



# 2024

Ten Key Challenges and Opportunities



Freshfields Bruckhaus Deringer

# 2023 – A Year Shadowed By War

The devastating terror attacks of October 7<sup>th</sup>, 2023, and the war against Hamas that followed have cast a dark shadow over the year 2023.

We are proud that in response to the atrocities, Freshfields has donated an ambulance to Magen David Adom. Our office, alongside everyone in the country, has been impacted by the war, as we have all been drafted to play our part.

We extend our deepest sorrow and grief to all those who have lost loved ones.

# Geopolitical Risk and Opportunities

## The Middle East in Focus

In 2023, the geopolitical situation in Israel has had a significant impact on international affairs, bringing significant risks and opportunities for businesses invested in or seeking to invest in the Middle East.

The war between Israel and Hamas and the \$14bn of emergency U.S. aid to Israel passed by Congress have shown an increased American commitment to its allies abroad. Before the 7<sup>th</sup> October atrocities by Hamas against Israel, there was significant talk of a transformative U.S. brokered normalization agreement between Israel and Saudi Arabia, set to bring about a dramatic change in the regional economy and create extensive business opportunities. It remains to be seen whether the normalization agreement may still be on the cards in the longer term.

In the meantime, the war is expected to impact the global economy, particularly due to the amount of oil supplied from the Middle East, the significant global trade routes passing through the region, the large investment opportunities in the region's fast modernizing economies and the role of the Middle East in the global great power conflicts between the U.S., China and Russia. Our team on the ground in Israel is uniquely placed in the midst of these tensions – able to provide insights, risk analysis and an awareness of key opportunities in this fast-changing and complex environment.

## The Global Geopolitical Landscape

Russia's war in Ukraine continues to impact supply chains of food and energy in Europe and beyond, also leading to increased spending on defense budgets worldwide.

## A Key Election Year

In 2024, a number of significant elections are set to take place in a number of key jurisdictions. With the impact of the geopolitical risk hard to forecast, it is nonetheless crucial to include in strategic planning.

- ❖ March - Russia
- ❖ April - India
- ❖ May - U.K.
- ❖ June - E.U.
- ❖ November - U.S.



Source: Mises Institute

## Economic Outlook

Moody's, S&P, and Fitch credit rating services have put Israel on review for a downgrade this year. Continued speculation surrounding the markets in Israel inevitably brings with it significant risks and opportunities.



Source: Rand Corporation

# Generative AI Takes the Stage

## New Technology – New Business and Legal Challenges

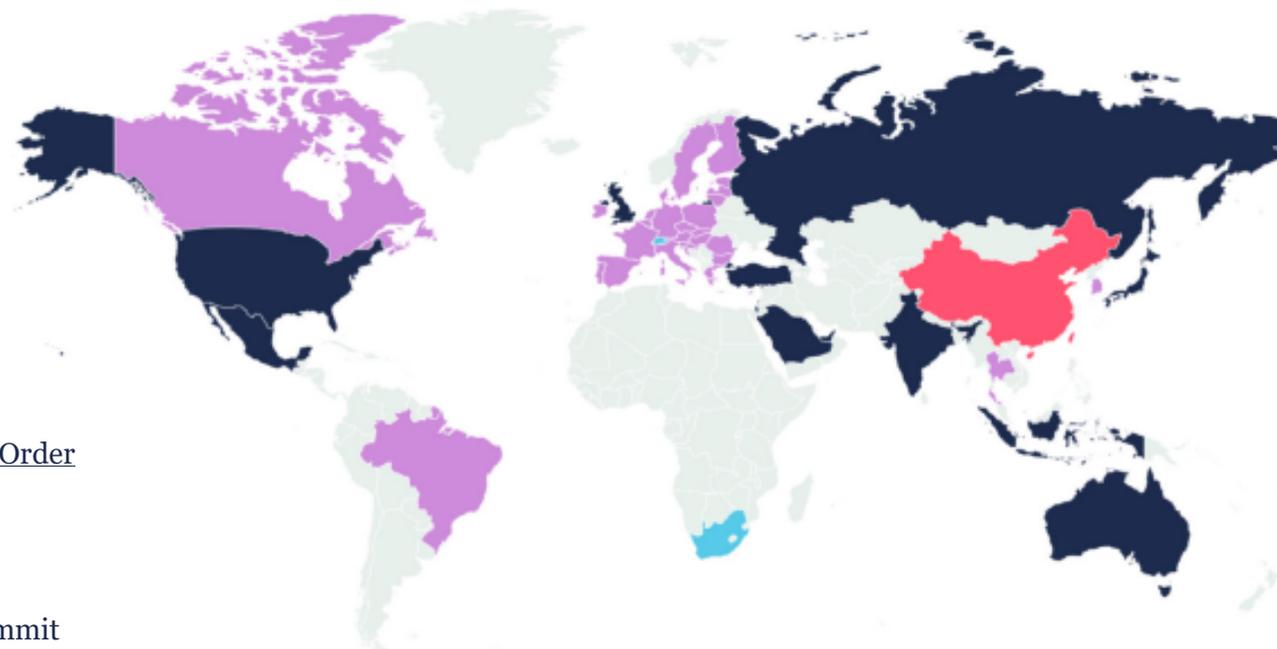
2023 was the breakout year for generative AI. Generative AI is a disruptive and transformative technology that changes the way people do work and access information. Its impact reaches across sectors, far beyond the worlds of technology companies. Generative AI applications, such as ChatGPT, GitHub Copilot and Stable Diffusion, have captured the imagination of people around the world. Inevitably, there are a wide range of business and legal risks that will need managing – from privacy related issues, to workers’ rights, regulatory risk and IP. Israel has been a generator of many interesting AI businesses, and we continue to advise a broad range of clients in this space, together with our colleagues around the world, including in other tech hotspots such as Silicon Valley and Berlin.

