DEVELOPING AND INVESTING IN AUTOMOTIVE PRODUCTION IN CHINA

January 16, 2019

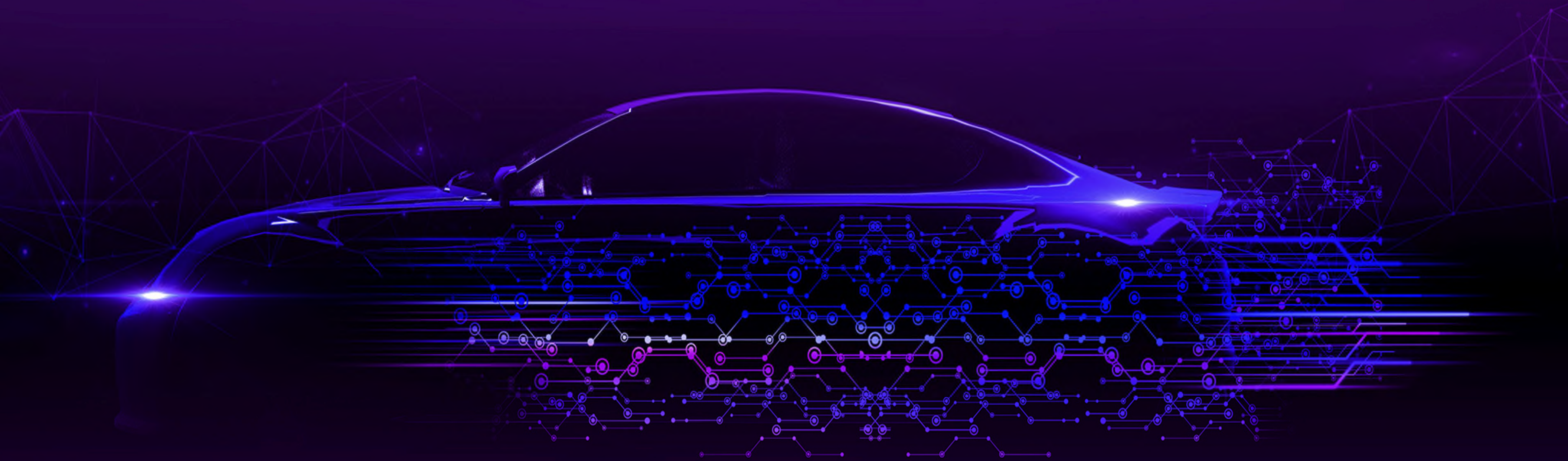
Todd Liao
Christopher Rose
Lesli Ligorner

Morgan Lewis Automotive Hour Webinar Series

Series of automotive industry focused webinars led by members of the Morgan Lewis global automotive team. The 10-part 2019 program is designed to provide a comprehensive overview on a variety of topics related to clients in the automotive industry.

Table of Contents

SECTION 01
INTRODUCTIONS



Presenters

CHRISTOPHER ROSE

Chris has a diverse transactional practice, regularly representing public and privately held companies in a variety of matters. Chris's practice focuses on mergers and acquisitions, initial public offerings, joint ventures, and venture capital and private equity investments.

Chris's private practice is complemented by his prior in-house experience as associate general counsel at Fidelity National Financial. He also previously worked as general counsel and senior vice president of corporate development at CODA Holdings, a maker of electric vehicles, where he led the company's fundraising efforts; negotiated agreements to partner with China's Great Wall Motor Company, Lishen, and Harbin Hafei to develop electric batteries and electric vehicles; and led the acquisition of EnergyCS.

TODD LIAO

Todd works with clients on a wide range of financial transactions and legal issues involving China. He frequently works with multinational corporations on cross-border mergers and acquisitions, foreign direct investment and investment financing, disposal of Sino-foreign joint ventures and assets, and the structuring of complex commercial transactions.

In addition, Todd advises multinational corporations regarding compliance with the FCPA and other regulatory compliance matters including policies and practices, gifts, travel and entertainment policies and violations, third-party due diligence issues, managing and conducting investigations of alleged FCPA violations, whistleblower investigations, and employee disciplinary actions. He also conducts FCPA training in multiple languages.

LESLI LIGORNER

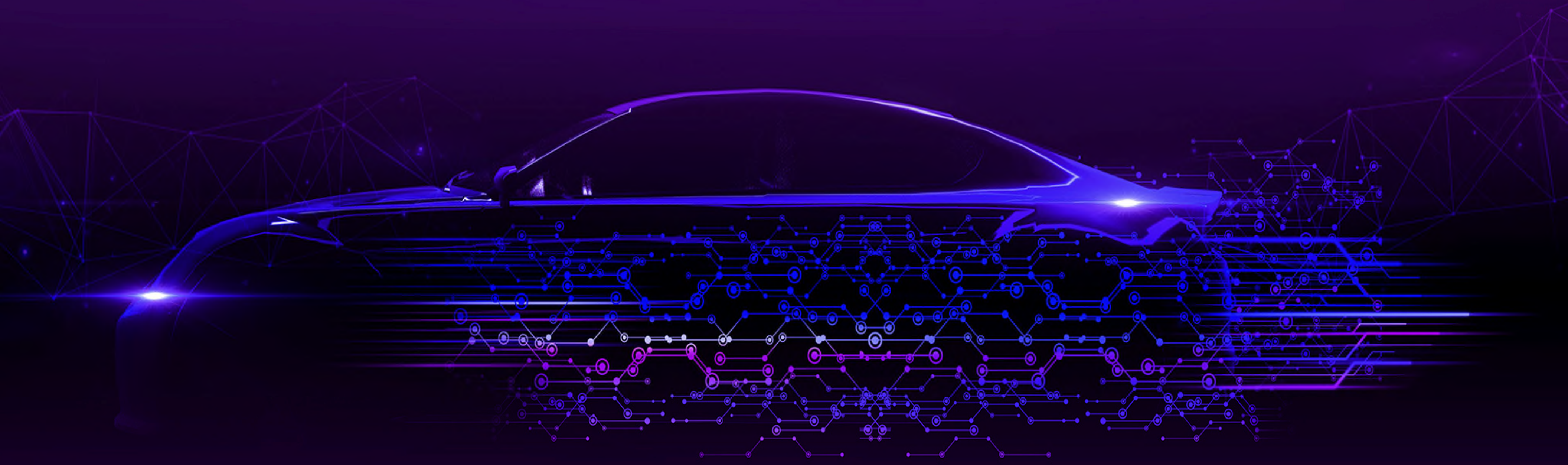
Lesli serves clients on a wide range of labor and employment matters involving hiring and termination, establishment and enforcement of company policies, the Foreign Corrupt Practices Act (FCPA) and local anticorruption compliance, and discrimination and harassment policies, training, and investigations.

