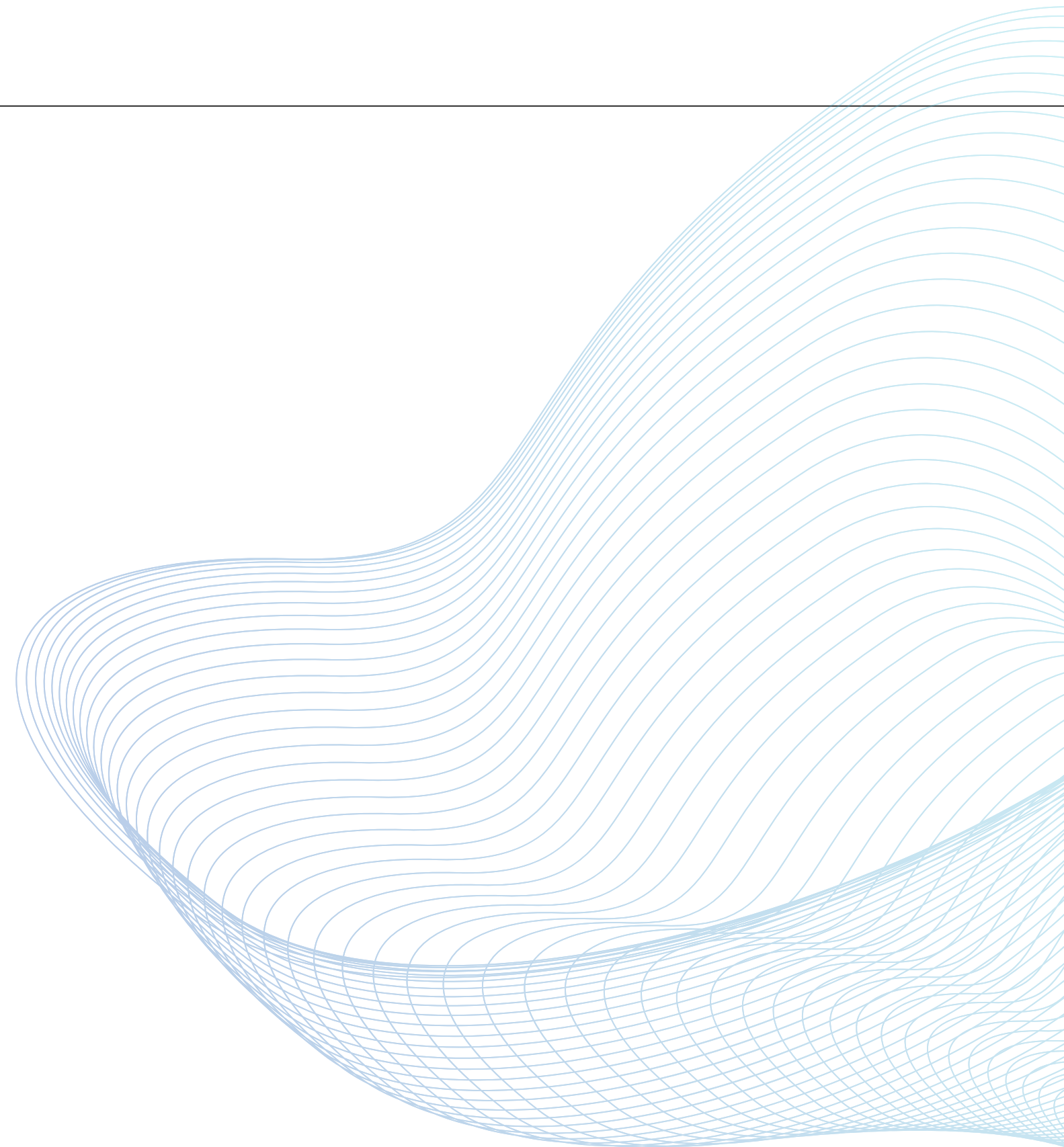




# COVID-19 as a *force majeure* on joint venture agreements

Lee Honors College  
Thesis Defense Presentation

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# 01 INTRODUCTION

Since its emergence in late 2019, COVID-19 has caused vast disruptions to daily life including school and business closures, travel restrictions, and social distancing measures.

## **Joint venture**

An agreement between 2 or more parties seeking to develop a single enterprise or project for profit while sharing the risks associated with its development.

## ***Force majeure***

A contract provision that relieves parties from an obligation if an extraordinary event directly prevents 1 or both parties from performing.



- 
1. Does COVID-19 invoke a *force majeure* clause during the onslaught and aftermath of the pandemic?
  2. Does COVID-19 impact supplier-buyer relationships in joint ventures during the onslaught and aftermath of the pandemic?
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## 02 METHODOLOGY