## Regulation of AI

There have been a number of significant developments in the regulation of AI, including the U.S. Administration Executive Order on the Safe, Secure and Trustworthy Development and Use of Artificial Intelligence and the European Commission’s draft legislative proposal on artificial intelligence. Moreover, the international governance of AI took a step forward with the Bletchley Declaration by countries attending the AI Safety Summit held in the U.K. in November 2023. Significantly, the U.S., China and the E.U., global leaders in AI, all signed. The declaration agreed to identify shared AI risks, to build respective national risk-based policies, and to support an internationally inclusive network of scientific research on frontier AI safety. Being up-to-date on regulation of AI will grow in importance as its prevalence grows.

## AI-specific laws: current and pending regulation in selected jurisdictions

- AI-specific laws in force at national level
- AI-specific laws planned at national level with published draft text
- Policies aimed at streamlining AI regulation at national level (but short of draft AI-specific laws)
- No proposal relating to general regulation of AI at national level



Interestingly, generative AI is likely to have the biggest impact on knowledge work, particularly on activities involving decision making and collaboration, activities which previously had the lowest potential for automation.

Fun Fact: The number of Israeli Generative AI startups has more than doubled in 2023 from 67 to 144 companies.

Sources: Deloitte, Calcalist

# ESG - Sustainability

## ESG – Increasingly Important Standards

ESG (Environmental, Social and Governance) standards are becoming increasingly important measures for companies' commitment to responsible and sustainable practices as well as a measure of business impact.

## An Increase in Sustainability-Related Regulation

Following this trend, regulators globally are stepping up their efforts to increase transparency of companies and their supply chains. Moreover, rule-makers are also heeding investors' demands for more complete, comparable and publicly verifiable sustainability-related information. Stricter targets, increased disclosure requirements, and growing enforcement of market restrictions and bans, all mean that it is critical for businesses to stay on top of this rapidly developing landscape.

- The grid to the right outlines the main categories of sustainability-related regulation, one of the fastest evolving branches of rule-making in the world. Developments in these areas can raise risks and opportunities for your business, affecting everything from disclosure obligations to corporate development strategy and financing options. Our [report](#) addresses forthcoming developments.
- ESG is also becoming a value driver for M&As. In line with global trends, some of the largest listed companies in Germany are using M&A to advance their efforts to increase sustainability by acquiring clean energy technology.
- For our Israeli clients with relevant enterprises in the U.S. or in Europe, [our latest briefing](#) provides an update on the requirements of the U.S. SEC's proposed rules on climate-related disclosures as well as on the standards set by the E.U. and by the ISSB (International Sustainability Standards Board).