She also advises on global mobility and immigration, employment and anticorruption due diligence in mergers and acquisitions, leaves of absence, wage and hour laws, intellectual property protection, and unionization and collective bargaining.

Lesli has been identified as one of the top 100 lawyers in China by *China Business Law Journal* and one of the top 100 global female investigations lawyers by *Global Investigations Review*.

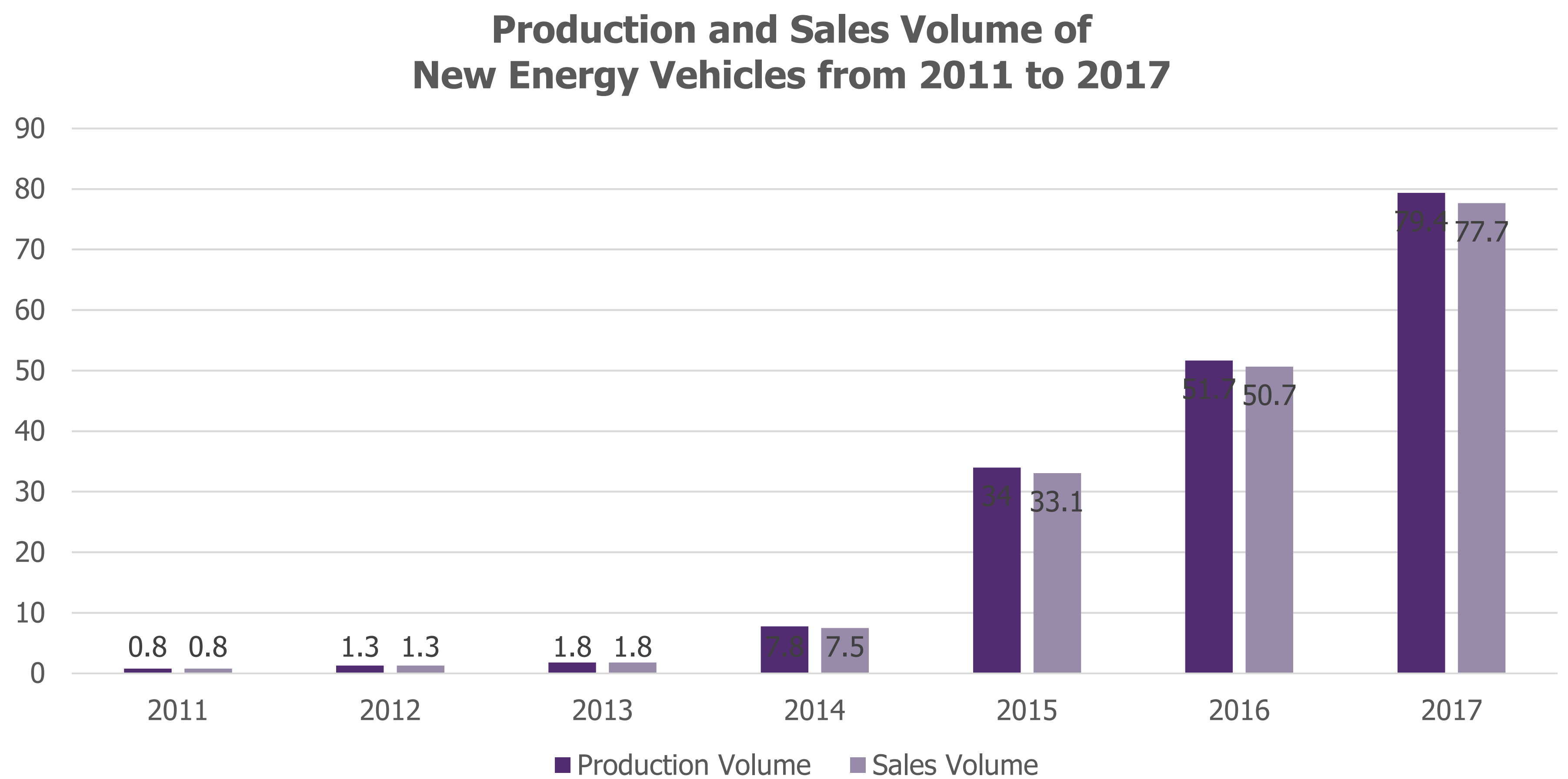
SECTION 02

OVERVIEW



GROWTH OF NEV INDUSTRY IN CHINA

Rapid growth of NEV sales and production in China



Morgan Lewis

Key Market Players in NEV Industry in China

Company Name	Total Sales Volume from January to October in 2018
BYD Company Limited (比亚迪股份有限公司)	132,454 vehicles
Beijing Electric Vehicle Co., Ltd. (北京新能源汽车股份有限公司)	68,492 vehicles
SAIC Motor Corporation Limited (上海汽车集团股份有限公司)	64,562 vehicles
Zhejiang Geely Holding Group (浙江吉利控股集团有限公司)	37,057 vehicles
Chery New Energy Automobile Technology Co., Ltd. (奇瑞新能源汽车技术有限公司)	36,766 vehicles
Anhui Jianghui Automobile Co., Ltd. (安徽江淮汽车集团有限公司)	35,582 vehicles
Zotye Holding Group (众泰控股集团有限公司)	16,649 vehicles
Jiangxi JM New Energy Automobile Co., Ltd. (江西江铃集团新能源汽车有限公司)	16,490 vehicles

EFFORTS TO PROMOTE NEV INDUSTRY IN CHINA

CODA: Born at a Wrong Time?