### Survey Approach

Developed through Qualtrics & incorporated Likert Scale questions



### Conceptual Approach

Derived from legal framework



### Literature Review

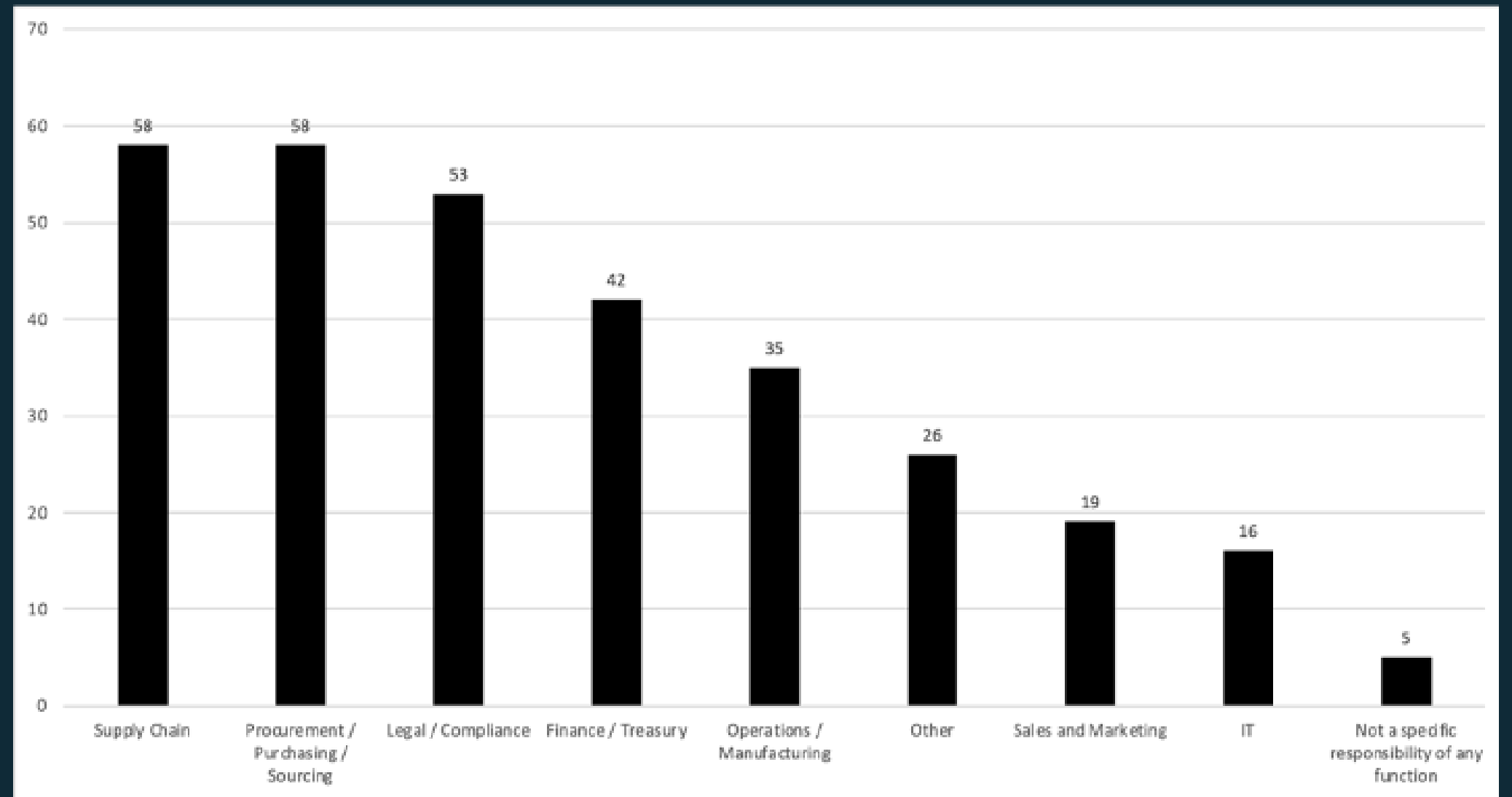
Derived from academic journals & articles



# 03 SURVEY QUESTIONS & RESULTS

## Question 1

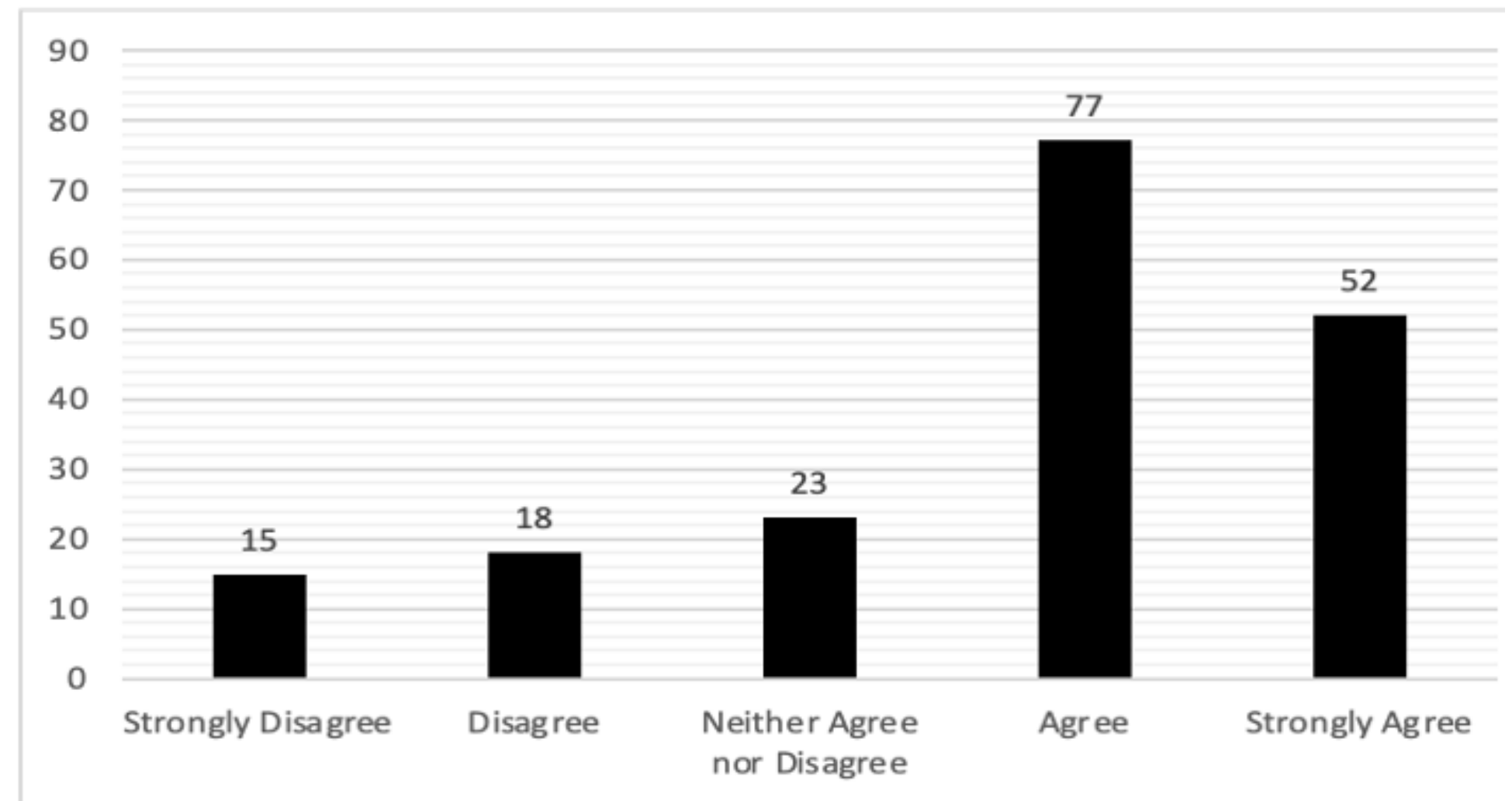
Please select a functional area that best applies to you.  
Check multiple boxes if necessary.





