

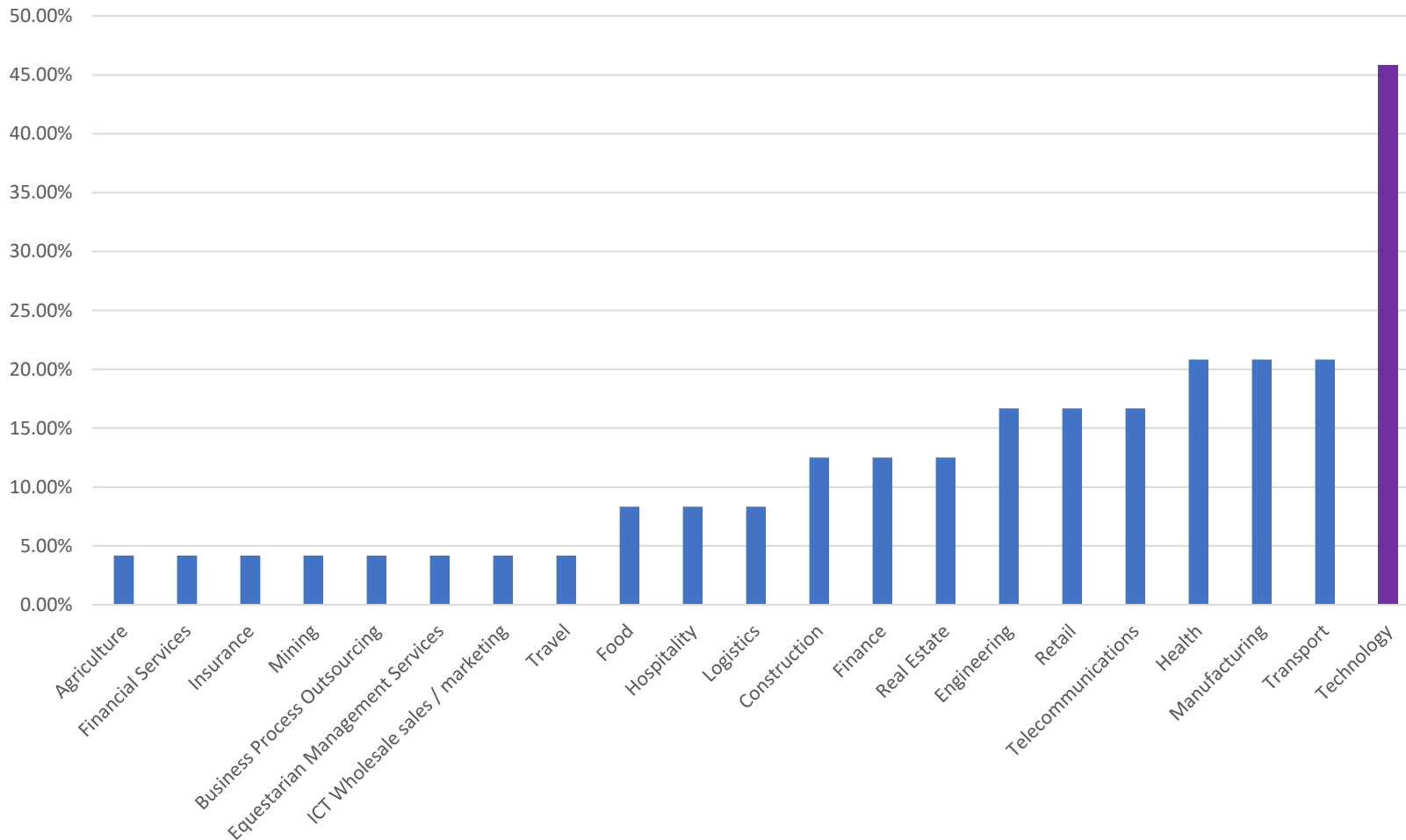
Asian Business Law Institute

2021 Survey of Regional Inhouse Counsel



ASIAN BUSINESS LAW INSTITUTE

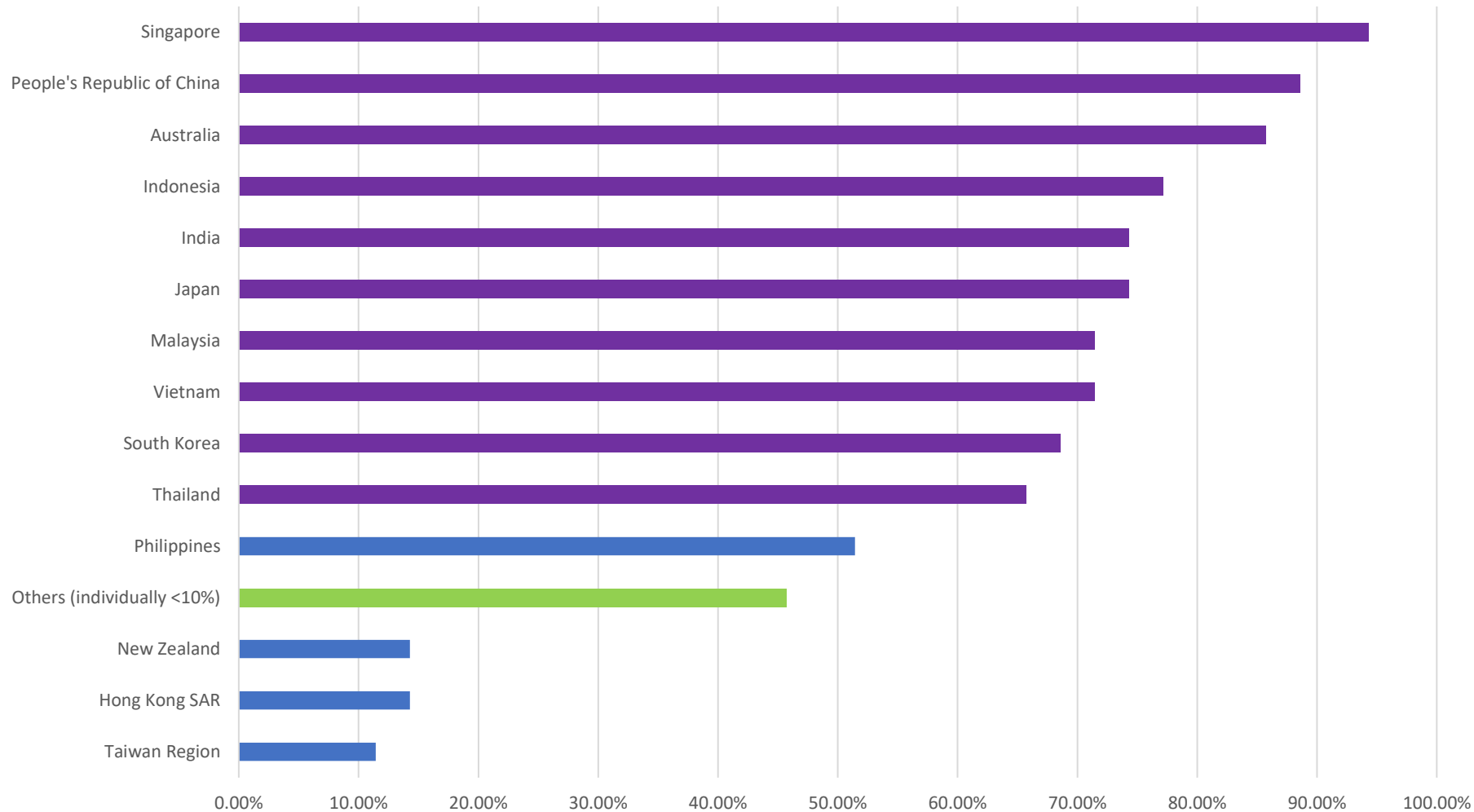
April - June 2021



Questions	11
Respondents*	37
Singapore-based respondents	94%

* Responses from private practitioners have been excluded from the results.