- CODA was a privately held American company headquartered in Los Angeles, California, that designed, and with its Chinese manufacturing partners made and sold, an EV sedan.

- CODA made its battery packs with Tianjin Lishen Battery Joint Stock Co., Ltd. ("**Tianjin Lishen**") thru a jointly established JV in Tianjin to manufacture battery packs for electric cars, with CODA owning 40% of the JV's equity.

- CODA also had a JV with Hafei Motor Company where it made the glider (an EV without a battery). It also entered into a JV with Great Wall Motors and began to design two other gliders.

- The JVs with Lishen and Hafei existed for about 4 years and sold a few 100 Coda electric cars before CODA filed for bankruptcy in 2013.

- After CODA filed for bankruptcy, the JV was taken over by Tianjin Lishen.

- The JV has been converted into a domestic company wholly owned by Tianjin Lishen, and now its major business is to manufacture batteries for NEV.

Automotive Industry Policy Change: Foreign Investment

❖ OEM (Original Equipment Manufacturer)

- **1994 – 2017: "50% +2" policy**
  - Foreign investors shall establish joint venture companies ("JVs") with a Chinese partner to enter into China's automotive industry, and foreign investors are not allowed to own more than **50%** of the shares in each JV (**50% Ownership Restriction**).
  - One same foreign automotive manufacturer is allowed to establish no more than **two** JVs in China for one same model of OEM (**2 JVs Policy**").
- **2017: 2 JVs Policy abolished for electric vehicle**
  - Effective from July 28, 2017, the 2017 revision of the *Catalogue of Industries for Guidance of Foreign Investment* removed the restriction of 2 JVs for electric vehicle manufacturers.
- **2018: 50% Ownership Restriction removed for NEV**
  - Effective from July 28, 2018, the 2018 revision of the *Special Administrative Measures (Negative List) for entry of Foreign Investment* removed the 50% Ownership Restriction for manufacturers of special purpose vehicles and NEV.
- **2020:** To remove the 50% Ownership Restriction for commercial vehicles
- **2022**: To remove the 50% Ownership Restriction for passengers vehicles and the 2 JVs Policy.

Automotive Industry Policy Change: Foreign Investment (Cont.)

❖ Automobile Parts and Components

- **1994:** 50% Ownership Restriction for engine manufacturers
- **1995:** Chinese state-owned assets shall own controlling or dominant shares in JVs for engine manufacturing (*Catalogue of Industries for Guidance of Foreign Investment*)
- **2004:** 50% Ownership Restriction removed for engine manufacturers
- **2002 - 2004:** Encourage foreign investment in automobile parts and components and no ownership restriction, including engine manufacturers (*Catalogue of Industries for Guidance of Foreign Investment*)
- **2007:** Encourage foreign investment in engine manufacturing and R&D for NEV
  - **Limited to JVs**: manufacture and R&D of automobile electric network, electric power steering, embedded electronic integrated system, power battery (nickel-metal hydride and lithium battery) and control system, integrated motor control system
- **2011 - 2015:** Encourage foreign investment in manufacturing of key parts of NEV
  - **50% Ownership Restriction**: energy-based power batteries (energy density ≥ 110 Wh/kg, cycle life ≥ 2,000 times)
- **2017:** 50% Ownership Restriction removed for automobile electronic system and power battery

Major Laws and Regulations for NEV Industry Development

Name of Document	Authorities	Year	Highlights
Administrative Provisions for Investment in the Automobile Industry	NDRC	2019	The provisions restrict the investment in manufacturing of fuel vehicles, and clarifies the conditions of investment in NEV industry.
Provisional Rules for Recycling of NEV Traction Battery	MIIT, MST, MEP, MOT, AQSIQ, Ministry of Commerce	2018	The rules clarified the responsibilities of key stakeholders of traction battery recycling. OEMs/importers take the primary role for taking back the batteries. Penalty of violation could be as serious as suspension of production/import.
Rules on Parallel Administration of Fuel Consumption Credits and NEV Credits	MIIT, AQSIQ, Ministry of Finance, Ministry of Commerce	2018	The Measures establish a system of administration of fuel consumption credits and NEV credits of passenger vehicle manufacturers and importers in China, which will drive the traditional energy passenger vehicle manufacturers to increase their NEV production or import volume.
Announcement on Exemption of Vehicle Purchase Tax for New-Energy Vehicle	Ministry of Finance, State Administration of Taxation, MIIT, MST	2018	During the period from 1 January 2018 to 31 December 2020, vehicle purchase tax shall be exempted for purchase of NEV in accordance with the Catalogue of NEV Models Exempt from Vehicle Purchase Tax ("Catalogue"). The conditions for adding NEV Models into the Catalogue are also provided.
Administrative Provisions on the Access for New-Energy Vehicle Manufacturers and Products	Ministry of Industry and Information Technology (MIIT)	2017	It provides definition, clarification and conditions of entry of the NEV and list out requirements on the manufacturing ability of NEV manufacturer
Notice regarding Fiscal Subsidy Policy for Promotion and Application of New-Energy Vehicle during 2016 - 2020	MIIT, NDRC, Ministry of Finance, MST	2015	It provides subsidy standards for 2016 to 2020. The subsidy will decrease gradually and will be 40% of the 2016 subsidy level in 2020. It also provides that the total amount of local fiscal subsidies shall not exceed 50% of national fiscal subsidies per vehicle.
Administrative Provisions on Newly-established Pure Electric Passenger Vehicle Enterprises	MIIT, NDRC	2015	It provides requirement on the R&D ability and manufacturing ability on the investor of newly-established Pure Electric Passenger Vehicle Enterprises
Policy on the Development of the Automotive Industry	MIIT、NDRC	2009	It encourages the NEV industry development and provides guidance regarding automotive industry development.

