

Outsourcing



About Bird & Bird

Bird & Bird is a full service international commercial law firm with a reputation for excellence in key industry sectors and areas of legal practice. We are proud to be working with some of the world's most innovative and technologically advanced companies, each of which depends on cutting-edge legal advice to realise its business goals.

With offices in Beijing, Brussels, Düsseldorf, Frankfurt, The Hague, Hong Kong, London, Lyon, Madrid, Milan, Munich, Paris, Rome and Stockholm and close ties with firms in the rest of Europe, Asia and the United States, we offer our clients local expertise within a global context.

The Lawyer magazine and The Legal 500 have both recently rated Bird & Bird as one of only three top tier firms for advising on outsourcing work

The Lawyer, March 2003 and The Legal 500, 2005

Bird & Bird's International Outsourcing Practice

As experts who genuinely understand the complex legal and business challenges and opportunities in each outsourcing transaction, lawyers in Bird & Bird's International Outsourcing Practice will work with you to gain the best business advantage for your organisation.

There is no standard formula for successfully implementing an outsourcing. Each deal is different. But, with over 20 years' experience in this specialist field, Bird & Bird's lawyers have developed exceptional legal and technical know-how of outsourcing practices, from now traditional technology and communications outsourcing to innovative transactions

involving the outsourcing of business processes and back office functions.

Bird & Bird advises customers and suppliers in both the public and private sectors on all types and sizes of outsourcing and in-sourcing transactions and re-tendering exercises, on-shore, off-shore and frequently across multiple jurisdictions.

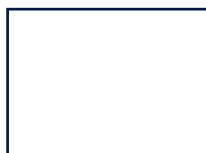
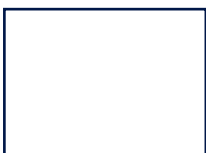
Our approach

Bird & Bird is committed to providing clients with an international service, combined with genuine local knowledge and understanding. Lawyers from all our offices work together to provide a tailored, seamless international service that is based on client needs.

Our offices are staffed by local lawyers who have an excellent insight into local market conditions and culture, coupled with a deep understanding of the sectors and areas of legal practice in which they work.

We provide pro-active, practical, commercially focused business law advice in the strategic context, not just technical legal advice.

We typically work closely with our clients and their in-house lawyers to provide advice and assistance. Our sensitivity to clients' preferred ways of working is central to our approach.



"Famed for its technology focus and prowess in IT and outsourcing, this firm has experience in the sector spanning the past 20 years"

Chambers and Partners, 2005

Outsourcing experience & expertise

Structure and tax planning

Choosing the right structure for your outsourcing is crucial for tax, accounting, compliance and operational reasons. In many cases, a two-party outsourcing contract will be the best structure. But our clients often need to consider the pros and cons of more complex arrangements, such as:

- multiple supplier arrangements
- special purpose vehicles
- joint venture structures
- BOT (build-operate-transfer) contracts
- using parent company guarantees

Our tax lawyers have particular expertise in advising VAT-exempt customers (such as banks) on Transfers of a Going Concern (TOGCs) and other VAT planning. Other tax considerations may include: capital gains on disposal of assets, stamp duty, availability of capital allowances and consortium relief.

We have substantial experience of advising financiers and consortia, as well as customers, on finance arrangements for outsourcings, e.g. vendor, syndicated or mezzanine finance arrangements, insolvency-proof or fiscally efficient financings and PPP (public private partnership) financing techniques.

Early advice

A solid understanding of different procurement models and of any relevant public procurement regulations is essential in the early stages. We work with our clients to achieve successful procurement results, including preparing (and responding to) Requests for Proposals and Invitations to Tender and assisting with the down-select process.

Actions taken by customers and suppliers well before the contract is signed can have a real impact on their rights and obligations and on the commercial agreements they are later able to negotiate. We advise on:

- due diligence and data room procedures
- Letters of Intent/Non Disclosure Agreements
- any procurement law obligations/required procedures
- any relevant government policy & practice
- implications of agreeing to exclusivity
- Interim solutions where work needs to start before contract signature
- making pre-contractual statements

Multi-jurisdictional outsourcings

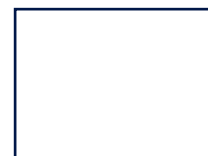
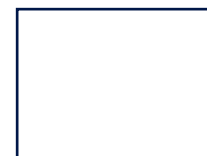
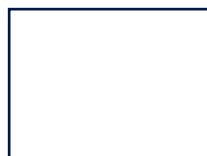
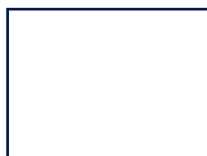
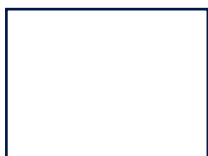
More and more multi-national companies are using outsourcing to achieve an international, or global,

solution. Not only for their IT, communications and network requirements, but also for more complex BPOs and back-office services. The particular challenges raised by multi-jurisdictional outsourcings include:

- devising the right contract structure
- handling phased cutovers in different countries/regions
- accommodating local regulatory requirements (e.g. on employee consultations)
- tax planning for cross-border payments
- currency risk
- contract management and pricing mechanisms in a multi-national context

Offshore outsourcing

The focus for offshore outsourcing is often, perhaps inevitably, on the bottom line. However companies looking at "offshoring" neglect the practical, legal, tax and regulatory factors at their peril. Proper project planning will not only pay dividends from a management perspective but can also contribute materially to the bottom line. Just some of the issues we advise on include: efficient tax structuring, dealing with employees, and where necessary innovative remedies.



