

Bird & Bird

Infrastructure and Data Centres

Our capabilities

2022

Contents



Our leading infrastructure team	3
Our data centre expertise	5
Data centre lifecycle	6
Our related expertise	7
Information about Bird & Bird	8
Key contacts	9

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 data centres 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 data centres 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 requiring, 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 COVID19 pandemic can accelerate the transformation even further. We draw on our expertise in these areas for data centres infrastructure as well.

Properly utilised and integrated technology is the key to the success of data centres 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 assist on project development and project finance stage to close data centres 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 market.

Our global team of experts

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

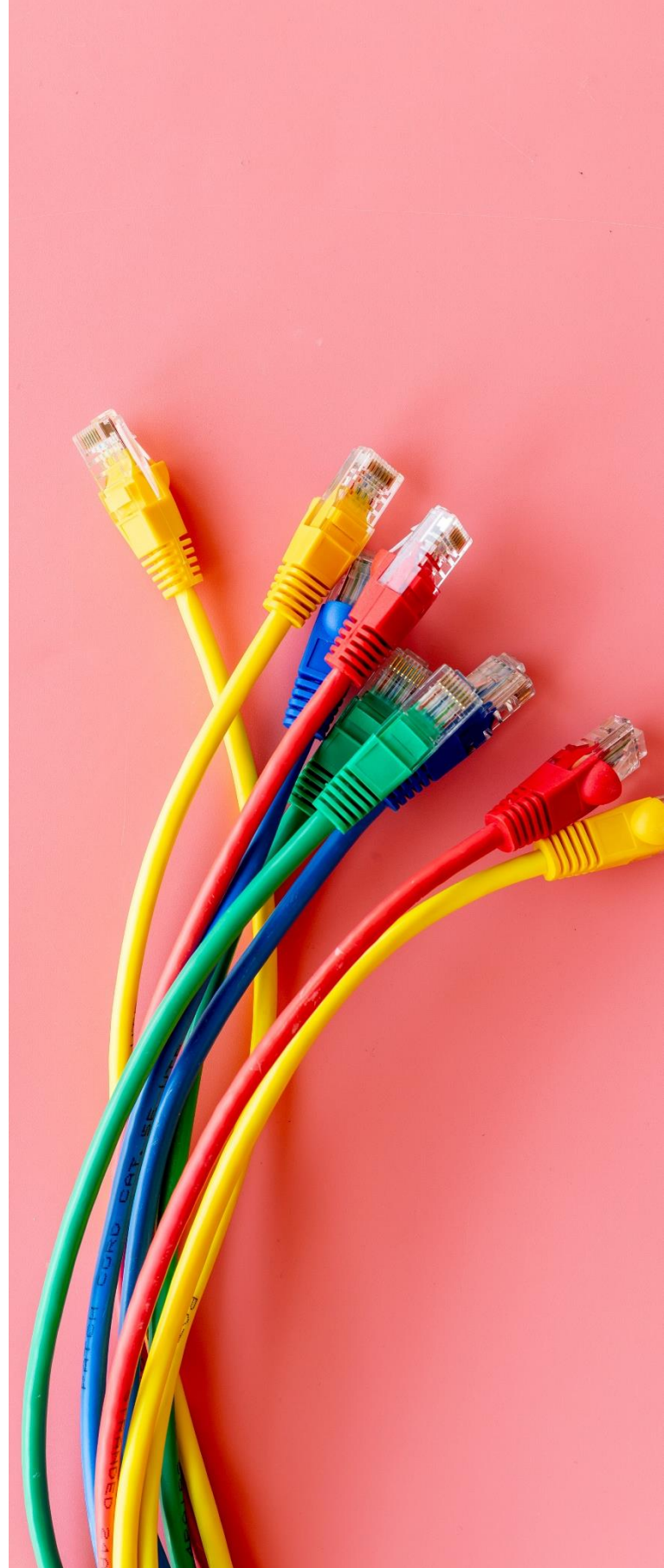
We draw on our experience to define the new ways of working we believe are required to successfully and sustainably deliver major data centre projects. Our success using these new approaches, and overwhelmingly positive feedback from clients, suggests they are extremely effective.

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 data centres and we are happy to help you.



Our data centre expertise

We have a long track record of advising on data centre and IT infrastructure projects

We are recognised industry leaders in providing legal services to the ICT sector, operating at the cutting edge of developments relating to the data centre community, including cloud computing, “big data”, cybersecurity, energy efficiency and sustainability and the evolving EU Taxonomy. This enables us to put our legal advice into context for clients in this space.

We have an International Data Centre Group, formed of over 40 lawyers from various practice groups and across many offices in the firm, who focus on delivery of seamless legal services to our data centre clients. Through our group we disseminate market knowledge and best practice across the whole of our team. As a result, our lawyers have a profound understanding of the environment in which our clients operate. For our clients, our investment in the sector helps us provide legal services with an added commercial dimension.

