

Data Centers Regional Guide

July 2023



Contents

FOREWORDS 3

BANGLADESH 5

CAMBODIA 11

INDONESIA 22

LAO PDR 35

THE PHILIPPINES 45

THAILAND 53

VIETNAM 58

ABOUT DFDL 67



Forewords



The Race is On

Southeast Asia has become a global hotspot for data centers and is now one of the fastest-growing data center markets in the world. A [study](#) published in February 2022 by US research firm Arizton found the region's data center market to be worth USD 8.7 billion, and projected it to reach at least USD 12.3 billion by 2027, growing at a 6% rate year on year.

The strong demand has been driven by the soaring consumption of data from both consumers and businesses in Southeast Asia, and the large-scale digital transformation currently underway, characterized by increased cloud storage, the emergence of 5G networks and the widescale application of the Internet of Things. Meanwhile, most countries are seeing their regulatory frameworks evolve towards stronger requirements for data localization.

The global Covid-19 pandemic has been another catalyst of this trend, accelerating online work, business, shopping and social media platforms – most of which depend on secure and cost-efficient data centers. In fact, many daily activities, from electricity bills to medical records, are connected to data centers.

Crucial Factors

As the backbone of modern business, a data center's downtime can cost companies incalculable damage in lost revenue and reputation – but establishing, securing and maintaining a data center can be an immensely complex operation, at the cross-roads of many diverse regulatory issues.

In the simplest terms, a data center is a facility that companies, governments and organizations use to store their applications and data. A data center is based on a network of computing and storage resources, including routers, switches, firewalls, storage systems, servers, and application-delivery controllers.

Other factors include real estate and construction costs, proximity and connectivity to solid network infrastructure, as well as social and environmental impacts. Increasingly, investors and operators are acknowledging ESG requirements, questioning the sustainable nature of the electricity powering data centers.



Forewords



Who Is Investing?

Southeast Asia is seeing a huge uptick in data center investments, ranging from smaller colocation centers to global hyperscale operators. Data centers have been described as “the new frontier” for Chinese and United States investments in Southeast Asia, but the wide range of companies jostling for a slice of the market is hardly restricted to the two superpowers. While some of the most renowned names in Big Tech are entering the regional data center market, the sector is also attracting strong interest from international and regional Private Equity firms, actively scouting opportunities.

For small and medium-sized businesses, the rising popularity of colocation data centers – a facility that rents out rack space to third parties for their servers or other network equipment – has offered opportunities of co-investment alongside their peers and larger corporations.

Why DFDL?

Founded in 1994 in the Mekong region, DFDL is a regional leader for legal and tax advisory services in emerging South and Southeast Asia, with a strong core expertise on infrastructure, energy and telecommunications. As a fully integrated firm, we serve international and regional clients in their most ambitious and complex projects across nine countries, with 12 local offices and more than 170 advisers and 32 partners.

Strongly entrenched in the emerging markets of South and Southeast Asia, DFDL has been at the forefront of the region’s digital infrastructure projects and transactions, ranging from market entry and regulatory advice to land acquisition, joint venture agreements, cross-border financing and M&A transactions. DFDL has been privileged to work in the last few years on some of the very first and most prominent data center projects in its jurisdictions, on behalf of international operators and financial investors. Driven by a strong commercial sense and industry-specific experience, DFDL advisers are committed to assist you successfully in your data center project.

The information provided in this report has been prepared and collected by our regional offices and is derived from our team’s direct experience on the ground. We hope it will provide a stimulating overview of data centers issues and opportunities in the region.

Bangladesh



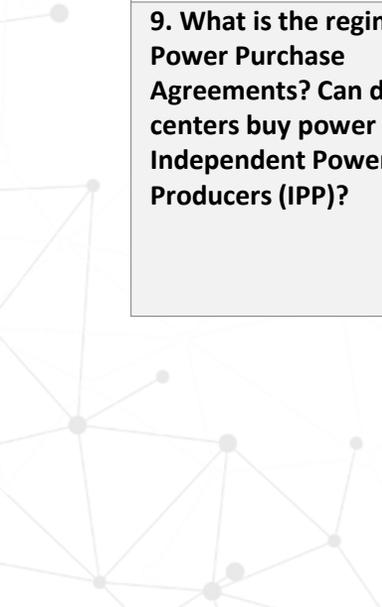
QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>1. Can a foreign data center manager operate a data center without establishing a local entity?</p>	<ul style="list-style-type: none"> ▪ Foreign Exchange Regulations 1947 ▪ Bangladesh Bank Guidelines for Foreign Exchange Transactions 2018 	<p>If a data center manager is providing services without physical presence in Bangladesh (i.e. on a contractual service basis without local employees and local office) to customers located in Bangladesh, then the data manager may provide such services without having legal presence in Bangladesh. There is no requirement for the foreign data center manager to incorporate a local subsidiary. In that case, please note that Bangladesh has a strict foreign exchange regulation and specific Bangladesh Bank (i.e. central bank) approval will be required to remit monies outside to the foreign data center manager for service provided in Bangladesh.</p> <p>If the data center manager intends to have a local office, employees and generate local income, then it is either required to setup a branch office or incorporate a subsidiary in Bangladesh. Please note that branch offices are not allowed to generate local income without first obtaining an approval from the Bangladesh Investment Development Authority (“BIDA”).</p>
<p>2. What are the foreign ownership restrictions for data center business?</p>	<p>N/A</p>	<p>Currently, there is no foreign ownership restriction for data center business in Bangladesh. However, we have unofficially discussed this with market experts and it appears that the policy makers are considering to impose foreign ownership restrictions on data centers.</p> <p>In the event the data center manager incorporates locally, then it will require to obtain an ISP license for providing telecommunication services in Bangladesh. There is no foreign ownership restrictions on owning an ISP business.</p>

QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>3. What are the general licenses required to develop and operate a data center?</p>	<ul style="list-style-type: none"> ▪ Local Government Authority (City Corporation) Act 2009 ▪ Local Government Authority (Municipality) Act 2009 ▪ Local Government Authority (Union Parishad) Act 2009 ▪ Telecommunications Act 2001 (as amended in 2010) ▪ Bangladesh Investment Development Authority 2016 	<p>There is no specific regulatory regime for data centers in Bangladesh. No specific licence save for a ISP licence may be required to operate a data center.</p> <p>However, the data center manager operating through a local subsidiary will require certain generic licences such as the trade license from the local government authority, Tax and VAT registrations, industrial registration from BIDA, import registration certificate, a no-objection certificate from Bangladesh Telecommunications Regulatory Commission (“BTRC”) for importing certain equipment, and establishment license among others.</p>
<p>4. What are the legal rights and obligations applicable to data center interconnectivity?</p>	<ul style="list-style-type: none"> ▪ Telecommunications Act 2001 (as amended in 2010) ▪ Licensing Guidelines for Issuing License to National Internet Exchange (NIX) 2012 	<p>A National Internet Exchange (“NIX”) license is required for providing internet exchange services or data center interconnectivity services. NIX is the exchange point for passing internet traffic within the country according to the agreement between different ISPs. Two or more licensed ISPs can form a company to provide NIX services. A NIX licensee cannot have a foreign shareholder.</p>
<p>5. Are there specific regulations governing the design and construction of data centers?</p>	<p>Data Center Guideline 2020</p>	<p>There are no specific laws and regulations governing the design and construction of privately owned data centers. All buildings are required to be constructed in accordance with the specifications set out in the Building Code 2020. We understand that unless a specific legal regime is introduced regarding private data centers, the Building Code 2020 will apply. Also, there are different classes of land in Bangladesh such as agricultural, industrial, residential, commercial etc. We understand that data center can be constructed only on industrial land or commercial spaces. If the client purchases or leases the land of any other class, it will be required to be converted into industrial or commercial land before using the same for data center services.</p> <p>Separately, the Data Center Guideline 2020 (“Guideline 2020”) applies to government owned data centers only and sets out rules governing the design and construction of data centers.</p>

QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>6. Is a foreign-owned data center permitted to sublease rack space? If yes, are additional licenses or permissions required?</p>	<p>User's Policy for National Data Center Bangladesh Computer Council</p>	<p>There is no restriction in data centers, held and operated by foreign owned local subsidiaries, to sub-lease rack space. As discussed, there is no specific data center regime in Bangladesh.</p>
<p>7. Can foreign investors own real property for purposes of data center development?</p>	<ul style="list-style-type: none"> ▪ Foreign Direct Investment (FDI) ▪ Land Law 	<p>Bangladesh allows foreigners to privately invest in all its industries, except the defense, nuclear energy, mining, and forest plantation industries. Key sectors that have benefited from foreign direct investment (FDI) include garment and textiles, agribusiness, energy, IT and outsourcing, and infrastructure.</p> <p>Foreign persons or entities are not allowed to directly own land in Bangladesh. They can take a lease over land only. However, certain legal structures can allow foreign nationals and entities to indirectly enjoy either freehold or leasehold title to land. They may do so by incorporating a Bangladesh local company (with up to 100 per cent foreign ownership, depending on the sector they are investing in) and having that foreign owned local company own or lease land in Bangladesh. Foreigners can also take ownership of shares in an existing local company that owns relevant land.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>8. Can security over data center real property (i.e. mortgage, charge, etc.) be granted to a foreign lender? Can a foreign lender take ownership of real property in the event of a foreclosure?</p>	<p>Data Center Guideline 2020</p>	<p>Security cannot be directly provided to foreign lenders. Foreign lending requires prior approval from BIDA. Pursuant to the BIDA approval, a local bank acting as security agent can take mortgage over real property on behalf of foreign lenders. In the event of foreclosure, the local security agent can directly sell the real property and remit the proceeds to the foreign lender by obtaining Bangladesh Bank permission.</p>
<p>9. What is the regime for Power Purchase Agreements? Can data centers buy power from Independent Power Producers (IPP)?</p>	<ul style="list-style-type: none"> ▪ Private Sector Power Generation Policy 1996, ▪ Renewable Power Policy 2008, ▪ Power and Energy Fast Supply Act 2010 	<p>Data centres or local customers cannot directly purchase powers from IPPs, who are supplying power to the national grid. Under Bangladesh laws, power generated by IPPs are sold to the Bangladesh Power Development Board (“BPDB”), which in turn sells power to the 6 government owned distribution utilities in Bangladesh. The data center will require to apply to one of the utilities to obtain power connection, and it will not require to enter into a separate power purchase agreement with the distribution utility. Separately, data centers can generate their own power from renewable set-up or small-scale generators. Otherwise, as consumers, they can enter into private PPAs with developers of commercial and industrial scale (“C&I”) power projects.</p>





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>10. What data protection / cyber security laws regulate or constrain the operation of a data center? What data retention obligations are placed on data center operators/developers? Are there any restrictions on transferring personal data into or out of the jurisdiction?</p>	<ul style="list-style-type: none"> ▪ Data Protection Act 2022 (Draft) ▪ Digital Security Act 2018 ▪ ICT Act 2006 	<p>In Bangladesh, there is no comprehensive data protection act yet that governs the collection, use and disclosure of personal data. The government has recently issued a draft act in this regard namely the Data Protection Act 2022 for public comments and opinion.</p> <p>At present, there are certain laws, rules and regulations which provides specific requirements and restriction in relation to collection of personal data, such as the Digital Security Act 2018, the Digital Security Rules 2020, the Information and Communication Technology 2006 and the Bank Companies Act 1991.</p> <p>Presently, it is illegal to collect, sell, take possession of, supply or use any person’s ‘Identity Information’, such as external, biological or physical information, without ‘legal authority’. Although, the term ‘legal authority’ is not defined, we understand that it means consent of the data provider/owner. There is no separate data retention or localisation obligation save that data should not be retained or transferred outside Bangladesh without express user consent. Separately, there are obligations on banks under the banking laws to retain customer data in Bangladesh.</p>
<p>11. Are there specific compliance obligations related to Health, Safety & Environment (HSE)?</p>	<ul style="list-style-type: none"> ▪ Bangladesh Labour Act 2006 ▪ Bangladesh Environment Conservation Act 1995 	<p>There is no specific health, safety and environment requirement with regard to operation of data centers. The general health and safety requirements under the Bangladesh Labour Act 2006 and Bangladesh Labour Rules 2015 shall apply. Separately, we understand that a company for operating a data center, should obtain an environmental clearance certificate from the Department of Environment.</p>



