

# Corporate dispute risks for 2022

Global law firm Baker McKenzie's recently released Global Disputes Forecast 2022 revealed that survey respondents around the world were mildly pessimistic in terms of the rate of disputes volumes predicted in the coming year, with many expecting corporate disputes to increase rather than decrease in 2022. Survey respondents comprised 600 senior legal and risk leaders from large organisations (annual revenue greater than \$500 million).



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The report showed that Covid-19 remains the biggest external factor driving disputes around the world - nearly half of respondents (48%) cited Covid as an issue. Digital transformation ranks second (30%), followed by cybersecurity/data issues (25%) and supply chain problems (23%). The economic cycle ranked in fifth place (21%). In terms of the types of disputes expected to be a risk going forward, 57% of respondents said that cybersecurity issues were going to be a major cause of risk in their organisations in the next 12 months. Data disputes were cited as a risk for 46% of respondents, followed by environmental disputes (42%) and tax disputes (36%).

The report combined the responses for cybersecurity and data disputes, and found that 72% of respondents considered these issues to be a risk. Similarly, the report showed that combining environmental, social and governance (ESG) disputes gave a combined risk rating of 67%. According to the report, these two broad categories represent the two standout disputes risks for most companies in the next 12 months. They share common features that elevate their importance: significant reputational risk, fast-moving issues, regulatory interest and global impact.

## Increased cloud attacks

The report also revealed how the increase in employees working remotely means more business is carried out on the cloud, bringing an increase in cloud attacks. The direct risks to organisations include loss of IP and confidential information, theft and fraud, disruption to business and reputational damage. Legal risks flow from these, including regulatory and law enforcement action, claims for breach of contract, and class actions for breach of privacy.

According to Darryl Bernstein, partner and head of Dispute Resolution at Baker McKenzie in Johannesburg, "Post-pandemic, disputes are expected to become increasingly frequent and complex in Africa, as corporates and institutions continue to enter new markets against a backdrop of tighter regulatory scrutiny, increased digitisation and higher accountability.

"Further, the pandemic has driven home the high value of personal data to the global economy, while also highlighting its vulnerability to abuse and attack. In response, governments in Africa have been reviewing their data privacy and protections laws and regulations. Global cybersecurity firm Kaspersky noted last year that cyberattacks were set to rise in African countries, especially in the key financial centres of South Africa, Kenya and Nigeria. The cybersecurity firm said that rapidly evolving digital techniques had led to an increased risk of Advanced Persistent Threats and hacking-for-hire events in the continent."

## **Spotlight on green investments**

Bernstein notes further that initiatives in Africa going forward are expected to have a heightened focus on environmental, social and governance issues. Projects that avoid environmental risk and involve green, low-carbon and sustainable development will take centre stage in new investments, via, for example, clean energy production, green transport and sustainable water projects, wildlife protection programmes and low-carbon development projects. Such projects are much less likely to cause disputes due to non-compliance with ESG requirements.

"The discussions around ESG are also resulting in an added emphasis on the social aspect and mitigation potential disputes in this space. Organisations in Africa are focusing on protecting their workers and the wider local populations in which these businesses are based. Sustainable businesses are looking at ways to build better social programmes that are more resilient to future pandemics and ensure good business practice. A focus on issues such as enhancing considerations around the health and safety of employees and communities, implementing diverse and inclusive workplace cultures, and building good management teams that can pull employees together in all kinds of remote, physical workplace and hybrid settings, put companies in a strong position to move forward and alleviate dispute risks. The governance aspect has also been emphasized by the pandemic, with an increased focus on due diligence and risk mitigation around compliance with regards to anti-bribery and corruption, data privacy and cyber security legislation, for example," he says.

"Legal advisors are needed to oversee incident response plans, perform due diligence assessments, as well as to review and manage risk allocations in contracts and advise on comprehensive risk mitigation strategies," he adds.