
Data Centers in Dispute: Contract and Treaty Claims in the Global Build-Out

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This client alert forms part of a series focusing on data centers. In two alerts from [February](#) and [July](#) 2026, we examined the rapidly evolving legal landscape surrounding data center development, focusing first on emerging state and local regulatory initiatives and then on the growing wave of nuisance, environmental, and land-use litigation targeting data center projects in the United States. In two further alerts from August 2026, we focused on two specific areas: [behind-the-meter data center power generation](#) and [the growing use of data center moratoria](#). In an additional alert from [September](#) 2026, we examined evolving political and regulatory risks facing data center projects in Texas. This alert considers these issues from a wider perspective, by considering the likely growth of contractual or investment treaty claims in national or international fora arising from the global build-out of data centers.

Introduction

Data centers are being developed at an unprecedented pace to meet the continued expansion of cloud computing services and the rapidly growing demand for AI computing capacity. Major technology companies are playing an increasingly active role in these projects, working closely with contractors and suppliers to deliver new capacity at scale. Global investment in data centers more than doubled between 2022 and 2026, reaching \$555 billion as of May 2026, and could approach \$7 trillion by 2030.¹ The expansion is happening in all corners of the globe, with multibillion-dollar projects announced across North and South America, Europe, the Middle East, and Asia.

As data center projects accelerate, disputes are beginning to emerge. This alert focuses on two categories of claims: first, contractual claims that arise among owners, contractors, and subcontractors, whether litigated in national courts or resolved via international arbitration; and second, investment treaty claims that may be brought against host states when overseas data center projects are affected by governmental measures.

Types of Contractual Claims

Data center construction projects are complex undertakings involving multiple parties across the design, construction, and supply chain. In many cases, a technology company serves as the project

owner, usually through a subsidiary that owns or leases the site and contracts with a builder. In other cases, the project may be developed and owned by a specialist data center developer or colocation provider, which then leases capacity to technology companies. Whether developed by a technology company or a specialist provider, construction projects of this scale typically use bespoke Engineering, Procurement, and Construction (EPC)-style contracts, similar to those used in large energy and infrastructure projects, with heavily negotiated provisions on risk allocation, liability, and delay. These arrangements can give rise to a range of contractual disputes, including claims relating to delay and disruption, as well as design defects.

(i) Delay and disruption claims

Data center owners and their construction partners are facing intense pressure to deliver data center projects on schedule. At the same time, many data centers incorporate novel technologies and are being built at an unprecedented speed and scale. In these circumstances, delays often happen. Even short delays can have significant commercial consequences, particularly where project revenues, customer commitments, infrastructure roll-out plans, or the deployment of new AI computing capacity depend on timely completion. Responsibility for delay turns on the cause of the delay and the parties' contractual allocation of risk.

Data center owners may themselves be responsible for project delays where their actions affect the project's critical path (*i.e.*, the sequence of activities, taking into account dependencies on other activities, that determines the overall completion date). For example, where the owner directly procures long-lead time equipment, such as AI chips required to operate the facility, delays in obtaining that equipment may delay completion and may, depending on the contractual allocation of risk, give rise to claims involving the owner's responsibility rather than the contractor's (although the owner may have recourse against its supplier in some cases).²

Where the delays are alleged to have resulted from the owner's conduct, the contractor may seek two principal remedies: (i) an extension of time, relieving the contractor from liability for late completion, and (ii) recovery of additional costs incurred as a result of the delay.³

For example, a contractor may seek monetary damages based on delays and cost overruns resulting from design errors by the owner's architect and engineers, as well as based on allegations of the owner's alleged failure to properly manage third-party vendors and/or respond promptly to issues raised during construction. Situations like that illustrate how the owner may be responsible for delay where its own design and project management decisions impede progress.

On the other hand, where delays are alleged to be attributable to the contractor, the owner may seek to recover compensation for the resulting schedule overruns instead. Construction contracts usually address this through a liquidated damages clause, which requires the contractor to pay the owner a pre-agreed daily or weekly amount of compensation for delayed completion. It is worth noting that some countries will instead frame delay-related damages as a "penalty", while in other countries framing damages as a "penalty" may be problematic.