Cambodia





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>1. Can a foreign data center manager operate a data center without establishing a local entity?</p>	<p>Law on Commercial Enterprises dated 30 May 2005, as amended by the Law on Amendments to the Law on Commercial Enterprises dated 29 January 2022 (“LCE”).</p>	<p>Under Article 272 of the LCE, a foreign company is deemed to be “doing business” in Cambodia if it performs the following activities in Cambodia:</p> <ul style="list-style-type: none"> (a) rents an office or any other space for manufacturing, or processing, or performing services for one month or more; (b) hires any person to perform work for it for one month or more; or (c) performs any other act that Cambodian law authorizes for foreign national or legal persons. <p>Any foreign data center satisfying any of the above conditions is required to register a local entity.</p> <p>To date, we are not aware of any judicial opinion or official guidance regarding the interpretation of Article 272 of the LCE. The period of “one month” under Article 272 of the LCE may be interpreted broadly to capture “a continuous or intermittent one month duration” and the term “person” may include employees of a foreign company based in a foreign country who travel to Cambodia for a business trip from time to time. Further, to date, the scope and extent of the trigger requirement under the third limb of Article 272 above has not been clarified by any official guidance or judicial opinion. This broad provision is, therefore, subject to interpretation by the relevant authority and competent courts in Cambodia.</p>
<p>2. What are the foreign ownership restrictions for data center business?</p>		<p>There are currently no restrictions to operate such businesses except in the event that land is owned by the developer (see Section 7 below).</p>
<p>3. What are the general licenses required to develop and operate a data center?</p>	<ul style="list-style-type: none"> ▪ Law on Telecommunications dated 17 December 2015; ▪ Sub-Decree No 110, on ICT Licensing Regime dated 21 July 2017. 	<p>On 21st July 2017, the Royal Government of Cambodia (“RGC”) adopted Sub-Decree No. 110 ICT Licensing Regime (“Sub-Decree 110”), regulating on the licensing requirement for the ICT regime. Article 8 of the Sub-Decree 110 requires that the operational license shall be obtained from the General Department of ICT (“GDICT”) prior to undertake any start up and process of data center business.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>4. What are the legal rights and obligations applicable to data center interconnectivity?</p>	<ul style="list-style-type: none"> ▪ Sub-Decree No. 23 on the Establishment of the National Internet Gateway dated 16 February 2021; ▪ Sub-Decree No 110, on ICT Licensing Regime dated 21 July 2017. 	<p>On 16 February 2021, the RGC adopted Sub-Decree No. 23 on the Establishment of the National Internet Gateway ("NIG Sub-Decree") which requires the telecommunication operators and <u>concerned person</u> to connect and peer its network with the National Internet Gateway ("NIG"). The NIG consists of Domestic Internet Exchange ("DIX") for domestic traffic exchange and the International Internet Gateway ("IIG") for international internet network.</p> <p>Article 7 of the NIG Sub-Decree imposes the obligations on the ISPs and the <u>Concerned Person</u> to connect and peer it networks with the DIX for domestic traffic exchange and accept a connection to the International Private Lease Circuit ("IPLC") from overseas through the IIG. Glossary of the NIG Sub-Decree defines "Concerned Person" as telecommunication services operators, content service providers, <u>data centers</u>, associations and other relevant institutions that connect and exchange data between each other through domestic internet gateway, either directly or indirectly. Connection and peering with the NIG is subject to connection fees, which will be charged based on number, type and bandwidth of the interface to be determined by the MPTC and the Ministry of Economy and Finance ("MEF").</p> <p>Further, Article 9 of the NIG Sub-Decree 23 also requires the telecommunications operator and Concerned Persons to use of an Autonomous System Number ("ASN") to peer internet connection in Cambodia and the conditions and procedure to apply for an ASN and Internet Protocol Address ("IP Address") will be set out in a separate Prakas of the MPTC.</p> <p>Nonetheless, on the 15 February 2022, a statement was released by the spokesman of the MPTC suspend the implementation the NIG Sub-Decree until further notice. To the best of our knowledge to date, we are not aware of any further notification issued by the MPTC with respect to the implementation of the NIG Sub-Decree.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>5. Are there specific regulations governing the design and construction of data centers?</p>	<ul style="list-style-type: none"> ▪ Construction Law of 2 November 2019 ▪ Sub Decree No. 224 of the Royal Government of Cambodia (“RGC”) on Construction Permits dated 30 December 2020 (“Sub Decree 224”) ▪ Sub Decree No. 225 of the RGC on Conditions and Procedures for Construction Inspection and Certification dated 30 December 2020 (“Sub Decree 225”) ▪ Sub Decree No. 226 of the RGC on Conditions and Procedures of Granting, Suspension and Revocation of Construction Occupancy License, dated 30 December 2020 (“Sub Decree 226”) ▪ Prakas of the Ministry of Land Management, Urban Planning and Construction (“MLMUPC”) No. 033 on Issuance, Granting New License Paper, Termination and Renewal of Validity of Construction Inspection and Certification dated 21 January 2021 (“Prakas 033”) ▪ Inter-ministerial Prakas between the MLMUPC and the Ministry of Justice on Procedure and Formalities of Construction Inspection dated 2 August 2019 	<p>At the present time, there are no specific laws and regulations governing design and construction of data centers in Cambodia. The relevant laws and regulations on design and construction as indicated in the legal framework that apply to the design and construction in general will also apply to the data centers design and construction if it is relevant to construction of buildings including structural work, electrical system and plumbing, fuel pumps, networking or physical security systems. In addition, there are no required or obligated standards for data center’s design or construction. However, the Ministry of Land Management, Urban Planning and Construction (“MLMUPC”) is preparing draft Prakas regarding construction technical regulations that may include the details of what is called “Building Codes”, applicable to design and construction of a building. There is no the official indication as to when the draft Prakas will be adopted. This may take some years. As a consequence, in absence of such Building Codes, the construction owners or contracting parties are free to select a standard they will comply among suggested standards (Eurocodes, American codes or international standards of a country, Singapore Building Codes, etc.) as long as they comply with construction permit obtained and the relevant regulations in place. Article 34 of Prakas 126 expressly provided that <i>“if no construction technical regulations are available for any building work, the construction certifier shall apply any construction technical standards recognized internationally or regionally at the choice of the designer, builder or construction laboratory and shall inspect and certify only the construction safety-related parts”</i>.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>5. Are there specific regulations governing the design and construction of data centers? (continued)</p>	<ul style="list-style-type: none"> ▪ Inter-ministerial Prakas of the MLMUPC and the Ministry of Economy and Finance on Supplemental to the List of Public Service Fees of the MLMUPC dated 10 August 2021 ▪ Prakas of the MLMUPC No. 109 on Formalities of Inspection and Certification Works of Architectural and Structural Design, dated 22 November 2021 (“Prakas 109”) ▪ Prakas of the MLMUPC No. 126 on Formalities of Inspection and Certification Works of Construction and Demolition of Architectural and Structural Works, dated 30 December 2021 (“Prakas 126”) ▪ Prakas of the MLMUPC No. 047 on Level of Danger, Issuance of Preventive Measures and Procedures of Management of Hazardous Constructions dated 1 February 2022 (“Prakas 047”) 	



