

DIGITALISATION OF BUSINESSES AND GREATER USE OF THE CLOUD DRIVING DEMAND FOR TMT-RELATED LEGAL SERVICES - BIRD & BIRD

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Storage of large amounts of sensitive data on the cloud, as well as the greater reliance on third parties to provide services creating complex legal issues



Law firms are seeing an increase in demand for technology, media and telecommunications (TMT) services, as clients across all sectors seek specialised advice. Key issues facing businesses include “digital transformation”, the wider use of the cloud and outsourcing, as well as cybersecurity and data protection. Consequently, the ability to access expert advice in these areas is vital if companies wish to avoid risks.

Sophisticated IT infrastructure and other services are now a key part of any large business, and clients across all sectors from energy to automotive and finance are undergoing the process of digital transformation. This often involves the storage of vast amounts of sensitive data on third-party clouds as well as relying on third parties to provide core services, which gives rise to complex legal issues; and it is vital to consult lawyers who have the relevant experience in this field.

“Companies across diverse sectors are increasingly making use of cloud-computing services, and therefore delegating direct control over their data and key aspects of their businesses,” says Bird & Bird counsel Alexander Benalal. “Data protection, confidentiality and cybersecurity becomes paramount, and it is also vital to have watertight service level agreements, terms and conditions that guarantee appropriate compensations if those service levels are not met, as well as insurance policies,” he adds. In order to achieve this, it is crucial to access specialised lawyers with TMT expertise that are acquainted with the sector, the nature of services being provided as well as the related challenges, says Benalal. “Specialised lawyers need to combine transactional and litigation advice in this field as it provides a more in-depth understanding of the issues that are specific to IT and how they are usually dealt with, or need to be dealt with in courts,” he says.

According to fellow Bird & Bird counsel Paula Fernández-Longoria, major clients are increasingly aware of the complexity of IT-related contracts and disputes, and therefore fully recognise the need to hire specialist TMT lawyers. “While small and medium-sized companies may not be aware of the importance of relying on expert advice for such matters, multinational companies, for example, are becoming more and more aware of this need and the potential benefits of involving experts.”

As well as offering advice on contractual matters, specialist TMT lawyers are increasingly in demand for dispute resolution matters, according to Bird & Bird counsel Pablo Berenguer. “Traditionally, clients used to entrust their TMT disputes to generalist litigators,” he explains. “However, as cases become more and more complex, they seek the added value brought by TMT experts, who bring in-depth understanding of technical, commercial and legal issues.” Meanwhile, Fernández-Longoria says: “The average corporate or dispute resolution attorney does not have the expertise necessary to advise on complex IT matters.”

Need for discretion

A growing trend is the increased demand for arbitration and mediation, with clients seeking to protect their reputation and avoid confidentiality issues, remarks Berenguer. “Arbitration is becoming more popular than litigation due to, on the one hand, the need for specialised technical knowledge,” he explains. “On the other hand, it is more discreet than litigation.” As well as corporate and dispute resolution issues, the expertise of TMT practitioners is sought for a wide range of matters, from civil responsibility and damages claims to criminal proceedings, especially in relation to cyberattacks. “As more and more companies are involved in the implementation of complex transformation and outsourcing projects, we’ve seen an increase in demand for IT-related contractual and data protection advice,” says Berenguer. “Data security is another vital concern for clients who store all of their data via third-party cloud services.” Regulatory changes including the General Data Protection Regulation (GDPR) and the e-privacy framework are also increasing the workload for TMT lawyers,

adds Fernández-Longoria. "The GDPR and amendment of the e-privacy framework will clearly impact the TMT sector in the coming months," she remarks.

Law firms, as well as clients, are realising the importance of specialised TMT advice, and this is driving recruitment in this area, adds Fernández-Longoria.