



HERBERT
SMITH
FREEHILLS

SUPPORTING OUR CLIENTS GLOBALLY IN THE AUTOMOTIVE SECTOR

EXPERTISE AND CAPABILITIES OVERVIEW



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Our global automotive practice – Offering a road map to success

Welcome

In the following pages we highlight some of the support that we provide to our clients across the automotive industry throughout the world. Thank you for taking the time to review this. If you are already one of our clients, we hope that you will appreciate that there are more areas where we can offer you support and if you are not yet a client, we hope that you will soon become one and allow us to support your businesses. We also well-appreciate the dynamic nature of the industry and we look forward to continuing to develop new services to allow us to provide ongoing support.

Introduction

The global Automotive industry is currently in the midst of **two revolutions** occurring at the same time:

- **An electric revolution**, as the industry transitions from I.C.E to all electric powertrains as part of the wider decarbonisation agenda; and
- a **digital revolution**, where the software stack (both in the vehicle and, increasingly, in the cloud) is becoming as important as the mechanical engine used to be.

We discuss these revolutions further in the coming pages, but they are giving rise to a large number of **new issues and challenges** for OEMs, Tier 1 & 2 suppliers, as well as Distributors & Retailers and, at the same time, encouraging a number of new market entrants.

These challenges include finding, or recycling, **the capital to fund the EV transition**, particularly for R&D and scale production of battery electric vehicles (**BEVs**); the **affordability challenge** of the EV transition for the mass market and for developing markets; the need to **restructure businesses and labour forces**, within both OEMs and suppliers that are I.C.E. focused, particularly in Europe; navigating the range of ever-changing **subsidies, tax incentives & government-backed funding**, particularly under the **US Inflation Reduction Act** and **EU IPCEIs**; significant changes to the traditional **retail and distribution models**, driven in part by digitalisation, including the rise of the omni-channel, direct to consumer and the agency model; the potential for significant **disputes and risks** arising from teething problems with new technology, disputes over the ownership of IP and the rising threat of class actions and cyberattacks. Of course, there is also the increasing focus on **ESG**, in particular, looking beyond tailpipe emissions to the **cradle to grave environmental and social footprint** of vehicles.

But with these challenges, come new business and revenue opportunities encouraging new market entrants. These include collaborations & partnerships between **technology and software businesses** and OEMs and Tier 1 suppliers, particularly in relation to vehicle operating systems and software for connected vehicles, which increasingly also have some autonomous capabilities (**CAV**); the need to create a **completely new supply chain** in Europe for **EV batteries**, including in the medium term an EV battery **repurposing and recycling** industry; the urgent need for a fully-developed – but commercially viable – **EV** (and hydrogen powered fuel cell EV (**FCEV**)), **charging & refuelling network** (also accommodating dedicated **commercial** fleet, depot and hub recharging operations); developments in other zero emission vehicles (**ZEVs**), including FCEVs; **Mobility As A Service (MAAS)** platforms; and increasing **digitalisation** and the **exploitation of data** throughout the industry, but particularly from vehicle telematics.

The pace of these industry revolutions, combined with the ever-changing global regulatory landscape, inevitably poses a number of unique legal issues straddling a wide number of areas of expertise in which we can offer support.

We work closely alongside clients around the globe and across the sector – from OEMs, component manufacturers, technology companies, infrastructure providers, distributors, retailers, vehicle-leasing and fleet management companies, to ride-hailing and other shared mobility platform providers.

As a full-service law firm we are able to support our automotive sector clients with all of their needs. We regularly give M&A advice on acquisitions, divestments and collaborations; debt, equity and project financing advice; and act on industry-wide disputes and investigations, particularly class actions, product liability and patent disputes. We also give regulatory, competition, employment, intellectual property, ESG, ABC, technology, data and cyber security advice.

However, capability is nothing without a cross-practice and single-global-firm approach in deploying it. We often work as strategic partners with our clients and their teams, demonstrating close collaboration across our practice areas and across sectors – particularly with our expert global teams in Energy, Financial Services, Infrastructure & Projects, Mining, Real Estate (Planning) and Technology – as the automotive industry interacts with increasing frequency with these sectors.



Roddy Martin, Partner, London
Global Head of Automotive



A **major global OEM** in the defence of a group action concerning diesel NOx emissions and related regulatory and competition law issues



BP on its acquisition of Chargemaster (now **bp pulse**) the UK's largest EV charging network, and on its joint venture with Daimler Mobility and BMW Group in Digital Charging Solutions (trading under ChargeNow)



Inchcape on its £1.3 billion acquisition of Derco, the largest independent automotive distributor in Latin America by volume



Iveco and Fiat Chrysler as European coordinating competition litigation counsel in relation to follow-on damages claims stemming from the EU Commission's settlement decision in *Trucks*, the most high profile competition infringement and follow-on damages cases in Europe



Jaguar Land Rover in relation to its joint venture established with Chery Automobile in China



Renault on its investment in Verkor, the French industrial company constructing a 16 - 50 GWh Gigafactory in Dunkirk, France, and on structural off-take arrangements for battery supply



Tata Motors on its US \$2.3 billion acquisition of Land Rover and Jaguar from Ford



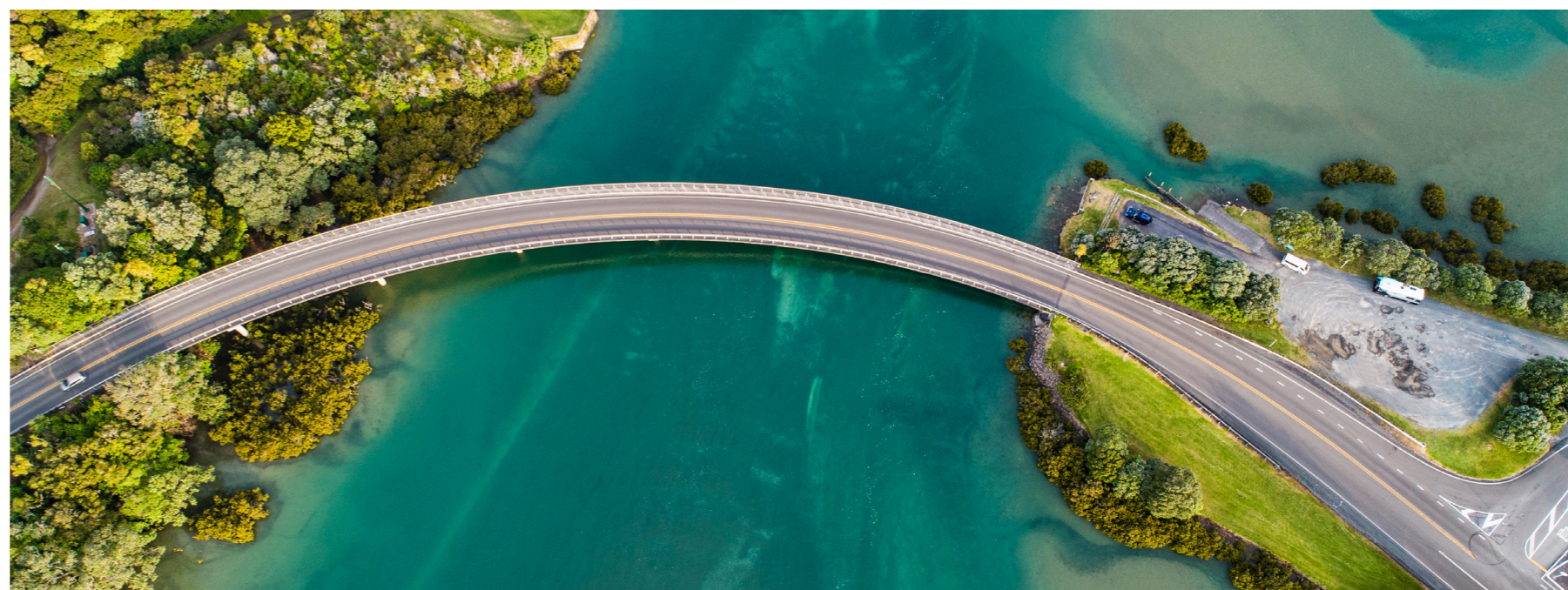
Tesla in relation to preparing contracts of employment, election of employee representatives, disciplinary and termination procedures, day-to-day advisory work for general employment issues in France and Employment Tribunal litigation



Toyota Motor Corporation Australia in a class action arising from Toyota and Lexus vehicles fitted with allegedly defective airbag inflators manufactured by Takata Corporation



Uber on its US \$3.1 billion acquisition of Careem Networks



Electrification – Driving industry change

Electrification is the most significant and pressing near-term development in the sector.

Understandably, public attention to date has mostly focused on the electrification of passenger cars, but the electrification of commercial vehicles – both passenger and freight carrying vehicles – is a major focus for the industry too, especially those for use in urban areas. Whilst rechargeable battery power has taken the lead throughout most of the developed world in powering EVs, the debate as to whether hydrogen fuel cells are a more viable fuel stock for EVs, particularly for non-urban vehicles, continues, and where this debate ultimately lands could have far-reaching consequences for the industry.

The transition to EVs is also having a fundamental impact on the traditional ICE component supply chain, due to the completely new powertrain, simplifications in design and manufacturing processes and the growth in the relative importance of technology and software over mechanical engineering. Further changes are expected, not least as the industry embraces new technologies, for example additive manufacturing and giga-press die casting.