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>6. Is a foreign-owned data center permitted to sublease rack space? If yes, are additional licenses or permissions required?</p>	<ul style="list-style-type: none"> ▪ Law on Telecommunications dated 17 December 2015; ▪ Sub-Decree No 110, on ICT Licensing Regime dated 21 July 2017. 	<p>Assuming a foreign-owned data center is the incorporated entity licensed by the Cambodian authorities, there is no restriction or limitation for a foreign-owned data center to sublease rack space.</p>
<p>7. Can foreign investors own real property for purposes of data center development?</p>	<ul style="list-style-type: none"> ▪ Cambodia Constitution of 1993 ▪ Land Law of 13 August 2001 ▪ Civil Code of 8 December 2007 ▪ Trust Law, promulgated on 2 January 2019 ▪ Law on Commercial Enterprises dated 30 May 2005, as amended on 29 January 2022 by the Law on Amendment of Law on Commercial Enterprises (“LCE”) 	<p>A real property, such as land in Cambodia may be privately owned by a person (either individual or corporate entity) with Cambodian citizenship only. In the other words, land cannot be owned by any foreign individual or corporate entity. I being the case, this would be held illegal. A corporate entity is considered to have Cambodian nationality if 51% or more of the voting shares of the entity are held by Cambodian citizens or a Cambodian entity.</p> <p>That said, there are some practical ways in which a foreign investor (including individual or corporate entity) could have foreign ownership of the land for the data center development in Cambodia: (i) by establishing a landholding company (“LHC”), (ii) trust service, (iii) obtaining Khmer citizenship (a complicated process, timing consuming and costly), (iv) obtaining leasehold rights via long term lease investment (a lease with greater 15 years up to 50 years, with a possibility to renew it for another 50 years), and other means that are not discussed herein.</p> <p>Due to the nature of development, the most appropriate way to own real property is LHC establishment to own land for such development supported by a few protection layers via the company management control based on corporate registration documents registered with the government Ministries, share protection documents and land protection documents to be prepared. Another viable vehicle is investing in a long-term lease in which the land remains under the ownership of Cambodian citizens and the foreign investor is not allowed to resell the property for capital gain. This is an easy and less expensive way other than ownership options available to foreigners. The long-term lease can be registered with the relevant land office and a certificate of a long-term lease will be issued upon successful registration. The long-term lease also includes the right to develop the data centers on the leased land.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>8. Can security over data center real property (i.e. mortgage, charge, etc.) be granted to a foreign lender? Can a foreign lender take ownership of real property in the event of foreclosure?</p>	<p>Land Law dated on 13 August 2001</p> <p>Law on Secured Transaction dated 24 May 2007 (“LST”)</p>	<p>Under Cambodian law, security can be created over both immovable property and movable property and such security can be granted to foreign lender.</p> <p>For immovable property, hypothecs are very common in Cambodia. Further, although there are restrictions on foreign ownership over land in Cambodia, nothing prevents the granting of security in favor of a foreigner or in favor of a foreign legal entity. Hypothecs, however, may only be taken over land registered at the cadastral office (hard title land). It is possible to take a pledge over land that is not registered at the cadastral office (soft title land) but it is not nearly as robust or valuable as a hypothec. Hypothecs over land and long-term lease are perfected (i.e. priority against third party claimants) by registering at the relevant cadastral office. When it comes to enforcement, a foreign secured party may apply to the court for compulsory sale of the hypothecated immovable in order to be paid in priority by preference and privilege prior to other creditors but such foreign secured party will not be able to take ownership of the immovable property.</p>
<p>9. What is the regime for Power Purchase Agreements (PPA)? Can data centers buy power from Independent Power Producers (IPP)?</p>	<p>Law on Electricity dated 2 February 2001, as amended on 22 June 2007 and 18 May 2015 (“Electricity Law”)</p> <p>Regulations of the Electricity Authority of Cambodia on General Conditions for Connecting Solar PV Generation Sources to the Electricity Supply System of National Grid or to the Electricity System of a Consumer Connection to the Grid dated 26 January 2018 (“Solar Regulations”)</p>	<p>Data centers can purchase power directly from Electricité du Cambodge (“EDC”), which is a wholly state-owned limited liability enterprise incorporated by Royal Decree No. 0396/10 dated 9 March 1996 (on the Creation of EDC) . Other than EDC, data centers can purchase power from other private distribution licensee who is licensed to distribute electricity in the area that the data center is located.</p> <p>Alternatively, data centers can lease solar PV systems to be installed on its rooftop for self-consumption under the Solar Regulations. No licenses is required for data centers to lease the solar PV system from the solar operator but in case the data center wishes to synchronise its rooftop PV system with the national grid, prior consent from the EDC is required.</p> <p>If the data center wishes to sell excess electricity generated from the rooftop PV system to EDC or private distribution licensee, a PPA is required to be executed with the EDC (or the private distribution licensee) and such PPA needs to be approved by the Electricity Authority of Cambodia (“EAC”) and a generation license is also required to be obtained from the EAC.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>10. What data protection / cyber security laws regulate or constrain the operation of a data center? What data retention obligations are placed on data center operators / developers? Are there any restrictions on transferring personal data into or out of the jurisdiction?</p>	<ul style="list-style-type: none"> ▪ Cambodia Constitution of 1993; ▪ Law on Telecommunications dated 17 December 2015; ▪ Law on Electronic Commerce dated 2 November 2019; ▪ Sub-Decree No 110, on ICT Licensing Regime dated 21 July 2017; ▪ Civil Code of Cambodia dated 8 December 2007; ▪ Criminal Code of Cambodia dated 30 November 2009. 	<p>Currently, there are currently no specific laws and regulations constrain the operation of a data center. Nonetheless, under the current legal framework, the data protection/retention obligations may be founded in different laws and regulations, including:</p> <p><i>Constitution of Cambodia</i> Per Article 40 of the Constitution, all Cambodian citizens have a right to privacy of residence and to the confidentiality of correspondences by mail, telegram, fax, telex and telephone.</p> <p><i>Law on Telecommunication (“LOT”) dated 2 November 2019</i> Article 65 of the LOT grants basic rights to the subscribers, including rights to privacy, security and safety of using the telecommunication service, excepted otherwise determined by other specific law.</p> <p><i>2007 Civil Code of Cambodia (“CCC”)</i> A right to privacy is enshrined as a constitutional right and is considered as a personal right under Article 10 of the Civil Code. For the purposes of Article 10, personal rights include the rights to life, body, health, freedom, name, dignity, privacy and other rights relating to personal benefits or interests. However, the scope and extent of any privacy rights granted under the Civil Code has not been clarified by any official guidance or judicial opinion and therefore the extent of the rights to privacy is subject to interpretation by a competent Cambodian court.</p> <p><i>2009 Criminal Code of Cambodia</i> Article 314 of the Criminal Code states that any person who, by reason of their position, profession, function or mission, holds information of a confidential nature, can be held criminally liable in the event that such confidential information is disclosed.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>10. What data protection / cyber security laws regulate or constrain the operation of a data center? What data retention obligations are placed on data center operators / developers? Are there any restrictions on transferring personal data into or out of the jurisdiction? (continued)</p>		<p>Law on E-Commerce (2019) Article 32 of the E-Commerce Law provides safeguards to consumers’ data that have been engaged in transactions via electronic systems such as:</p> <ul style="list-style-type: none"> a. any person that holds personal information in electronic form shall use all means to ensure that the information is protected by such security safeguards as it is reasonable in every circumstances to avoid the loss, access, use, modification, leak or disclosure of those information, except with the permission of the owner of the information or any other party authorized by law; and b. any person shall not interfere in the electronic system, access, retrieve, copy, extract, leak, delete or modify data, which is under the retention of any other person in bad-faith or without permission. <p>In light of the above, data center operators/developers is likely to have data protection obligation, and obtaining prior consent from the disclosed person is suggested before undertaking any transferring of personal data into or out of the jurisdiction.</p> <p>Given that the Law related to data protection/cyber security is still drafted laws, the requirements/obligations relating to the data protection/cyber security is subject to be re-reviewed upon the promulgation of the Law pertaining to the data protection/cyber security. We will keep our attention to it.</p>