When negotiating these contracts initially, it is important to recognize that many scenarios where there is a delay will not be wholly the fault of the owner or the contractor, but instead require some

apportionment of fault. When entering into contracts to build a data center, an operator and contractor should consider mechanisms to allocate fault, consequences of being at fault, and any scenarios where delay may be permissible.

In addition to owner- or contractor-caused delays, delay and disruption claims may also arise from delays caused by subcontractors. In these circumstances, the owner's contractual remedies will most often be directed primarily against the general contractor, while the general contractor may in turn have rights of recourse against subcontractors or suppliers. Where this becomes complicated for a general contractor is if delays are caused by multiple subcontractors or suppliers, collectively. Everything will ultimately depend, of course, on the allocation of rights and responsibilities under the relevant contracts.

Subcontractor-caused delays can have cascading effects across multiple tiers of project participants. Recently, a sub-subcontractor involved in the construction of a data center in Huntsville, Alabama alleged that subcontractor-caused delays in the procurement, fabrication, and delivery of structural steel disrupted its work and resulted in substantial additional costs. The sub-subcontractor pursued claims against the subcontractor responsible for supplying the steel, against the general contractor, and against the project owner entities under a variety of legal theories, including breach of contract and *quantum meruit*.⁴ Although the court ultimately dismissed the *quantum meruit* claims against the owner entities and contractor, the case underscores that delay can potentially cascade through multiple tiers of different parties involved in the data center build-out, giving rise to substantial cross-party claims.

(ii) Defect claims

Defect claims arise where completed works fail to satisfy contractual requirements. Data centers present particular risks in this regard because they depend on complex technical systems and electrical infrastructure such as transformers, backup power systems, and cooling equipment.

Because these facilities are designed to operate with exceptionally high levels of reliability, even a brief outage can have significant commercial consequences for the owner.

An owner's remedies for defects depend on the contract and the timing of discovery of the defect.

Defects identified during construction can usually be corrected before the work is accepted.

Defects discovered after handover are typically addressed through the contract's warranty regime, which may entitle the owner to repairs, replacement, or damages.⁵ In many cases, remedies are limited. For example, if a cooling system is defective and the warranty provides for replacement or repair as the sole remedy, a data center operator may suffer damages to other systems that are not recoverable.

Defect disputes often turn on who was responsible for the design. Where the owner specifies the design, technical requirements, or particular equipment, the contractual framework often allocates to the owner some or all of the risk associated with defects arising from those requirements.⁶ This issue can arise in data center projects where technology companies dictate key design parameters or specify vendors for critical systems. Where a defect is alleged to be traced to those owner-mandated requirements, liability may rest with the owner rather than the contractor that installed

those systems.

Even where responsibility for the defect lies elsewhere, defect claims can flow through multiple tiers of the project structure. As a general rule, the owner's primary recourse will be against the general contractor even where the defect originates in equipment supplied by a subcontractor or manufacturer, although the extent of available remedies will depend on the terms of the relevant contracts. The contractor may in turn pursue recovery against the responsible subcontractor, supplier, or manufacturer under the relevant downstream agreements, including through contractual indemnity, warranty, or breach of contract claims. Given the reliance of data centers on specialized equipment procured through complex supply chains, a defect in a single component can therefore give rise to related claims across multiple contractual tiers.

(iii) Bottom Line: Contractual Claims

- **Carefully allocate risk in construction and supply agreements.** As data center projects increase in size and complexity, it is increasingly important to negotiate clear contractual provisions addressing delay (including allocation of responsibility for delay), design responsibility, change orders, warranties, and liability limitations. For projects involving multiple interrelated agreements, parties should also seek to ensure that key provisions are consistent across the contractual framework and do not create unintended gaps, overlaps, or conflicting obligations.
- **Pay particular attention to critical-path dependencies and long-lead time equipment.** Delays involving owner-furnished equipment, specialized electrical infrastructure, or key suppliers can have significant downstream consequences and may create disputes across multiple contractual tiers.
- **Evaluate how claims may flow through the project structure.** Defect and delay disputes often extend beyond the immediate contractual relationship and may involve subcontractors, suppliers, manufacturers, and other project participants.
- **Maintain contemporaneous project documentation.** Detailed records regarding design decisions, schedule impacts, procurement issues, and communications can be critical in resolving disputes or supporting claims. Parties should also pay close attention to contractual notice provisions and timing requirements, as failure to comply with them may prejudice or even bar otherwise valid claims.
- **Pay close attention to governing law and dispute resolution provisions.** Data center projects frequently involve multiple parties, jurisdictions, and contractual tiers. The choice of governing law provisions, forum selection clauses, and arbitration agreements can significantly affect how efficiently and effectively disputes are resolved.