Exponential growth in BEVs is the priority focus for OEMs and other industry participants as legislation (including I.C.E. bans) and decarbonisation and emissions regimes globally become ever more stringent, particularly in fully-industrialised economies.

Key challenges in the drive towards electrification are the dual requirements of a scale, secure supply of reliably performing, safe and affordable EV batteries (which themselves meet stringent ESG standards) and a scale,

reliable, universally compatible, convenient and affordable EV charging network.

The pace at which these fundamental ingredients are delivered will have an important bearing on the speed and success of the EV transition.

We assist companies across the value-chain in relation to their strategies and responses to the electrification of the industry.



A **confidential client** on a potential joint venture to develop a passenger EV OEM in the Kingdom of Saudi Arabia and to facilitate local manufacturing and R&D



A **leading global OEM** on its proposed establishment of a standalone next generation passenger EV business



BP on its joint venture with Daimler Mobility and BMW Group in Digital Charging Solutions (trading under ChargeNow), a leading developer of digital charging software for automotive manufacturers and vehicle fleet operators

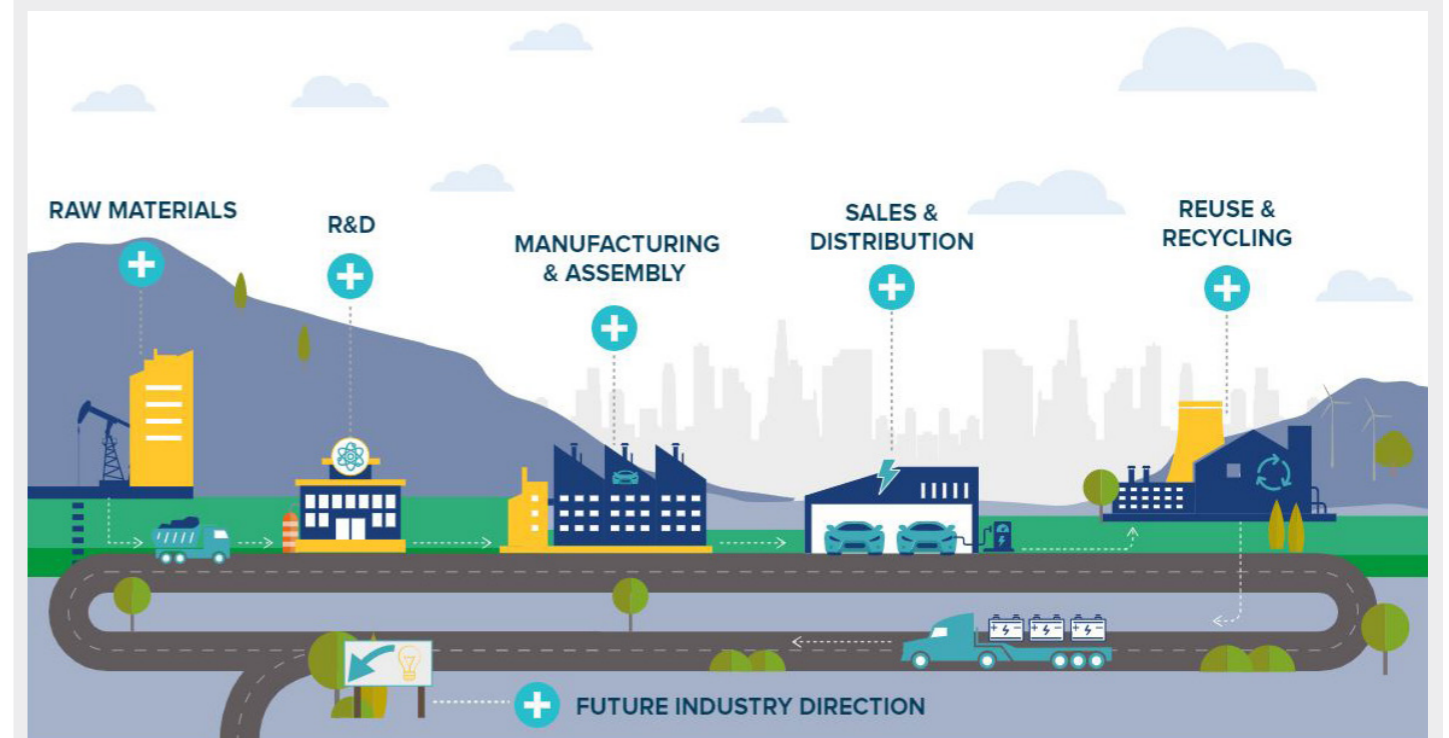


Daimler and Robert Bosch on their China merger control filing in respect of their joint venture for manufacturing electric motors for BEVs and MHEVs



UD Trucks (part of **AB Volvo**) on its proposed collaboration with Smith Electric Vehicles for the manufacture and sale of electric trucks

Our interactive infographic, **EV Batteries: Powering the Automotive Revolution**, provides commentary on the stages of the EV battery lifecycle and some of the specific industry drivers and issues that will shape the direction of the industry (particularly in Europe) (*snap shot and link to the interactive version below*).



<https://www.herbertsmithfreehills.com/insight/ev-batteries-powering-the-automotive-revolution>



A **global EV battery manufacturer** in patent infringement litigation relating to battery cells



A **leading global OEM** on a significant battery mineral streaming and offtake transaction



Panasonic on its joint venture in Indonesia to conduct a feasibility study into manufacturing re-chargeable motorcycle batteries and implementing an exchange system at petrol stations throughout the country



Toyota Motor Company on EU regulation advice in respect of the transportation of lithium-ion batteries in Europe



A **global EV battery manufacturer** in defending an arbitration relating to a fire involving short circuiting of a BEV battery



Toyota Tsusho on its AUS \$282 million acquisition of a 15% shareholding in Orocobre, an Australian lithium mining company

For our thinking on electric charging infrastructure, please see <https://www.herbertsmithfreehills.com/latest-thinking/driving-change-in-the-auto-industry>.

For our thinking on government support and incentives, please see <https://www.herbertsmithfreehills.com/latest-thinking/views-on-an-evolving-automotiveindustry-government-support-and-incentives>.

For our latest thinking on last mile delivery, please see <https://www.herbertsmithfreehills.com/latest-thinking/how-last-mile-delivery-can-accelerate-the-automotive-industrys-drive-to-net-zero>

The Digital Revolution – Connected Vehicles navigating the future

If the heart of an I.C.E vehicle is its engine, then the operating system in a connected vehicle is its brain. However, in a connected BEV is the heart its electric motor, its battery or its operating system and software stack? If the motor and battery are relatively standardised and the operating system is sophisticated and able to receive over-the-air (OTA) updates to improve and enhance the vehicle's performance, there is an argument that it is the latter. Perhaps a better view is that connected BEVs will be at their best when all of their systems (including the powertrain and energy source) are operated seamlessly by a single operating system. Whilst the operating system and software stack could provide cinema quality video, concert hall sound and teenage den gaming, the better goal would be invisibility – delivering the ability to switch from one driving mode to another with complete safety, including the use of autonomous driving features; to accurately monitor the vehicle's real-world driving performance, wear and emissions and to fix glitches and provide updates quickly and seamlessly OTA.

In terms of autonomous vehicles the industry appears to have, quite sensibly, split between incorporating certain L2 and some L3 driving features into higher-specified privately-owned vehicles and developing fully-automated robotaxis and other fully autonomous shared mobility vehicles (AVs). In relation to the latter, we will increasingly see full automation of a larger share of public and commercial road transport, which will eventually revolutionise mobility and transportation as we know it, with driverless shared mobility solutions in defined public areas (robotaxis, shuttles and buses), the commercial

application of AVs in ports, mines, large factories and depots and on defined road freight trunk routes.

The experimental nature of much of the connected and autonomous (CAV) technology that is being developed, combined with the evolving global regulatory landscape and legitimate concerns for human safety, poses a number of novel and challenging legal issues.

We have a well-known specialist CAV group comprised of multidisciplinary specialists who advise clients on the various business and legal issues arising from the development and commercialisation of CAV technology, including product safety and liability, IPR, technology, data and cyber security.



A **confidential client** on an automated truck trial, which involves a US-based OEM, property developers, container terminals and logistics companies



A **global trucks manufacturer** in relation to regulatory requirements for wireless communication between platooning vehicles (including minimum breaking distances and longitudinal control) across the EU, US and Asia-Pacific regions



A **major motorcycles OEM** on the development of a new global mobility platform based on blockchain for the next generation of connected e-bikes and motorcycles



Baidu on its training in CAV, covering regulatory, legal and commercial issues surrounding CAV technology across the EU, US and Asia-Pacific



bp pulse on its entry into strategic commercial agreements with a number of OEMs to integrate its EV charging network offering into OEMs' software applications and head-up displays



Bridgestone on the acquisition of the business and assets relating to, and the grant of an exclusive worldwide licence to the technology of, the iTrack tyre monitoring system from Transense Technologies



OEMs and technology companies in relation to product liability issues arising from CAV technology



The Royal Automobile Club of Western Australia on the acquisition and trial of Australia's first fully driverless and electric shuttle bus, including advice on road traffic approvals and exemptions, customs requirements and local government regulations; and the procurement and trial of its next generation driverless and electric car, the RAC Intellicar, from NAVYA

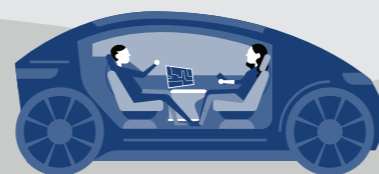


Toyota Tsusho and Toyota Motor Company on the establishment of a telematics service provider