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>11. Are there specific compliance obligations related to Health, Safety & Environment (HSE)?</p>	<p>Law on Construction dated 2 November 2019 (“Construction Law”)</p>	<p>Health and safety</p> <p>The main governing law that provides for provisions regarding health and safety compliance obligations by a construction owner is the Construction Law. Those provisions aims to ensure the construction quality, security and safety. Below are some requirements of health and safety obligations:</p> <ul style="list-style-type: none"> ▪ Every construction must obtain structural safety certification, health and comply with the fire safety regulations and obtain fire safety certification (Articles 8 and 9 of the Construction Law). ▪ Construction material, equipment and product (MEP) must be certified and complied with the Building Codes, evidenced by the certificate of compliance (Article 22 of the Construction Law). ▪ Builder must ensure public security, safety, order and environment at their construction sites. In case of necessity, the MLMPC may assign a construction controller to check building and the construction owner, users, builder and a construction certifier must well cooperate with the construction controller. Based on the checking, the MLMUPC may suspend, modify, halt or require constructed demolition or take other measures if the building is not compliant with the Building Codes and other regulations in force (Articles 39 and 42 of the Construction Law). ▪ A quality and safety control on construction must be conducted within a maximum period of 5 years from the date when the certificate of occupancy is issued and this control must be conducted regularly once every 5 years, at the latest. Further, quality control and certification of the control and effectiveness of the construction’s fire prevent and extinguishment system must be conducted once every two years (Article 47). ▪ For hazardous construction equipment, the quality and safety control must be done once a year. The construction owner or building manager has an obligation to hand over the safety and quality control to the MLMUPC within one month after the deadline for the conduct of such quality and safety control.



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>11. Are there specific compliance obligations related to Health, Safety & Environment (HSE)? (continued)</p>		<ul style="list-style-type: none"> ▪ A quality and safety control is also required if there is a risk to human life, property or effect on public security or order (Article 48) ▪ The construction safety and quality control must be conducted by construction controller of the MLMUPC or licensed certifiers issued by the MLMUPC at the cost of the construction owner (Article 49). <p>Article 98 provides for punishment (1-3 years imprisonment and monetary fine from 20 million to 40 millions Riels) for any building work, construction MEP without compliance with the Building Codes or MEP technical regulations and that causes injury to or damages the health of others.</p> <p>Environment</p> <p>The applicable environment regulations require an environmental impact assessment (“EIA”) for certain projects due to their nature, size or activity. There are two types of EIA: Initial EIA and full EIA. Besides, a construction project company may be required to sign an environmental protection agreement (“EPA”) with the Ministry of Environment (“MOE”). According to Prakas No. 021 of the MOE on Classification of Environmental Impact Assessment for Investment Projects dated 3 February 2020, construction of all kinds of buildings (office, multiple purposes, other buildings) will be subject to the following types of the EIA depending on the size of such building:</p> <ul style="list-style-type: none"> ▪ Full EIA if the building size is greater 45,000 square meters ▪ Initial EIA if the building size is greater than 15,000 up to 45,000 square meters ▪ EPA for building size greater than 3,000 up to 15,000 square meters. <p>Thus, addition to the environmental standards in the Building Codes, any construction of data centre falling under the requirements above must obtain the respective EIA as discussed above.</p>

Indonesia





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>1. Can a foreign data center manager operate a data center without establishing a local entity?</p>		<p>Please be informed that data center is not specifically regulated under Indonesian laws. However, pursuant to Government Regulation No. 71 of 2019 concerning the Administration of Electronic Transaction and System ("GR 71/2019"):</p> <ul style="list-style-type: none"> a. Private Scope Electronic System Operators may manage, process, and/or store Electronic Systems and Electronic Data <u>in the territory of Indonesia and/or outside the territory of Indonesia.</u> b. Public Scope Electronic System Operators may manage, process, and/or store Electronic Systems and Electronic Data <u>outside the territory of Indonesia in the event that storage technology is not available domestically.</u> <p>In addition to the foregoing, we also note that the Regulation of Minister of Communication and Informatics No. 5 of 2020 on the Administrator of Private Scope Electronic System as amended by the Regulation of Minister of Communication and Informatics No. 10 of 2021 ("MR 5/2020") provides that the administrator of private scope electronic system that is established based on the foreign law of or domiciled in foreign country who:</p> <ul style="list-style-type: none"> a. provides services within the territory of Indonesia; b. operates business in Indonesia; and/or c. the Electronic System is used and/or offered in the territory of Indonesia, <p>must conduct registration with the Minister of Communication and Informatics to obtain a registration certificate.</p> <p>Please note that the MR 5/2020 only mandates a registration with the Minister and not establishment of a legal entity in Indonesia.</p> <p>Accordingly, it can be interpreted that GR 71/2019 and MR 5/2020 are permitting a foreign data center company to operate its business without establishing a local entity in Indonesia.</p>





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>2. What are the foreign ownership restrictions for data center business?</p>		<p>Please note that the type of business licensing and foreign shareholding limitation of an Indonesian company will be determined based on the business activities that will be performed by such a company. Please note that in Indonesia each of the business activities is classified under certain KBLI codes, consisting of 5 numerical digits.</p> <p>Currently, there are no one particular KBLI codes that is representing the entirety of data center business activities. For instance, the provision of cloud computing services falls under KBLI 63122 (Hosting and Other Activities), while the provision of its infrastructure (e.g., the lease of physical space, room and/or building in managing the data center) falls under KBLI 68111 (Real Estate). Both KBLI codes 63122 and 68111 are open for 100% foreign ownership.</p>