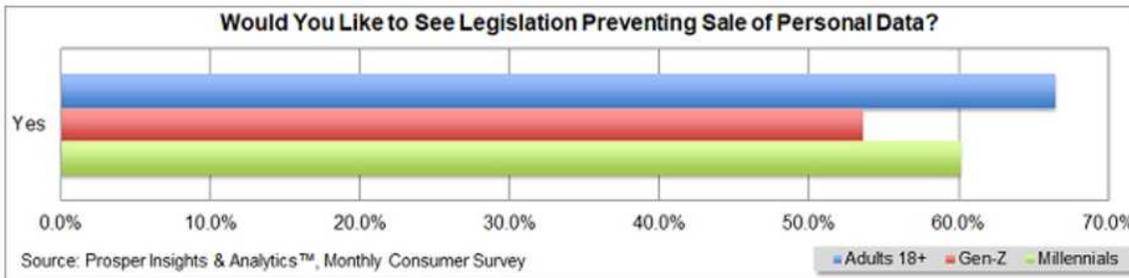
## Main Categories of Sustainability-Related Regulation



# Data Protection and Security

## New Regulations

Across industries, Data Protection is becoming an increasingly pertinent issue as regulators and consumers become more vigilant about data processing and storage. 2023 saw the introduction of new Data Protection regulations in addition to the GDPR, CCPA and others. Among the new regulations are the California Senate Bill 362, more widely known as the Delete Act, and the U.K. Data Protection and Digital Information (No. 2) Bill which is currently in the report stage in the House of Commons. Businesses need to be aware of the rules and regulations governing data protection and to ensure they are up-to-date with best practices to protect their clients' data. Moreover, Data Protection Authorities (DPAs) are also ramping up enforcement efforts of data-related regulation. This is particularly notable in Europe, with increased GDPR enforcement.



Source: Forbes and Prosper Insights

## How to Respond

Due to increasingly concerned consumers, companies will need to establish necessary controls and processes to both meet the demands of the modern data stack and to effectively balance data access, with maintaining security posture and privacy compliance. Here in Israel, we have been working with several multinational corporations dealing with data protection issues across their global businesses.

For more information see our [Data Trends 2024 Report](#)

## Data Protection Fines Reach Record High in 2023

Fines imposed in the EU as a result of General Data Protection Regulation (GDPR) violations



\* As of May 23, 2023

Sources: Enforcementtracker.com, European Data Protection Board



## Israel in Focus

The Israeli tech ecosystem continues to produce cybersecurity startups that are on the cutting edge of the data revolution. Such innovation can help meet many of the challenges facing businesses, but they too must be vigilant in complying with international data protection regulations.



# Cross-Border Disputes

## International Arbitration

International arbitration continues to be the forum of choice for settling international disputes. This trend continues due to the flexibility and reliability of arbitration especially when compared to legislation in different national fora. For parties investing abroad, arbitration clauses in agreements serve as a useful tool to limit political risk in the country they are investing in.

The drive towards greater transparency in arbitration proceedings has involved some leading arbitral institutions amending their rules to provide greater public access to information. These changes indicate a move towards a new default rule of publication of awards, procedural orders and even written submissions, with parties having to opt out to impose confidentiality. This process seeks to increase trust in arbitration as a viable mechanism for dispute resolution.

