

Sectors in focus

GROWING DATA CENTER DISPUTES RISK

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Summary

The construction phase remains the most common source of high-value disputes in data center projects, and disputes here can disrupt delivery schedules, undermine revenue projections and strain key commercial relationships well beyond the immediate cost of the underlying issue. As builds become more complex, this risk escalates further.

WHAT'S DRIVING DISPUTES?

Disputes between developer and contractor often arise over delays and extensions, defects and underperformance and cost overruns, and are relatively routine. But disputes between developers and network operators over connection timelines and technical connection requirements, and landlord-tenant issues on service level agreements and completion of works, are becoming increasingly common.

Complexity arises when a delay in one package triggers claims across the project.

PREVENTING CONTRACTUAL DISPUTES

Prevention is better than cure. The traditional way to reduce the probability of disputes arising at all is through contractual drafting that anticipates points of conflict and builds in early resolution mechanisms.

However, good drafting is only the starting point. Developing a defined process to issue notices on time, maintain records, operating change control, updating the program, preserving evidence and escalating issues before positions harden is equally important.

There are several strategies that can help you mitigate data center disputes:

Scope certainty

Develop precise, granular scopes of work and technical specifications, tied to objective, measurable performance metrics rather than subjective standards.

Risk allocation

Implement proactive risk management mechanisms and address foreseeable matters, such as change in law, ground conditions, customer change and supply-chain delay.

Contract administration

Use live risk and change registers, enforce notice requirements and keep detailed records.

TIERED RESOLUTION AND EARLY ESCALATION

Draft in multi-tiered dispute resolution clauses, escalating from project-level negotiation to senior executive engagement to mandatory mediation before any party can commence formal proceedings.

EXPERT DETERMINATION

Create an expert determination or adjudication board for technical questions, allowing a pre-agreed independent expert to resolve disputes quickly.

DISPUTE RESOLUTION

Where formal resolution becomes necessary, adjudication remains the fastest route for construction disputes in jurisdictions with statutory adjudication regimes, operating on a “pay now, argue later” basis that protects contractor cash flow during the build.

For major commercial disputes, particularly between joint venture partners or landlord and tenant, arbitration is generally preferred over public court proceedings for its confidentiality, the ability to select an arbitrator with genuine sector expertise, and the international enforceability of arbitral awards.

HOW BCLP CAN SUPPORT YOU ACROSS THE DATA CENTER LIFECYCLE

We help clients compete where others can't, bringing global insight to the legal challenges of next generation digital infrastructure. We understand the unique complexities and commercial drivers of the sector, and look at the whole asset, so you can maximize value. Our seamless coverage across real estate, planning, energy, construction, finance, tax, regulatory, data and disputes helps you connect the dots across the data center lifecycle.

Related capabilities

- Data Centers

Meet the team



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