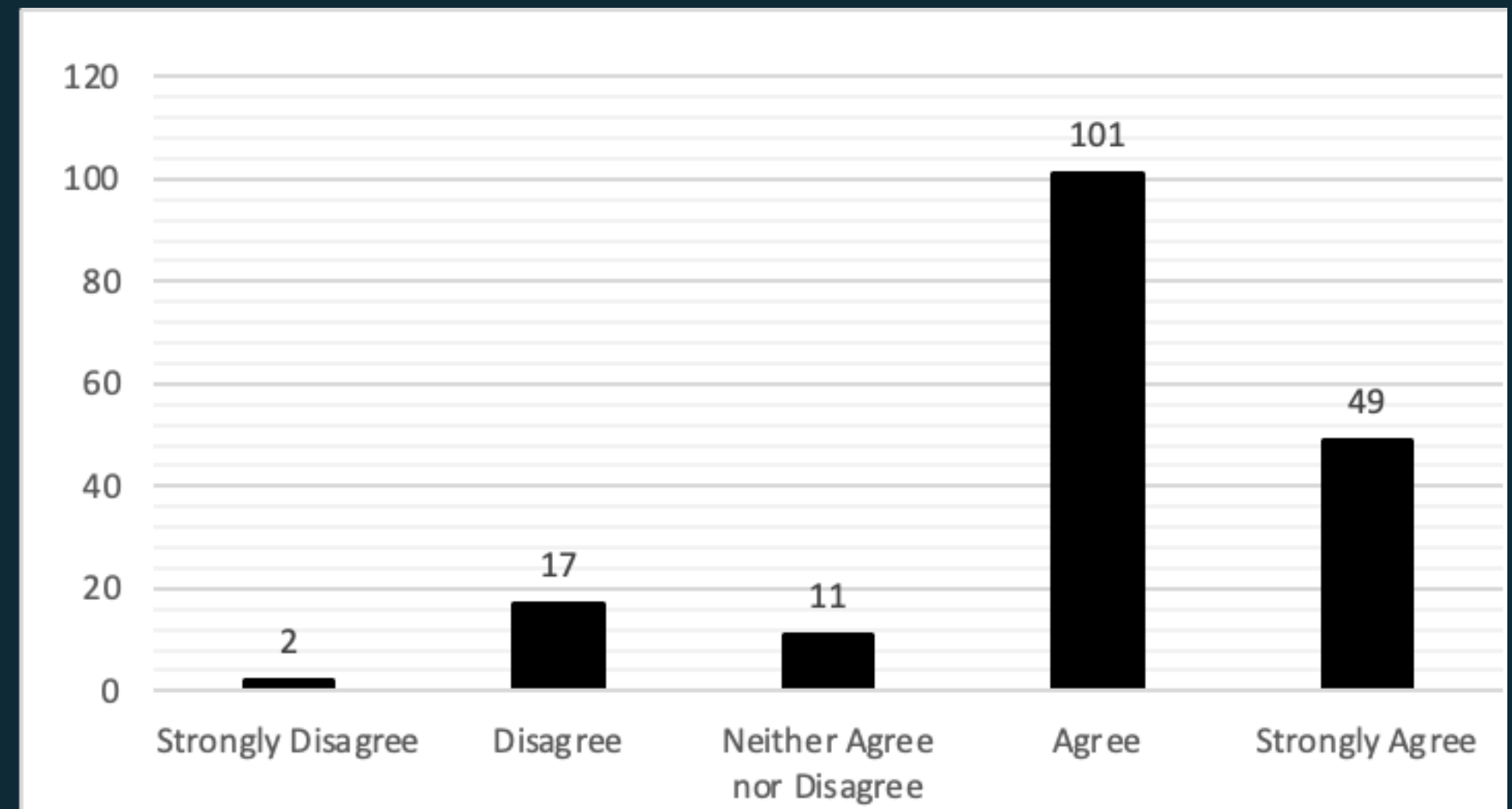
## Question 2

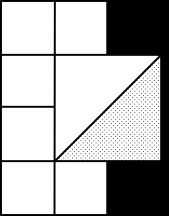
Over the last three years (2020–2022), how strongly would you agree that the COVID–19 pandemic is considered a *force majeure* event in joint ventures?