Fiscal Subsidies for NEV: Rules and Policies

NEV Subsidies Trend

- At national level: DECLINE
  - *Notice regarding Fiscal Subsidy Policy for Promotion and Application of New Energy Automobiles during 2016 – 2020*: 2017 and 2018 subsidies will be 80% of the 2016 standard. And 2019 and 2020 subsidies will be 60% of the 2016 standard
  - *Notice on Adjusting and Improving the Financial Subsidy Policy for the Promotion and Application of New Energy Vehicles:* NEVs with ranges of less than 150km would no longer be eligible for subsidies.
- At local level: DECLINE

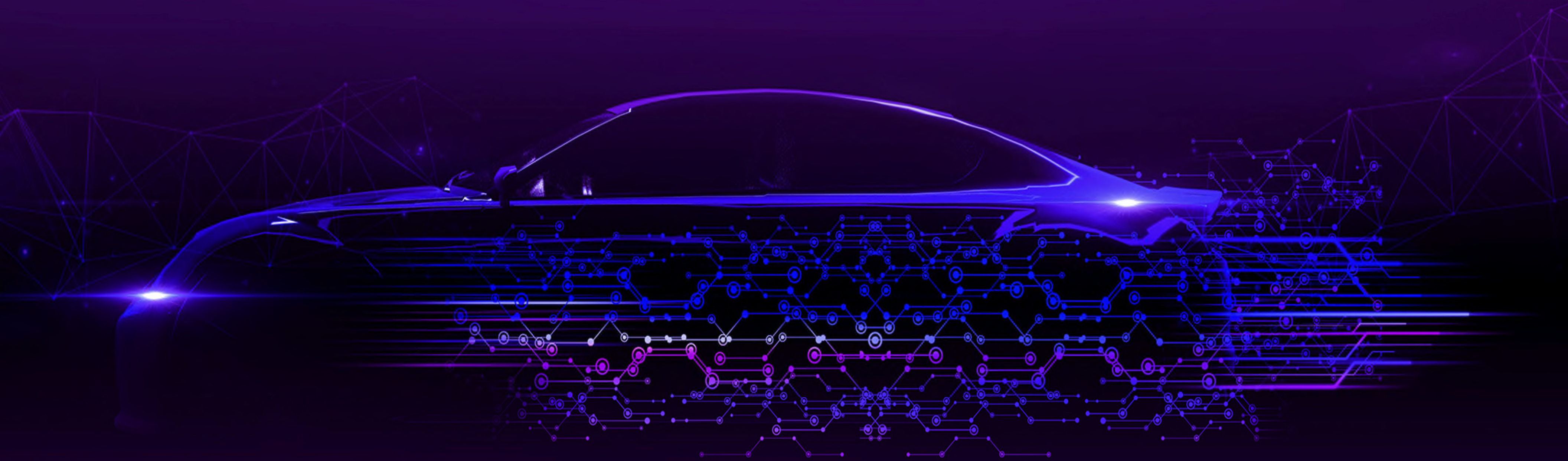
Chinese government pushes automakers to innovate rather than rely on fiscal policy to spur demand for alternative-energy cars.

Comparison of Subsidies for New Energy Passenger Vehicles in 2017 and 2018

Type	Driving Range (km)	Subsidies in 2017	Subsidies in 2018	Reduction
BEV	100≤R<150	2	0	--
	150≤R<200	3.6	1.5	-58.3%
	200≤R<250		2.4	-33.3%
	250≤R<300	4.4	3.4	-22.7%
	300≤R<400		4.5	2.3%
	R≥400		5	13.6%
PHEV	R≥50	2.4	2.2	-8.3%

SECTION 03

FOREIGN INVESTMENT IN CHINA



Foreign Investment in China: Investment Vehicles

1. Joint Venture ("JV")

- Jointly owned by Chinese and foreign investors
- Limited liability company or joint stock limited company
- Equity Joint Venture and Cooperative Joint Venture
- Currently JV is the major investment vehicle for foreign investment in automotive industry due to the 50% Ownership Restriction. For example, BMW and Brilliance Auto, SAIC and GM, GAC Group and Honda, etc.
- Different roles of investors:
  - Foreign investors to provide technology and capital, and control research and development, and production;
  - Chinese investors to provide capital, land, sales and marketing channel, assistance in acquiring government support.
- Special rules and regulations may apply to establishment, operation, corporate governance of JVs. E.g., board is the highest authority of the JV.
- Key concerns: wars with Chinese investors over control and management; potential leakage of confidential information; cultivation of Chinese competitors in the industry.

Foreign Investment in China: Investment Vehicles (Cont.)

