

Data Centres: Legal Issues for Real Estate Investors

Data centre investment offers a **strong yield** compared to many other asset classes for real estate investors with the right platform and appetite. Thanks to the **global exponential growth** in internet traffic and data centre workloads, we are likely to see **increased liquidity** in this sector, with the investment trend continuing to grow over the coming years. At Allen & Overy, we have developed a detailed legal data centre checklist for our clients covering the range of commercial drivers which are unique to data centre transactions.

Our legal data centre checklist

The type of data centre (be it enterprise, managed services, colocation, hyperscale, cloud or edge) as well as the counterparties involved, will largely drive the commercial and contractual strategies followed for a specific data centre development. However, the following critical matters will need to be considered in each case.



Electricity and Power Supply

Given the scarcity of transport capacity and regulatory requirements for energy efficiency, it is important to plan power strategies early on. Data centres are projected to be the world's largest energy user by 2025 which is why stakeholders are actively exploring how to:

- (i) use energy more efficiently;
- (ii) obtain at least part of their energy from renewable sources; and
- (iii) reuse waste heat production.

Back-up supply is also important to consider depending on whether the data centre is using diesel generators (which requires participation in ETS) or looking to transition to battery storage.



Connection

Stakeholders need to consider where the data centre is in relation to the closest internet exchange point and what redundancy measures are required.



Regulatory and Permitting

Time management regarding obtaining permits and managing the impact of legal redress procedures is key. Stakeholders also need to consider any ESG requirements and the impact of the Foreign Direct Investment Regulations depending on where the data centre is based.



Data Protection

Stakeholders need to be aware of the evolving economic and regulatory framework governing:

- (i) digital infrastructure;
- (ii) the handling of data; and
- (iii) cyber security.

Resilience is one of the core benefits of digital infrastructure and as such data protection is a key aspect to consider for these types of transactions.



Contracting

Stakeholders need to consider the interface between the EPC, O&M, PPA, offtake, land lease and financing documentation for different types of data centres. This often requires due diligence and stakeholder management early on in the process.



Financing

Data centres are typically financed on a hybrid basis and we see a variety of different financing strategies being selected based on:

- the type of assets (for example greenfield vs brownfield, single vs multiple asset, colo vs hyperscale); and
- the lenders, borrowers and offtakers involved.

Data centre financing does have some asset specific features, in particular in relation to step-in arrangements, non-disturbance requirements, financial covenants and general financing terms.

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