## Question 3

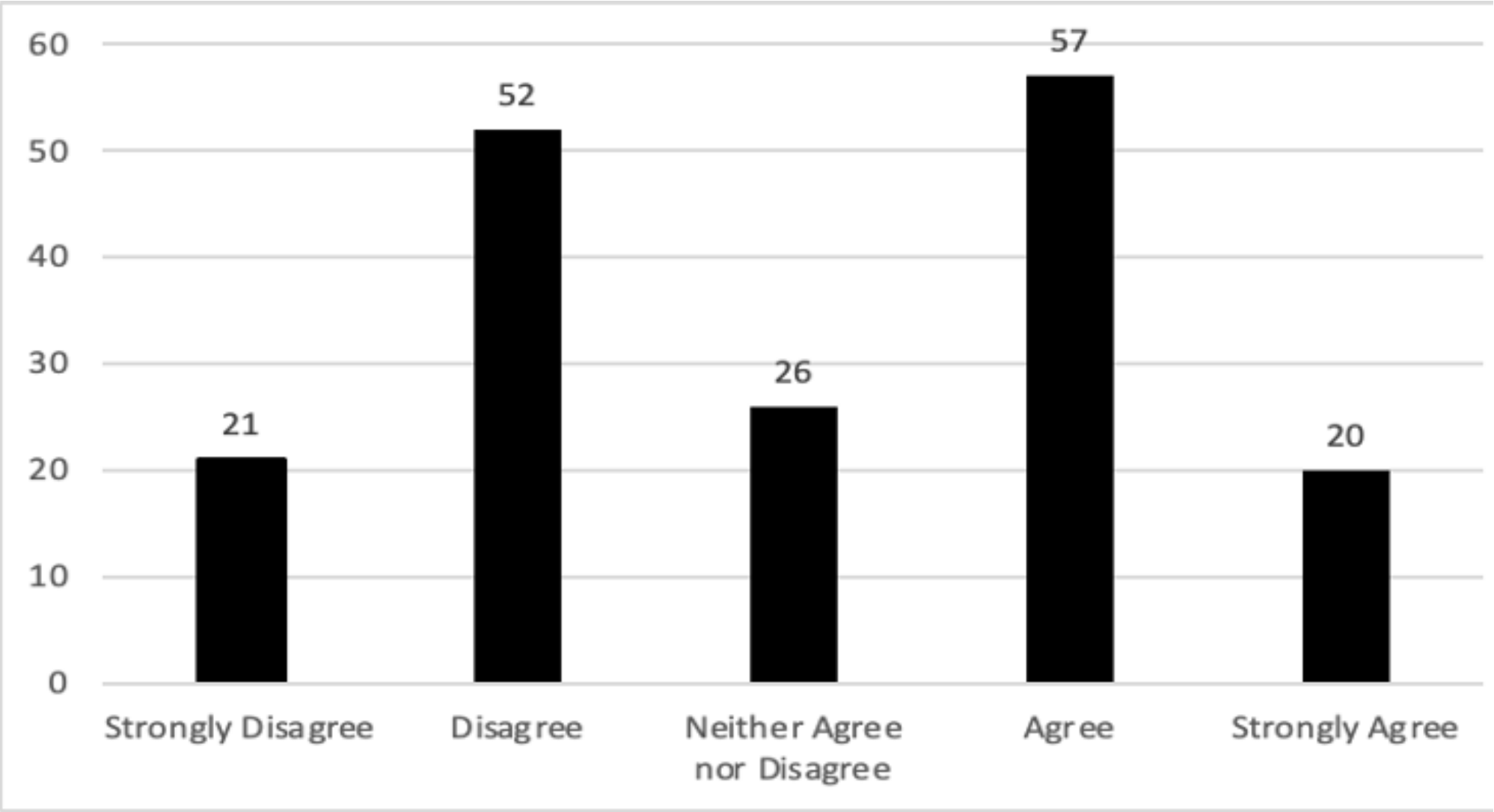
Over the last three years (2020–2022), how strongly would you agree that the COVID-19 pandemic has threatened or negatively impacted supplier–buyer relationships in joint ventures?





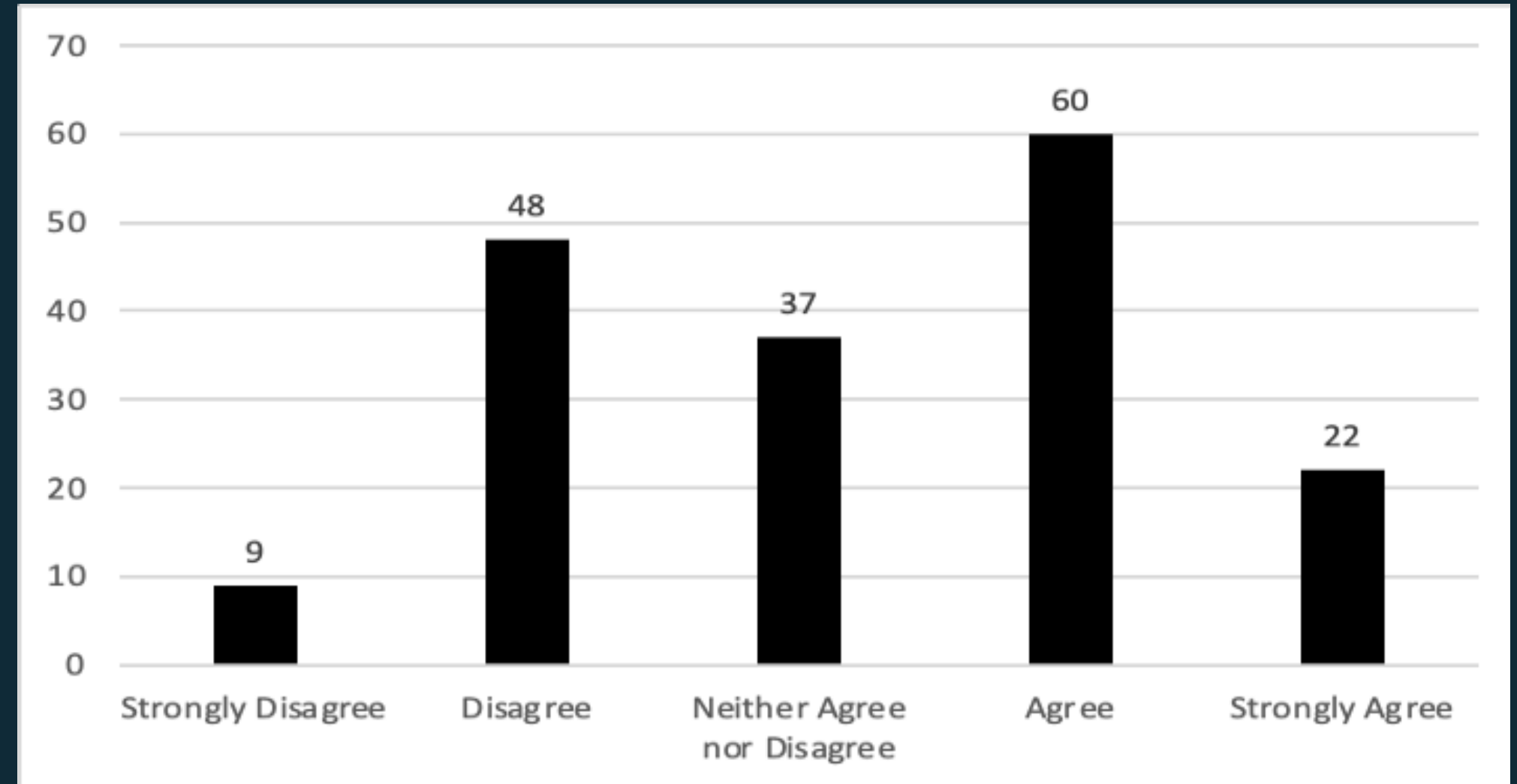
# Question 4

In our present time (2023),  
how strongly would you agree  
that the COVID-19 pandemic is  
considered a *force majeure*  
event in joint ventures?



