



## Up to speed on COVID-19

Automotive Industry Risk Mitigation Action Plan

# Coronavirus piles more pressure and strain on the automotive sector, disrupted supply chains, factory closures and restructuring

The COVID-19 (Coronavirus) outbreak has now been labelled a pandemic by the World Health Organisation (WHO). COVID-19 has put the brakes on 2020 new car production and sales, as it continues to affect supply chains and disrupt manufacturing operations around the world.

The global automotive industry imports more than \$34 billion in motor parts from China annually, which is impacting supply chain and forcing major OEM's around the world to slow or halt production, resource products and re-evaluate revenue.

Some of the key drivers and risk areas management teams and in-house legal teams need to be aware of and address are as follows:

1. Supply Chain Disruption and Force Majeure
2. Factory Shutdown and Workforce Management
3. Restructuring in a crisis

**For more information and global support, please contact our Global Automotive Sector Team:**



**Adam Fisher**  
*Co-Head of Automotive (International)*  
T: +44 121 232 1619  
M: +44 739 325 4305  
adamfisher@eversheds-sutherland.com



**Marco Ferme**  
*Co-Head of Automotive (International)*  
T: +49 89 54565 293  
marcoferme@eversheds-sutherland.com



**Jason S. McCarter**  
*Co-Head of Automotive (US)*  
T: +1 404 853 8050  
M: +1 404 514 0054  
jasonmccarter@eversheds-sutherland.us



**William S. Dudzinsky Jr.**  
*Co-Head of Automotive (US)*  
T: +1 202 383 0106  
M: +1 202 415 1832  
williamdudzinsky@eversheds-sutherland.us

# 1

## Supply Chain Disruption and Force Majeure

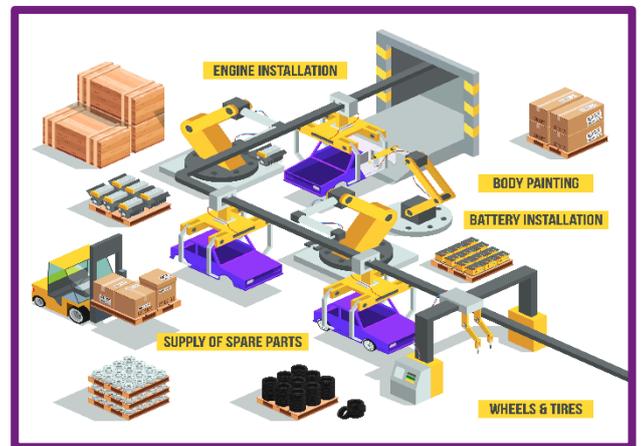
With the outbreak of the coronavirus, automotive suppliers and customers have scrambled to keep the supply chain running. As in other industries, this has suppliers and their counsel reviewing the force majeure clauses in their contracts to determine if these may provide relief if the suppliers fail to meet delivery requirements or are forced to incur additional costs to do so.

### What are the **key challenges** facing companies in the industry?

- The most vulnerable companies are those that rely heavily or solely on factories in China for parts and materials. We are starting to see a rebound this week with factories in China coming back online
- Large OEM's who rarely agree to incur or share unanticipated costs, are notifying all of its suppliers that the obligation to deliver parts are "not affected by the coronavirus pandemic"
- Suppliers facing costs resulting from coronavirus – as they should with costs attributable to tariffs, unanticipated raw material cost escalations
- Companies are reviewing their contractual obligations with suppliers, paying more attention to the possibility that they may attempt to claim force majeure and avoid liability for failing to supply

### What are the **key actions** Boards and General Counsel need to take action on?

- Review all contracts in which force majeure (or frustration) may be a factor – whether used by or against you;
- If you are able to invoke a force majeure clause, consider time limits and notice for doing so;
- Retain all evidence of disruption, including documents proving delay / cancellation;
- If entering into new contracts, draft clauses sufficiently clearly to cover eventualities such as the coronavirus outbreak;
- Consider if there are any alternative ways of performing contractual obligations and take appropriate mitigation steps (whether by you or your counterparty) e.g. we anticipate that companies will seek to rely on material hardship clauses where they exist. Such clauses often temporarily alter a party's contractual obligations in circumstances where they are suffering from material hardship;



As well as checking for contractual protections, you also now need to be giving consideration to your insurance policies and testing what protection they afford to you. Key questions here include whether policies are triggered by the outbreak of COVID-19 and, if so, how much cover is afforded? Here the issue will be how many separate claims can be made, and how do those claims aggregate to use up the available cover.

### What are the **long-term strategies** companies should be considering?

- Review supply chain strategy in terms of location risk across the tiers and reconsidering having isolated supply chains
- Review key contracts and consider what legal protections need to be inserted for future contingency planning
- Consider and invest in smart supply chains that are supported by digital technologies such as 5G, data analytics and artificial intelligence which offer greater visibility and connectivity across the end-to-end value chain

## 2

## Factory Shutdown and Workforce Management

Major OEM's around the world have closed down factories in the US, Europe and across Asia, sending workers home in an effort to help fight the spread of the coronavirus globally. Many factories will continue for several weeks depending on the pandemic situation, national restrictions, supplier constraints and dealer stock requirements.