"An excellent international outsourcing practice"

The Legal 500, 2005

Staffing

Outsourcing often involves transferring a team of talented individuals, who are key to the future success of the outsourced services. It is therefore critical that our clients' human resource practices are not only compliant with the ever advancing tide of employment legislation, but are also designed to ensure that their people, as one of their most important assets, remain well-motivated and highly productive. Our international team of employment lawyers advises on matters such as:

- staff consultations
- Trade Unions and Workers Councils
- EU Acquired Rights Directive, Hong Kong Employment Ordinance etc
- redundancy programmes
- secondment arrangements

Quality of service

Compiling a comprehensive service definition for an in-house service that has never previously been measured presents a considerable challenge. Ensuring that the agreed service levels keep pace with technological change can be even harder. Bird & Bird's outsourcing lawyers are familiar with the range of mechanisms used to

address quality of service issues, and the circumstances when each may be appropriate.

Pricing mechanisms

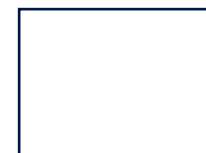
Fair (and workable) pricing arrangements are integral to a successful outsourcing relationship. We work with our clients to make sure the outsourcing agreement achieves the right balance between rewarding the supplier and protecting the customer. Approaches we typically address with our clients include:

- price benchmarking
- most favoured customer clauses
- risk/reward and benefits-based charging
- incentivisation mechanisms
- open book/cost plus approaches
- minimum spend commitments
- suitable triggers for price changes, e.g. indexation, legal/regulatory change, change in the scope of services, following verification of assumptions/due diligence, incentivisation & benefit sharing and "hardship" clauses
- "non-embarrassment" clauses

Contract management

Outsourcing contracts are often for lengthy terms - five to ten years is not unusual. During this period, change is inevitable - perhaps in the customer's requirements, the organisational structure of the parties, the level of service available in the market-place, and/or in the law. Issues and problems are also inevitable. The governance structures established under the outsourcing contract should encourage open and frequent communication between the parties at different seniority levels. In this way, both supplier and customer have a framework for contract management, contract change, forward planning, addressing unexpected events and for handling issues and problems as they arise. Our advice includes:

- governance structures & procedures
- quantitative and qualitative performance measurements
- reporting and management information
- managing change
- market testing
- audit rights
- forecasting



"Bird & Bird has an excellent reputation for IT outsourcing transactions"

The European Legal 500, 2004

The impact of regulation

Our lawyers are well versed in the laws and regulations which may impact your outsourcing and the constraints (and opportunities) they create. For example:

- data protection (e.g. the regulations on international data transfers)
- industry-specific regulation, such as in the communications or the financial services sector
- public procurement regulations
- employment law
- tax law
- application of competition/anti-trust regulations to contractual restrictions
- merger controls

Problem management

Disputes are inevitably aggravating, time consuming and costly. Our specialist dispute resolution lawyers are well equipped to assist clients in devising suitable dispute resolution strategies. We advise on the range of problem management mechanisms used in outsourcing arrangements, such as:

- escalation mechanisms
- specific structures for multi-national outsourcings
- customer's right to withdraw
- arbitration and mediation

- protecting against the other party's insolvency
- step-in rights
- business continuity & disaster recovery

After the contract is signed

When the hard work on the outsourcing contract is over, the hard work on the outsourcing relationship is only just beginning. We work with our clients to help achieve a strong ongoing outsourcing relationship. Our post-contract involvement typically includes:

- briefing the Contract Management Team
- advising on ongoing project management issues, such as: the importance of good project management arrangements; supplier/customer communications and managing "scope creep"
- assisting with changes over the life of the contract
- handling breaches of contract

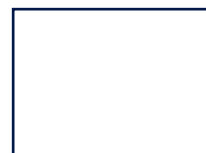
At the end of the contract term

Many companies commenced outsourcing relationships some years ago which are now coming to the end of the contract term. Our outsourcing lawyers are highly experienced in advising clients on exit planning, on the

options open to them (which may include taking the service back in-house) and in handling the tricky HR, data protection and confidentiality issues that can arise. We provide audits of existing contracts to determine whether the exit arrangements are adequate and will provide recommendations for any appropriate changes. These audits should be carried out well in advance of the expiry of any outsourcing arrangements so that there is sufficient time to negotiate and then implement, any required changes to the original contract.

"A factor that distinguishes it from rivals ... is its international focus and reach"

The Legal 500, 2003





Identified by the PLC Which lawyer? Yearbook as one of the top 50 law firms in the world - "those that have taken the greatest strides towards globalisation while maintaining quality"

Catherine Erkelens (Belgium)
Marcus Vass (China & Hong Kong)
Stéphane Lemarchand (France)
Alexander Schröder-Frerkes/Alexander Duisberg/Fabian Niemann (Germany)
Massimiliano Mostardini (Italy)
Jeroen van der Lee/Philip Hartman (The Netherlands)
Javier Fernandez-Samaniego (Spain)
Jim Runsten (Sweden)
Mark Leach/Roger Bickerstaff/Chris Holder/Simon Shooter (UK)

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