Transport for London on the procurement of a replacement and improvement of the current automatic vehicle location system for the London bus network, London River Service and London Trams

For our latest thinking on the Law Commission of England and Wales and the Scottish Law Commission's review of the safe and responsible introduction of CAV vehicles on British roads, please see <https://www.herbertsmithfreehills.com/latest-thinking/adapting-road-safety-to-autonomous-vehicles-joint-law-commission-issues-report-on>

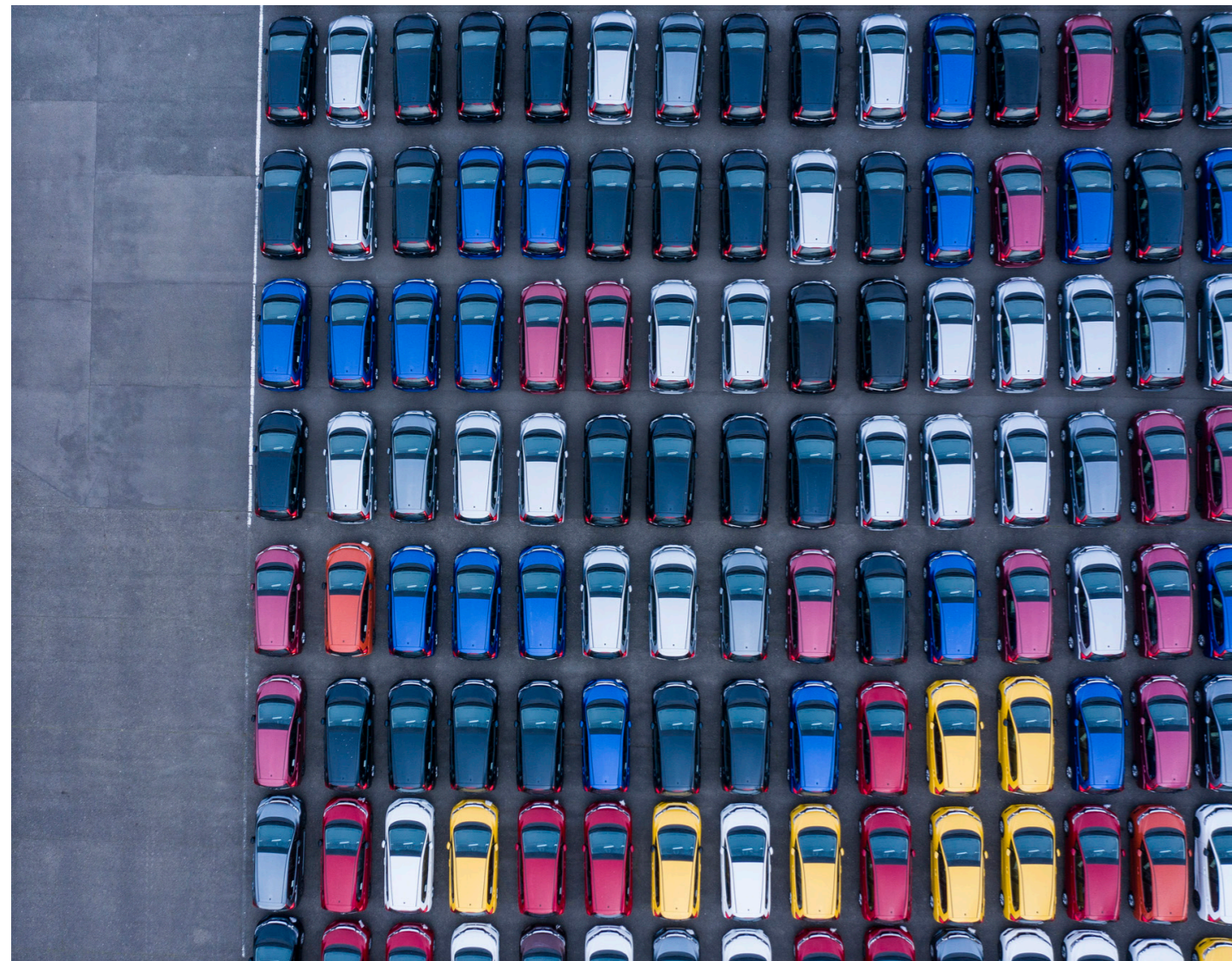


Mobility as a Service – Maximising opportunities together

"Mobility as a Service", including "Shared Mobility", is a wide-ranging term for the division, bundling or sharing of ownership and use of vehicles and associated services, often with the intent of significant environmental and social benefits as well as convenience and cost advantages.

Increasing innovation and technological developments have rapidly influenced the sector, particularly in areas such as ride-sharing and ride-hailing. Industry participants have also been responding to an increasing demand for more flexible, or all-in fixed-cost, vehicle usage, as they look to package the delivery of all elements of vehicle use into a single monthly subscription fee.

We work with clients on the key issues impacting this part of the sector, in particular where the applicable law may be out-dated (eg e-bikes and e-scooters) and governments and regulators are struggling to ensure that the applicable regimes keep pace with technological and industry developments. Our advice ranges from providing a global outlook from a competition, regulation and employment law perspective, to supporting on strategic disputes, acquisitions, financings and compliance matters, and addressing specific local regulatory, employment, technology, data and IP considerations.



Ada, a French car rental company, on the financing of its cars and trucks rental fleet



D'leteren on the recommended cash acquisition of the entire issued share capital of Avis Europe by Avis Budget Group



Enterprise Holdings on the acquisition of PSA Peugeot Citroen's car rental subsidiaries Citer and Atesa



Groupe Berto, the leading French transportation vehicle rental company, on a €235 million financing for the acquisition of Via Location



ihail, a joint venture that provides an app-based taxi-booking service in the UK, US, New Zealand and Canada, on its successful authorisation application



Smoovengo (comprising **Smooove**, **Indigo**, **Mobivia**, and **Moventia**), on the financing aspects of the self-service bicycle and car (Vélib' and Autolib') market for Grand Paris from 2018 to 2033



SoftBank in relation to the due diligence and regulatory aspects of its acquisition of OlaCabs, the leading India-based ride-hailing booking mobile application



SoftBank on an up to US\$2.5 billion equity funding round for GrabTaxi, alongside DiDi



Uber on its acquisition of Car Next Door, an Australian peer-to-peer car sharing platform



Uber on the UK competition aspects of the sale of its JUMP micromobility (e-bike and e-scooter sharing) business to Lime and Uber's non-controlling minority investment in Lime

Our global network

Herbert Smith Freehills is a leading global law firm with over 5,000 people, including 508 partners, in 25 offices (including associated offices). We offer local insight and seamless cross-border service in all major regions and are positioned to support the major trade flows, particularly between the leading automotive economies in Asia and in Europe.

London

- The leading corporate advisor to FTSE-listed companies for five consecutive years (ARL rankings)
- Corporate Team of the year, The Lawyer Awards 2021
- Awarded Litigation and Dispute Resolution Team of the Year and M&A Team of the Year at the 2021 British Legal Awards

Paris

- One of the leading, full-service practices on the French market
- Civil and common law specialists advising clients across a range of sectors

Düsseldorf and Frankfurt

- Full-service operation in Germany with a major focus on cross-border work
- Provide German and international clients with leading expertise in corporate, dispute resolution, finance, real estate, competition/regulatory and employment matters

Brisbane, Melbourne, Perth and Sydney

- The leading M&A and ECM law firm in Australia by deal count and by deal value
- Law Firm of the Year (>500 lawyers) at the 2021 Australasian Law Awards
- Act for a majority of Australia's top 100 listed companies
- Dispute resolution powerhouse and market leaders in class action litigation

Tokyo

- One of the leading international firms in Japan
- Advises Japanese and international corporations on cross-border transactions, energy projects and dispute resolution
- Top-tier practices in corporate and M&A, dispute resolution, projects & energy, real estate & construction

Hong Kong, Beijing and Shanghai

- 40 years' experience in the region with offices in Hong Kong, Beijing and Shanghai
- One of small number of international law firms permitted to integrate China law advice with international legal services in mainland China through our Herbert Smith Freehills Kewei (FTZ) Joint Operation in Shanghai

Brussels

- Specialists across the spectrum of competition law matters, including in relation to merger control, foreign direct investment, cartels and investigations, unilateral conduct, competition litigation, competition compliance, State aid and EU procurement
- Leading international trade and WTO practice, including trade disputes

Milan

- Unique offering in the Italian legal market, including Corporate, Disputes, Private Equity, ECM and Energy and Infrastructure and a truly market-leading Life Sciences offering
- Award-winning IP practice, specialising in contentious and non-contentious matters, patent and regulatory law

Madrid

- Market leading M&A and energy and infrastructure teams within a full service practice
- Works with multinational clients with high-profile operations in Spain and the rest of the world

Singapore

- Over 30 years' presence in Singapore and a formal law alliance with Prolegis LLC, a premier Singapore law firm
- A hub for our SE Asia practice
- Top-tier practices in energy, financial regulatory services, international arbitration and labour & employment

Kuala Lumpur

- One of the leading international practices in Malaysia
- Both local and international lawyers advising on M&A, disputes and Islamic finance
- Malaysia: International law firm of the year awarded for the third year in a row (ALB Law Firm of the Year awards 2021)