In the data centre sector, we do not believe that it is enough for a lawyer simply to understand his or her practice specialism. Rather, our lawyers are expected to have a broad knowledge and understanding of the sector, so they fully understand the ramifications of the advice they are giving in the context of the data centre market.

The diagram on the next page shows the areas where we can provide commercial and legal services across the full lifecycle of a project: business strategy, planning (including country selection), acquisition, (project) finance, development, operation and exit. Our multi-disciplinary approach enables us to create teams of expert lawyers who can cover the full range of legal needs such as real estate, construction and procurement, funding and corporate finance, commercial, cybersecurity, edge network solutions, energy and utilities, commercial and outsourcing, environmental and sustainability, intellectual property, IT, regulatory and tax.

“ *Lawyers who serve a diverse client list that includes managed network and data centre service providers. Coordinates global regulatory mandates among group offices and with external local counsel to provide OTT service providers with an analysis of regulatory risks in different jurisdictions. Frequently involved in telecoms projects related to the rollout of 5G.* **”**

Chambers UK-wide, TMT 2022

Data centre lifecycle

We support our clients through various stages of a data centre project:



Site acquisitions and planning

During the planning stage attention must be given to the real estate acquisition as well as the power, carrier and network infrastructure and necessary supply chain resilience. Outline planning is crucial alongside developmental finance, tax, incentives and environmental considerations such as land, acquisition and clean up.

Power Strategy

Energy risk and sustainability have become critical issues for data centre owners for various reasons, such as supply costs, increasing concerns about security of supply and closer scrutiny of energy use as a major source of carbon emissions. We assist clients in taking a holistic approach to energy demand management. Regulatory and policy pressures coupled with commercial imperatives have led to new technology and business processes.

Regulatory

Our team has the capability to advise on all regulatory aspects of the data centre life cycle, including: cybersecurity, sustainability, risk assessment, taxonomy, telecoms/connectivity to support edge cloud and computing, energy, planning – as well as with facilitating and coordinating risk assessments and developing self-regulatory frameworks.

Exit and Disposal

We can advise on the real estate and corporate disposal of a data centre, as well as manage data protection issues.

Development

In the developmental stage attention should be given to design construction, equipment procurement, asset financing, power and carrier infrastructure, tax incentives and developing M&E systems as well as carrying out regulatory risk assessments (this could be equally important to the planning phase).

Operation

During the operational stage the following aspects must be taken into consideration: wholesale leases, service level agreements, power supply and metering, hard/soft supply arrangements, connectivity and peering, cybersecurity and regulatory requirements, facilities management, public procurement, data protection, insolvency and dispute resolution.

Strategic

Data centres are unlike traditional real estate assets because the income derived from operational services makes up a high proportion of overall income. At this stage consideration must be given to carbon reduction, bulk energy purchase, location choice, intellectual property, cash flow and financial flexibility.

Our related expertise

Data centre development and operation

- **A leading international co-location provider:** Provided procurement and construction advice in relation to the development of new data centre facilities in locations across Europe, including London. As well as advising them with their agreements with end users, colocation agreements and other contracts with users, as well as structural advice on contract design and on questions regarding energy procurement and environmental law.
- **A global data centre company:** Supported construction projects across EMEA. This ranged from strategic advice on procurement, through to detailed negotiation and drafting of contracts for design and construction and assisting with the management of the construction process. Our work with client demonstrates our ability to support clients in the delivery of a wide range of data centres in various legal jurisdictions. As a result of the significant number of projects delivered, and the number of stakeholders involved, we have dealt with most of the complex issues you are likely to face including testing, commissioning and long-lead equipment.
- **A digital infrastructure provider:** Assisting the client across its development projects in the Nordic countries with a team of cross-border advisors. Assistance includes the drafting and negotiation of bespoke construction management agreement, framework agreements for the purchase of long lead items, consultants' appointment documents and ad hoc commercial support such as on the current Brexit matters and COVID 19 issues. Currently advising on the construction contract for the client's new data centre project.
- **An American multinational information technology services and consulting company:** Advised on the lease of multiple premises used as server farms in Germany, Belgium and the United Kingdom.

"They understand what an in-house lawyer is looking for"

Chambers UK wide, 2022

- **A multinational information technology company:** Advised on the rental and outsourced operations of premises in a data centre yet to be built for the external

management of customer accounts by e-shelter, including the master services agreement.

- **A multinational infrastructure consulting firm:** Acting in various IP matters relating to the construction of data centres, the protection & commercialisation of modular building concepts and their UK trademark portfolio.

Power strategy

- Advised clients on issues regarding power connection agreements with the local distribution network operator in relation to a UK data centre.
- Retained by data centre operators to advise them on EU and UK regulatory developments regarding energy efficiency and carbon reduction requirements.
- Advising a data centre operator on a German energy supply arrangement with energy supplier and structuring of German colocation agreements with respect to energy cost.