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>3. What are the general licenses required to develop and operate a data center?</p>		<p>In the event there is no subsidiary company that will be established in Indonesia, then the foreign data center company must be registered as a foreign administrator of private scope electronic system and obtain registration certificate commonly known in Indonesia as TDPSE.</p> <p>In the event the foreign data center company will establish a subsidiary company in Indonesia then it must be in the form of foreign investment limited liability company ("PMA Company"). If the PMA Company is engaging in business activities under KBLI No. 63112 and KBLI No. 68111 (please refer to our answer to question number 2), then it must obtain the following licenses:</p> <ol style="list-style-type: none"> a. A business identification number (<i>Nomor Induk Berusaha</i> or "NIB"); b. Standard Certificate. Issued by the government based on the results of verification of compliance with standards for the implementation of business activities by business actors; c. Certificate of Exemption for located in Industrial Estate. This license will be applicable if the PMA Company is located outside the Industrial Estate; d. Electronic System Providers Registration Certificate or TDPSE; and e. Industrial Business Licensing Technical Verification. <p>Please also note that for KBLI No. 63112, the PMA Company will be required to have a server located in Indonesia.</p>





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>4. What are the legal rights and obligations applicable to data center interconnectivity?</p>		<p>Please be informed that currently Indonesia does not have a specific regulations governing data center. Accordingly, the legal rights and obligations applicable to data center interconnectivity is not clearly regulated.</p> <p>However, Article 7 of GR No. 71/2019 provides that hardware used by electronic system provider should (a) meet the security, interconnectivity and compatibility aspects with the system used; (b) have technical, maintenance and/or aftersales support services from the provider; and (c) have guaranteed continuity of service. Compliance of such requirements should be carried through certification or other similar evidences.</p> <p>In addition, the data center company as an electronic system provider must:</p> <ol style="list-style-type: none"> a. ensure information security in accordance with the provisions of laws and regulations; b. protect personal data in accordance with the provisions of laws and regulations; and c. conduct an electronic system feasibility test in accordance with the provisions of laws and regulations.
<p>5. Are there specific regulations governing the design and construction of data centers?</p>		<p>There is no specific Indonesian regulations governing the design and construction of data centers.</p> <p>However, there is general requirement in relation to construction of a building which will also be applied in a construction of data center building infrastructure as regulated under the Government Regulation No. 16 of 2021 on Implementing Regulations of Law No. 28 of 2002 on Buildings (“GR No. 16/2021”).</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>6. Is a foreign-owned data center permitted to sublease rack space? If yes, are additional licenses or permissions required?</p>		<p>We assume that the Rackspace referred herein is a cloud computing services provided/owned by a third party (e.g., Rackspace Technology, Inc.), instead of the relevant foreign data center company. If our assumption is correct then we need to understand the cooperation and business schemes that will be agreed between the foreign data center company and the Rackspace Technology, Inc., as well as the arrangement with the users.</p> <p>In the event the business is conducted through a subsidiary company in Indonesia, a PMA Company, then the PMA Company must register additional KBLI codes for its business, for instance: KBLI 77322 (Rental and Leasing Activities Without Rights Option of Digital Technology Tools) and 77400 (Leases Without Intellectual Property Option Rights, of a Non-Copyright Works).</p>
<p>7. Can foreign investors own real property for purposes of data center development?</p>		<p>They can hold property under certain types of rights. Foreign citizen or a PMA Company may hold/control a property are under the following rights:</p> <ol style="list-style-type: none"> Right to Use (<i>Hak Pakai</i>), which can be held by the foreign citizen domiciled in Indonesia and PMA Company. Right to Rent (<i>Hak Sewa untuk Bangunan</i>), ich can be held by the foreign citizen domiciled in Indonesia and PMA Company. Strata Title, which can be owned by a foreigner who resides in or has a regular presence in Indonesia, as it is considered to be vertical space as opposed to land. Right to Build (<i>Hak Guna Bangunan</i> or "HGB"), which is the most common right of a property held by a PMA Company. HGB title grants a right for its holder to establish and construct buildings on a land. HGB can be registered under the name of Indonesian individuals and Indonesian companies (including a PMA Company). HGB is granted for an initial term of a maximum of 30 (thirty) years, which can be extended for a maximum 20 (twenty) years and can be renewed for a maximum of 30 (thirty) years.



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>8. Can security over data center real property (i.e. mortgage, charge, etc.) be granted to a foreign lender? Can a foreign lender take ownership of real property in the event of a foreclosure?</p>		<p>Depending on type of the land right held by the borrower.</p> <p>For instance, a PMA who hold a HGB title over the data center real property may put its property under or mortgage or pledge, whether to a local or a foreign lender.</p> <p>Please note that the execution of a loan security under mortgage or a pledge cannot be conducted automatically by the lender through transfer of ownership.</p> <p>Instead, if the debtor is default under the loan agreement, the lender may enforce its security with the following steps:</p> <ol style="list-style-type: none"> The lender should provide a demand letter to the debtor, to state that the borrower is in default under the loan agreement and demand full payment of the outstanding amount within a certain days. In practice, normally at least 3 (three) demand letters provided by the lender to debtor; If the debtor does not comply with the demand letter, then the lender can processed the encumbered property through public action in accordance to the procedure provided by the prevailing laws; Based on the agreement of the lender and the debtor, the encumbered property maybe sold by way of private sale (rather than through a public auction) if the highest price could be obtained and it would be profitable for all parties concerned.