Jakarta

- We have one of the closest and longest standing relationships in the Indonesian market through our 20+ years' association with Hiswara, Bunjamin & Tandjung (HBT), one of the leading full-service firms in the market, supported by long-term embedded partners and counsel from HSF
- HBT awarded best law firm in Indonesia in 2021 for the third year running by Finance Asia

Nordic Group

- Our Nordic Group comprises lawyers from across our international network and from across a wide range of specialisms
- Advises clients on a variety of matters involving Denmark, Finland, Iceland, Norway and Sweden over a number of years

Johannesburg and Africa Practice

- Our Africa practice has been built over 30 years with experience in all 54 of Africa's jurisdictions
- Band 1 practices in in Projects, Energy, Mining & Minerals, Dispute Resolution and OHADA law
- Chambers Africa Awards 2023 - Winner-Africa-wide International and
- Law Firm of the Year - Projects & Energy

India Group

- Tier 1 (India, Foreign Firm) by Legal 500 for 14 consecutive years. Very few other international firms have more band 1 rankings or more ranked lawyers than us for India-related work
- Ranked Band 1 Corporate/M&A and Projects and Energy by Chambers Asia Pacific (India)

Bangkok

- Established office for 25 years
- Home to one of the country's premier commercial litigation and arbitration practices, offering Thai litigation and regulatory advice alongside international disputes expertise
- Recently added Corporate practice, labour and employment, banking and finance, energy and resources and insurance

Alternative Legal Services

- Alternative Legal Services (ALT) is a fully-integrated and integral part of our international network
- We offer innovative, market-leading solutions for high-volume, document-intensive legal work by combining cutting-edge technology with legal expertise
- Full global coverage via Beijing, Belfast, Brisbane, Hong Kong, Johannesburg, London, Melbourne, New York, Perth, Shanghai and Sydney offering 24/7 service

Dubai

- Middle East hub office in Dubai, providing corporate, finance, projects and real estate advice to clients, and helping resolve disputes in all of these sectors
- Advised on Middle East transactions for over 40 years and our multidisciplinary team acts for international and regional clients conducting business throughout the Middle East

Riyadh

- Full-service practice, with a focus on infrastructure projects, financings and corporate transactions
- Key advisor to leading domestic, regional and international clients on their inbound and outbound investments
- Trusted advisor to a number of branches of the government, government-owned entities and regulators

New York and LATAM Group

- A seasoned disputes practice focused on complex litigation, financings, the financial services sector, employment disputes and international arbitrations
- We understand how deals get done in Latin America and in particular, the challenges they bring. Above all, we appreciate that Latin America is not a homogenized region and every country requires a unique approach

Transactions

Mergers and acquisitions

A new era of mergers and acquisitions within the automotive industry is anticipated as OEMs face pressures to consolidate and fund the high capital expenditure and R&D programme costs resulting from the industry-wide transition to EVs and to software enabled, connected vehicles. Similar levels of consolidation and M&A are expected in the supply chain, as traditional I.C.E. component manufacturers restructure and retool for EVs and in particular seek to expand their integrated technology offerings. Further consolidation is expected amongst distributors and retailers, as increased scale and efficiency in the route to market comes under sharper focus and with the need for increased investment in areas such as digitalisation.

We advise on cross-border, domestic, public and private mergers and acquisitions, and pride ourselves on applying our outstanding technical expertise in a practical manner to ensure our clients achieve their commercial goals.

Our reputation for the structuring (including tax structuring and relevant FDI advice) and seamless execution and transaction management of the most complex cross-border deals underlines the international scope and deep bench-strength of our teams.

Joint ventures and strategic alliances

Collaborations through equity investments or contractual tie-ups are increasingly seen as a critical means of enabling automotive businesses keep up with the required pace of change in a cost-effective and flexible manner.

We have a strong track record of partnering with companies in the automotive industry to ensure they have the full legal support required for the creation, operation and termination of joint venture agreements and strategic alliances of all shapes and sizes.

We are well-positioned to support clients looking to enter into agreements across EMEA, Asia, Australasia and Latin America. We are able to add real value by leveraging our automotive sector expertise to provide practical and commercial solutions.



Hyundai Motors on its acquisition of the Australian distributor of Hyundai motor vehicles, comprising 140 dealerships across Australia



Tata Motors on its US\$2.3 billion acquisition of Land Rover and Jaguar from Ford



ZF Friedrichshafen on its £445 million recommended cash offer for Hansen Transmissions International

For our latest thinking on M&A in the sector, please see [Global M&A Outlook 2023: Automotive Electric and digital revolutions still drive M&A](#) | Herbert Smith Freehills | Global law firm



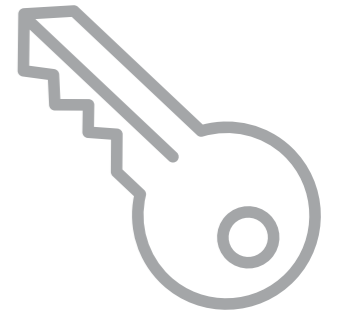
Daimler on the formation of a joint venture with Toray and ACE for manufacturing carbon-fibre reinforced plastics components for automotive applications



Renault Group on the creation of the turnkey hydrogen mobility solutions joint venture HYVIA with Plug Power



ZF Friedrichshafen on the establishment of a €150 million joint venture with Hangzhou Advance Gear Group



Early stage investments

Making early stage investments can be seen as a risky investment strategy, particularly for large corporates who are nervous about having to dedicate excessive operational support to enable such investments to grow, and to align them operationally and culturally with their existing business. However, in an evolving industry where the pace of change is seen as critical, failing to make such investments and meet consumer demand for the latest technological advances may see industry players lag behind.

We regularly support our clients on corporate venture and venture capital investments to help them identify, structure and secure equity and other investments across the sector.

We offer end-to-end transaction management support for the duration of negotiations, ensuring that we can quickly translate an agreement at a principled commercial level into underlying legal documents.

Supply and distribution agreements

Securing robust long-term supply and distribution contract terms is critical to any business in the sector. We have experience in a wide variety of automotive-related commercial contracts, including a wide-range of supply and distribution agreements.

Our understanding of the legal and regulatory challenges that arise in the context of these agreements, and our familiarity with the documentation, terms and wider market trends (such as the renewed focus on force majeure provisions following the COVID-19 pandemic), enable us to provide support on negotiations in a commercial, efficient and pragmatic manner.

Our corporate/commercial teams leading on contract negotiations work closely with our dispute resolution teams who have extensive experience in supply chain and distribution disputes to ensure that our global experience on contractual interpretation is leveraged for the benefit of our clients.



Goldman Sachs as lead investor in the new issuance of Series B preferred shares of Chinacars (an online portal for automobile consumers)



Grok Ventures on Zoox's \$650 million Series A funding



SoftBank on its US\$250 million Series D and US\$750 million Series F equity funding round investments in GrabTaxi



AB Volvo on its truck assembly and distribution arrangements in Thailand



A leading French automobile parts and components manufacturer on an automobile parts purchase agreement with an international technology solution provider



A UK-based distributor of high value consumer and commercial products with operations in a large number of countries in EMEA, Latin America and East Asia on its procurement of outsourced business services

Dispute Resolution and Product Liability

Dispute resolution

With the automotive industry facing unprecedented disruption, all participants, whether they be OEMs, component manufacturers, distributors, retailers or mobility as a service providers, may find themselves in a range of commercial or regulatory disputes covering all aspects of their business.

With a multi-disciplinary global disputes team of world-leading sector specialists and regional experts, we provide commercial insight and legal advice which is described by Chambers and Partners as a "Dispute resolution powerhouse that consistently tops the rankings across the world".

Bringing together litigators, arbitrators, mediators, advocacy experts, regulatory specialists, and investigators, whatever the challenge or opportunity, we partner with our clients every step in the process.



Altran Engineering in relation to a post-M&A arbitration following Altran's acquisition of a number of automotive engineering sites from the Benteler group over e-mobility projects for MAN



A **Japanese OEM** in a dispute with a major European automotive group in respect of breaches of a product development, manufacture and supply agreement



Volvo Trucks (part of **AB Volvo**) on a product liability and warranty recovery dispute against the manufacturer of defective engine parts

Product liability and insurance

The automotive sector knows all too well the stress of facing major product liability risks and the disputes that can arise in the context of managing such and other risks through insurance.

Our international product liability team assists clients to navigate and manage product liability risk. We advise on regulatory compliance and product safety issues. We partner with our clients to help them manage the initial crisis following major product liability events. We provide tailored advice upon managing product recalls (both national and cross-border), insurance and how to conduct an effective internal investigation.

Our insurance practice has an outstanding reputation in complex, high-profile insurance and reinsurance disputes and advises clients on a range of matters including major claims, resolving coverage disputes, and handling contentious regulator and insolvency matters.



A **global truck manufacturer** in multi-jurisdictional contractual and product liability dispute with a Tier 1 supplier of defective pistons



A **leading global component manufacturer** on recall and product liability issues arising out of the supply of defective engine parts to an automotive business in Europe and the US, and on policy cover under their product liability and recall policy



Wincanton and its insurers in relation to the Scania class action concerning over 800 personal injury claims arising from the alleged negligent cab design of lorries

Supply chain disputes

Supply chain strength and continuity is critical for any business, not least those businesses involved in the complex automotive industry supply chain. Whether suppliers, distributors or OEMs, we help our clients avoid and manage disputes arising in the supply chain of automotive vehicles and parts.

With a deep appreciation of the pressure points within the automotive industry, we can advise on a range of issues that cause disruption to the supply chain, including price disagreements, product quality issues and termination disputes between suppliers and OEMs.