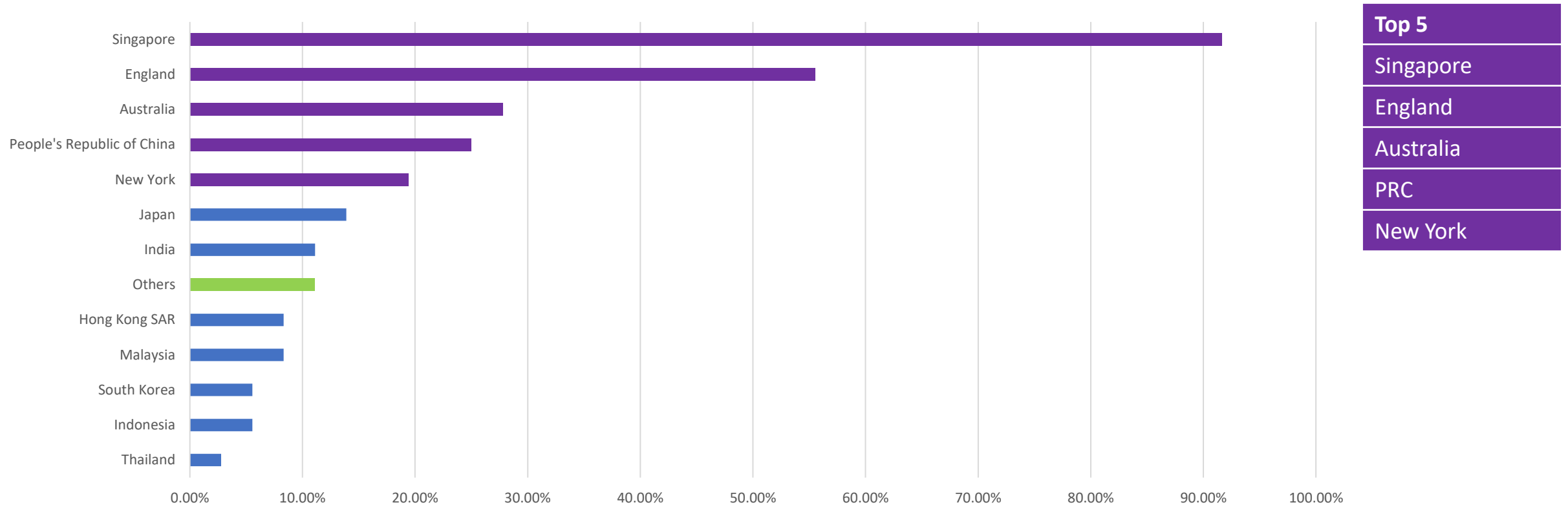
Does your company contract with companies incorporated/registered in any of the following jurisdictions or for the performance of contracts from any of these jurisdictions?



Top 10 (individually >60%)	
Singapore	Japan
PRC	Malaysia
Australia	Vietnam
Indonesia	South Korea
India	Thailand

Others (individually <10%):	
UK	Myanmar
USA	UAE
Maldives	Sri Lanka
EU	Laos
Cambodia	Saudi Arabia
Brunei	

What are the top three laws chosen as the governing law of your company's contracts?



- Top 5
- Singapore
- England
- Australia
- PRC
- New York

Others (individually <3%)
"US law", "Generally UK or SG law – there isn't a popular third choice", "California", "Based on the lex loci" and "Myanmar"

Top-line Survey Questions

- Do you face concerns with contractual “**formalities**” under foreign laws?
 - E.g., “That the contract has been validly executed under foreign law”
- Do you face concerns with “**substantive**” issues under foreign laws?
 - E.g., “That pre-contractual statements may not be validly or fully excluded under foreign law”
- Do you face concerns of “**supervening**” legal risks?
 - E.g., “That the contract may be illegal, void or unenforceable under foreign law (e.g., for offending anti-competitive conduct law).”
- Do you face concerns with “**international**” risks
 - E.g., “That the governing law selected may be ignored by a foreign court or arbitral body.”

