

Data Center Development, Operation and Financing: Special Concerns for Real Estate Counsel

Addressing Environmental Controls and Power, Connectivity,
Access and Security Requirements; Service and Licensing Agreements

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Agenda

1 Types of Facilities

2 Unique Features of Data Centers

3 Regulatory Issues Associated with Data Center Development

4 Leasing Issues

5 Financing Issues

Types of Commercial Facilities Where Physical Servers May be Located

Servers Owned by Third Party

- Public Cloud, Hybrid Cloud, Private Cloud

Servers Owned by Client

- Unsecured portion of client-occupied space (e.g., office)
- Secured portion of client-occupied space (e.g., closet)
- Third-party facilities

Types of Third-Party Procurement Options for Servers Owned by Client

- Cabinet / Rack
- Cage
- Demised space
- Whole building

Unique nature of data centers and related contracts

- Power – significant, uninterrupted
- Environmental controls – temperature, humidity
- Connectivity – fiber access, multiple carriers
- Access / security
- Physical Integrity – ability to withstand weather events, natural disasters
- Failure examples and ramifications

Regulatory / Tax Issues Associated with Data Center Development

Regulatory

- Laws applicable to data transmitters can be problematic depending on country

Tax Issues

- Differing incentives based on location
- Personal / real property split
- Taxation of services (e.g., some states tax managed services)

Leasing Issues

- Data center documentation generally
- Understanding the economics of lease / license.
- Service performance and outages
- Renewals, expansions and flexibility for future growth

Data center documentation

Unique to this industry

- Document integration
- Industry terms and jargon (MMR, PUE, etc.)
- Many defined terms

Lease

- Build-to-suit, wholesale and large scale retail

License

- Retail, colocation, cage and rack

Master Service Agreement (MSA)

- Designed to be applicable to multiple sites
- Sticking with one provider

Service Order

- Describes business deal for only one site
- Managed Additional Services/Smart Hands

Service Level Agreement (SLA)

Understanding the economics of the lease/license

- How is “**Base Rent**” (MRC) charged?
- What is, and is not, included in the MRC?
- Are there pass-throughs of operating costs, taxes and insurance premiums?
- How is power paid for?
- Cross connections and smart/remote hands / managed services

Service performance and outages

- Housed in the Service Level Agreement (SLA)
- Exhibit to Lease or License or separate document
- Usually only applies to one site
- Potentially negotiable
- What are the remedies?
- Unique to data centers
- Engineers really need to review / consider

Renewals, expansions and flexibility for future growth

- Need is often driven by customer's use of data centers
- Time consuming/difficult to migrate into and out of a data center
- Once in a data center, preferable to expand or extend in that facility
- Ability to connect existing servers to new servers is a prime driver for expansion rights
- Operators prefer not to provide hard expansion rights without compensation

Financing / Equity Issues

- Not many lenders are interested
- For very large credit-worthy tenants, effectively being project-financed
- Not many private equity firms are interested
- Industry is not mature

Development Issues

- Data centers do not create a lot of jobs
- Parking requirements are low
- Zoning regulations often not directly applicable
- Getting fiber / power to facility
- Power / green initiatives



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