Our dispute resolution team is supported by our global network of sector expertise, ranging from our mining sector team in relation to the extraction and processing of raw materials to our digital law group's experience in smart legal contracts (including blockchain) in supply chain management.



A **major automotive equipment manufacturer** in the context of a dispute with a chain of subcontractors that supplied potentially defective batteries that were then incorporated in the equipment sold to their end client, an OEM



A **major Tier 1 supplier** on its global response to performance failures as a result of COVID 19 shutdowns of plants



A **major Japanese trading company** in successfully defending an ICC arbitration claim brought against it by its joint venture party in connection with the distribution of automobiles

Class actions

A number of automotive industry participants, including OEMs and components suppliers, have experienced class actions including those alleging fraud, violation of contract and warranty and unjust enrichment.

Our specialist class actions teams have a long history of acting for automotive manufacturers and distributors defending against class actions, whether in process or threatened proceedings. We help our clients navigate this complex area of law, successfully resolving or defending class action litigation across multiple jurisdictions.

We have acted in a significant number of the largest and most complex class actions in recent years (such as the Lloyds Bank rights issue class action in the UK and the Johnson & Johnson class action in Australia) and have expert understanding of the relevant court rules in different jurisdictions and the basis on which class actions claims can be challenged.



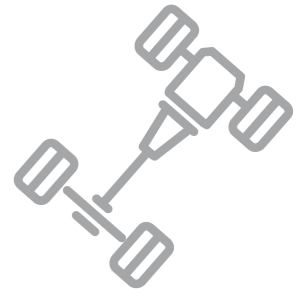
A **leading global OEM** in its defence of a quasi-class action for damage caused by diesel emissions

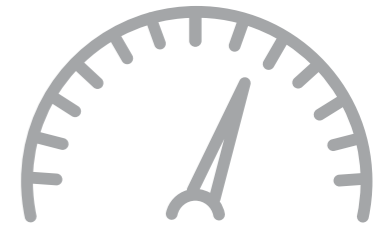


HDI Global on a product liability serial claim in connection with a defective component for the automotive sector



Toyota Motor Corporation Australia in a class action arising from Toyota and Lexus motor vehicles fitted with allegedly defective airbag inflators manufactured by Takata Corporation





Finance and Capital Markets

Trade and export financing and treasury support

To ensure industry participants can thrive in an evolving landscape, it is essential that clients bridge the gap between treasury and law. We provide support on trade and export financing and wider banking, debt and treasury advice to a broad range of clients across their debt teams and wider treasury functions with this commercial aim in mind.

Our holistic approach to corporate debt means that we advise clients across their debt capital structures seeking to ensure they are as efficient and tailored as possible. In doing so we advise on large syndicated bank financings, local floor plan financings and trade loans and capital management facilities, seeking to drive consistency of terms and future-proof capital structure flexibility for our clients. In doing so, we take into account wider market considerations, such as the shift towards sustainable and green financing, with most market participants now considering embedding ESG provisions in their bank financings.

Our tax team also provide an innovative and commercial approach in assisting treasury teams working closely with our finance and corporate transaction teams to support clients both in respect to their debt requirements and wider transactional work.



A Tier 1 supplier on an off-balance sheet export trade receivables factoring arranged by Crédit Agricole Leasing and Factoring



BNP Paribas Fortis and Swedish Export Kredit (SEK) in relation to the arrangement of four export credit facilities (EKN backed) to finance four commercial contracts entered into between the Angolan Ministry of Transport and Angloauto and Auto Sueco (the local importers of Scania and Volvo)



Inchcape on various local trade loan facilities and floor plan financings

Acquisition financing and securitisation

The acquisition and leveraged finance market for the automotive sector has developed quickly in recent years, with financial structures requiring more unusual design with ever more pressures on borrowers and lenders to achieve the necessary return on their investment.

With the need to restructure deals readily and to act quickly and efficiently in often turbulent debt markets, we advise on the full spectrum of debt products namely senior, second-lien, unitranche, mezzanine and PIK debt, bridge-to-bond financings, bank/bond financings, high-yield debt, securitisation take-outs and debt buy-backs.

Our securitisation team has extensive experience advising on facilities to finance or monetise credit assets in the automotive and automotive finance sectors. We advise lending and leasing businesses on their private warehouse facilities, forward flow and portfolio acquisition transactions, working with assets across the UK and EMEA and Australia. We also act for lenders, arrangers and investors in public and private ABS and portfolio acquisition transactions.



Blue Motor Finance, a fintech auto lender, on its warehouse facilities, forward flow and portfolio sale transactions, and the inaugural c.£400 million securitisation, Azure Finance No. 1



Natixis and Société Générale, as co-ordinators and mandated lead arrangers, on the financing of the acquisition by Segula's German subsidiary of R&D assets owned by Opel



Inchcape on all of the financing aspects of its acquisition of Derco, the largest independent automotive distributor in Latin America by volume, including its £600m acquisition financing in the form of a bridge and term loan

Debt and equity capital markets

Due to the need for substantial R&D budgets and capital expenditure, automotive companies may look to the debt and equity capital markets to raise finance.

Our team of debt capital market experts, which comprises of experienced English and US qualified lawyers, advises issuers, managers and investors on these transactions in developed and emerging markets. We provide our clients with high quality, commercially-minded legal advice on high-yield and investment grade bonds, sovereign and state-owned enterprise bond issues, EMTN and GMTN programmes, Eurobonds, exchangeable and convertible bonds, and US and English law private placements.

In respect of equity capital markets, we work with issuers, shareholders and underwriters on equity fundraisings, including all of the major market intermediaries, on the full range of equity and equity-linked transactions (shares, depositary receipts, convertibles and warrants) across global jurisdictions. We are also at the forefront of regulation and practice, and in constant dialogue with regulatory bodies.



CIIC, Deutsche Bank and Merrill Lynch on the HK\$4.6 billion (US\$589 million) offering of H shares of Dongfeng Motor Group Company, in a Hong Kong IPO and a Rule 144A/Regulation S international offering



JP Morgan Securities (Asia Pacific) and China International Capital Corporation as joint global coordinators and joint bookrunners on the HK\$9.98 billion (US\$1.28 billion) global offering and Hong Kong IPO of Sinotruk (Hong Kong), one of the largest heavy truck manufacturers in mainland China



Renault on the maintenance and annual updates of its €7 billion EMTN programme and in relation to the issuance of ¥32.3 billion Samurai bonds listed on the Tokyo Stock Exchange

Restructuring, turnaround and insolvency

In these uncertain times for the automotive industry, it is more important than ever to have trusted, skilful advisers to support you and your business.

Our Restructuring, Turnaround and Insolvency team are a global team of lawyers, banking, litigation and finance experts who collectively have the in-depth knowledge and expertise to work with any business facing restructuring, insolvency or contentious issues with tailored solutions and dedicated advice. Our integrated offering is a particular strength of the firm, allowing us to quickly mobilise highly-skilled, multi-disciplinary and multi-jurisdictional teams whenever and wherever we are needed.

Our experience covers the whole spectrum of corporate distress, from early stages through creditor workouts, debt and equity restructurings, workforce reorganisations, corporate transformation and formal insolvency administration.



Citibank International in relation to the restructuring of KAMAZ, a Russian truck manufacturer



Daewoo Motors on the restructuring and sale of Daewoo Automotive Australia to General Motors Holden



Nanjing Automobile (now part of SAIC) on its acquisition of assets and certain liabilities from the administrators of MG Rover, a British car manufacturer



Technology and Data

Technology

Technology innovation has always been at the heart of the automotive sector. The integration of information technology with operating technology in automobiles, coupled with recent innovations in batteries, connectivity and autonomy, promises a step-change in the sector. Technology is changing the way that vehicles are powered and their capacity for engaging in driving tasks. It is also starting to reshape user interaction and supply chains, and it will impact the planning and functioning of future urban environments.

We have deep and broad experience advising our clients on their technology-driven strategies and the associated development, supply chain, roll-out, collaboration and consolidation of projects and transactions that will drive the next decade and beyond in the automotive sector.

Our experience advising customers and suppliers in the sector across the lifecycle of transformational transactions and projects means that we can add real value to the development, execution and exploitation of technology-driven strategies. We also regularly support our corporate/M&A colleagues in relation to technology investments and acquisitions.



Automotive Holdings Group on a major, complex and high-value transition to a new ERP platform for running its national refrigerated transport and logistics operation, Rand Transport



Bridgestone Corporation on the acquisition of the business and assets relating to, and the grant of an exclusive worldwide licence to the technology of, the iTrack tyre monitoring system from Transense Technologies



RAC in relation to the overhaul of its customer experience management platform, which manages all of RAC's interactions with its members, involving the procurement of a range of software and IT services from a number of third parties (including Microsoft, Deloitte and Ignia) across a number of contract phases

Digital infrastructure

Recent years have seen significant demand for and investment in mobile network infrastructure, 5G roll-out, fibre deployment, IoT devices and data centres (core and edge). This trend will be accelerated by the adoption of CAV technology and associated smart transport infrastructure. In addition, the growing fleet of EVs will require significant investment in charging infrastructure and the associated technology to support dynamic fleet and grid management.