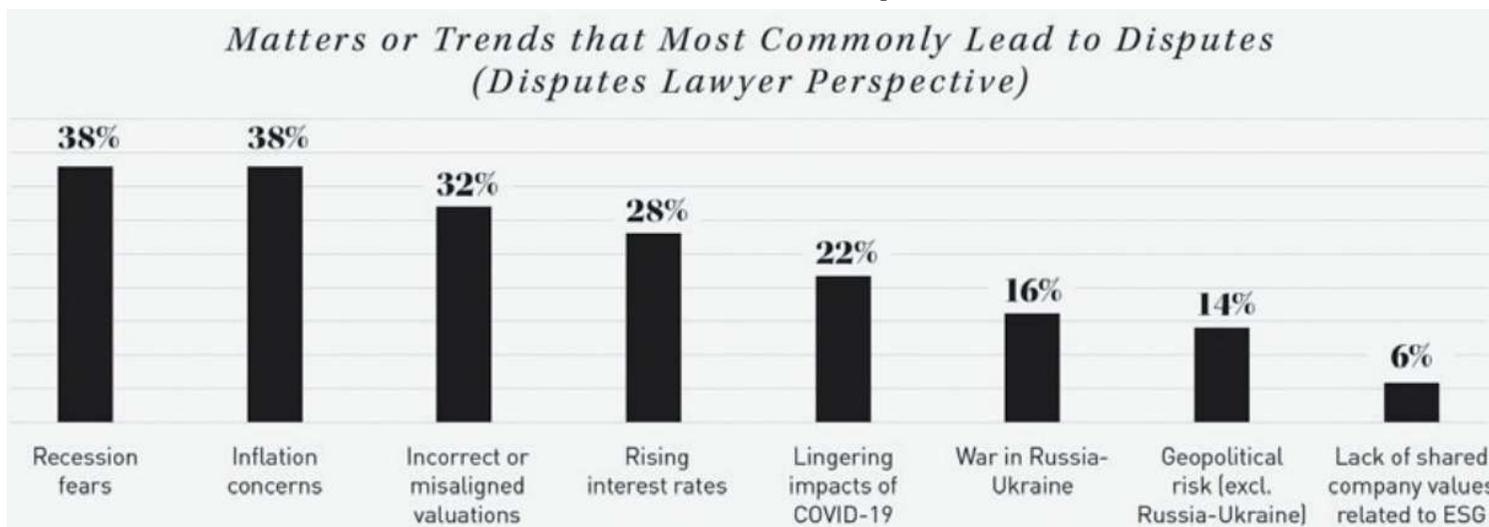
## Litigation

Our top-tier litigation practice handles complex litigation matters around the world, including in the antitrust, commercial, IP and securities fields.

This year, our securities litigation team from the Silicon Valley represented amici curiae the Hon. Jay Clayton, former Chairman of the SEC, and the Hon. Joe Grundfest, former SEC Commissioner in a Direct Listing Case before the U.S. Supreme Court. Moreover, Freshfields was voted Securities Firm of the Year by Benchmark Litigation at the 2023 Benchmark Litigation U.S. Awards.

In recent years, there has been significant growth in our U.S. litigation teams, with a number of high-profile attorneys joining from both government authorities and other top tier litigation firms.

## Reasons for M&A Disputes



**Our International arbitration in 2023 report gives our experts' overview of the top arbitration trends this year.**



# Energy Transition

## The challenge of net-zero

As the world grapples with the challenges of reaching net-zero emissions and limiting global warming, the energy transition is significant to people and businesses worldwide and across sectors. From stakeholder expectations that businesses play their part, to the opportunity of energy sources that after initial investment can reduce energy bills and industrial costs, the energy transition is highly relevant in all sectors today. This comes as massive structural changes are needed across the global energy value chain, requiring considerable technological advancement, unprecedented levels of investment, and buy-in from the global public.

## Turning the vision into reality

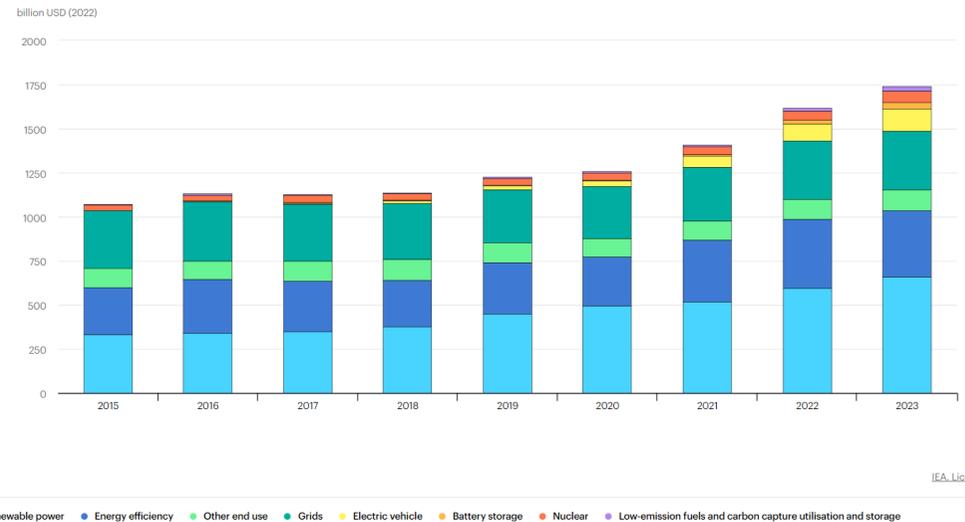
Freshfields' energy transition work ranges from project licensing, development and financing to complex corporate transactions, multi-jurisdictional regulatory processes, strategic logistical and commercial planning and negotiation, and some of the world's highest-profile energy disputes.

