

Bird & Bird

Our Infrastructure and Rail capabilities

2022



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Our leading Infrastructure team

With the beginning of the new decade, megatrends such as new mobility concepts, sustainability and technology transformation increasingly continue to lead to new legal and regulatory challenges in major infrastructure projects.

In addition, COVID-19 led to additional attention to infrastructure needs. These developments are offering opportunities for the next wave of big investments supported by the public sector, sponsors and financial institutions.

Whether you are an operator, a public entity, a private company or a financier, our dedicated infrastructure projects team will guide you through the changing market environment. We combine extensive experience across the full range of traditional, smart and technology-driven projects with technical know-how in the most critical infrastructure sectors to help you achieve successful outcomes on time and budget.

All-around infrastructure projects advice

Your project runs smoothest when all legal and regulatory aspects of its lifecycle are duly covered and managed. With experts in all key areas of law, we are a one-stop-shop to support you at every stage of your infrastructure projects, from the planning and development to the commissioning, funding and delivering stages. We collaborate both across our international network and with other professional advisers of all disciplines to ensure you have the necessary skills at your disposal. Our expert team will make sure that your projects:

- are planned and structured correctly from a corporate law, bankability and investment perspective;
- obtain official permits and approvals;
- meet all the regulatory requirements of the affected industries;
- are guided through the procurement process;
- are protected against legal risks covered in contracts;

- reflect the requirements of bank and non-bank lenders including sustainability and ESG goals;
- take account of the political, competition and state aid framework;
- have no potential for significant consequences where there is a late delivery or a post-completion defect;
- fulfil post-completion operation and maintenance requirements.

Guiding through the transformation by technology

Technology transforms our clients' businesses in all our key sectors, whether linked with energy, telecommunications, transport, defence or other. External events like the COVID-19 pandemic can accelerate the transformation even further. We draw on our expertise in these areas for rail infrastructure as well.

Properly utilised and integrated technology is the key to the success of many rail infrastructure projects. We help both traditional players in traditional sectors and new entrants through the changing landscape of such sectors as well as in new digital and smart infrastructure projects. If you are planning to introduce digital products or need to manage a large amount of data, our leading experts in data and technology can help you integrate the best technical solutions as your project progresses.

Our experts can assist on the project development and project finance stages to close rail infrastructure deals across continents. Moreover, our deep knowledge of the banking system together with our connections in the market may help in finding the right financial structure for the deal taking into account all the opportunities offered by the financial markets.

Our global team of experts

Our Infrastructure Group has exceptional experience of helping those involved in major projects to achieve successful outcomes.

We draw on our experience to define the new ways of working we believe are required to successfully and sustainably deliver major rail projects. Our success using these new approaches, and overwhelmingly positive feedback from clients, suggests they are extremely effective.

Our specialist lawyers, with real estate, construction, procurement, permitting, regulatory and commercial experience, have unparalleled technical knowledge and an ability to think creatively about clients' solutions.

We work collaboratively as a team across our office network as well as with other professional advisers of all disciplines to bring the necessary skills to advise our clients on major projects which:

- comprise technically complex engineering;
- require creative procurement solutions;
- work within the regulatory requirements of the affected industries;
- take due account of the political, competition and state aid framework;
- have the potential for significant consequences where there is late delivery or a post-completion defect; and/or
- have post-completion operation and maintenance requirements.

All of these matters are critically important to any major infrastructure project, including rail, and we are happy to help you.

We were delighted to be recognised for our strength in infrastructure at The Lawyer Awards 2021 by winning the Energy & Infrastructure Team of the Year Award.



Our expertise in Rail

Infrastructure expertise

The changing needs of the railway sector globally demand fresh perspectives in how it operates both internally and with its suppliers, customers and advisors. New physical infrastructure and rolling stock is part of the solution, but the greater part will come from innovation and technology.

Our rail sector group brings together our global experience advising industry participants on diverse mandates including financing of rolling stock and related infrastructure, M&A, real estate, commercial and outsourcing, IP, regulatory, planning and environment, dispute resolution.

We work with lessors, train operating companies, manufacturers, project sponsors, funders and other investors, as well as public bodies. As a result, we bring a measured and commercial approach to their transactions.