Types of Investment Treaty Claims

The rapid global expansion of data center infrastructure is exposing technology companies, data center developers, and colocation providers to regulatory and political risks associated with investing abroad. Government action has already affected major developments. For example, plans for a significant data center campus in the Netherlands were recently abandoned following political and public opposition, with complaints centering on concerns over energy consumption

and pressure on local infrastructure.

Investments in overseas data center projects may benefit from protection under bilateral or multilateral investment treaties. These treaties may permit investors to bring claims directly against host states where governmental measures negatively impact the value of their investment.

Against that backdrop, two categories of potential treaty claims are particularly relevant to data center investments: those arising from allegations of arbitrary state administration and those arising from the withdrawal of investor incentives.

(i) Claims arising from allegations of arbitrary state administration

Data center projects are heavily dependent on government permits, environmental approvals, and grid connections. As a result, investors may bring treaty claims where a host state encourages or approves a project, only to later revoke or materially alter the approvals required for the investment to proceed.

Investment tribunals have previously found that states may breach treaty protections where, for example, a local government frustrates a project by refusing permits that an investor had been led to expect would be granted following approvals from other state authorities.⁷ Investment tribunals have also held that the withdrawal of project rights in response to political or community opposition may amount to an expropriation where less intrusive regulatory measures were available to the host state.⁸

Similar issues are increasingly arising in the data center sector. For instance, in Chile, environmental concerns led to the partial revocation of permits for a data center project, requiring a significant redesign. As data center developments come under increasing public and governmental scrutiny, disputes concerning the withdrawal of project approvals are likely to become more common.

(ii) Claims arising from the withdrawal of investor incentives

States are introducing incentives to attract data center investment through tax benefits, preferential energy arrangements, and other forms of state-sponsored support.⁹ Investment treaty claims may arise where an investor commits capital in reliance on such measures, only for the host state to later withdraw or fundamentally alter them.

In the context of renewable energy investments, Spain managed to attract significant overseas investment through generous feed-in tariffs which it subsequently substantially reduced, triggering more than fifty investment treaty claims under the Energy Charter Treaty. A number of tribunals held that Spain had frustrated the legitimate expectations of investors who had relied on the original framework when making their investments.¹⁰ The same principles may also apply to data center projects.

(iii) Bottom Line: Investment Treaty Claims

- **Assess political and regulatory risks as part of project diligence.** Data center projects

often depend on permits, environmental approvals, grid access, and government support measures that may change over time.

- **Consider whether investment treaty protections may be available before making significant overseas investments.** The availability of investment treaty protection will depend on the jurisdiction in which the investment is made, the nationality of the investor, and the applicable treaty framework. It is often more effective to assess treaty protections during investment structuring rather than after a dispute arises.
- **Pay close attention to government incentives.** Tax benefits, preferential energy arrangements, and other inducements may be important components of a project's economics, but changes to those programs can create significant legal and commercial risks.
- **Recognize that increasing scrutiny of data center development may create new sources of investment risk.** As governments balance economic development, energy demand, environmental concerns, and local opposition, disputes over approvals and incentives may become more common.

Conclusion

The rapid expansion of AI and cloud infrastructure is creating a new generation of disputes. However, the underlying issues emerging in the data center sector involve many of the same legal and commercial risks that have long arisen in major construction, infrastructure, and energy projects: delay and disruption, defective work, and, in some cases, investment treaty protections. As investment in data center infrastructure continues to accelerate, companies that own, build, and contract in relation to data centers should anticipate potential disputes and structure both their investments and project contracts accordingly.

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