## Question 5

In our present time (2023), how strongly would you agree that the COVID-19 pandemic has threatened or negatively impacted supplier-buyer relationships in joint ventures?



# 04 LEGAL FRAMEWORK

## Governing Law

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The two major legal systems are common law & civil law.

## 3 Main Defenses under Common Law

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1. Impossibility
2. Commercial impracticability
3. Frustration of purpose.

## Three-part Test ("*Force Majeure* Test")

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1. A *force majeure* event has occurred.
2. The *force majeure* event has rendered that party unable to perform its obligations under the contract.
3. The party invoking the clause has made reasonable efforts to mitigate both the event and its effect.



# 05 LEGAL ANALYSIS



# LEGAL PRECEDENTS

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## *Citrus Soap Co. v. Peet Bros. Manufacturing Co. (1918)*

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This contract is made subject to suspension in case of fire, flood, explosion, strike or **unavoidable accident** to the machinery or the works of the producers or receivers of this material, or from any interference in plant by reason of which either buyers or sellers are **prevented from producing, delivering or receiving the goods** and in such event the delivery thus suspended is to be made after such disabilities have been removed; otherwise to be fulfilled in good faith. **Notice, with full particulars** and the probable term of the continuance of such disability, shall be given to the other party hereto, within ten days of the date of the occurrence of such disability

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## In re Hitz Rest. Grp. (2020)

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Landlord and Tenant shall be excused from performing its obligations or undertakings provided in this Lease, in the event, but only so long as the performance of any of its obligations are prevented or delayed, retarded or hindered by... **laws, governmental action or inaction, orders of government**... Lack of money shall not be grounds for Force Majeure.

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## *JN Contemporary Art LLC. v. Phillips Auctioneers LLC. (2022)*

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In the event that the auction is postponed for **circumstances beyond our or your reasonable control**, including, without limitation, as a result of natural disaster, fire, flood, general strike, war, armed conflict, terrorist attack or nuclear or chemical contamination, **we may terminate this Agreement with immediate effect**. In such event, our obligation to make payment of the Guaranteed Minimum shall be null and void and we shall have no other liability to you

# APPLICATION OF LEGAL FRAMEWORK & PRECEDENT

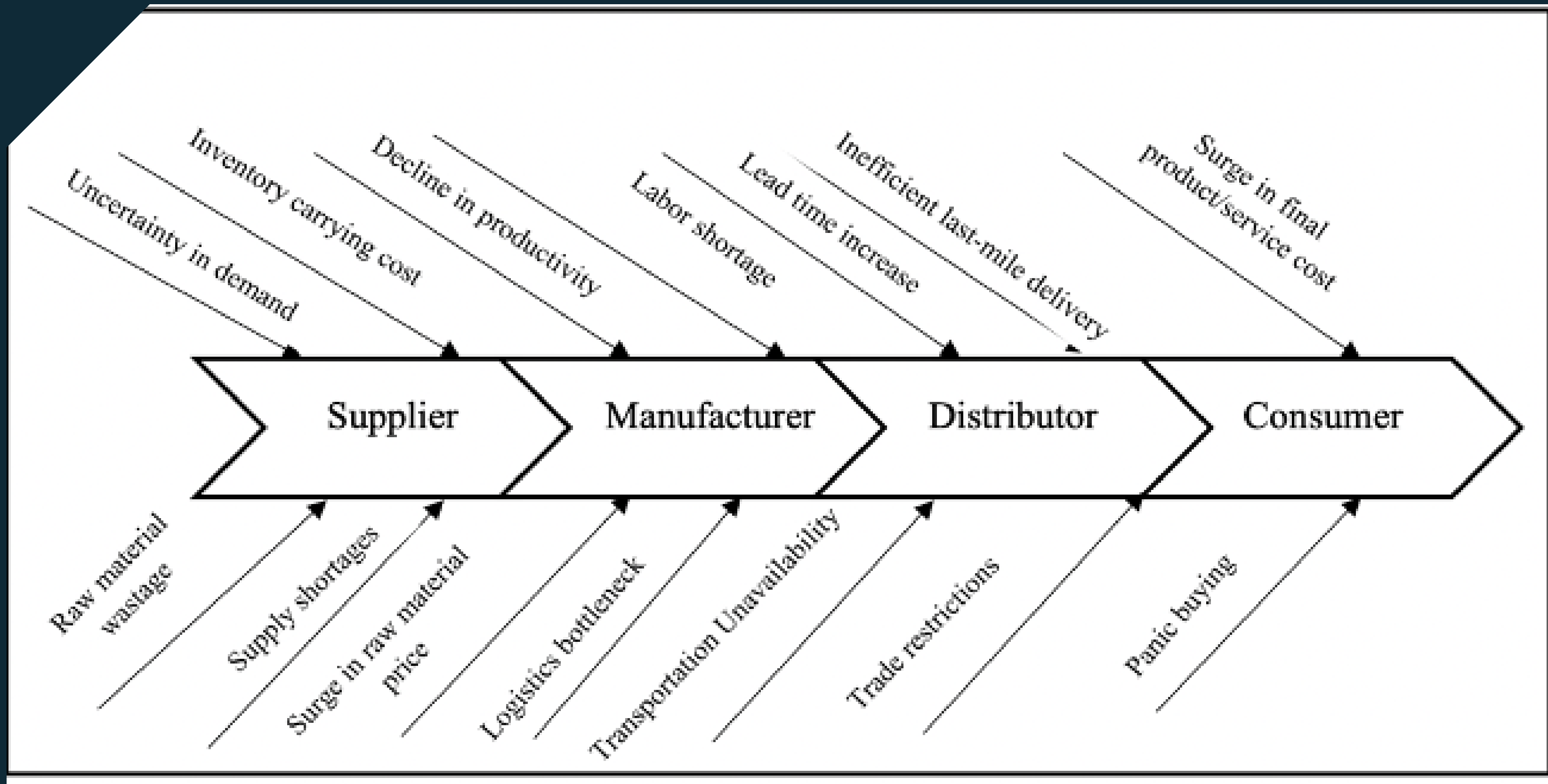
As impossible as it may seem, a *force majeure* clause can still be invoked due to the COVID-19 pandemic at this time.