In particular, the future of the automotive industry will require the development and deployment of digital infrastructure on a massive scale to enable mass adoption of CAV technology. This ties automotive sector business cases to the business cases for 5G mobile network roll-out and for significant data and power network investment. We have a market-leading team of technology, infrastructure and energy experts who are very active in shaping and delivering investment in and deployment of this digital infrastructure.



bp pulse on its entry into strategic commercial agreements with a number of OEMs to integrate its EV charging network offering into OEMs' apps and head-up displays



State of Western Australia in relation to its transformational AUS\$3 billion GovNext-ICT project involving a fundamental change to the way in which the Western Australian public sector procures data storage, cloud and telecommunications services



Transport for London on its project to move to a pan-London IT network, to connect stations, ticket machines, corporate locations and data centres

Data

Data has evolved to become a key asset of automotive industry participants. In particular, in the digital economy, the commercial value attached to data has increased dramatically as businesses try to use data to predict and respond to their customers in ways that were not previously possible.

We have extensive experience advising clients on the strategic opportunities and regulatory challenges relating to the digitisation of assets, data analytics and the exploitation of data as a strategic corporate asset. Our work covers the full range of data protection, privacy and associated matters, including advising on data protection, privacy, subject access requests, employee monitoring and surveillance, data breaches, data retention, global data compliance and GDPR.

Our practice comprises specialists from a broad range of areas, meaning that we are able to give advice in a holistic manner and clients are confident that we have the appropriate expertise to advise on any given data protection or privacy matter.



A **leading OEM** on a global group-wide data management and commercialisation project, including advice on the full lifecycle of data collection, aggregation and commercialisation of a diverse data set



An **automotive manufacturer** on data protection issues arising out of the development of a speed and safety monitoring product



Uber on its data protection and general regulatory compliance position in light of various proposed new service lines

Cyber security

Along with constant technological disruptions, cyber security issues also permeate the automotive industry.

With connectivity a cornerstone of the development of CAV technologies, there is a clear need to ensure that the requisite security framework is in place to ensure driver safety as well as the safeguarding of personal data.

The complex supply chain involved in IoT technologies also requires careful management from the security and data perspective. We leverage our experience of managing cyber and data security incidents to advise before-the-event on appropriate contractual provisions to reduce and manage risk.

Our cyber security capability brings together our multi-disciplinary and international teams to advise holistically on issues covering regulation, product liability, contracting, health and safety and incident response.



A **global client** who had fallen victim to an advanced persistent threat intrusion into its networks, perpetrated by a sophisticated nation state actor which had occurred many years earlier without being detected



A **global company** on an incident response in relation to a multinational personal data breach which required consideration of notification and other legal obligations in over 30 countries in a short timescale



A **rail company** in relation to the cyber security aspects of the procurement and roll-out of a digital train control and signalling system

Intellectual Property

Collaborations and licensing

Collaborations and strategic investments in the automotive industry are increasingly commonplace.

The established OEMs are able to look externally to other

high-technology industries for sourcing the relevant technological building blocks. Accordingly, there is a large degree of collaboration between these "traditional" manufacturers and "non-traditional" contributors. This open innovation will include significant IP licensing and technology transfers.

We have a strong track record of advising on complex, cross-border collaborations, as well as IP licenses and technology transfers. We have significant experience in drafting and negotiating a broad range of joint venture agreements, collaboration agreements and R&D agreements, at the heart of which is valuable technology underpinned by IP.



A **leading OEM** on a proposed in-licensing (and licence-back) of technology, know-how and IP from a third party OEM to form a strategic collaboration in respect of a new model of passenger car for a new market



An **engine manufacturer** on a collaboration to develop and commercialise a new car engine technology with an OEM



Tata Motors on concluding the complex technology and patent licensing arrangements in connection with the acquisition of Jaguar and Land Rover from Ford

FRAND and SEPs

There is a proliferation of new patents being filed relating to CAVs and associated safety and communication technologies. Aspects of the technology driving CAVs will be essential to standards for interactivity, communication, safety and security. Patents that relate to this technology will be designated standard-essential patents (**SEPs**) with an associate obligation that proprietors license them on fair, reasonable and non-discriminatory (**FRAND**) terms.

The telecoms industry has provided an example of what can happen in this scenario – a proliferation of licensing disputes and patent litigation. There is also the possibility of non-practising entities and even competitors asserting patent rights to extract value out of licensing the patents and potentially blocking the adoption of competing technologies.

Additionally, SEPs in the telecoms sector (relating to 3G/4G/5G standards) are increasingly likely to be asserted against the automotive sector, as connectivity becomes more important to vehicles of all kinds. The recent SEP dispute between Nokia and Daimler is an example of this but there are likely to be further disputes in the future.

We have significant experience advising on the issues around SEPs, FRAND and associated disputes.



A **mobile phone manufacturer** in relation to international law concerning FRAND declarations, statute of limitations and exhaustion in the context of its dispute with Qualcomm



Thales on actions in Germany for infringement of standard essential patents relating to GSMA standards SGP.02 and SGP.22 in relation to remote SIM provisioning technologies



Sky in relation to FRAND patent infringement issues arising in proceedings against Thomson Broadband UK and Technicolor for breach of contract relating to the supply of defective set-top boxes

Patent, trade secret and trade mark disputes

Technology is critical in the automotive sector and trade secrets play a key role in the development of new technologies. We are increasingly counselling our clients to enforce trade secrets, as the theft or misappropriation of critical information by ex-employees or contractors may expose businesses to the risk of competitors adopting key technologies and short-circuiting the typically long and expensive cycle of R&D.

Insofar as patent rights are concerned, the automotive industry has traditionally been reticent to bring claims for infringement. With the rapidly changing landscape of the automotive industry, and the incorporation of new technologies (especially around EVs), attitudes about enforcement are changing.

We have unique experience in technology disputes involving patents, trade secrets and confidential information and strategies for enforcement.

Protection of IP rights

Automotive industry participants often face challenges to protect their IP rights particularly in the spare part market despite the clear commercial benefits for doing so.

For instance, there are limitations on the ability of OEMs to control the supply and distribution of spare parts through their authorised network and resellers due to the complex regime in the EU concerning the ability to rely upon EU design rights and patents to prevent third parties manufacturing spare parts, and under trade mark and unfair competition law upon the ability of resellers to describe the spare parts as being compatible with or suitable for the branded vehicle.

We have wide experience in advising upon the legitimate boundaries of any enforcement programmes against spare part resellers and have supported numerous clients on managing their IP rights portfolio more generally.



Frazer-Nash in defending the proceedings brought in the High Court by the London Taxi Company (Geely) over the shape of the new electric taxi designed and launched by Frazer-Nash



Honda in judicial proceedings in Italy against infringers of the design of their well-known SH-i motor scooters



Nanjing Automobile (now part of SAIC) in an IP dispute that emerged following its high profile acquisition of MG Rover



Ferrari on an enforcement against sellers of replica kit cars

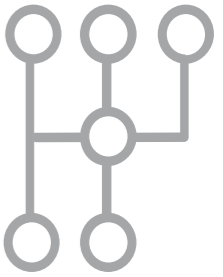


Honda acting as their sole Italian IP counsel, providing assistance across a wide number of activities including trade mark monitoring



Iveco in considering enforcement options against resellers of unauthorised spare parts

For our latest thinking on the importance of a clear IP strategy please see here: <https://www.herbertsmithfreehills.com/latest-thinking/automotive-perspectives-why-ip-strategy-is-now-fundamental>, on standards and essential patents in the automotive industry, including FRAND licensing, please see here: <https://www.herbertsmithfreehills.com/latest-thinking/views-on-an-evolving-automotive-industry-%E2%80%93-standards-and-essential-patents>, and on the use of trade secrets to protect innovation, please see here: <https://www.herbertsmithfreehills.com/latest-thinking/views-on-an-evolving-automotive-industry-using-trade-secrets-to-protect-innovation>



ESG

Environmental issues

The effects of and accountability for climate change are not uniform across the world, with states and regions dealing with different types of threats, contributing to a fragmented coverage of climate and environmental law.

In the automotive industry, innovation frequently precedes changes to the law making it essential that clients continue to develop their environmental strategies to achieve the best fit with this increasingly patchwork nature of regulation.

We advise clients on all aspects of emissions regulations and end-of-life recycling requirements. We also work with regulators and policymakers regarding future changes to environmental-related legislation.

Our global climate change practice supports clients across the full range of regulatory, transactional, project and contentious legal issues.



An **automotive component manufacturer** in connection with the VW emissions investigations



Stemcor with regard to waste regulation concerning end of life vehicles



Various clients on the UK Climate Change Programme including the Renewables Obligation and the trading of ROCs, the UK Emissions Trading Scheme, Climate Change Levy Agreements and Levy Exemption Certificates and the Energy Efficiency Obligation

Business and human rights

Respect for human rights previously remained outside the concern of business and had been seen simply as a corporate social responsibility issue. However, businesses are now catching up amidst a changing legal landscape with new standards, legislation, and regulations at national and international levels and increased public scrutiny for adverse human rights impacts from business operations. Automotive industry participants in particular must not lose sight of the importance of tackling social impacts of their supply chain.

Our global Business and Human Rights practice provides clients with cutting-edge business and human rights advice and cross-border expertise in a wide range of jurisdictions (including high-risk jurisdictions).

We proactively advise clients on how to comply with reporting requirements (including in relation to modern slavery transparency reporting) and integrate human rights with their business activities as a way to identify and mitigate risks (both in their business and supply chain), gain competitive advantage and resolve issues with stakeholders, regulators and law enforcement.