"Their work is absolutely top notch"

Chambers, 2022

Regulatory

- **A multinational telecommunications and internet service provider:** Advising on its deal to sell its infrastructure division providing Pan-European, North American, sub-sea and trans-Atlantic fibre network and data centre infrastructure services. This involved multi-jurisdictional telecoms regulatory analysis in several countries and included providing telecoms regulatory advice in relation to the divestment of an infrastructure business and assistance with required regulatory filings/registrations.
- **Cybersecurity** – advising multiple clients on the evolving cybersecurity landscape to assist with compliance, risk assessments as well as incident notifications and requirements.
- **Regulatory risk assessments** – advice and support to inform risk assessments to support data centre deployment covering planning, tax, cybersecurity, law enforcement, telecoms, sustainability and energy.
- **Permitting strategy** – advising a multinational data centre operator on its regulatory construction and environmental permitting strategy

Information about Bird & Bird

Bird & Bird has been advising on data centre and IT infrastructure projects for over two decades, working with developers, investors, operators, suppliers and end users, and providing expert commercial and legal advice at all stages of the data centre project lifecycle.

Everything is connected

We are a truly international firm, organised around our clients. With our technical expertise and problem-solving experience, we'll help you unlock the potential of change and realise your ambitions.

With more than 1,400 lawyers and legal practitioners across a worldwide network of over 30 offices, Bird & Bird delivers expertise across a full range of legal services. Our specialisms include advice on technology and communications, energy, digital rights & assets, commercial, corporate, EU and competition, intellectual property, dispute resolution, finance matters and sustainability.

The key to our success is our constantly evolving sector-focused approach. To better meet their needs, we have developed a deep industry understanding of key sectors.

Deep industry knowledge

- Expertise in the legal and regulatory framework relating to each sector
- A more practical, commercial approach, supported by advisors with decades of experience working in the relevant industries

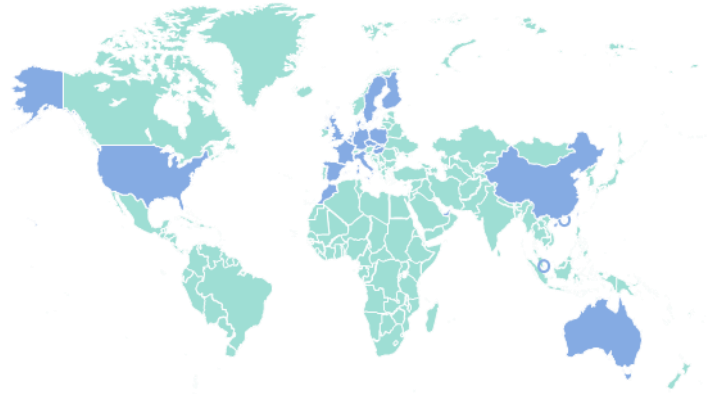
International reach

We have offices in key business centres across the globe (identified below), and where we don't have presence, we have strong partner firms with whom we have worked with closely so that they are aligned to our clients' needs so that we can work seamlessly and in a cost-effective and efficient manner.

Europe: Amsterdam, Bratislava, Brussels, Budapest, Copenhagen, Dublin, Düsseldorf, Frankfurt, The Hague, Hamburg, Helsinki, London, Luxembourg, Lyon, Madrid, Milan, Munich, Paris, Prague, Rome, Stockholm and Warsaw

Middle East, Asia-Pacific & North Africa: Abu Dhabi, Beijing, Casablanca, Dubai, Hong Kong, Shanghai, Singapore and Sydney

North America: San Francisco



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

Key contacts



Marco Nicolai

Partner

+442074156153
marco.nicolai@twobirds.com



Ronald Hendriks

Partner

+442079056228
ronald.hendriks@twobirds.com



Julie Bak-Larsen

Partner

+4539141633
julie.bak-larsen@twobirds.com



Marianne Nawroth

Partner

+4969742226000
marianne.nawroth@twobirds.com



Roger van Buuren

Partner

+31208529510
roger.van.buuren@twobirds.com



Giuliana Polacco

Senior Counsel

+390230356371
giuliana.polacco@twobirds.com



Dr. Matthias Lang

Partner

+4921120056000
matthias.lang@twobirds.com



Thank you

twobirds.com

Abu Dhabi • Amsterdam • Beijing • Bratislava • Brussels • Budapest • Casablanca • Copenhagen • Dubai
• Dublin • Dusseldorf • Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • London
• Luxembourg • Lyon • Madrid • Milan • Munich • Paris • Prague • Rome • San Francisco • Shanghai
• Singapore • Stockholm • Sydney • Warsaw

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority (SRA) with SRA ID497264. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.