- **THE *FORCE MAJEURE* CLAUSE ITSELF IS THE KEY**  
Courts interpret force majeure clauses "as is".
- **COVID-19 IS A FORCE MAJEURE EVENT**  
Courts consistently have deemed a pandemic or epidemic as a *force majeure* event.
- **STRATEGIES TO INVOKE A *FORCE MAJEURE* CLAUSE**  
Focus on contract negotiations & have substantial evidence to indicate you have done everything in your power to mitigate nonperformance.
- **THREE DOCTRINES UNDER THE COMMON LAW**  
Even if a party is unable to invoke a *force majeure* clause, they can still invoke doctrines of impossibility, commercial impracticability, and frustration of purpose





## 06 SUPPLY CHAIN ANALYSIS



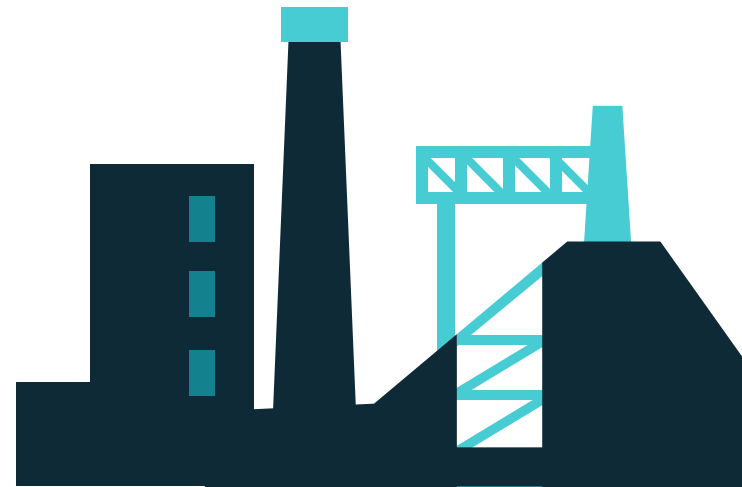
Supply Chain Disruption

# Dependence on China



**Mega powerhouse as both  
supplier & buyer**

*Largest exporter of goods in  
2009 & trading nation in 2013.*



**Leading manufacturing country**

*China's share of global  
manufacturing value added from  
1% to 28% in 2018.*



**Lucrative trading nation**

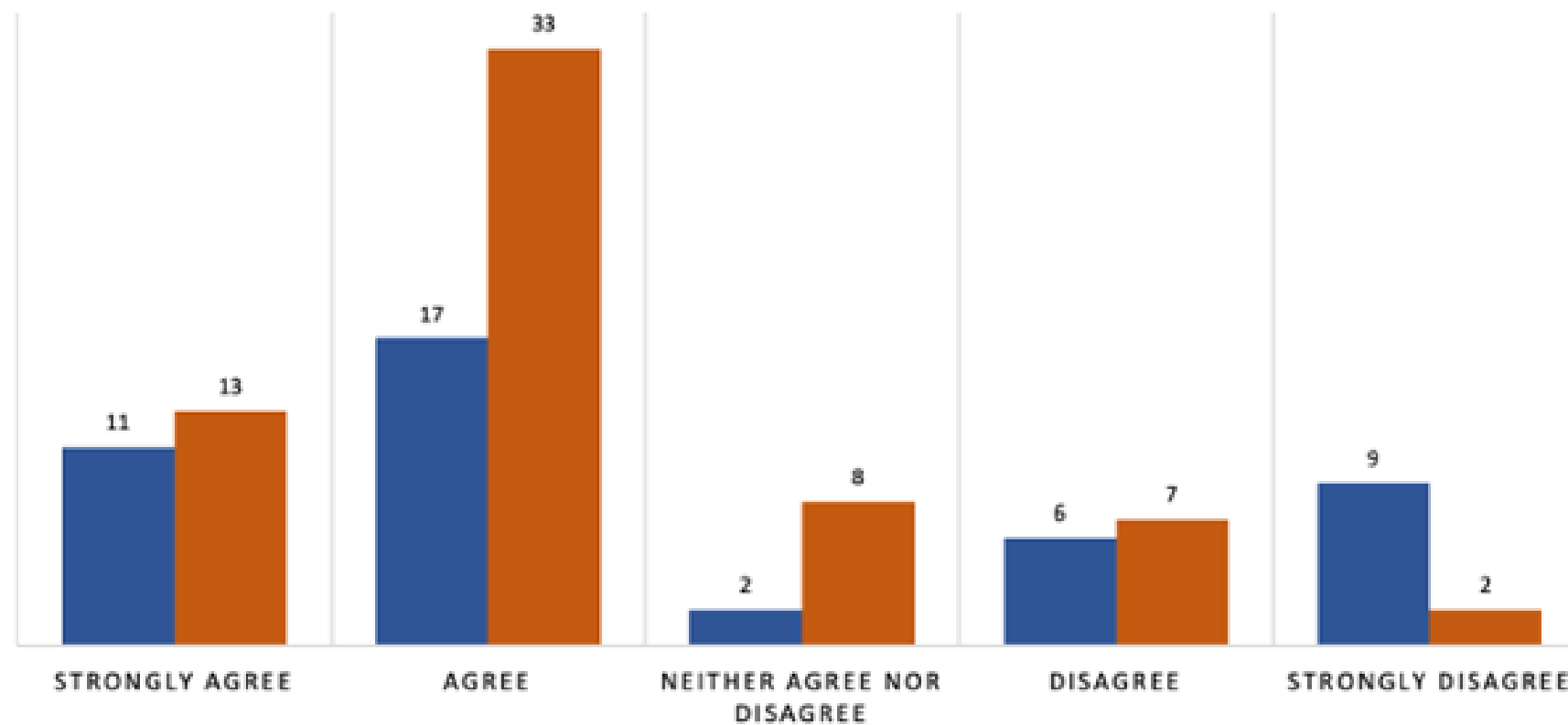
*China adopted the Japanese  
business model with lower labor  
costs.*