A **confidential client** in relation to the Mining Code and human rights obligations in Guinea



Technology and consumer goods companies in relation to alleged incidents of forced labour/modern slavery in their supply chain in SE Asia



Various confidential clients on updating their human rights policies and their obligations under the UK Modern Slavery Act and on preparing modern slavery transparency statements



Corporate governance

Whilst there are fewer unique developments in the governance aspects of ESG facing the automotive industry, establishing systems, procedures and controls and conducting due diligence on risks within supply chains, manufacturing processes and financial and information systems, are increasingly important. It is critical, therefore, that boards and senior executives understand legal, regulatory and best practice developments in these good governance processes.

Our team comprises governance specialists that combine technical expertise and practical advice on the full spectrum of governance issues. Working with boards, general counsel, company secretarial and legal teams, we draw on our wide-ranging experience to advise on legal and regulatory requirements, emerging trends and market best practice.

In addition, we play an important role influencing governance developments. We liaise with regulators, industry bodies and governments on forthcoming developments and contribute regularly during the drafting and implementation stages of new regulation and legislation, thus ensuring that we are at the forefront of developments.



A **listed European Tier 1 supplier** on corporate governance matters



A **UK FTSE listed automotive company** on a range of corporate governance issues including listing regime and MAR obligations and its share buyback programmes



Automobile contract dealers on the implementation of Compliance Management Systems

Anti-bribery, corruption and sanctions

The hasty implementation and ever-expanding scope of many country-specific anti-bribery, corruption and sanctions regimes continues to raise a myriad of complex issues with automotive industry participants having to be able to prevent, identify and respond to bribery and corruption incidents and sanctions-related concerns effectively, wherever in the world they do business.

Our Global Corporate Crime and Investigations team has extensive experience in conducting internal investigations into corruption (and other criminal) allegations, dealing with law enforcement agencies and regulators, and advising on how to manage public relations, shareholder communications, insurance, employment and other related issues, whilst remaining mindful of the prospect of civil claims. We have also been heavily involved in developing

anti-corruption compliance programmes.

We also have an extensive track record of advising corporates in relation to the ever-expanding scope of UN, EU, US, Australian and Russian country-specific sanctions regimes involving, amongst others, the sanctions regimes imposed against Russia, Iran, Syria, Libya, Cuba, Sudan, Myanmar, North Korea and Zimbabwe.



A **German automotive supplier** on an internal investigation in Germany, Brazil, Colombia and the US into whistle-blower allegations concerning offshore transactions



An **automotive parts manufacturer** on EU/US sanctions regulations imposed in connection with Russia and Ukraine as well as on its proposed participation in a project in Iran, including its sanctions risks



A **leading OEM** on internal investigations and the enforcement of multi-million euro claims in relation to systematic economic crimes by employees, suppliers and subcontractors (national and international); on the arrest of the offenders' properties and the coordination of the termination proceedings; and on representation in criminal law proceedings

Our thinking on the response of the automotive industry to ESG-related scrutiny is available at <https://www.herbertsmithfreehills.com/latest-thinking/views-on-an-evolving-automotive-industry-responding-to-esg-related-scrutiny>.

Competition, Regulation and Trade

Competition law compliance

The automotive industry is increasingly in the regulatory spotlight and has been the subject of a number of high-profile competition investigations in recent years. The risks associated with infringement are significant, including fines, potential damages claims and serious reputational damage.

The issues industry participants face are also increasing with complexity with, for example, questions around the collection of customer data from connected vehicles and data as a potential source of market power already firmly on the radar of competition authorities worldwide. Competition issues also arise in respect of the trend towards increased collaboration, the growing importance of digital platforms and potential use of algorithmic pricing.

Our market-leading team of global competition law experts can assist clients in taking a proactive approach to competition law compliance (including in relation to the sector specific block exemption, EU Regulation 461/2010, as well as navigating and accessing the, sector-relevant battery value chain and hydrogen sector, IPCEIs), highlighting key areas of risk and providing practical advice, along with detailed technical advice in the event specific compliance related issues arise.



Enterprise Rent-a-Car on the competition law aspects of its strategic alliance agreement with Europcar



A **global OEM** on assessing the compliance of its business practices with EU and French competition laws



A **confidential OEM** on antitrust compliance matters as well as advice on unfair competition laws

Merger control

Consolidation within the automotive industry will almost inevitably trigger merger control reviews in one or more jurisdictions. Over 120 jurisdictions worldwide now have merger control regimes, in many cases requiring mandatory notification and prohibiting implementation of a transaction prior to clearance. These rules can also apply to the creation of certain types of joint ventures or strategic alliances.

Where merger control rules are triggered, this can have significant implications for deal documentation and timing. For transactions which potentially give rise to substantive competition concerns, the stakes are even higher: competition regulators may ultimately prohibit a transaction, or only allow it to proceed subject to conditions.

We are highly experienced in multi-jurisdictional merger control assessments and have a wealth of experience in dealing with competition regulators worldwide, drawing on invaluable insights into the review process from former merger officials in our team.



CFAO in relation to merger control clearances in South Africa, Botswana and Namibia on its 74.9% acquisition of Unitrans Motor Holdings



Ningbo Jifeng, a Chinese automotive parts manufacturer, on antitrust and merger control aspects of an acquisition of shares in and a strategic partnership with German competitor Grammer



Tata Motors on the merger control and antitrust aspects of its acquisition of Jaguar and Land Rover from Ford, including securing EU Phase I clearance



CRT-related investigations and litigation

Private enforcement of competition law in national courts is now common in a number of jurisdictions, and multi-million damages claims are a prominent feature of the competition landscape. Infringement decisions involving the automotive industry have already generated a significant number of ongoing damages claims, including "class actions" brought on behalf of large groups of claimants.

Our competition disputes team conducts complex private antitrust litigation matters across multiple jurisdictions, as well as providing expert strategic advice on private enforcement risks and the relationship with the public enforcement process.

Our in-depth knowledge of regulators, courts, policymakers and their workings from former secondees, officials and judges means we are well-equipped to deliver clear, pragmatic and bespoke advice to our clients on all aspects of CRT-related litigation.



A **leading global OEM** on the parallel EU and UK investigations into suspected anti-competitive conduct in relation to the recycling of old or written-off vehicles



Nachi-Fujikoshi Corporation on the European Commission's investigation into the automotive bearings cartel and its settlement agreement with the Commission



Iveco and Fiat Chrysler as European coordinating competition litigation counsel in relation to follow-on damages claims stemming from the EU Commission's settlement decision in *Trucks*, the most high profile competition infringement and follow-on damages cases in Europe

International trade and WTO

The automotive industry is not immune to the ever-increasing regulation of international trade in goods and services.

We have extensive experience advising both companies and sovereign governments on matters across the full spectrum of international trade law, including negotiations of international trade agreements, WTO disputes, economic sanctions, export controls, customs rules and trade defence instruments.

We are also experts in all aspects of EU law aimed at either implementing the EU's international trade obligations or regulating EU import and export flows of goods and services. This means that our trade team benefits from the necessary experience and expertise to provide comprehensive advice to companies operating in and/or exporting to the EU and to help them navigate the intricate network of international trade-related rules, whether defined at international, EU or national level.



A **global exporter** on its repayment of duties procedures before several EU Member State customs authorities on the basis of the newly applicable EU customs rules



A **Japanese automotive manufacturer** on the analysis of legal issues concerning import and export regulations in Indonesia and India



A **number of international companies** on the interpretation and implications of the Trans-Pacific Partnership Agreement and the Comprehensive Economic and Trade Agreement

Our latest thinking on the response of the automotive industry to competition law challenges is available at <https://www.herbertsmithfreehills.com/latest-thinking/views-on-an-evolving-automotive-industry-responding-to-competition-law-challenges>.

People

Hiring, retention, industrial relations, works councils and unions

The threat of OEMs and component manufacturers having to implement restructurings or collective redundancies or face wider industrial relations issues is very real, especially at this time of material industry change brought about by the I.C.E to EV transition.

Effectively navigating statutory regimes for industrial relations, the need for clients to understand the role of works councils and unions, and ensuring flexibility of approach to hiring and retention are also as fundamental to any business strategy as ever.

We advise clients on restructuring projects including liaising with applicable local authorities, enterprise bargaining, job restructuring, revising common law employment contracts, dealing with industrial actions, relocating and redeploying employees and, inevitably, redundancies.

We also partner very closely with our clients' in-house teams and provide reactive, commercially focused and solutions-driven advice to support them with negotiations with works councils and unions.

Disciplinary actions, dismissals and employee litigation

Disciplinary and termination laws can be procedurally complex and the ramifications for failing to follow the correct procedure can be significant.

We assist clients with preparing all necessary documents and advise them on their strategies to minimise costs and the risk of claims from terminated employees.

We also provide support on strategies relating to terminated employees, conducting negotiations for settlement agreements and on internal investigations into matters such as fraud, gender and other forms of discrimination and moral harassment.

Our lawyers are all also qualified to and regularly plead cases before labour tribunals and courts.