2. Wholly Foreign-owned Enterprise ("WFOE")

- Wholly owned by one or more foreign investors.
- Limited liability company or joint stock limited company.
- WFOE became available for foreign investment in NEV and special purpose vehicle since June 2018. The JV restrictions for other automobiles will be gradually released until a full open-up in 2022.
- Special rules and regulations may apply to establishment, operation, corporate governance of WFOE.
- Advantages over JV: Controlled and managed by foreign investors; better protection for confidential information
- Key concerns: Requiring efforts to establish local sales and marketing channel for newly established WFOEs; government relationship and support.
- New WFOE vs. conversion of existing JV to WFOE

Foreign Investment in China: Procedures for WFOE or JV Incorporation

Step 1: *Name Pre-approval with local counterpart of the State Administration for Market Regulation ("SAMR")*

- A company in China must register a name in Chinese.
- After confirming the availability of the proposed company name, local counterpart of SAMR will issue a name pre-approval. The pre-approval allows investor to reserve the registered name for a period of 6 months, during which investors shall complete company registration with the SAMR (see step 2).

Step 2: *Company registration with the local counterpart of SAMR*

- Articles of association (by laws of the Chinese companies governing corporate governance and key aspects of the company)
- Registered capital and total investment
- Other key information / documents required for company registration: legal address (leased or self-owned), business scope, board and other senior managers, a
- Local SAMR will issue a business license for the company upon completion of step 2, which indicates that this company is legally established.

Foreign Investment in China: Procedures for WFOE or JV Incorporation

Step 3: ***Approval from or filing with the local counterpart of the Ministry of Commerce (“MOFCOM”)***

- Filing with local MOFCOM for establishment of WFOE or JV manufacturing NEV or special purpose vehicles after step 2.
- Please note that approval of local MOFCOM is required before SAMR registration if the WFOE or JV is established for manufacturing commercial automobiles or passenger automobiles that are not NEV.

Step 4: ***Post-establishment procedures***

- Engraving of company chop, legal representative name chop, etc.;
- Tax registration;
- Registration of customs declaration (if applicable);
- Foreign exchange registration;
- Bank account opening, etc.

Foreign Investment in China: Other General Issues

Capital Contribution

- Form: Cash, in-kind and intellectual property rights.
- In kind contribution: land, factory building, equipment and raw materials, etc.
- IP rights: Technology Transfer vs Technology License
- Registered capital and total investment requirement:
  - Registered capital for special purpose automobile manufacturers shall be no less than RMB20 million.
  - Total investment amount for new automobile manufacture companies to be established shall be no less than RMB2 billion, but new energy passenger car manufacture projects are not subject to this restriction.

Environment Assessment Review

- Company has to complete environment impact review before it commences production if it involves construction of factory buildings, or manufacturing.

Land grant and bidding process

- All lands are owned by the country.
- Company could go through special bidding process and pay land grant premiums to get the right to use the land (50 years for industrial use)

Employment and hiring policy

- No at-will employment in China.

Special Approvals/Flings: Project Investment

- New OEM investment projects shall be filed with the provincial level counterpart of the National Development and Reform Commission ("**NDRC**")

- Investment in automobile parts and components manufacturing (such as engines, power batteries and fuel cells, etc.) shall be filed with district level or city level of the NDRC.

- According to the NDRC rules, establishment of NEV manufacture is subject to certain specific requirements:
  - Foreign investor qualifications:
    - Foreign investor should own the IP rights in the NEV or NEV parts;
    - Foreign investor should have sold and registered more than 30,000 new energy passenger automobiles or more than 3,000 new energy commercial automobiles accumulatively in the last two years; or the sales volume of new energy automobiles in the last two years is more than RMB3 billion accumulatively.
  - Scale of production: No less than 100,000 for new energy passenger car manufacturer; and no less than 5,000 for new energy commercial automobile manufacturer.

Special Approvals / Filings: Automobile Manufacture Enterprise

- Manufacturer of road automobiles and new energy automobiles shall apply a **Road Automobile Manufacturer License** from the Ministry of Industry and Information Technology ("**MIIT**")

- Requirements:
  - The applicant shall comply with relevant laws, regulations, rules and automotive development policies and macro-control policies

  - The applicant should have completed project investment filing procedure with NDRC for the newly established automobile manufacture company.

  - The applicant shall have the design and development capability, production capacity, capacity to ensure the conformity of production and capability to guarantee after-sale services and product safety, all of which are required for new energy automobiles manufacturer.

  - The NEV applicant shall also comply with requirements for traditional automobiles manufacturer.

Special Approvals / Filings: Entry of Automobile Product

- After it obtains the Road Automobile Manufacture License, manufacturer of road automobiles (including new energy automobiles) shall apply a **Road Automobile License** from the MIIT for it automobiles to be sold

- Special Requirements for NEV
  - The NEV manufacturer shall comply with relevant laws, regulations and rules.
  - The NEV shall comply with *the Special Testing Items for NEV and Relevant Standards* published by MIIT as well as relevant standards for traditional automotive products under the same category.
  - The NEV shall pass the inspection conducted by a state-recognized testing agency.
  - The NEV shall comply with the safety and technical requirements specified by MIIT.

Special Approvals / Filings: China Compulsory Certification

- The CCC mark is a compulsory mark for many products imported, sold or used in the Chinese market, including Chinese manufactured automobiles and automotive products.