We are particularly active in rail project financing - acting for funders or sponsors - and we are familiar with all transaction types in the sector, including hybrid PPP/asset finance, private or public bonds and structured debt finance.

Looking to the future, our long-standing rail sector experience, combined with our focus on technology and innovation in the digital world means we are well placed to guide you through the challenges and opportunities posed by technology and digitalisation of the railway.

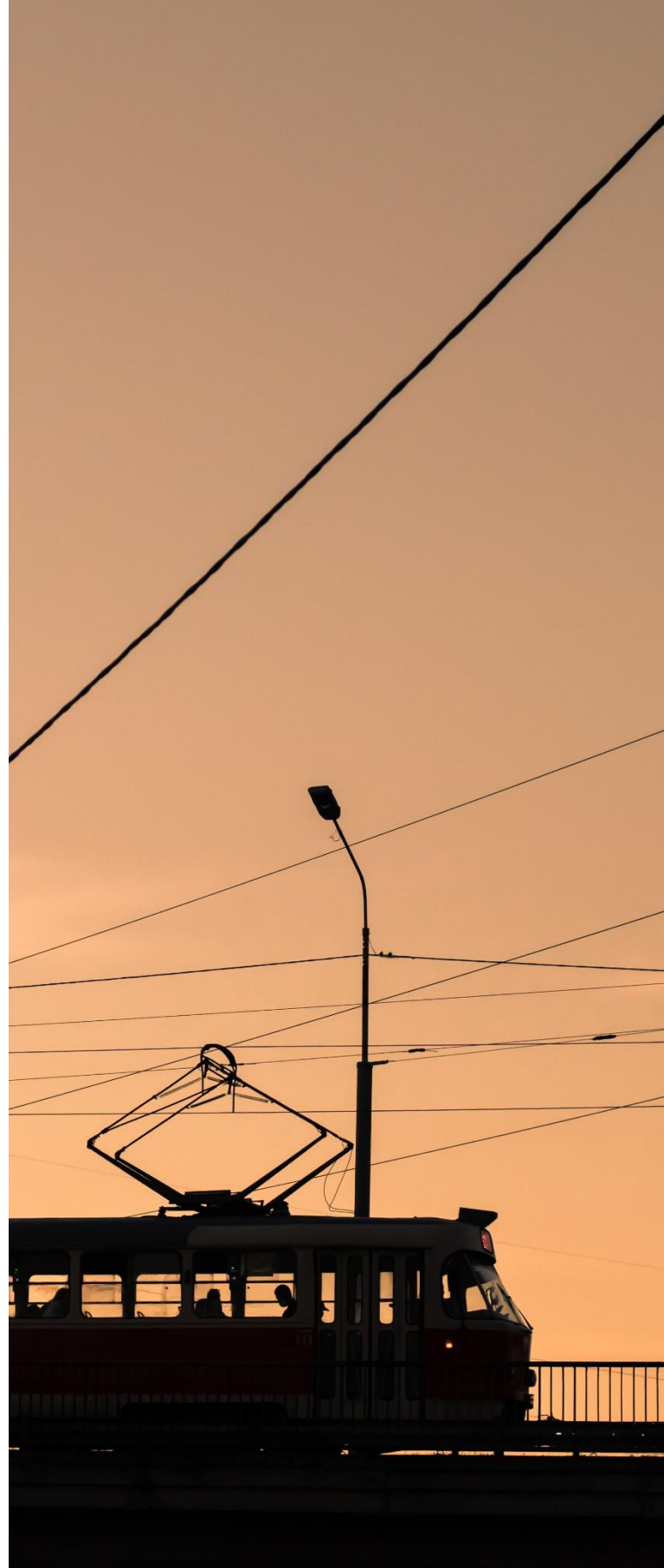


Our experience includes:

- Advising Centostazioni S.p.A. (managers of mid-sized Italian railway stations) on a project concerning the commercial development of Italian railway stations.
- Assisting Ferrovie dello Stato Italiane on the drafting of agreements related to both the setting up of a consortium with Siemens, Alstom and George Kent and the participation in the tendering procedure for building a high-speed railway line linking Singapore and Kuala Lumpur
- Acting for a financier/lessor in connection with provision of track maintenance equipment for a major rail network.
- Assisting a Swedish state-owned logistics company in defending itself against a request for access to infrastructure. Our client is the incumbent rail freight operator in Sweden, owned by the Swedish State. We are assisting in several cases, including a request of access to infrastructure by a competitor. The matter involves complex issues in the cross-over between competition law and rail transport regulation.
- Advising a Swiss Infrastructure fund on the acquisition and (long term) leasing to a cargo railway operator of twelve Alstom Prima H3 Hybrid shunting locomotives including the structuring of the full-service maintenance aspects.
- We are instructed by a group of Reykjavik municipalities and the Icelandic Road and Coastal Authority (together, the Authority) in respect of Borgarlína, an exciting new infrastructure project which will see the introduction of a Bus Rapid Transit (BRT) system to the greater Reykjavik area. This is the first such project in the whole of Iceland, with parts of the system being upgradable to light rail in the future depending on capacity and uptake.
- Assisting Pirelli Group in the renegotiation and termination of existing contracts with local public transport companies for the supply of filters and mechanical components.
- Assisting Centostazioni (managers of mid-sized Italian railway stations) on managing middle-sized Italian railway stations in the drafting of public tender documents and management of public tender procedures for the awards of works and services to private contractors. The assistance also included litigation before administrative courts.
- Providing legal assistance to the Municipality of Brescia in the first Italian project financing promoted by Ferrovie dello Stato Italiane for the construction and management of the tramway.
- Assisting ATAP, owned by municipalities in northeastern Italy and operating local public transport services directly and through a regional consortium which manages bus, rail and waterways, on a range of issues from drafting public tender documents to corporate, compliance and regulatory advice.
- Following the passing of renewable and energy efficiency laws, we led a consortium of

commercial, technical and legal consultants who created template contracts (including all the commercial and technical schedules), a procurement strategy, associated guidance and suggested regulatory reforms to enable Kazakhstan Temir Zholy (national rail company) to procure renewable, low carbon and energy efficiency solutions funded by the private sector.

- Representing Siemens Mobility before the district court in Warsaw in the proceedings conducted by Metro Warszawskie Sp. z o.o. for the supply of 37 + 8 six-track electric multiple units intended for the carriage of passengers on the first and second metro line in Warsaw. The dispute was a continuation of a dispute before the National Appeals Chamber between the same parties. The appeals were submitted by Siemens Mobility and Stadler, while Skoda was defending the favourable rulings of the National Appeals Chamber. The matter involved preparation of the expert opinion which happens very rarely in procurement disputes. We managed to convince the National Appeals Chamber to appoint the expert and applied for a similar expert opinion to be prepared for the court hearing.
- Advising Rail Transport Authority in respect of disputes for damage to Marina Coastal Expressway, Singapore.
- Assisting Centostazioni (managers of mid-sized Italian railway stations) on managing middle-sized Italian railway stations in the drafting of public tender documents and management of public tender procedures for the awards of works and services to private contractors. The assistance also included litigation before administrative courts.
- Assisted in the establishment of agreements and in negotiations concerning a leading transport company's improvement to its passenger coaches (SEK 350 million). The project involved extensive strategic considerations and negotiations in respect of inbound and outbound vehicles and the consequences of delayed delivery.
- Assisted in multi-annual negotiations regarding the delivery of trains for a leading transport company (SEK 3 billion) from a leading train supplier. The project involved extensive strategic internal considerations, such as negotiations and the preparation of agreements on financing, maintenance and IT.



Technology expertise

For many years Bird & Bird has been providing first rate legal advice to both digital disruptors and companies looking to evolve through digital transformation.

Supporting digital businesses

With over 500 dedicated Tech & Comms lawyers we are universally recognised as market leaders within the sector. For the past two decades, we have been the go-to law firm for businesses developing, or being impacted by, disruptive technology. Our clients include **60 of Forbes' top 100 most innovative companies** worldwide. Our practice also extends to supporting traditional businesses across a variety of industries, as they look to build their online presence and engage with their client base in this digital age. Disruptive digital technologies are impacting a number of sectors, and the rail sector is no different. We understand the legal issues associated with technology adoption, what works and what is likely to lead to problems.

Platform licensing, hosting and managed support

We are at the forefront of legal developments in cloud computing, and our international group provides the full range of contentious and non-contentious advice on cloud computing matters, for IT suppliers and customers in the public and private sectors. We advise a large number of clients on the procurement of a wide range of cloud solutions from leading providers.