A **US automotive parts and components manufacturer** on the employment of several hundred local workers as a part of the establishment of a Sino-Foreign equity joint venture enterprise in China



Ford Motor Company of Australia on the variation of their main staff collective Enterprise Agreement in response to the COVID-19 pandemic



Toyota Australia on the closure of operations in Australia including job restructuring, revision of common law employment documents, relocation and redeployment of employees and redundancies



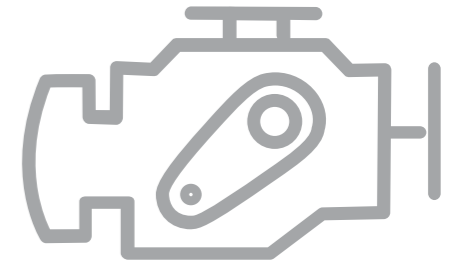
A **major automotive client** in a successful appeal of a Fair Work Commission decision reinstating a former union delegate following a Fair Work Commission finding he had been unfairly dismissed



A **major OEM** in an investigation and subsequent employment litigation involving alleged misconduct by supervisors in a section of their manufacturing plant



Tesla in relation to Employment Tribunal litigation



Work health and safety

Workplace incidents go to the very core of the operations of any automotive market participant.

When a workplace incident or crisis hits, we can provide immediate, pragmatic and commercial advice to help protect our clients' legal interests, while still managing the operational needs of the business.

Advising on all aspects of work health and safety, we guide leading global organisations through all phases of incident management. This includes providing strategic advice on risk management and regulatory compliance, as well as providing a rapid response in the event of significant health and safety incidents causing serious injury and death, which give rise to the potential for large fines and criminal prosecution as well as substantial reputational damage.

We work with clients on all areas of incident response including the conduct of effective internal investigations, assisting when corporate entities and senior managers face high profile and criminal investigations and potential prosecutions, and preparing clients for attendance at inquests.

Pensions and retirement benefits

The automotive industry, like many others, has seen pensions-related issues continue to take centre stage meaning it is more important than ever that our legal advice recognises a client's own business imperatives along with the macro-level challenges the automotive industry faces.

For instance, we recognise that de-risking arrangements are bespoke: one size cannot fit all. We understand therefore that our clients want robust, commercial and solution-orientated advice covering a full range of options and structures and that in providing such advance we innovate to develop solutions to a range of issues.

We can assist with the whole spectrum of pensions issues that might arise, from day-to-day matters to complex, bespoke projects across a range of schemes.

We also work closely with our clients to negotiate, document and implement their preferred de-risking options, whether these be complex, multi-party arrangements or more vanilla structures.



A **global OEM** on potential exposure under health and safety laws following a fatal incident at an assembly plant



Cooper Standard Automotive in relation to the employment law advice for the acquisition of a company, notably in respect of health and safety and working conditions committees



Ford and **GM Holden** for many decades on various employment and health and safety issues and union interaction in respect of the same



Pension Insurance Corporation on the buy-out of the BMW (UK) Operations Supplementary Pension Scheme



Scottish Widows on its £140m bulk annuity transaction insuring the liabilities of the Peugeot Advanced Pension Plan, covering all members of the scheme and securing all benefits



The trustees of a retirement benefit plan for a leading global automotive supplier on a variety of day-to-day pensions advisory matters, including advising on non-statutory transfers (and the appropriate documentation for such transfers) and drafting a deed of amendment to the Plan rules

Energy & Renewables, Mining, Projects, Infrastructure and Smart Cities

Energy & Renewables

The combination of increasing global demand for environmentally-friendly energy sources with the pace of change in clean energy technologies to mitigate the effects of climate change has led to a dynamic environment in the energy and power sectors, with frequent changes in legal and regulatory regimes arising from domestic, regional and global policy making. The renewables boom has already seen unprecedented levels of growth and investment in wind, solar, hydro, marine and bio-fuel assets in both emerging and developed markets, also causing fundamental changes in the operation of the electricity systems and markets.

We consider it fundamental in being able to support our automotive industry clients to integrally understand developments in a decarbonising world and the perspective of energy and power generators, suppliers and operators and their financiers. After all, the CO2 footprint of BEVs is dependent on how green the electricity coming from the grid is.

Having worked with clients across the power and renewables sector and the energy lifecycle on some of the world's largest and most high profile projects and disputes, we understand the intricacies of the sector and are able to share that knowledge with our automotive sector clients.

Our annual **European Energy Handbook** provides an unparalleled extensive report on regulatory, legal and market developments across the European energy sector.

Mining

The mining industry is facing an unprecedented surge in demand for critical EV battery materials, such as lithium, graphite, manganese, nickel and cobalt. In the wake of this heightened demand, mining companies are seeking to rebalance and expand portfolios, either through exploration or M&A to try to ensure sufficient supply.

Mining companies are also now increasingly partnering with OEMs, and other key industry suppliers, to ensure there is sufficient long term financial investment in place to supply these critical materials in a manner which upholds stakeholders' ESG expectations.

We work with clients of all sizes, in many geographical regions and at every stage of mine life. We are keen to share our insights with our clients: to help them to make connections they may not have seen, or to identify new opportunities within their businesses.

Our dedicated global mining team covers every aspect of the industry. We support clients on every aspect of mining, ranging from process plants and infrastructure to business and human rights and other ESG considerations.



BP on the technology arrangements in its joint venture with Rio Tinto, Hydrogen Energy, set up to design plants that manufacture low-carbon hydrogen from fossil fuels



Renault on its 350 MWh solar PPA with Voltalia



Sumitomo Corporation on the acquisition of interests in the Race Bank and the Galloper wind farm projects



CMOC on the acquisition of Freeport's indirect 56% interest in the world-class Tenke Fungurume copper-cobalt mine in DRC for US \$2.65 billion



Sumitomo Metal Mining on the completion of its joint US \$400 million divestment with Vale Canada of a 20% interest in nickel miner PT Vale Indonesia to Indonesian state-owned enterprise MIND-ID



Toyota Tsusho on its AUS \$282 million acquisition of a 15% shareholding in Orocobre, an Australian lithium mining company

Projects

At the outset of any project, whether an EV battery gigafactory, a lithium-hydroxide processing facility or an EV battery recycling plant, careful consideration and planning is essential, with factors such as site location, including proximity to a skilled labour force, relevant raw materials and competing government incentives to encourage investment in that region, key to the overall success and profitability of the project.

Additionally, planning, land-use and other consents for construction need to be considered, alongside acquisition of the land and access rights. The tender and construction phase (including ongoing compliance with building regulations and other permits) can then begin, requiring initial capital injections and often complex financing structures.

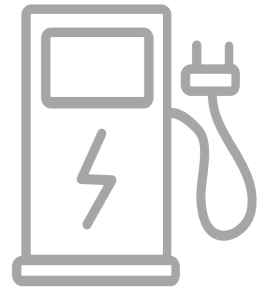
Our projects team can offer support at every stage of the project lifecycle, with their in-depth knowledge and expertise. For each project we can provide a customised multi-disciplinary team and our key personnel have worked together over many years on a number of large-scale projects throughout the world and have proven systems to ensure a streamlined, efficient and economical delivery of our services.

Infrastructure and Smart Cities

Many of our cities are designed around and defined by roads and vehicles. Developments in the automotive industry will not only therefore change the way we travel, but also have the potential to change the face of urban real estate as we know it. In particular, urban charging infrastructure will need to be appropriately located (in city centre street furniture and edge of city mixed-use developments) and sufficiently homogenous (both in terms of compatibility to different models of EV and methods of payment) in order to maximise the benefits and continue to encourage and support the move towards EVs.

Our deep market experience and sector focus gives us an unparalleled understanding of such likely challenges and helps offer clients solutions to issues they may encounter as the next generation of "smart cities" are developed.

Our ability to offer clients cross-collaboration across our practice areas including technology, real estate, planning, environment and disputes provides clients with the efficiency benefits of a clear, consistent one-firm approach.



Keliber Oy in relation to the Keliber lithium project, which involves the development of its lithium mine, mineral processing facilities and a lithium hydroxide processing plant in Finland



Hastings Technology Metals in connection with the development of its Yangibana rare earths project (its products include neodymium, praseodymium, terbium and dysprosium, used in the manufacture of the permanent magnets in EV motors)



Rock Tech Lithium in relation to the construction of a converter facility for battery-grade lithium hydroxide in Brandenburg, Germany



A **confidential client** on the strategic procurement and implementation of a new smart city development in the Kingdom of Saudi Arabia, including advising on contractual arrangements for the lease of a fleet of EVs and installation and maintenance of EV charging stations



A **global automotive manufacturer and an international telecommunications operator** on a smart cities project, including in connection with the telecommunications regulatory requirements for CAVs



NSW Government on all aspects of the master planning and development of the Western Sydney Aerotropolis that will incorporate smart city technologies

Our latest thinking on Smart Cities is available at <https://www.herbertsmithfreehills.com/futurecities>.

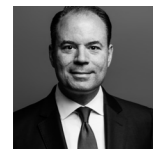
Our global team

Below is a non-exhaustive selection of some of our key practitioners globally across the sector.

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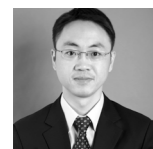
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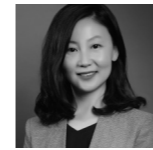


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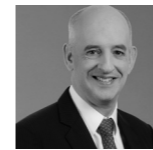
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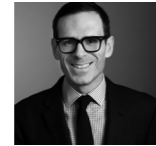


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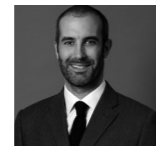
Intellectual Property



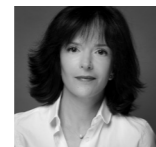
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ESG



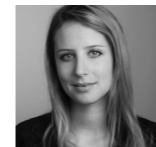
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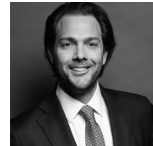
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People

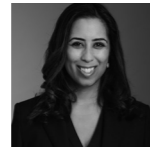


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