Top 11 issues Identified

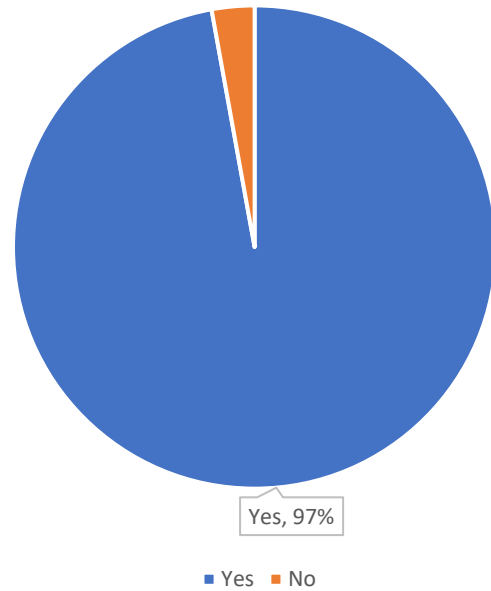
	Issue	%
1	That limitations of liability and indemnities may not be valid or work as intended under foreign law	94%
2	That you may be liable under other areas of foreign law outside of contract law	86%
3	That stipulated contractual remedies (e.g., liquidated damages) may not be valid or work as intended under foreign law	79%
4	That the contract may not be interpreted as intended under foreign law	77%
5	That electronic contracts and/or electronic signatures may not be valid under foreign law	77%
6	That the contract may be subject to foreign tax or duties or foreign registration requirements and the allocation of that risk under foreign law	77%
7	Dealing with foreign or dual language contracts	74%
8	That the choice of forum selected may be ignored by a foreign court	71%
9	That a foreign government might enact laws or policies detrimental to your interests?	71%
10	That the contract may be subject to foreign mandatory default rules or foreign implied terms	69%
11	That the contract has been validity executed under foreign law	69%

Top 11 issues Identified

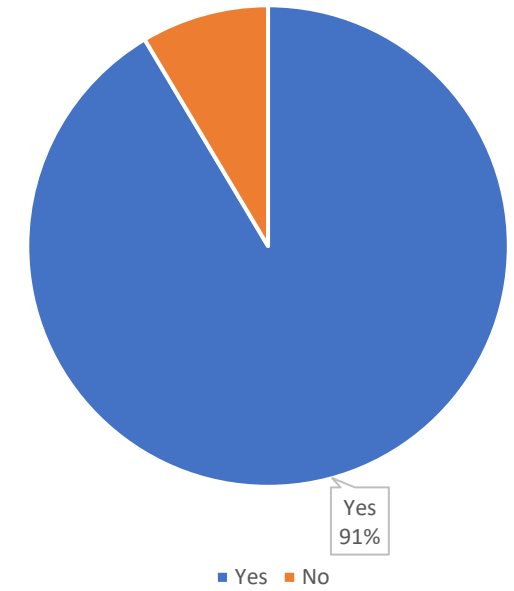
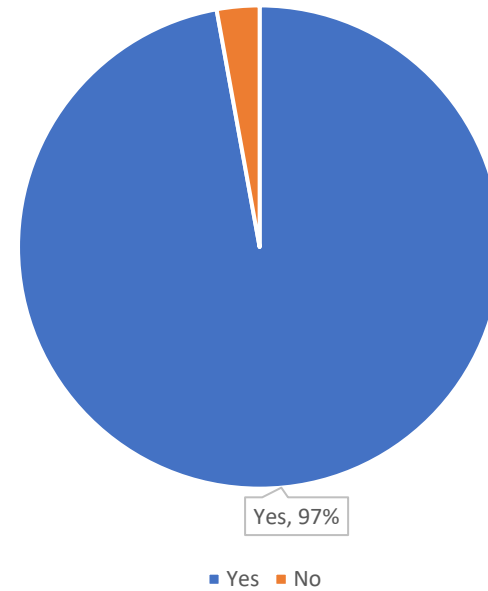
	Issue	%	
1	That limitations of liability and indemnities may not be valid or work as intended under foreign law	94%	Substantives
2	That you may be liable under other areas of foreign law outside of contract law	86%	Externalities
3	That stipulated contractual remedies (e.g., liquidated damages) may not be valid or work as intended under foreign law	79%	Substantives
4	That the contract may not be interpreted as intended under foreign law	77%	Externalities
5	That electronic contracts and/or electronic signatures may not be valid under foreign law	77%	Formalities
6	That the contract may be subject to foreign tax or duties or foreign registration requirements and the allocation of that risk under foreign law	77%	Formalities
7	Dealing with foreign or dual language contracts	74%	Formalities
8	That the choice of forum selected may be ignored by a foreign court	71%	Internationalities
9	That a foreign government might enact laws or policies detrimental to your interests?	71%	Internationalities
10	That the contract may be subject to foreign mandatory default rules or foreign implied terms	69%	Externalities
11	That the contract has been validity executed under foreign law	69%	Formalities

Project utility

Would a guide to such contractual risks be helpful in your work?



Would such model clauses, published by an independent body, be helpful in contractual negotiations by providing a common “baseline”?



Would model clauses, dealing with the above that have been assessed to work across various Asian jurisdictions, be helpful for your work?