- Competent Authorities
  - CCC Mark is administered by Certification and Accreditation Administration (CNCA)
  - The China Quality Certification Center (CQC) is designated by CNCA to process CCC mark applications and defines the products that need CCC
  - China Certification Centre for Automotive Products (CCAP) is also responsible for CCC mark of products in the automotive area

- Practical Problems

  Although the CCC Mark's only purpose is to ensure compliance of products with the Chinese product standards, many companies are worried that their IP rights or trade secrets might be infringed during the CCC certification. Company was especially troubled by the following steps:
  - The certification requires provision of comprehensive product information
  - Products will be tested in an accredited test laboratory in China
  - Chinese inspectors will do factory audit

Special Requirements for Automotive Manufacturing

Export License

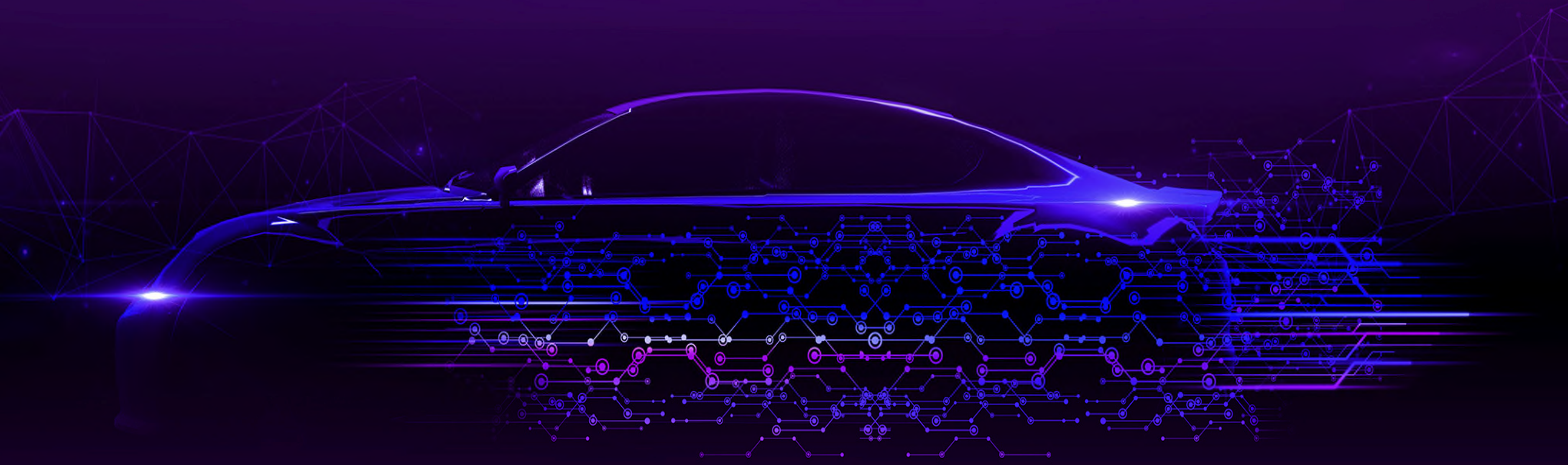
- *Catalogue of Goods Subject to Export License Administration for 2019 (《出口许可证管理货物目录》)*

  Export License is required for export of automobiles (including complete knock-down kits).

- The company that exports automobiles shall also be subject to **Foreign Trade Operator Filing**.

SECTION 04

TECHNOLOGY TRANSFERS



Technology Import and Export

- Technology transfer into and out of China is subject to PRC Law.
  - Key laws and regulations:
    - PRC Contract Law;
    - Administrative Regulations on Technology Import and Export (2011);
    - Measures for the Administration of Registration of the Contracts for Import or export of Technologies（2009）
  - Broad coverage:
    - Regulate acts of transferring technology from outside of China into China or vice versa by way of trade, investment, or economic and technical cooperation.
    - Such acts include assignment of the patent right, assignment of the patent application right, licensing for patent exploitation, assignment of technical secrets and technical services, and transfer of technology by other means.
  - Trademark and copyright license or assignment is subject to different rules.
- Category administration
  - Technologies prohibited for import/export;
  - Technologies restricted for import/export;
    - ➢ Import / export is subject to license by local counterpart of the Ministry of Commerce
  - Technologies allowed for import/export:
    - ➢ No license is required for the import/export;
    - ➢ However, transfer agreement/license agreement/joint development agreement shall be filed with local counterpart of the Ministry of Commerce. For tax payment purpose, these agreement should also be filed with local tax authority.
    - ➢ While the filing is not mandatory, local banks may request for the filing receipts before they agree to process foreign exchange conversion / payment in respect to such agreements.
    - ➢ The filing receipts may also be required to complete customs formalities if any products will be imported or exported according to such agreements.
    - ➢ Practices vary in different cities.

Technology Import and Export: Key issues

- Be careful with restrictive clauses in the license agreement

  Example: "The Transferor should support the negotiation of the Transferee with the suppliers regarding the supply of products…". It might have violated the following mandatory requirements:

  - Transferor shall not require the receiving party to accept any additional condition unnecessary for the technology import, including buying any unnecessary technology, raw material, product, equipment or service;
  - Transferor shall not unduly restrict the receiving party from purchasing raw material, parts and components, products or equipment from other channels or sources.

