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Data centres unboxed

A guide to legal issues, trends and risks

Norton Rose Group

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About the Guide

The monumental need for data centres

Planning, locating building and operating a data centre

Environment and corporate governance

Outsourcing and offshoring

Shared Services

Data privacy

Hot topics and regional trends

Locating a data centre - jurisdictional and enforcement issues



Relevant factors for site selection

- Costs
- Supply and demand
- Connection
- Access to services and supplies
- Physical framework conditions
- Macro factors

Jurisdictional and enforcement issues

- Planning consents / permissions
- Impact assessments (environment)
- Grants and incentives
- Legal certainty
- Security / data protection considerations
- Real Estate factors

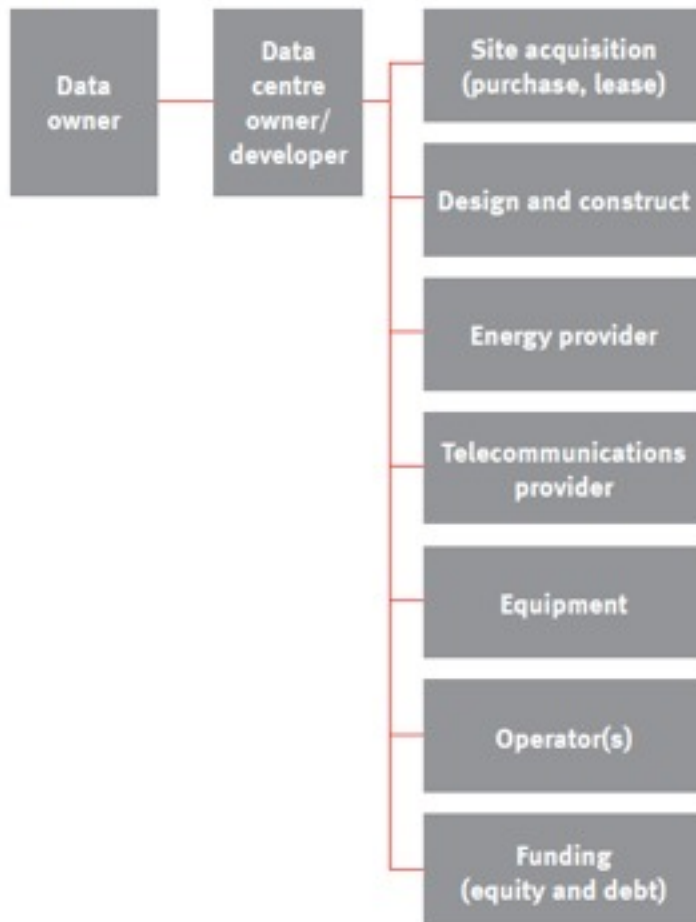
Planning, building and opening a data centre



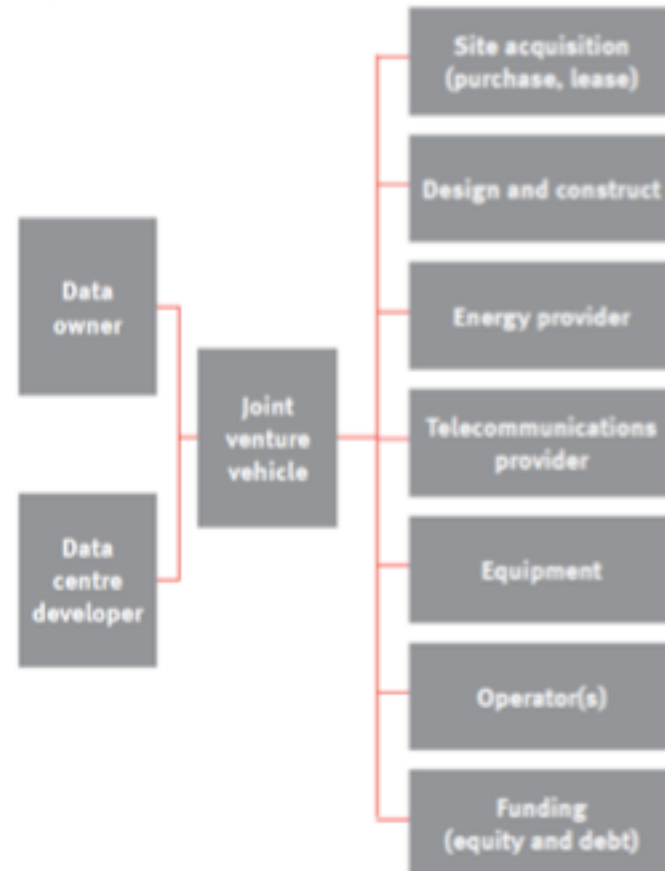
Planning, building and opening a data centre