Across industries, we assist our clients with the energy transition. As we noted in last year's memo, we advised ZIM on aspects of its move to LNG-powered ships. Also, we were proud to send one of our team members to a leading climate tech investor to lead a study of the Israeli climate tech landscape this year.

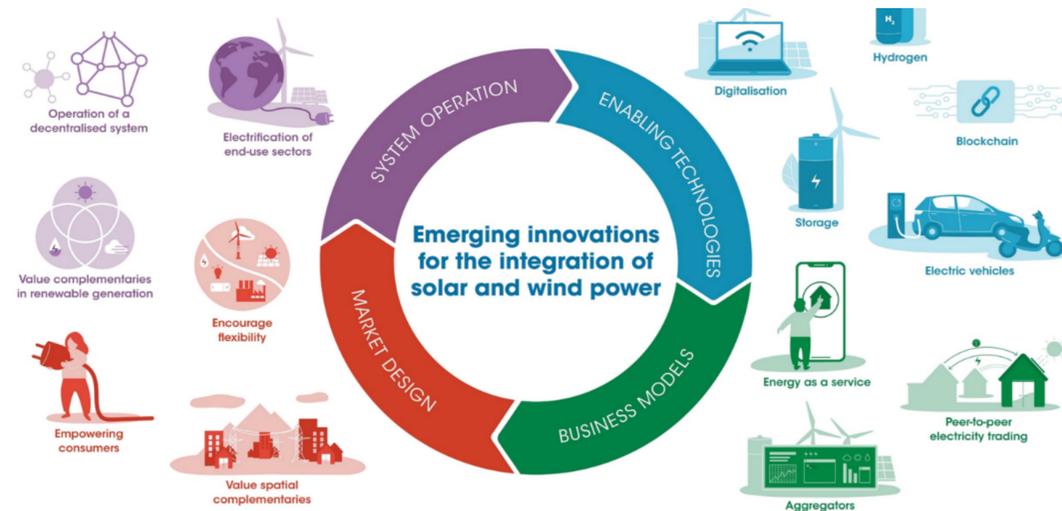
## 2023 Highlight: Inflation Reduction Act Funding

2023 has seen significant rollout of funding from the Inflation Reduction Act (IRA) signed into law last year by the Biden Administration. The IRA incentivizes unprecedented spending on the energy transition through tax benefits aimed at increased production of EV's and deployment of low-carbon energy in the U.S., impacting the entire global energy sector. There are many [Israeli startups](#) in the clean energy space with the number expected to increase.

Annual clean energy investment, 2015-2023



Source: International Energy Agency



Source: World Economic Forum

# Antitrust and Regulation

## Heightened Involvement of Regulators

Antitrust enforcement agencies are responding to calls to do more to address a range of global crises and social concerns. Authorities are being given enhanced powers and new tools, and are tackling novel kinds of cases, significantly increasing unpredictability. As regulatory regimes evolve, businesses must stay abreast of changing regulations across jurisdictions and ensure that their policies comply with local requirements while also supporting their businesses.

## Antitrust in Israel and Beyond

In line with the global trends, the Israeli Competition Authority is also responding to shifts in the market. The boardroom and C-suite of any company with global operations, global supply chains or global ownership structures should invest the time to understand and plan against this complex regulatory and geopolitical environment. Our Israel practice is in close touch with the top antitrust lawyers in Israel, helping our Israeli and international clients coordinate their global and Israeli policies.

## Merger Control

The past year has seen more stringent merger control enforcement from competition authorities globally, responding to excessive consolidation in certain industries. Although this has been a global trend, the toughest enforcement has come from the U.S. the U.K. and the E.U. Read more in our Merger Control 2024 edition.