Technology Import and Export: Key issues

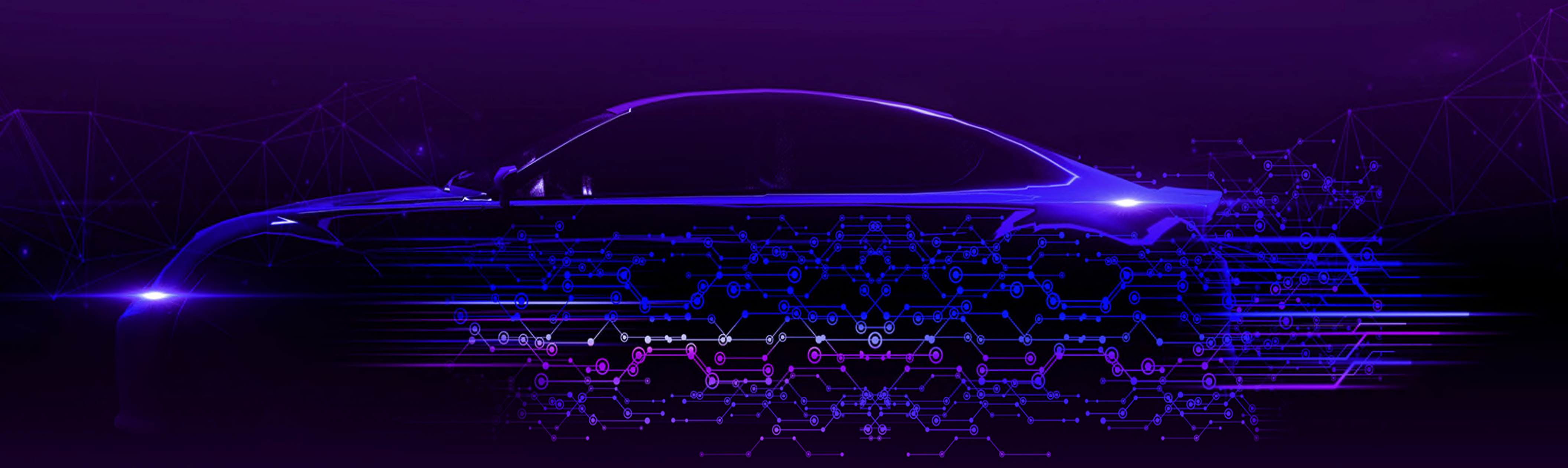
- Ownership in Improvements
  - An achievement made in improving the technology concerned within the term of the technology transfer agreement belongs to the party making the improvement.
  - A technology licensor may not demand to assign or license back the improvements to the licensor without fair compensation.
  - If there would be any potential improvement to the intended technology, the Transferor may consider adding express provisions such as
    - ✓ the licensee shall notify the licensor before making any modifications, provide details of improvements to the Transferor, etc.
    - ✓ The licensor shall have the right to get ownership or license right to the improvements with fair compensation to the licensee.

Technology Import and Export: Abuse of dominant market positions based on IP

- The PRC Anti-Monopoly Law ("AML") prohibits a business operator from abusing his intellectual property rights in order to eliminate or restrict competition.
- The PRC Contract Law provides that any technology contract that illegally monopolizes technology, impedes technological progress or infringes technological achievements of others is void.
- What would amount to abusing IP rights?
  - Organizations in dominant market positions based on their IP rights (e.g. the ability to control the price or quantity of goods or other trade conditions in the relevant market) shall not include restrictive clauses in license agreements, such as requirement of assignment or license without fair consideration.
  - Qualcomm Case
    - Pay fees for a technology which patent term has expired;
    - License back without fair consideration;
    - Tie-in sale

SECTION 05

OTHER COMPLIANCE ISSUES



Product Quality

Relevant Laws and Regulations

- Administrative Regulations on the Recall of Defective Automotive Products
- Administrative Regulations on Compulsory Product Certification

Recommendations

- Review and determine whether products quality management system has been established;
- Review and determine whether products strictly complies with national standards and industrial standards in the process of manufacturing;
- Review and determine whether products have passed quality management system verifications, including ISO 9001:2008（SGS verification) and ISO/TS 16949:2009（SGS verification), and whether the verification scope covers the whole process of manufacturing;
- Review and determine whether there are any exposed or reported products quality and safety issues, etc.

Anti-Monopoly

Price Monopoly Agreement is prohibited.

- *Audi case* - Hubei Price Bureau fined Faw-volkswagen Marketing Co. Ltd. RMB 248.58 million and its eight sub-distributors in Hubei province were fined RMB 29.96 million.

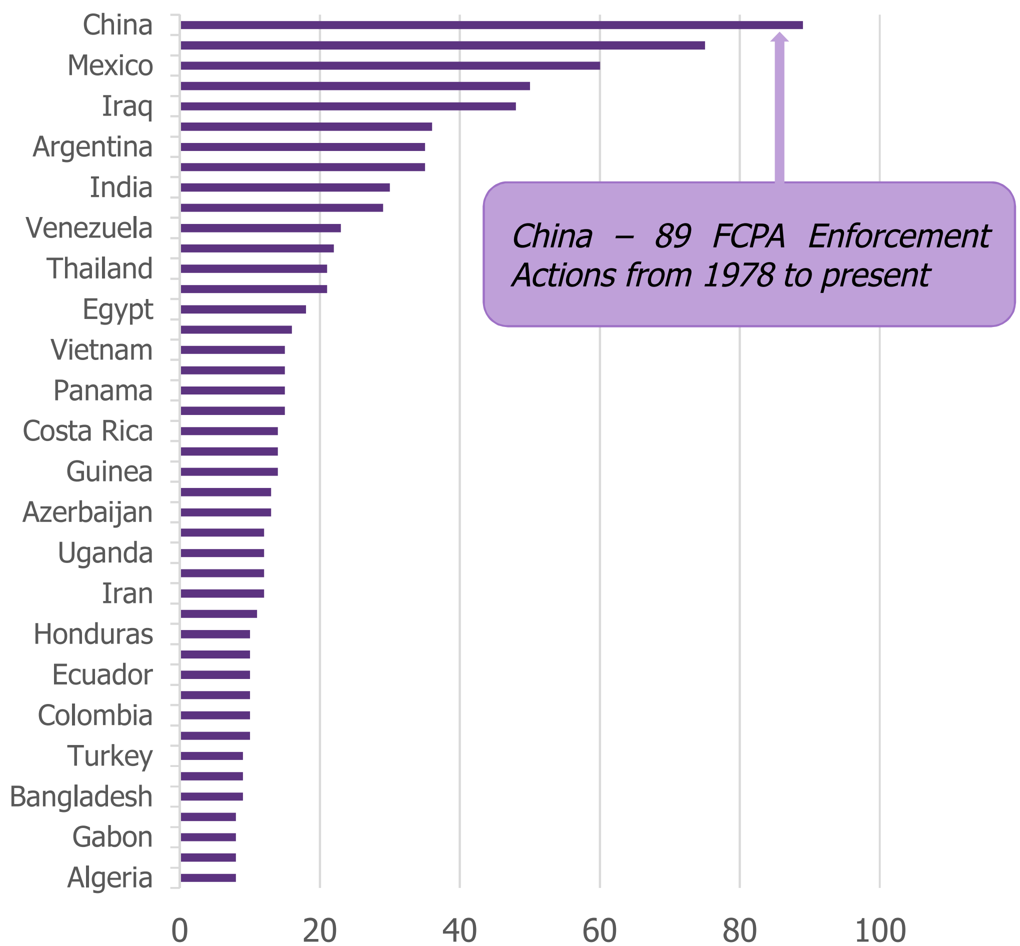
- *Chrysler case* - Shanghai Price Bureau made a penalty decision on Chrysler (China) Automobile Sales Co., Ltd. and its three distributors in Shanghai with Chrysler was fined RMB 31.682 million and its three distributors were fined a combined amount 2.1421 million.