Ownership Structures

Option 1: Tenancy agreement



Option 2: Joint venture



Planning, building and opening a Data Centre

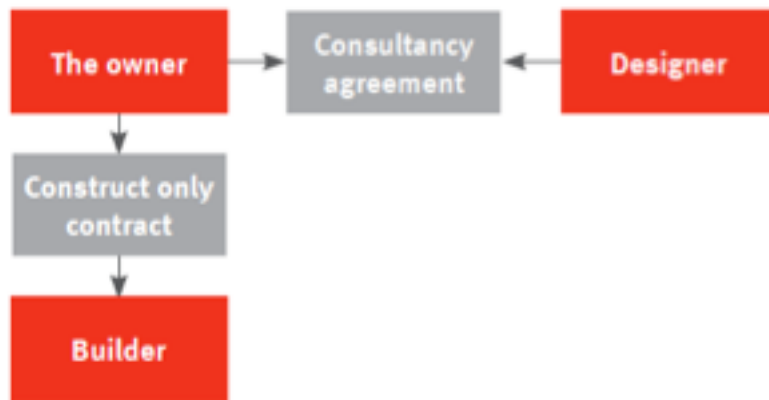
Site acquisition and construction

- Acquisition of title to the land
- Prior due diligence
 - Any encumbrances (third party rights) over the property such as existing mortgages or leases
 - Sufficient rights to access the property
 - Third party's rights to purchase the land or other priority interests that could prejudice the ownership
- Financing acquisition or construction
 - Protections for lenders (mortgage etc.)
 - Construction standards and timelines
 - Events of default and consequences
 - Call upon security
 - Reporting requirements
- Lease
 - Rent review
 - Rights to make alterations
 - Mechanism to expand facilities
 - Right to obtain security over leasehold interest
 - Transfer / sub-lease
 - Term and termination

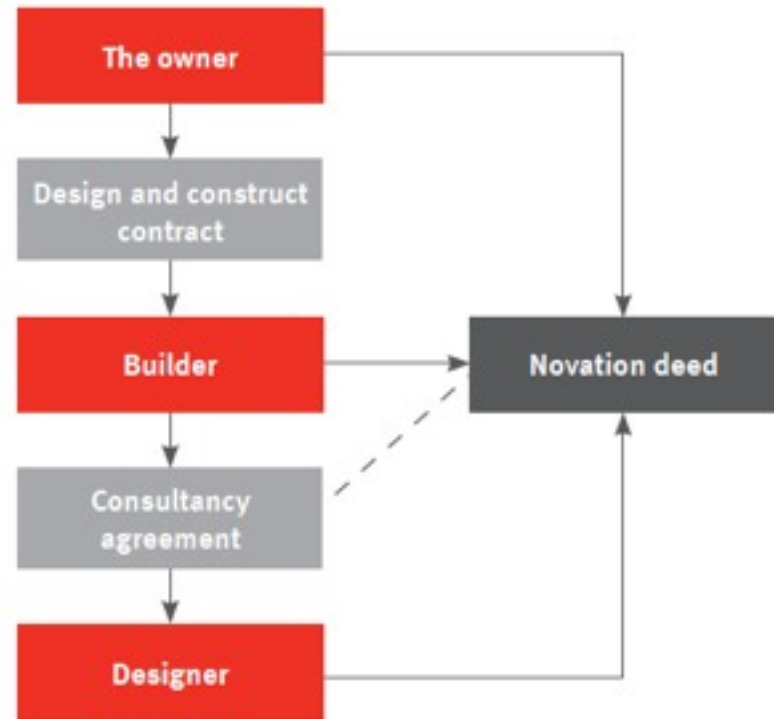
Planning, building and opening a data centre