Our experience includes:

- Advising Nokia on creating a consortium to participate in a tender for the construction of a fiber-optic network and GSM R system for PKP PLK SA and supporting in managing the implementation of the contract.
- Advising Siemens Mobility on a tender for the delivery of a traffic control system in Tychy.
- Advising Siemens Mobility on a tender for the delivery of a traffic control system in Katowice.
- We are advising a leading independent end-to-end IT services company in relation to disputes and project management issues arising from Network Rail's multi-million-pound programme to digitize and upgrade its asset management system. This is one of the key infrastructure projects in the UK and of central importance to

Network Rail's ongoing management of its infrastructure and assets.

- Assisting Telecom Italia on the participation and litigation of public tenders launched by national, regional and local administrations, concerning the supply of 3G comms and IT. Our advice covered several tenders awarded by publicly-held companies active in the rail and metro rail sectors (Metropolitana Milanese S.p.a. and Busitalia S.p.a.).
- Advising Konux, a Munich-based software/IoT company who is developing AI/IoT solutions for monitoring and early recognition of maintenance needs for railway networks.
- Advising a technology company in a tender for system for production of rails.
- Advising on the financing by an IFI for the fibre optic telecommunications network for Kazakh railways.
- Advising on the provision of onboard Wi-Fi services to Eurostar's passengers.



Excellent industry knowledge – genuinely exceptional – very pragmatic – not scared to get off the fence and give opinions on the tough elements – very good negotiators.

Legal 500, TMT 2022

Procurement expertise

We are the largest international team of lawyers dedicated to advising both the public and private sectors on all aspects of procurement law.

We have acted as trusted advisor on some of the most complex public procurement processes undertaken in the United Kingdom and beyond. Our team has also acted for bidders in respect of some of the most high-profile procurement challenges in this jurisdiction.

How can we help?

For contracting authorities/utilities, we can help with: planning a compliant procurement strategy; undertaking pre-market engagement, defending procurement challenges; drafting/reviewing procurement documents; designing evaluation methodology to achieve your commercial objectives; knowledge transfer and training/workshops; audit and review of procurement processes; and advising on changes to public contracts.

For bidders, we can help with: challenging procurement processes, shortlisting decisions and contract awards; providing workshops/training on the procurement rules and conducting negotiation sessions; advice on the novation/assignment of public contracts; and advising on "in-contract" modifications to public contracts. Given our experience in advising the public sector, we also advise bidders on their bidding strategy from pre-market engagement to contract award.



Our experience includes:

- Advising Abellio Rail GmbH on public procurement law, state aid law and contract law for the adaptation of large-volume, long-standing transport contracts in passenger transport. The focus of the advice was the solution-oriented support of the complex project negotiations with the public authorities across several federal states in Germany.
- Assisting ATAP, owned by municipalities in north eastern Italy and operating local public transport services directly and through a regional consortium which manages bus, rail and waterways, on a range of issues from drafting public tender documents to corporate, compliance and regulatory advice.
- Providing legal advice and supervision to Bombardier, on a review procedure concerning

a major procurement procedure regarding the construction and delivery of rail vehicles for the suburban railway network of Berlin.

- Advising Transdev on various regional railway projects including negotiating concessions, advising on bids and procurement aspects in France.
- Advising in a public procurement dispute regarding electronic services provided to railway transport company.
- Assisting Centostazioni (managers of mid-sized Italian railway stations) on managing middle-sized Italian railway stations in the drafting of public tender documents and management of public tender procedures for the awards of works and services to private contractors. The assistance also included litigation before administrative courts.
- Assisting Transdev on various regional railway projects including negotiating concessions, advising on bids and procurement aspects in France

Asset Finance

We have more than 45 specialist lawyers working together on asset finance transactions across our international network, with core teams in London, Paris, Frankfurt, Dubai, Singapore and Hong Kong.

We work as one global team to achieve your objectives, and we work closely with our corporate, tax, derivatives, insolvency, litigation and regulatory practices to offer full-service capabilities to the sector.

We work with financial institutions, equity investors, arrangers and train operating companies (TOCs) on a broad range of transactions including on rail asset backed lending and rolling stock leasing, helping us to close your deals efficiently and on market terms.