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>9. What is the regime for Power Purchase Agreements? Can data centers buy power from Independent Power Producers (IPP)?</p>		<p>Please be informed that, the whole territory of the Republic of Indonesia is the business area of state utility PT Perusahaan Listrik Negara (Persero) (“PLN”), except for a number areas that have been carved out from PLN’s business area and given to other companies. In practice, these business areas typically can be granted if the area is an industrial estate, or is in a remote area where PLN’s grid is not available. But it can be very difficult for investors to obtain a business area stipulation if PLN supply is already available.</p> <p>Accordingly, unless the data centers located in an industrial zone or in a remote area where PLN’s grid is not available, the data centers will most likely need to become customers of PLN. Because of the inflexible regulatory restrictions in the Indonesian electricity sector, trying to adopt the same corporate PPA model as the one used in most liberalized countries (where a buyer and an electricity supplier can enter into business-to-business negotiations to purchase electricity) does not really work. However, there are ways to implement other structures in Indonesia with results similar to those of a corporate PPA. The most common structure involves the lease or rental of a power generation plant, with a lease payment scheme tied to the amount of electricity generated. This structure is most commonly implemented for behind-the-meter solar projects.</p> <p>In addition, Indonesia’s electricity laws and regulations explicitly allow electricity consumers to have captive power plants and transmission/distribution assets for their own use. For this purposes, data centers as consumers will be required to hold an electricity license (<i>izin operasi</i> or operational license) for the captive power plants. Accordingly, data centers seeking to generate electricity for their own use from private developers by entering into corporate power purchase agreements (PPA) will have to deal with the requirement as if they were developing the power plants themselves.</p>





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>10. What data protection / cyber security laws regulate or constrain the operation of a data center? What data retention obligations are placed on data center operators / developers? Are there any restrictions on transferring personal data into or out of the jurisdiction?</p>		<p>The Government Regulation No. 71 of 2019 on Administration of Electronic Transaction and System (“GR 71/2019”) and Regulation of the Minister of Communications and Information Technology No. 20 of 2016 on Protection of Personal Data in Electronic Systems (“MOCI Reg. 20/2016” together with GR No. 71/2019 referred as the “Data Regulations”) define data center as a facility used to place electronic systems and its related components for the purposes of data placement, storage and processing, whereas data recovery center is defined as a facility that is used to recover data or information and important functions of electronic systems that are disrupted or damaged by natural or human disasters.</p> <p>The Data Regulations do not clearly regulate the operation of a data center. Currently, the Minister of Communications and Informatics is still working on the draft of data center regulations.</p> <p>The Data Regulations provide that the data center and disaster recovery center of the private electronic system provider (“ESP”) (the operation of electronic system by persons, business entities, and the public, not by the government) to be placed within Indonesia and/or outside Indonesia.</p> <p>If the electronic system and electronic data is stored outside Indonesia, the private ESP must: (i) ensure that it will not diminish the effectiveness of the supervision conducted by a relevant state ministry or institution and law enforcement agencies and (ii) provide access to the electronic system and electronic data for the purpose of supervision and law enforcement, in accordance with prevailing laws and regulations Meaning the operation of electronic system by persons, business entities, and the public. Accordingly not by the government.</p>





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>10. What data protection / cyber security laws regulate or constrain the operation of a data center? What data retention obligations are placed on data center operators / developers? Are there any restrictions on transferring personal data into or out of the jurisdiction? <i>(continued)</i></p>		<p>For data retention, GR 71/2019 states that the personal data must be destroyed and/or deleted unless it is within a retention period in accordance with the needs and based on laws and regulations. MOCI Reg. 20/2016 also regulates that personal data must be retained in the electronic system for a minimum of 5 (five) years, unless stipulated otherwise by sectoral regulations.</p> <p>MOCI Reg. 20/2016 requires that the transfer of data to overseas shall be done in co-ordination with the Ministry of Communication and Informatics. This coordination entails:</p> <ul style="list-style-type: none"> a) Reporting the plan to transfer the personal data. At a minimum, the report must include (a) the name of the destination country; (b) the name of the receiving party; (c) the date of the transfer; and (d) the reason/purpose of the transfer. b) Requesting the assistance of the MOCI for the transfer (if required). c) Reporting the result of the transfer activity. <p>However, the MOCI has not specified the procedures to implement this coordination with the MOCI. MOCI Reg. 20/2016 further stipulates that the transferring entity would need to adhere the laws and regulations on the cross-border country exchange of personal data.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>11. Are there specific compliance obligations related to Health, Safety & Environment (HSE)? (continued)</p>		<p>Please be informed that in Indonesia, there are several laws and regulations for Health, Safety & Environment (HSE). In general, any worker has the right to get protection for occupational health and safety under Article 86 point 1 (a) of Law No. 13 of 2003 concerning Labor Affairs, as lastly amended by Law No. 11 of 2020 concerning Job Creation.</p> <p>Furthermore, the occupational health and safety is also regulated in Law No. 1 of 1970 concerning Occupational Safety, which states that the workplace of each room or field, closed or open, moving or fixed, where the work personnel work, or often entered the work personnel for the purposes of a business and where there are sources or sources of danger. As for, the general requirements for safety with respect to the workplace are as follows:</p> <ol style="list-style-type: none"> 1. Preventing and minimizing occupational accidents; 2. Preventing, reducing and eliminating fire; 3. Preventing and reducing hazardous blasting; 4. Providing opportunity or way of escape in the event of fire or other dangerous events; 5. Providing personal protective equipment to workers; 6. Preventing and controlling the rise or diffusion of temperature, humidity, dust, dirt, smoke, vapor, gas, wind gusts, weather, rays or radiation, sound and vibration; 7. Preventing and controlling the occurrence of illness due to physical or psychological work, poisoning, infection and transmission; 8. Obtaining adequate and appropriate information; 9. Maintaining good temperature and humidity; 10. Maintaining adequate air refreshment; 11. Maintaining hygiene, health and orderliness; 12. Gain compatibility between manpower, work tools, environment, ways and processes; 13. Safeguarding and facilitating the transport of persons, animals, plants or goods;





