

DATA CENTERS & DIGITAL INFRASTRUCTURE

OVERVIEW

In the 21st century digital economy, companies cannot afford to fall behind. Every business has been affected by the rapid evolution of technology, the move to cloud computing and related developments. In order to keep up with the unique needs of the information age, our clients need legal advisers who have the vision and experience to anticipate evolving trends and provide the strategic insights and sophisticated advice they demand and deserve.

Organized as a multi-disciplinary effort, BCLP's global Data Center and Digital Infrastructure Team is tailored to be a complete solution for investors, developers, operators, and users participating in the data center and digital infrastructure realm. Combining our deep well of knowledge and experience in numerous practice areas, BCLP is armed with extensive capabilities in all aspects of the data center ecosystem, including: data center development and tax incentives, construction, acquisition and sales, various financing arrangements, operations, leasing, subleasing and co-location, along with environmental permitting, power purchases, power procurement strategies and agreements, user agreements, service level agreements and maintenance agreements. This approach gives us a unique perspective, unmatched by other law firms, and allows us to provide our clients with comprehensive, holistic advice.

OUR OFFERING

A key strength of BCLP's Data Center and Digital Infrastructure Team is our worldwide geographic coverage, which enables us to provide assistance in the predominant locations where data centers are clustered. Other key elements of our offering are set out below:

- Data Center Asset Purchase and Sale
- Data Center M&A
- Private Equity Finance, Fund Formation and Joint Ventures
- Project/Asset Finance and Construction Finance
- Real Estate Development and Site Selection Support
- Development Tax Incentives and Legislative Affairs

- State and Local Tax Management Solutions
- REIT Taxation and Cross Border Taxation
- Co-location, Data Center Leasing and Licensing
- Renewable Energy and Sustainability
- Power Procurement and Power Solutions
- Telecommunications and Network Connectivity
- Data Center Construction
- Cloud Service Agreements
- Cyber Security and Data Privacy
- Land Use and Entitlements/Planning
- Environmental
- Intellectual Property & Licensing
- Litigation and Dispute Resolution

DATA CENTER TAX INCENTIVES AND LEGISLATIVE ISSUES

Attorneys on our Data Center Team are leaders on data center tax issues, development incentives for data centers, and legislative issues associated with taxes on data center construction and operation. Our team literally “wrote the law” in more than one jurisdiction to eliminate or reduce taxes on data center equipment and power consumption. Further, our attorneys help clients navigate complex digital transactions and service offerings that most current tax laws fail to address. From providing support for site selection, to managing ongoing tax burdens from data center operations, to a cloud product launch, our proven team can assist.

REAL ESTATE PRIVATE EQUITY AND REITS

Private equity and REIT financing are fueling rapid growth in the industry. BCLP's Real Estate Private Equity and REIT practice is a key area where the firm enjoys an internationally recognized reputation and serves as an anchor to our Data Center Team. Our attorneys regularly represent real estate industry clients in structuring, negotiating and documenting the following types of transactions:

- Real estate private equity and joint ventures
- Private and public equity and debt offerings
- Private, non-traded and publicly traded REITs
- REIT mergers and acquisitions, and REIT conversion and spin-off transactions
- REIT taxation

DATA CENTER M&A AND TRANSACTIONS

M&A activity in the data center sector is widely publicized. Transactional matters are a core practice of BCLP. For nearly 20 years, we have annually ranked as one of the most active law firms in the United States based upon number of transactions completed. Our corporate practice and attorneys are also recognized on a global scale by Refinitiv (f.k.a Thomson Reuters), Chambers & Partners, PitchBook, Legal 500 US, Legal 500 UK, and JUVE, among other leading publications. Projects we regularly handle for clients include:

- Mergers and other acquisitions and dispositions of businesses and related assets
- Tender offers, proxy contests and similar transactions
- Takeover and antitakeover planning
- Joint ventures and other methods of combining business operations
- Spin-offs, split-offs, carve-outs and other methods of restructuring the ownership of business operations

CO-LOCATION, LEASING AND LICENSING

Our attorneys are particularly experienced in advising companies on the legal complexities associated with all aspects of data center operations, leasing, subleasing, co-location and related services. BCLP has extensive experience advising on the related service level maintenance agreements and we have assisted with data privacy policies and various user agreements. Our in-depth industry knowledge enables us to efficiently negotiate data center development and operation agreements, while providing up-to-date guidance on industry-specific terms and conditions. We regularly represent major buyers and providers of data center services. Our attorneys understand and counsel clients on how to protect their interests with respect to access rights, service levels, disaster recovery and business continuity, termination rights, wind-down and hold-over rights, and other legal and commercial terms unique to data center leases and co-location related agreements.

TELECOMMUNICATIONS AND NETWORK CONNECTIVITY

Our Data Center Team attorneys possess significant experience handling the most important issues associated with network connectivity, whether related to issues involving local exchange carriers (LECs), competitive local exchange carriers (CLECs), wireless providers, broadband companies or cable companies. We have experience with deployment of every technology currently used in the marketplace (i.e. CDMA, EVDO, GSM, EDGE, Wimax and LTE). Our experience includes agreements related to tower, macro cell antenna, small cell antenna and solar installations; co-location facility agreements and leases; fiber connectivity agreements and licenses; master services/service level agreements; IRU agreements/managed services; new builds and new site overlays; cell site power and telco hardening; and E911 implementation.