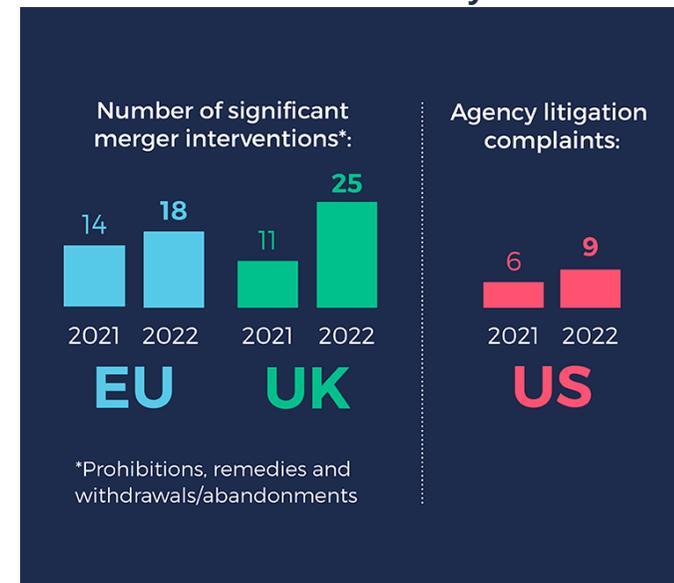
## National-Security Motivated Regulation

With increased geopolitical instability, national security continues to be a key consideration for regulators when examining FDI, with scrutiny increasing across the board. To read the Freshfields analysis of Committee on Foreign Investment in the U.S. (CFIUS) enforcement and fines, see our Foreign investment monitor. The ever-changing regulations are likely to impact company growth and acquisition strategies, financing sources, stability of supply chains, and exit plans, among other fundamental commercial considerations.

## 2023 Highlight

Our market-leading antitrust team in the U.S. is lead defense council for Google parent company Alphabet in a digital advertising litigation brought by the U.S. Department of Justice. The firm is ranked #1 in the GCR Global Elite ranking of top antitrust firms and #1 in Global Merger Control.

## Antitrust authorities are demonstrating increased scrutiny:



Our **Antitrust 101** app helps companies stay compliant with antitrust laws and reduce the risk of dawn raids.



# Crisis Preparedness

## Preparing for the Next Disruption

If we can learn anything from the past years, it is that we are to expect the unexpected. The disruptions we have experienced include the pandemic, global inflation, political instability, wars in Ukraine and the Middle East, and the closure of Silicon Valley Bank and other banks. Ensuring one's business and contracts have the necessary protections in place for the next crisis can be the difference between staying on track and sinking during a crisis.

Instability is impacted by rapid technological advancement, geopolitical and security challenges and has heightened concern around cyber-attacks, which potentially affect not just defence assets but also major transport infrastructure, the banking system and a range of other sectors. Such threats require businesses to scrutinize their own activity in this field as well as ensure compliance with various government responses.

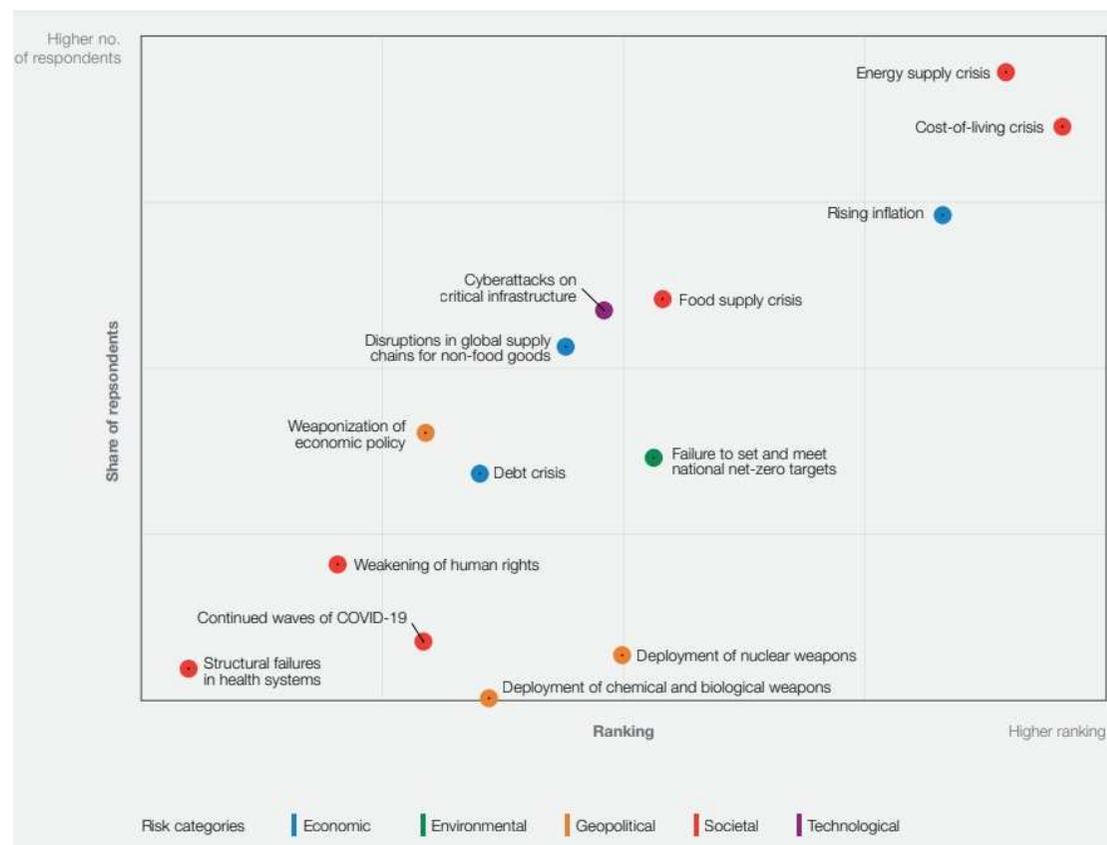
## The Need for Comprehensive Assessment of Risk