Our experience in the Rail sector includes:

- Advising on the financing by an IFI for the East European production facilities of a major European manufacturer of EMUs, DMUs and light railway rolling stock.
- Advising on the financing by an IFI to refinance the central railway station in Tbilisi, Georgia.
- Advising multiple German municipalities/their transport services on the on-going administration, restructuring and/or termination of US cross-border-leasing transactions (i.a. regarding vehicles used in the regional rail transport).
- Advising a railway undertaking on the acquisition and leasing of trains to use on the Ruhr-Sieg railway line.
- Advising a railway undertaking on the acquisition and leasing of trains for the use in the diesel-powered network in Sachsen-Anhalt.
- Advising a consortium of banks with respect to the refinancing of VTG Aktiengesellschaft by way of a funding structure involving a US private placement and a syndicated loan facility as well as the creation of a cross-border collateral pool of rolling stock.
- Advising a German special financial backer of railway rolling stock on the granting of a collateralised loan for the acquisition of a portfolio of locomotives by a Scandinavian railway company.
- Advising the lenders on the financing by a multilateral bank and a Chinese commercial bank of the construction and operation of a major Turkish rail port/transport hub.
- Assistance to the consortium formed by (among others) FCC and Iridium (ACS) in the refinancing (through the issuance of bonds for amount of \$563m) for the construction of Lima (Peru) metro line 2– Transaction awarded the LatinFinance Deal of the Year 2019.
- Assistance in the sale by FCC Concesiones of 49% of CEAL9, owning Line 9 of Barcelona Metro, together with other concessionaire companies in Catalonia (Spain).
- Assistance in the restructuring of the financing for the construction of Line 1 of Murcia tramway (Southeast Spain).
- Assistance to the Consorcio Linea 2 (Odebrecht and FCC) in the \$400m financing for the construction of Panama Metro Line 2.
- Advising MFD Rail on the establishment and equity and debt financing. The equity contribution was made by an Oaktree managed private equity fund, the debt financing was provided by KfW-IPEX.
- Advising a Swiss Infrastructure fund on the acquisition and (long term) leasing to a cargo railway operator of twelve Alstom Prima H3 Hybrid shunting locomotives including the structuring of the full-service maintenance aspects.
- Advising a Swiss Infrastructure fund on the acquisition and set-up of a lessor regarding eighteen Siemens Vectron locomotives..
- Advising MFD Rail on the establishment and equity and debt financing. The equity contribution was made by an Oaktree managed private equity fund, the debt financing was provided by KfW-IPEX.
- Advising on multiple financings (acting for an IFI and a DFI) for purchase of rolling stock and locomotives for one of the principle rail freight and oil transport companies in Kazakhstan.
- Advising on the financing aspects for a JV arrangement involving the supply of track maintenance equipment to Network Rail.

Corporate

We are an integrated, international team with a real aptitude for providing fresh and strategic legal support to companies of all sizes and industries. We understand how legal issues can impact the full strategic picture of your business. Our fresh and creative approach is coupled with expert industry knowledge which allows us to spot opportunities and help minimise risk to your business.

Built on exceptional legal expertise with a strong sector focus, Bird & Bird is a highly respected international law firm with a deserved reputation. Covering all areas of business law on a cross-jurisdictional basis, we have specialists advising in a range of industry sectors - especially where technology, regulation and intellectual property are key.

Businesses are increasingly operating on an international scale. Legal advisors who understand local regulators, differing business cultures and market practices can help businesses gain a real competitive edge. Our comprehensive local market knowledge allows us to deliver practical corporate advice and handle complex multi-jurisdictional transactions and intensive due diligence exercises smoothly and efficiently.