RENEWABLE ENERGY AND SUSTAINABILITY

BCLP's lawyers are active in assisting clients with renewable and alternative energy project development, financing and operations including most forms of renewable energy. We have one of the nation's leading practices involving the structuring and restructuring of projects to monetize federal and state tax credits and renewable energy credits and we routinely represent clients in analyzing project feasibility, structuring project ownership, project financing and project development. This includes project siting, governmental land use and other approvals, environmental and other permitting, regulatory compliance, and contracts for project construction and operation, facility interconnection, transmission, power and other product offtake arrangements, operations and maintenance, and fuel and other feedstock supply arrangements.

ADDITIONAL AREAS OF FOCUS

The following is a representative list of some of the many practice areas throughout the firm that are also available to address the unique needs of our data center clients.

- Real Estate
- Real Estate Private Equity and REITs
- Development
- Energy and Renewables
- Sustainable Energy and Climate Change
- Data Center Construction

- M&A and Data Center Transactions
- Private Equity and Joint Ventures
- Data Center Finance
- Corporate Finance and Securities
- Land Use and Entitlements
- Environmental
- Legislative and Governmental Affairs
- Litigation and Dispute Resolution

MEET THE TEAM



Emma Le Wita

Partner, London

emma.lewita@bcplaw.com

[+44 \(0\) 20 3400 3117](tel:+442034003117)



Tim Cline

Partner, St. Louis

tim.cline@bcplaw.com

[+1 314 259 2238](tel:+13142592238)

EXPERIENCE

Acquisition and Divestiture of Data Center Properties Across the U.S.

Location: US, Nationwide

Within the past year, advised and assisted with the acquisition and divestiture of more than 20+ data center properties in the US totaling approximately \$475 million in acquisition value.

50MW of Leasing Activity Within the Past Year

Location: US, Nationwide

Within the past year, advised and assisted in the negotiation of tenant and landlord leases, licenses and service level agreements and have worked on more than 50MW of leasing activity.

Advising on European-Wide Co-Location Services

Location: European-wide

Advised one of the world's largest data center providers on various of its co-location arrangements for the provision of European wide co-location services to its clients.

Our Client's First UK Data Center

Location: UK

Advised on the acquisition of a data center owned and operated by T-Systems, a subsidiary of Deutsche Telekom. The transaction saw our client take over T-System's lease and simultaneously grant to Zayo, one of the biggest fibre and data center operators. This was our client's first data center transaction in the UK.

Incentive and Power Procurement Negotiations for 90+ Acre Data Center Campus Development

Location: US, Texas

Assisted with incentive negotiations and power procurement negotiations related to a 90+ acre data center campus development in Texas.

300 Acre 100MW Master Planned Data Center Campus Development

Location: US, Midwest

Assisted with all aspects of a 300 acre master planned data center campus development in the Midwest targeting large enterprise users. This work involved environmental issues, tax incentive issues, power purchase arrangements, renewable energy, and regulatory agreements, real estate lease and sale agreements, as well a structured power delivery arrangement for 100MW of utility power at a high voltage rate.

Acquisition of Europe's Largest Data Center

Location: UK, Wales

Advised on the acquisition and leasing arrangements of a Newport data center, which is currently Europe's largest data center.

\$140 Million "Mission Critical" Data Center Serving Worldwide Operations

Location: US

Representation of a Fortune 500 publishing company in a national brokerage agreement and a national facilities management agreement providing for outsourcing of space acquisitions and dispositions and property management. Other work for this client included contracting for the design and construction of a \$140 million “mission critical” data center serving its corporate operations throughout the world.

Data Center Site Selection Comparative Tax Burden Analysis

Location: US

Assisted various clients with comparative tax burden analysis for possible data center deployment in particular jurisdictions to support site selection for a particular deployment. This work results in a calculation we call the Tax TCO, which is simply an estimate of the tax components of the TCO for data center construction and operation.

Sale and Lease Back of Data Site Center

Location: UK, London

Advised on the sale and leaseback of a data site center in Greenwich, London. We advised on the sale to an institutional pensions provider and then negotiated our client’s lease.

Review of Data Center Tax Legislation Proposals Across the U.S.

Location: US

Reviewed and advised clients with data center tax legislative proposals considered in Georgia, North Carolina, Colorado, Minnesota, Nevada, Oregon, Washington, New Jersey, Ohio, Illinois, Iowa, Nebraska, Florida, and Virginia.

\$575 Million Sale of Data Center Business

Location: US

Advised the provider of advanced network communications and technology solutions on the sale of its data center business to a nationwide (US) provider of cloud, co-location and managed services for \$575 million.

Advising the UK's Largest Supermarket

Location: UK

Advised the UK’s largest retailer on a five hall data center leasing deal and on further leasing arrangements with a real estate investment trust for a DR data center hall.