Business and political imperatives tend to prioritize risks with a direct, immediate and localized impact, such as food, fuel or other commodity shortages or local environmental disasters. This is necessary to manage crises when they happen. However, when such risks manifest, resources and attention are often diverted from addressing other risks, especially those that form the root causes of local catastrophes or those that may arise outside the time frames relevant to today's leaders. This can skew preparedness efforts in the public and private sector alike. For better planning and preparedness, businesses must de-anchor risk prioritization from shorter-term incentives. Careful long-term planning of business and legal risk is therefore essential to preparing for the next crisis.

## Risk Mitigation

Companies should have a set list of internal personnel and outside advisors to call in the event of a crisis. Across sectors, legal advice is instrumental in helping to identify key risks, in setting up and amending necessary policies and procedures for managing these risks and in responding to any crisis to ensure that the relevant stakeholders are adequately coordinated. Such procedures and relationships should be established before the crisis happens.

## Currently Manifesting Risks Globally



Source: World Economic Forum

# Deglobalization and Macroeconomic Outlook

## Global Inflation Remains a Relevant Concern

Despite signs of recovery from post-pandemic global inflation, recent data implies global inflation could continue to prove more persistent than anticipated. The most common inflation measure, the Consumer Price Index, rose 3.7% in the U.S. over the past 12 months, impacting the entire global economic outlook. At Freshfields, we remain focused on supporting our clients in navigating these challenging times and providing robust advice to protect them from avoidable disputes.

## The impact of 'Deglobalization' Rules

Recently, there has been increased discourse around the concept of 'Deglobalization' due to national responses to the pandemic, the 'decoupling' of the U.S. and China and the war in Ukraine. The deglobalization trend and the move toward self-sufficiency also includes increased monitoring of foreign investments. Against this backdrop of economic downturn and protectionist political agendas, the lack of convergence of local rules on foreign investment increases the probability of divergent outcomes. Businesses must be mindful of the implications of new rules entering into force; for example, rules relating to subsidy control and the impact that such strategic autonomy and sovereignty may bring.