### What are the key challenges facing companies in the industry?

- Identifying how temporary any drop in demand or supply of materials will be?
- Establishing if there any scope for reducing lay off pay or amending stand down arrangements due to significant financial pressures?
- Understanding how any actions to-date, such as lay off, stand down or dismissals operate within the Government's new Job Retention Scheme
- Anticipating when previous levels, demand or supply of materials will return and whether financially the business can continue with its current workforce levels; if not what levels of redundancies/ specific plant closures are required
- Identifying what core staff you need and establishing if they can work effectively from home
- If there is an increase in demand (for example transportation of food/essentials), how do you temporarily increase the workforce quickly. Either by virtual recruitment exercises or secondment agreements with other employers who are suffering a reduction in demand/redeployment of staff from other areas
- How to operate safe working practices, such as social distancing, whilst there is an increase in production



### What are the key actions Boards, General Counsel and HR Directors need to take action on?

- Understanding contractual entitlements for short term temporary measures to reduce workforce levels, hours, and/or specific payments and re-negotiating those if business needs dictate
- Understanding any contractual terms/policies on enhanced redundancy pay
- Progression of collective and individual consultation processes to implement more long term plans to reduce workforce levels on grounds of redundancy
- Undertaking risk assessments and contingency planning for those key staff who need to continue working

### What are the long-term strategies companies should be considering?

- If redundancies are necessary and then production/demand was to return to previous levels it may be more difficult to recruit staff in the future if everyone seeks to recruit again at the same time
- Will there be a greater expectation that working from home becomes the norm for some staff?

# 3

## Restructuring in a crisis

The global automotive sector is currently showing early symptoms of the coronavirus. Companies in the sector are facing a downturn in productivity and the disruption to their supply chains which continues to both new-car demand, supply and in turn, registrations. The resulting uncertainty for customers and suppliers is likely to lead to financial instability and this can quickly have a negative effect across the entire supply chain.

### What are the **key challenges** facing companies in the industry?

- OEMs hoping suppliers get their plants up and running quickly. Shutdowns, formal or informal, could very likely continue as China starts to “get back online”
- European carmaker operations heavily disrupted.

### What are the **key actions** Boards, General Counsel and HR Directors need to take action on?

- Ringfence your supply network and as a result your own cash management has to be a priority, attention should be given to maintaining a healthy balance sheet and strong cash management
- Reach out to suppliers and discuss with them the plans that they are implementing to protect the supply chain and their own infrastructure. In particular you should consider those suppliers where there are integrated arrangements involving IT, infrastructure and tooling. It is essential to try and avoid disputes which could irreparably harm your supply chain. To the extent that disputes do arise then strategies need to be implemented to avoid ransom positions and to preserve the continuation of supply
- Undertake an operational review of your supply chain to identify key weaknesses and potential solutions
- Contingency planning should start immediately to consider plans to source alternative suppliers or to start resourcing goods elsewhere
- If demand increases, (for example transportation of food/essentials) how to temporarily increase the workforce quickly either by virtual recruitment exercises or secondment agreements with other employers who are suffering a reduction in demand/redeployment of staff from other areas
- How to operate safe working practices, such as social distancing, whilst there is an increase in production



### What are the **long-term strategies** companies should be considering?

The received advice from the WHO and others is that the virus could return in a second wave and could return again next year. As a result this may not be an isolated incident which makes it necessary to start contemplating much longer term plans to preserve the resilience of the supply chain for an extended period. Or what may be the new normal of diversifying key supplies with multiple suppliers to reduce concentration and future pandemic risk

- Accountants should be engaged to complete rolling cashflow forecast for your supplier to understand whether the funding request is sufficient and whether future funding requests will be made. This gives you the opportunity to weigh up the option of supporting supply or resourcing new supply
- Consider plans for partnering with other businesses for the delivery of goods or the production of products through a joint venture or a merger/acquisition of trading divisions. If the supplier is facing a potential insolvency position then it may be more cost effective to acquire the supplier rather than continuing to fund losses for the benefit of all the supplier customers
- Stakeholder management is pivotal to any successful financial restructure and consideration of options such as additional borrowing or funding structures; asset based lending or receivables finance; or access to Government funding initiatives

# Let's talk

## Supply Chain Disruption and Force Majeure



**Adam Fisher**

*Partner, UK*

T: +44 121 232 1619  
M: +44 739 325 4305  
adamfisher@eversheds-sutherland.com



**Helen Amison**

*Senior Associate, UK*

T: +44 121 232 1609  
M: +44 739 325 4364  
helenamison@eversheds-sutherland.com



**Michael Bennett**

*Partner, US*

T: +1 713 927 8710  
michaelbennett@eversheds-sutherland.us



**Matthew Gatewood**

*Partner, US*

T: +1 202 383 0122  
matthewgatewood@eversheds-sutherland.us

## Factory Shutdown and Workforce Management



**Shirley Hall**

*Senior Partner, UK*

T: ++44 191 241 6176  
shirleyhall@eversheds-sutherland.com



**Louise Lightfoot**

*Partner, UK*

T: +44 113 200 4266  
M: +44 792 072 6393  
louiselightfoot@eversheds-sutherland.com



**Scott McLaughlin**

*Partner, US*

+1.713.470.6155  
scottmclaughlin@eversheds-sutherland.us



**Marco Ferme**

*Partner, Germany*

T: +49 89 54565 293  
marcoferme@eversheds-sutherland.com

## Restructuring in a crisis



**Dr. Christian Hilpert**

*Partner, Germany*

T: +49 30 70 01 40 600  
M: +49 30 700140 699  
christianhilpert@eversheds-sutherland.com



**Andrew Jordan**

*Partner, UK*

T: +44 121 232 1149  
andrewjordan@eversheds-sutherland.com



**William S. Dudzinsky Jr.**

*Partner, US*

T: +1 202 383 0106  
M: +1 202 415 1832  
williamdudzinsky@eversheds-sutherland.us

## **eversheds-sutherland.com**

© Eversheds Sutherland 2020. All rights reserved.  
Eversheds Sutherland (International) LLP is part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland.  
For a full description of the structure and a list of offices, please visit

### **Disclaimer**

The information is for guidance purposes only and should not be regarded as a substitute for taking legal advice