Structures for appointment of building contractors

Model 1: Construct only model



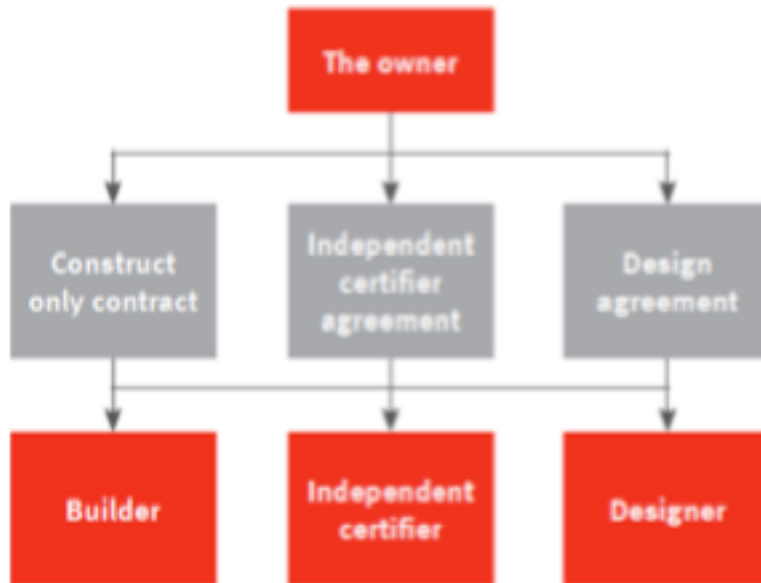
Model 2: design and build structure



Planning, building and opening a data centre

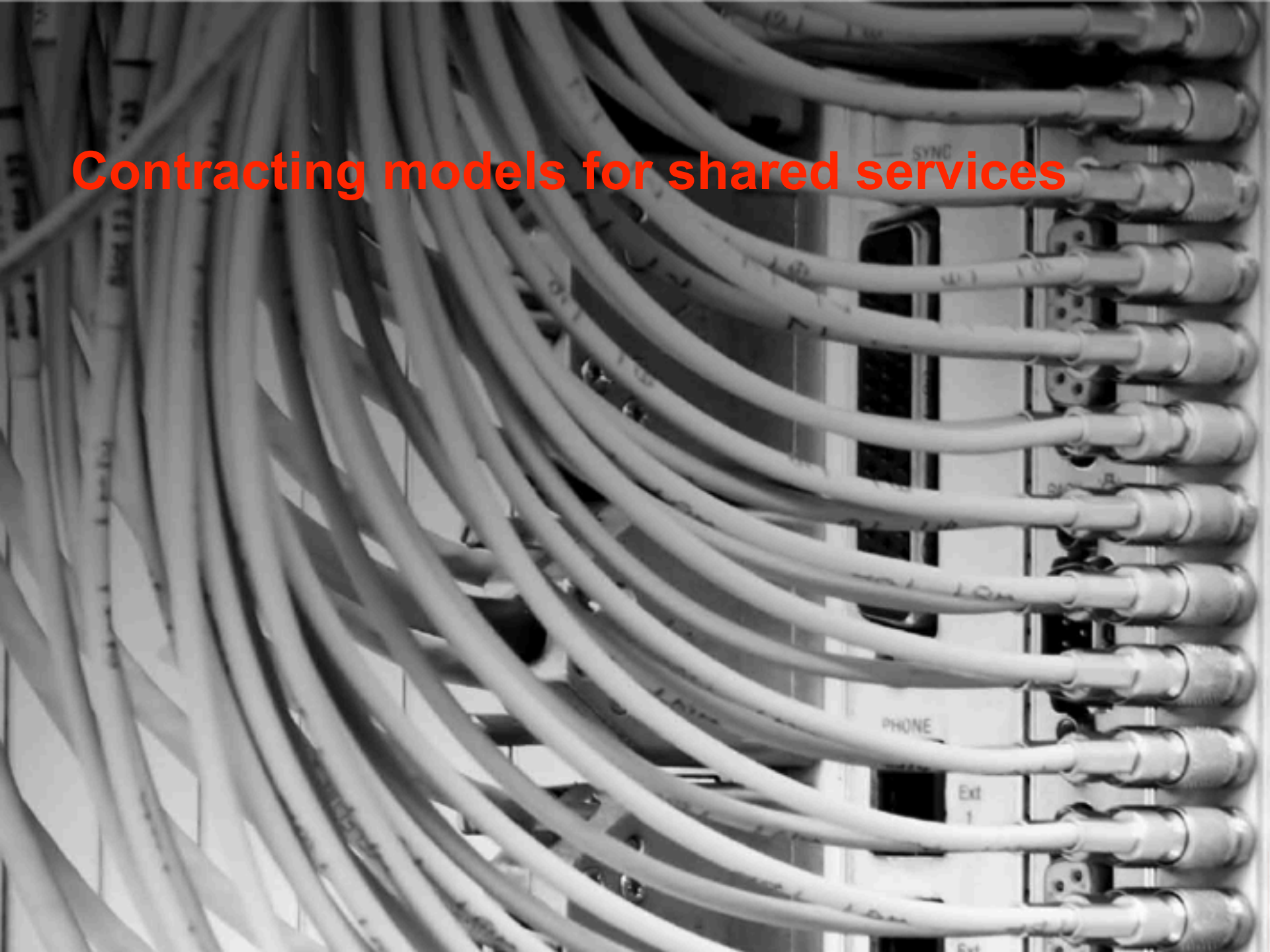
Structures for appointment of building contractors

Model 3: Split model



- **Advantages**
 - Price
 - Design control
 - Quality control
 - Timing
- **Disadvantages**
 - No single point of responsibility
 - Designer insolvency
 - Design and project management skills

Contracting models for shared services



Legal structures for shared services models

- Shared Services = provision of common support functions by one or more specialist data centres to a number of divisions / departments or organizations
- Provided through different shared services models (captive, joint venture, outsourcing)
- **Captive model - Legal structure:**
 - Forms part or is owned by customer organization it serves (in-sourcing)
 - Separate department or legal entity
 - Transfer of assets
 - Internal service levels

• Advantages

- Minimizes political and works council issues
- Staff expertise being retained
- Minimizes data privacy and confidentiality issues

• Disadvantages

- Lack of business transformation / change management mindset
- Lack of specialist shared services knowledge
- Lack of flexibility
- cost

Legal structures for shared services models

- **Joint venture model - Legal structure:**
 - Joint shared data centre operating for a number of private or public organizations
 - Mostly as independent corporate entity (private limited company)
 - Shares and profit distributions
 - Arm's length agreement

- **Advantages**

- Retaining a degree of control
- Access to third party expertise
- Sharing of risk

- **Disadvantages**

- Time and commitment
- Director's liability
- Deadlock and exit

Legal structures for shared services models

- **Outsourcing model - Legal structure:**
 - Provision of services by external data centre
 - Service provision on a purely contractual basis (importance of contractual safeguards including service levels, change requests, control and governance, exit, etc.)

- **Advantages**

- Access to third parties expertise
- Costs
- Flexibility

- **Disadvantages**

- Loss of own expertise
- Data protection / security issues
- Works council / employee issues

Q&A



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