As transaction experts, we represent both buyers and sellers of businesses, from large multinationals to individual entrepreneurs, handling deals that are structured as:

private acquisitions and disposals	Mergers	joint ventures
public takeovers	schemes of arrangement	competitive auctions



Our experience includes:

- Advising French Keolis S.A. on its market exit from the German local passenger rail transport (SPNV) business. Keolis S.A. is a subsidiary of the French national railway SNCF and the pension and insurance fund of Quebec Caisse de dépôt et placement du Québec (CDPQ).
- Advising the Finnish Ministry of Transport and Communications in the investment into two companies together with a total of 26 Finnish municipalities relating to the development of two new high-speed railway connection corridors between Helsinki and Turku and Helsinki and Tampere.
- Advising Ratos AB on its acquisition of a 74% interest in the Swedish company NVBS Rail Group Holding AB. Ratos acquisition of NVBS also includes an agreement by which NVBS and Ratos acquire 100% of the Finnish company Ratatek.
- Advising Tokyo listed Mitsubishi Electric Corporation on its strategic cross-border investment into EKE-Electronics Ltd, whereby Mitsubishi Electric Corporation acquired a 34% stake in EKE-Electronics from EKE-Finance Oy. EKE-Electronics is a leading global supplier of intelligent train automation and management systems. Based in Finland, the company has operated in the railway business for over 30 years, executing complex projects across the world with a current focus on Australia, Europe, and China.

Dispute Resolution

We can guide you from the very start of the dispute to assess your risk and help you avoid costly litigation. Renowned for our tech-savvy approach, we're able to spot potential issues on the horizon in ever-evolving areas such as data privacy litigation, product liability, insurance claims, collective redress and class actions, and fraud investigations.

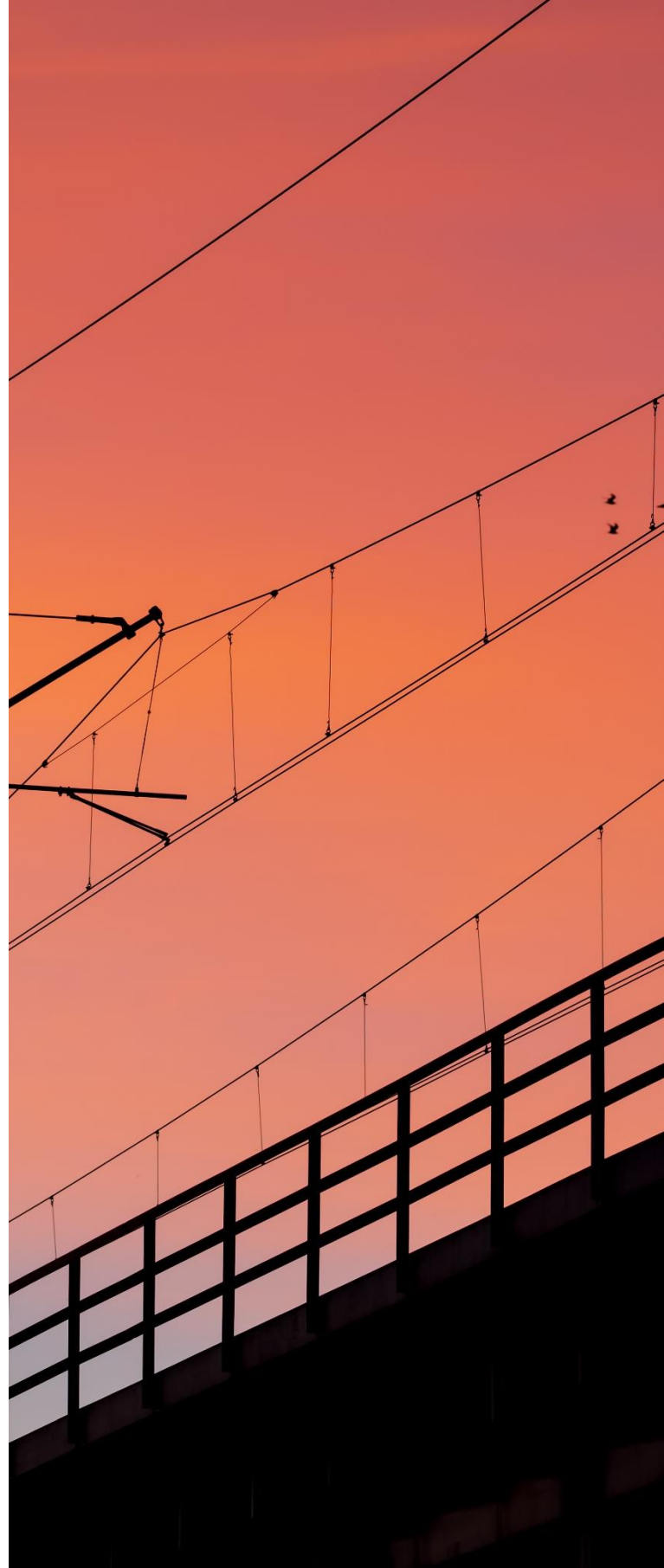
In circumstances where litigation isn't the right course of action, our experienced team can guide you through the alternative options, such as arbitration (commercial and investment treaty) and mediation. No matter where in the world you are based, our team of international arbitrators can help you navigate the rules of the world's leading arbitral institutions (ICC, LCIA, AAA/ICDR, CIETAC, ICSID, WIPO) as well as ad hoc arbitrations (UNCITRAL).

