

Insights

UNLOCKING VALUE IN UK DATA CENTRE M&A TRANSACTIONS

Nov 24, 2025

SUMMARY

This is the fourth in a ten-part series exploring the critical legal strategies shaping the future of data centre development in the UK.

The United Kingdom's data centre market is undergoing a profound transformation. A forecast surge in demand for data centre capacity—driven by advancements in AI, cloud computing, and digital services—is expected to outstrip supply, even with recent government initiatives aimed at accelerating development. Key constraints remain, including lengthy grid connection timelines and a complex, often polarised planning system.

At the same time, data centres continue to attract long-term capital—including pension funds, sovereign wealth funds, infrastructure funds, and REITs—thanks to their predictable, inflation-linked returns. Private equity investors have also been highly active, drawn by strong growth prospects and opportunities to consolidate fragmented markets. These dynamics have pushed valuations to record highs and sustained strong demand for UK data centre M&A, defying the slowdown in other real estate sectors post-pandemic.

Against this backdrop, data centre M&A transactions are not merely high-value real estate deals; they demand familiarity with operational infrastructure, advanced technology, long-term service contracts, and complex regulatory issues. Executing such transactions successfully requires integrated expertise across M&A, energy, real estate, technology, regulatory, and finance. Understanding the legal and commercial anatomy of these deals is paramount for unlocking maximum value and mitigating inherent risks.

DUE DILIGENCE AS A DEAL-MAKER: WHY DETAIL COUNTS

Legal due diligence in data centre M&A goes far beyond a standard corporate or property review. Each technical, operational, and contractual component demands meticulous examination. Such

robust diligence is crucial to validate the investment thesis, accurately inform valuation, and equip the parties with the critical intelligence needed to strategically negotiate the Sale and Purchase Agreement (SPA).

POWER INFRASTRUCTURE AND REAL ESTATE DILIGENCE

The intrinsic value of a data centre is rooted not only in its operational efficiency, but also in the robustness of its physical foundations and power supply.

Power and grid contracts: Power is the lifeblood of any data centre. Due diligence must therefore include a detailed review of the two core power agreements: the Grid Connection and the Power Purchase Agreement (PPA). The Grid Connection Agreement should confirm the facility's Maximum Import Capacity (MIC), the security of the connection and the cost and timing of any planned capacity upgrades. A site's position in the grid connection queue is a major driver of value, so it's vital to verify the certainty of any reserved future capacity. The PPA should then be reviewed for pricing structure (fixed, indexed or pass-through), contract term and the strength of its service level commitments.

Title to the asset: The focus of title diligence will depend on the tenure through which the data centre is occupied – freehold or long leasehold. For all sites, beyond confirmation of valid occupation, the core issues to investigate are the rights that third parties have that may compromise the optimal use of the site. Advisers should carefully review all easements and wayleaves – particularly those enabling fibre optic cables and power lines. For leaseholds, additional issues include the remaining term, rent review provisions and any restrictions on use or transfer. Similarly, restrictive covenants must be carefully assessed to ensure they don't limit 24/7 operations, noise or other core activities.

CONTRACTUAL AND OPERATIONAL DILIGENCE

A data centre's long-term, predictable revenue depends on its key contracts.

- **Tenant leases:** In a typical data centre, third-party tenants—such as hyperscalers (i.e. large cloud service providers), enterprises, and other organisations—lease space to house their IT infrastructure, including servers and networking equipment. Such leases, which give rise to the data centre's revenue stream, are the primary drivers of value. Hyperscale leases, often 15 years or longer, demand careful review of tenant covenant strength, robust rent escalation clauses, and any early termination or break rights. Given their substantial bargaining power, hyperscalers often insist upon change of control provisions in their leases which may impact a transaction. Colocation leases, for data centres with multiple tenants on varying terms, are more complex. Analysing tenant diversification, lease expiry profiles and historical churn helps build a clear picture of revenue stability and risk. Across all leases, attention must be paid to tenant fit-out rights, the landlord's maintenance obligations and “yield-up” or reinstatement provisions that govern the condition in which premises must be returned.

- **Operations and Maintenance (O&M) and service contracts:** A data centre's operational integrity relies on a network of service agreements covering cooling, security, fire suppression, and facilities management. These contracts should be assessed for scope, cost, service levels and termination provisions. Understanding their structure is essential not only for forecasting operational expenditure but also for identifying opportunities to optimise performance or post-acquisition efficiency gains.

REGULATORY CHALLENGES

- Given the sector's sensitivity, early assessment under the National Security and Investment Act 2021 (NSIA) is essential. Mandatory notification applies where the target carries on specified 'Data Infrastructure' activities; where mandatory criteria are not met, a voluntary notification may still be advisable to mitigate call-in risk.
- UK merger control remains voluntary and non-suspensory. However, the Competition and Markets Authority (CMA) can review completed or anticipated mergers and impose interim measures requiring businesses to be "held separate" during the investigation. A transaction falls within the CMA's jurisdiction where any of the following apply:
 - The target's UK turnover exceeds £100 million;
 - The parties together have a share of supply of 25% or more in any UK market, with at least one party having UK turnover of £10 million or more; or
 - The party has UK turnover above £350 million and at least a 33% share of supply in any market and the other party has a UK nexus, even absent horizontal overlap.

