has led to diversions of liquefied natural gas cargos from

Europe, already with gas storages at depleted levels following a cold and extended winter in early 2021, and thus increasing prices – illustrating the globally-connected nature of the economic recovery from Covid-19. Energy suppliers need to mirror the electricity and gas they supply to their customers to ensure they continuously balance their customers’ consumption. In order to manage this risk exposure, many suppliers hedge, at least partially. With a supplier’s ability to hedge dependent on ability to access liquidity and credit, this illustrates just one example of the type of financial disputes arising from the Covid-19 pandemic.

**An appetite to settle with a focus on legal expenditure**

Over half of the companies surveyed in FTI Consulting’s research indicated they are setting aside more than 10% of their legal budget this year for settling disputes. The appetite for settlement was found to be 13% higher, on average, for the world’s largest companies (with turnover over \$1bn), compared to smaller companies (defined as those with turnover under \$100m). Overall, the legal budgets allocated for settlement were found to be higher than the legal budgets assigned to litigating. Industries with the highest litigation budget were found to be infrastructure businesses and financial services companies.



**METHODOLOGY**

Data in this article is based on the FTI Consulting Jan 2022 Resilience Barometer®, which incorporates the views of 3,314 decision makers in large companies across all G20 countries. Large companies are defined as those with over 250 employees, or over USD50million in annual global turnover, or with a balance sheet of over \$43million. From 26th October to 10th November 2021, FTI Consulting conducted a quantitative survey with respondent profiles replicating those used in the previous waves of Resilience Barometer® research. 78% of respondents were C-suite and senior managers/executives from privately owned companies, while 22% were from publicly listed companies.

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