Concentration of Operators Review

- *Administrative Provisions on Investment in the Automobile Industry* (effective on 10 Jan 2019) - Anti-monopoly review is required for major automobile investment projects of new establishment, mergers and acquisitions, and equity changes.

- *Acquisition of Delphi by General Motor case* - MOFCOM ruled that General Motors' acquisition of some units of Delphi, the bankrupt US car parts maker, would restrict competition on the mainland. It slapped on several conditions, including a ban on exchanging trade secrets on Delphi's other Chinese customers.

Anti-Bribery and Anti-Corruption – Overview of FCPA Enforcement in Automobile Industry



- China remains the source of the largest number of FCPA enforcement actions in the past decade.
- The Automobile Industry is one of the key industries under FCPA scrutiny, notable sanctions include:
  - Volvo, $7 million
  - Fiat, $17.8 million
  - Daimler, $185 million

Morgan Lewis

Case Study - Daimler

Between 1998 and 2008, Daimler AG and 3 of its subsidiaries made payments worth tens of millions of dollars to foreign officials in at least 22 countries, including China, to secure government contracts for the purchase of Daimler vehicles.

The payments were made through a variety of means, including corporate ledger accounts called “third-party accounts”, corporate cash desks, offshore bank accounts, deceptive pricing arrangements, and third-party intermediaries.

Charges against Daimler AG and it subsidiaries:

- Violating the anti-bribery, internal controls, and books and records provisions of the FCPA;
- Daimler AG and its Chinese subsidiary entered into a DPA with the DOJ;
- $93.6 million in criminal penalties;
- Daimler AG’s Chinese subsidiary charged with making over $5.6 million in improper payments to Chinese government officials, including employees of SOEs;
- Settlement with SEC - $91.4 million in disgorgement.

Overview –
Risks Under China's Anti-bribery Laws

- Commercial bribery:
  - In 2010 a Japanese auto manufacturer was fined in China for allegedly bribing car dealers to boost revenue.
  - In 2010, the Company's Chinese auto finance unit was fined by the local authority in Hangzhou for allegedly offering "rebates" to 3 dealers to have customers opt for loans provided by the Toyota unit, rather than from local banks.
  - It was reported that the unit had paid a total sum of RMB 70,640.99 ($10,500) of rebates to the three dealers between 8/2008 to 4/2010, and it had secured a net profit of RMB 426,352.33 ($63,300) by extending consumer loans through the 3 dealers. The interest rates under Toyota's consumer loan ranged from 10 to 13%, which was much higher than the rates offered by local Chinese banks (about 4%).
  - The unit was reportedly fined RMB 140,000 ($20,850) and all net profit was confiscated.

Overview –
Risks Under China's Anti-bribery Laws

- Observation:
  - The new PRC Anti-unfair competition Law (amended in 2017, the "AUCL") reinforced the prohibition of providing "bribery" to any person who can influence a transaction, such as the car dealers in this case, in order to secure business or competitive advantage.
  - "Commission" or "rebates" are not illegal *per se*, provided they are transparently, well-documented and reasonable in nature and amount.
  - They should not be paid for the purposes of impairing the choices of end customers, which may exactly run afoul of the AUCL.

Recommendations for Compliance

- Maintain meaningful due diligence and oversight in managing third party relationships, including JV partners.
  - Understand third parties' business models, and assessing their risk profile;
  - Strengthen oversight on their dealings with local governments and state-owned entities.
- Reinforce your compliance program with tone at the top, middle and "sides".
  - Clearly articulated internal policy against corruption and disciplinary measures;
  - Responsiveness to red-flag issues and whistleblower reports;
  - Periodic assessment of the program's efficacy and continuous improvement;
  - Regular compliance trainings to management, employees and external third parties.

Recommendations for Compliance

- Enhance internal review of expenses in terms of genuineness, reasonableness, and transparency.
- Seek contractual protections by including anti-corruption warranties, audit rights, compliance certifications, and indemnity and termination clauses.
- Review incentive schemes with third parties carefully for anti-competitive effects and seek legal advice.

Questions?

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Almaty	Dallas	London	Paris	Shanghai*
Astana	Dubai	Los Angeles	Philadelphia	Silicon Valley
Beijing*	Frankfurt	Miami	Pittsburgh	Singapore
Boston	Hartford	Moscow	Princeton	Tokyo
Brussels	Hong Kong*	New York	San Francisco	Washington, DC
Chicago	Houston	Orange County	Santa Monica	Wilmington

Morgan Lewis

*Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan Lewis operates through Morgan, Lewis & Bockius, which is a separate Hong Kong general partnership registered with The Law Society of Hong Kong as a registered foreign law firm operating in Association with Luk & Partners.

THANK YOU