With a global presence, we're here to ease the pressure during your most challenging situations.



Our experience includes:

- Acting for a national rail franchisee on a claim against Network Rail for sustained poor performance.
- Advising enforcement of an Australian arbitral award re a parent company guarantee (subject to Australian law) in German state courts; dispute regarding formation of a contractual partnership.
- Singapore arbitration under SIAC and UNCITRAL arbitration rules on damage claims due to allegedly defaulting contract.
- Negotiation of ultimate parent guarantee for High Speed project in UK HS2 (a £500 million project for Switches and Crossings in the UK) from Vossloh AG.
- Negotiations of e-procurement contract according to German Law (originally US law) aiming to avoid German GTC rules.





The level of service is excellent
and the workload they can
handle is enormous.

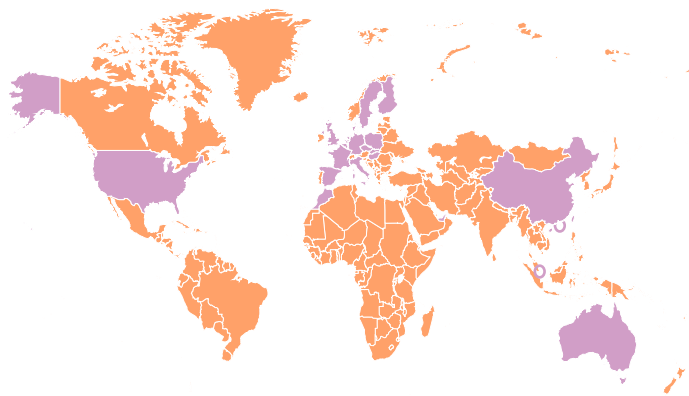
Chambers Europe, 2020 (Rail & Aviation Asset
Finance)

Information about Bird & Bird

Bird & Bird is a truly international firm, organised around our clients. Everything is connected.

With more than 1,400 lawyers and legal practitioners across a worldwide network of 31 offices in 23 countries, Bird & Bird specialises in delivering expertise across a full range of legal services.

We pride ourselves on providing leading-edge expertise across a full range of legal services with a particular focus on technology driven, IP-rich and regulated industries. Our lawyers are specialists in managing complex projects across multiple regions with our seamless one-firm approach.



Sector-focused approach.

The key to our success is our constantly evolving sector-focused approach. As one of the first law firms to organise its expertise along sector lines our lawyers can build up considerable knowledge of the commercial drivers unique to your industry, enabling us to deliver more targeted advice in a commercial context.

Our clients build their businesses on technology, life sciences and intangible assets and operate in regulated markets. To better meet our client's needs, we have developed deep industry understanding of key sectors, including life sciences & healthcare, tech & comms, retail & consumer, automotive, aviation & defence, energy & utilities, financial services, and media, entertainment & sport.

Excellence in client service

Bird & Bird operates as one truly international partnership: our goals, accounting and profit pool are all shared, as is our commitment to providing our clients with advice from the right lawyers, in the right locations. Our open and flexible business culture allows us to configure ourselves to respond as quickly and effectively as possible to the commercial pressures faced by our clients. Our priority is to use our practical and commercial approach, to provide excellent client service.



Bird & Bird “work is absolutely top notch,” claims one interviewee, who adds: “I particularly appreciate their ability to coordinate work across a variety of jurisdictions.”

Chambers Global, 2022



Excellent industry knowledge – genuinely exceptional – very pragmatic – not scared to get off the fence and give opinions on the tough elements – very good negotiators.”

Legal 500 UK, 2022

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