A limited 'small mergers' safe harbour exists at very low turnover levels, but CMA call-in powers remain broad. Parties should consider potential CMA engagement and the risk of interim measures alongside NSIA clearance planning.

Data centres operate within a complex regulatory framework, and full compliance is critical to prevent operational disruption or financial penalties. This includes holding all necessary planning permissions and meeting any planning agreement obligations. It also means adhering to environmental standards such as EIA mitigation measures, Biodiversity Net Gain requirements, and emissions or waste management regulations. Thorough reviews help identify any latent environmental liabilities that could transfer to the new owner.

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ASSET OR SHARE DEAL? KEY CONSIDERATIONS FOR DATA CENTRES

Choosing between an asset purchase and a share purchase is a fundamental strategic decision, with significant implications for tax efficiency, liability management, and overall transaction complexity.

Asset purchase: In an asset deal, the buyer acquires specific assets—such as land, buildings, plant and machinery, and key contracts—while leaving behind unwanted liabilities like historic tax exposures or litigation. The trade-off is complexity: each material contract, including leases and power agreements, must be assigned or novated, often requiring third-party consent and potentially delaying completion. From a tax perspective, asset deals typically trigger Corporation Tax on the seller's gains, Stamp Duty Land Tax (SDLT) on property for the buyer, and possibly VAT unless the transfer qualifies as a going concern. This structure can sometimes result in double taxation where tax arises in a seller company, and the sale proceeds are later distributed to shareholders (particularly individuals who may pay tax on dividends).

The Share Purchase: In a share deal, the buyer acquires the shares of the special purpose vehicle (SPV) that owns and operates the data centre. This structure is generally simpler operationally because the SPV continues to hold all assets, contracts, and licenses, reducing the required third-party consents. Stamp duty is usually lower, being charged at 0.5% of the consideration for shares in a UK company, compared to SDLT of c.5% on the VAT inclusive price for property transfers. From a tax perspective, the seller typically pays Capital Gains Tax (CGT) or corporation tax on chargeable gains on the share sale (depending on whether the sale is by an individual or a company). In many cases, corporate sellers benefit from the Substantial Shareholding Exemption (SSE), which can eliminate corporation tax on gains if conditions are met (e.g. holding at least 10% of shares for 12 months and the target being a trading company). The downside is that the buyer inherits the SPV “warts and all,” including historic and contingent liabilities, making thorough due diligence and robust SPA protections essential.

THE SALE AND PURCHASE AGREEMENT (SPA)

The SPA is the definitive legal document governing a data centre transaction. Its negotiation—particularly around warranties and indemnities—is highly specialised, reflecting the unique operational and technical risks of this asset class.

Bespoke warranties: A data centre SPA typically includes targeted business warranties covering critical business issues that are relevant to the asset. These include:

- **Power:** Confirmation that the contracted grid capacity is secure and free from disputes with the network operator.
- **Connectivity:** Verification that the facility's fibre optic infrastructure is diverse and meets the standards promised to tenants.

- **Operational performance:** Assurance that the facility has consistently met its historical Service Level Agreement (SLA) commitments for uptime and that there are no material recurring faults.
- **Compliance:** Confirmation that the asset complies with all relevant industry standards (e.g. Uptime Institute or TIA-942 certifications) and all applicable health, safety and environmental regulations.

Warranty and indemnity (W&I) insurance: In modern data centre M&A, the seller is often reluctant to stand behind the warranties and indemnities in the SPA. W&I seeks to transfer the risk of a warranty breach to a specialist insurer, providing the buyer with reliable financial recourse while allowing the seller to exit with limited residual liability. Policies are typically tailored to the risks identified during due diligence, covering operational, technical and regulatory exposures. The availability and scope of cover depend on the quality and completeness of legal, commercial, financial, and tax due diligence, as assessed by the underwriters.

POST-ACQUISITION INTEGRATION: FROM COMPLETION TO VALUE CREATION

The legal and commercial work doesn't end when the deal completes. A well-planned post-acquisition integration is essential to maintaining operational stability, preserving tenant relationships and realising the value set out in the investment case.

The immediate post-completion phase involves strategically integrating the acquired asset into the buyer's portfolio. This includes aligning operations and maintenance contracts, standardising reporting systems, and applying best practices for energy management and operational efficiency. The goal is to boost performance, unlock significant operational improvements, and ensure competitive advantage without disrupting tenant services.

Clear and proactive communication with tenants is also essential. Early engagement allows the new owner to introduce themselves, explain the transition process and reassure tenants of their continued service quality. This is particularly important in colocation facilities, where the landlord has a direct relationship with multiple enterprise customers. A smooth transition supports tenant retention and preserves the asset's long-term revenue stream.

How we can help

Our clients need to navigate complex data centre deals with confidence, managing regulatory, operational and commercial risks while maximising value.

We help by combining deep sector knowledge with hands-on experience across the UK and beyond. From strategy and due diligence to negotiation and post-acquisition integration, our

integrated team coordinates across M&A, real estate, technology, energy and finance to deliver efficient, risk-managed outcomes.

With strong market insight and industry relationships, we guide clients through competitive processes, secure approvals and negotiate robust contracts. In doing so, we help them preserve value and position themselves for long-term success.

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