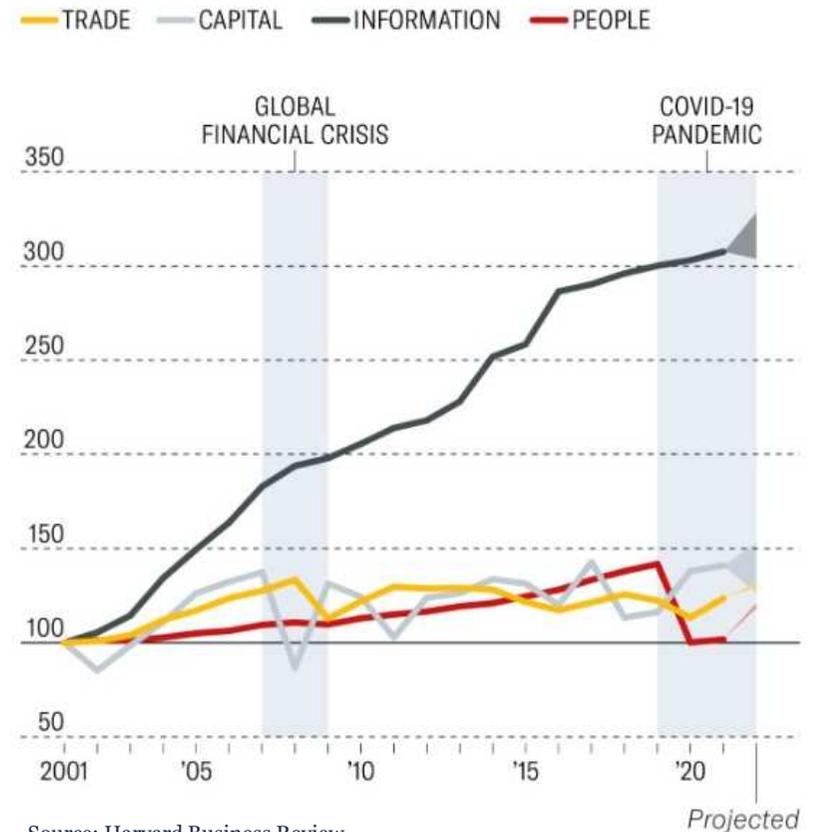
## FDI Controls

Around the world, increased FDI controls have emerged particularly in sectors that relate to national security and involve dual-use technologies. Israel too, established a Committee for Evaluating National Security Aspects of Foreign Investments, and this is an area that requires attention at the outset of any M&A process.

## International Trade and Connectedness

Interestingly, despite the changes described above, evidence seems to suggest that though the public discourse may have shifted, and international politics may be less conducive to global cooperation, markets and global flows as displayed in the chart have shown significant resilience and do not appear to be significantly less globalized.

"Depth" of global connectedness, relative to 2001



Source: Harvard Business Review, DHL, Global Connectedness Index

**Our Foreign investment monitor looks at opportunities and obstacles presented by evolving FDI regimes worldwide.**



# Compliance and Sanctions

In the highly regulated world we live in, it is increasingly important to ensure compliance across jurisdictions, especially as an issue in one jurisdiction can very quickly overflow into another. A healthy culture of compliance with local and international regulation can be achieved if the tone is set from the top, by the CEO and senior executives.

## Compliance with Sanctions Regimes

With continued war between Russia and Ukraine, the expansive sanctions imposed by the West on Russia, sanctions on Iran, and limits placed on Chinese investments, it is becoming increasingly important for businesses to operate within the limitations of sanctions. Sanctions vary across jurisdictions, so Israeli clients need to be aware of differences between the U.S., the U.K. the E.U. and other sanctions regimes. Also, of interest to Israeli companies, are the U.S. anti-boycott laws that prevent U.S. companies from complying with other countries' boycotts of Israel, laws that are of increased relevance due to the Israel-Hamas war.

### Russia

Over the last few months, the Russian government has ramped up its 'countermeasures' intended to counteract sanctions imposed by Western governments, including rules targeting Russian subsidiaries of Western corporate groups. For example, a new forced administration regime was introduced this year allowing the Russian government to remove such subsidiaries from the control of their parent companies and instead appoint a Russian administrator to manage their business. For information on how to respond to such measures and other sanctions and counter-sanctions issues, read [here](#).

## Compliance in Banking

2023 was a particularly eventful year for the [banking sector](#). Due to the failure of Silicon Valley Bank (SVB) and several other U.S. small and mid-sized banks in March 2023, U.S. regulators proposed new capital and liquidity rules, as well as resolution planning guidance, that will increase the compliance costs for regional banks and could potentially lead to a new wave of consolidation in the U.S. banking industry and create opportunities for non-bank financial institutions and private capital providers.

## The World's Most-Sanctioned Countries

Number of currently active sanctions by target country



As of Feb. 19, 2023  
Source: Castellum.AI



statista

## 2024: Ten Key Challenges and Opportunities

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