## 07 COMPARISON OF LEGAL/COMPLIANCE & SUPPLY CHAIN PROFESSIONALS

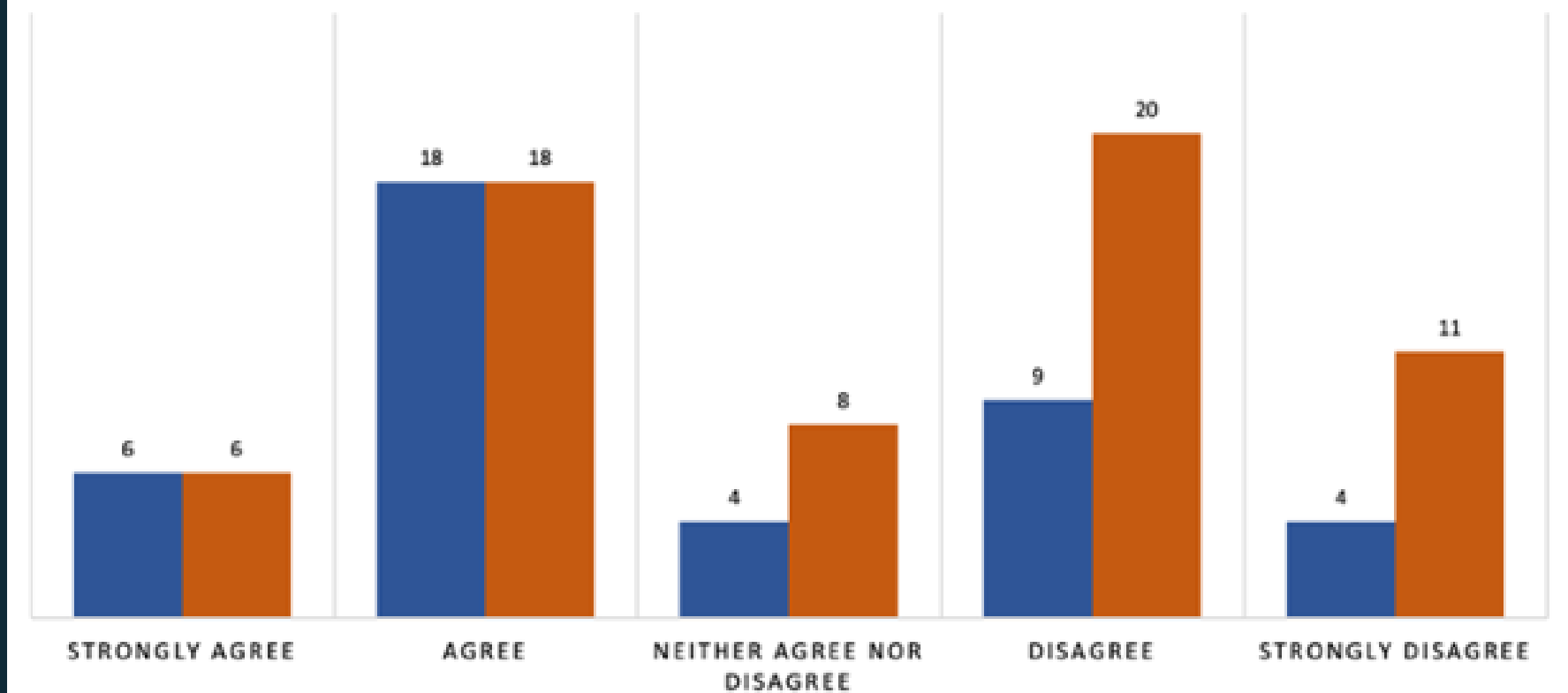
**QUESTION 2:**  
**COVID-19 AS A *FORCE MAJEURE* (2020-2022)**

■ Legal/Compliance ■ Supply Chain



**QUESTION 4:**  
**COVID-19 AS A *FORCE MAJEURE* (2023)**

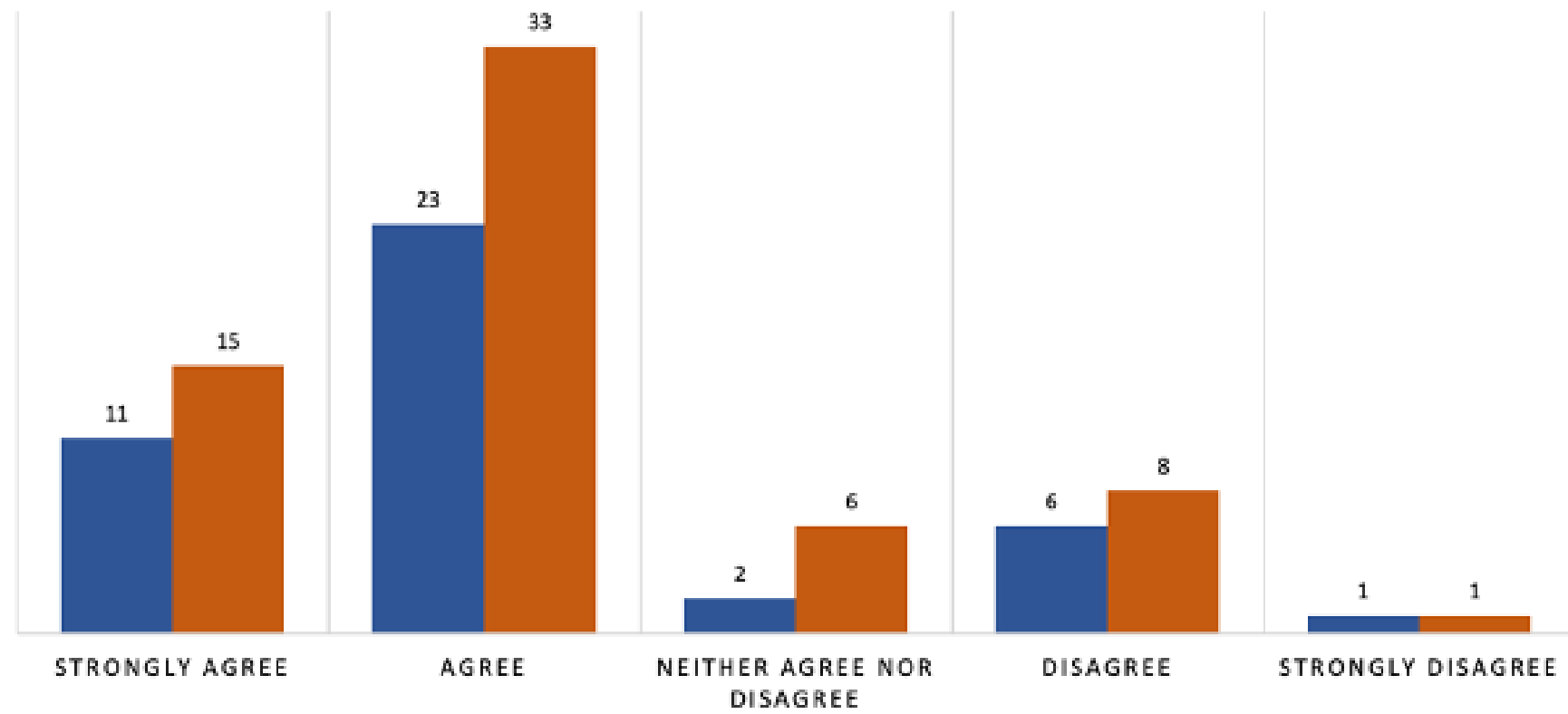
■ Legal/Compliance ■ Supply Chain





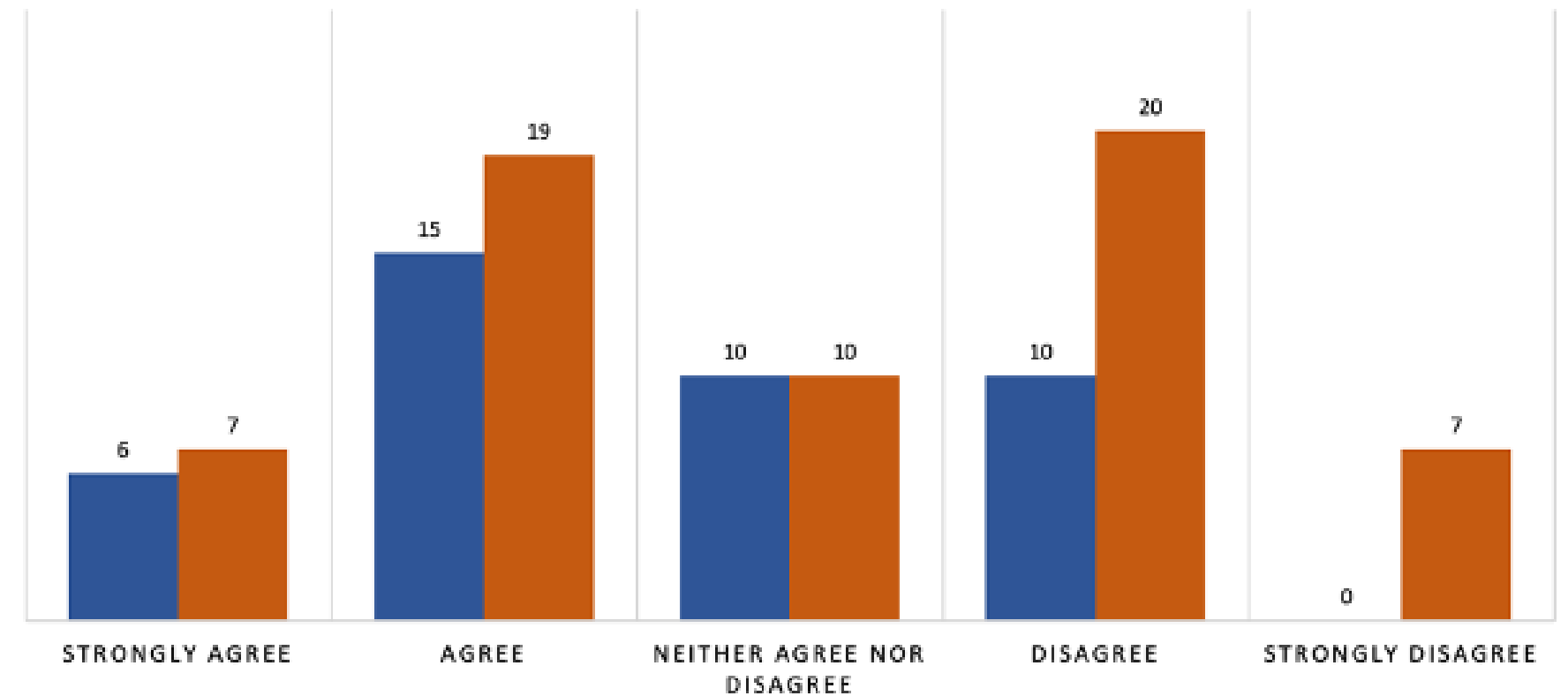
**QUESTION 3:  
COVID-19 IN JOINT VENTURES (2020-2022)**

■ Legal/Compliance ■ Supply Chain



**QUESTION 5:  
COVID-19 IN JOINT VENTURES (2023)**

■ Legal/Compliance ■ Supply Chain





## 01 Legal systems

## 02 Policies







### 03 Economies

## 08 CONCLUSION

- The COVID-19 pandemic was and still is a *force majeure* event.
  - The COVID-19 pandemic has and will still impact supplier-buyer relationships in joint ventures.
  - The surrounding circumstances such as a country's legal systems, policies, and economies influence the level of scrutiny that Courts use to interpret *force majeure* clauses.
  - All cases are different, yet applying the three-part *force majeure* test helps parties of a joint venture determine their chances in invoking a *force majeure* clause.
  - If all else fails, apply the three main doctrines of contractual nonperformance under the common law.
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**Thank You!**