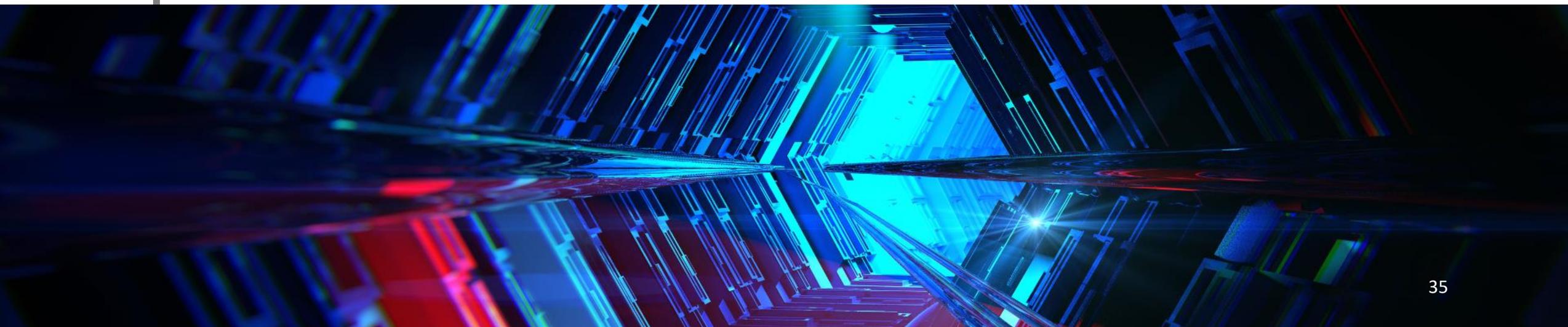
QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>11. Are there specific compliance obligations related to Health, Safety & Environment (HSE)? (continued)</p>		<p>14. Securing and maintaining all types of buildings; 15. Securing and facilitating loading and unloading work, treatment and storage of goods; 16. Preventing exposure to dangerous electricity; and 17. Adapting and improving security on the work that the danger of the accident becomes increasingly high.</p> <p>Please that data center company is also required to comply with the occupational health and safety requirement. Accordingly, if the data center company employs at least 100 worker, then the data center company must implement the occupational health and safety management system (<i>Sistem Manajemen Keselamatan dan Kesehatan Kerja or SMK3</i>).</p> <p>In relation to the environment, Law No. 32 of 2009 on Management and Protection of the Environment, as amended by Law No. 11 of 2020 regarding Job Creation (Job Creation Law) ("Environment Law"), is the main regulation in Indonesia pertaining to the environment. The Environment Law covers broad aspects of environment utilization and protection, including pollution control, environmental damage, administrative sanctions, the affirmation of environmental rights as part of human rights or civil liability, particularly strict liability for environmental damage, and criminal enforcement for perpetrators of environmental crimes.</p> <p>Further, Government Regulation No. 22 of 2021 on Implementation of Environmental Protection and Management requires business entities to carry out a self-assessment to determine whether their business activities are subject to the environmental impact analysis (<i>Analisis Mengenai Dampak Lingkungan Hidup or "AMDAL"</i>), undertaking to manage the environment in compliance with environmental management and monitoring efforts standards (<i>Upaya Pengelolaan Lingkungan Hidup dan Upaya Pemantauan Lingkungan Hidup or "UKL-UPL"</i>) or statement of environmental management and monitoring capability (<i>Surat Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup or "SPPL"</i>) regimes.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>11. Are there specific compliance obligations related to Health, Safety & Environment (HSE)? <i>(continued)</i></p>		<p>To assist in this self assessment, business actors must complete preliminary information, e.g., identity, description of business activities (including the business size/scale) and environmental conditions and also can ask for guidance from the relevant environmental agency.</p> <p>Based on our preliminary review on Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 4 of 2021 Concerning the List of Businesses and/or Activities that must have an the Environmental Impact Analysis, Undertaking to Manage the Environment in compliance with Environmental Management and Monitoring Efforts Standards or Statement of Environmental Management and Monitoring Capability, the data centers should have UKL-UPL Category C, in relation to KBLI No. 63112.</p>



Lao PDR 





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>1. Can a foreign data center manager operate a data center without establishing a local entity?</p>	<ul style="list-style-type: none"> ▪ Law on Enterprises (№ 46/NA, 26 December 2013) ▪ Decree on Data Center Pass Through Internet (№ 412/NA, 10 November 2016) 	<p>A foreign data center manager must establish a local entity in the Lao PDR to operate a data center. As part of the establishment process, the entity will need to obtain an enterprise registration certificate (“ERC”)¹ and an operating license from the Ministry of Posts and Telecommunications (“MPT”) to conduct business.² It is prohibited to operate a data center without a business operating license.</p>
<p>2. What are the foreign ownership restrictions for data center business?</p>	<ul style="list-style-type: none"> ▪ Decree on the Approval of the List of Controlled Activities and Concessionary Activities (№ 03/PM, 10 January 2019) ▪ Notification on list of Conditional Business for Foreign investors (№ 1327/MoIC, 13 July 2015) ▪ Law on Construction (№ 05/NA, 26 November 2009) ▪ Notification on the list of Business Activities Reserved for Lao Nationals (№ 1328/MoIC, 13 July 2015) ▪ Notification Regarding Regulations for the Authorization for the Establishment of Controlled Businesses in the Public Works and Transport Sector (№ 13779/MWPT, 21 August 2012) 	<p>There are no foreign shareholding restrictions in relation to the operation of a data center. However, some construction business activities have a maximum foreign shareholding limit of 49%, and some are restricted entirely. As such, a project owner will usually hire a Lao company to undertake the construction work.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>3. What general licenses are required to develop and operate a data center?</p>	<ul style="list-style-type: none"> ▪ Decree on Data Center Pass Through Internet (№ 412/NA, 10 November 2016) (“Data Center Decree”) ▪ Decision on Data Center Licensing (№ 590/MPT, 18 March 2016) (“Data Center Licensing Decision”) 	<p>The Data Center Licensing Decision provides three types of business operating licenses:</p> <ul style="list-style-type: none"> ▪ Type 1: license for a large data center provider that has its own building ▪ Type 2: license for a medium data center provider that has rooms but without its own building ▪ Type 3: license for a data center provider that uses the facilities of another data center <p>The license period for a business operating license varies from a temporary license valid for one year to a permanent license valid for up to five years (further extendible), depending on the type of license issued.</p> <p>An application for a business operating license requires:</p> <ul style="list-style-type: none"> ▪ Completed application form; ▪ Identity card/passport of the applicant (e.g., the authorized director); ▪ CVs of the managers and technicians; ▪ Enterprise Registration Certificate (i.e., needs to be a Lao registered entity); ▪ Economic and technical feasibility study; ▪ Financial status report issued by a commercial bank in the Lao PDR; ▪ An agreement for the leasing of network, infrastructure, and others; and ▪ Any other documents as requested by the MPT.
<p>4. What are the legal rights and obligations applicable to data center interconnectivity?</p>	<ul style="list-style-type: none"> ▪ Data Center Decree ▪ Data Center Licensing Decision 	<p>A data center must remain directly connected to the Lao National Internet Center or internet service provider to facilitate connection with other network providers.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>5. Are there specific regulations governing the design and construction of data centers?</p>	<ul style="list-style-type: none"> ▪ Data Center Decree ▪ Data Center Licensing Decision 	<p>The Data Center Decree and Data Center Licensing Decision determine the design and construction standards of a data center as follows:</p> <p>Location Standards:</p> <p><u>Location:</u></p> <ul style="list-style-type: none"> ▪ Data center must be in an appropriate location, a location that is not congested, and which shall be accessible to a fire truck. <p><u>Building:</u></p> <ul style="list-style-type: none"> ▪ The building where the data center is located should be in accordance with internationally recognized standards. ▪ The wall thickness of at least 20 centimeters, a fire protection system, and other standards as specified in the TIA-942 standard or equivalent. <p><u>Room:</u></p> <ul style="list-style-type: none"> ▪ A data center must include main-backup power, cooling-humidity system, ventilation systems, power-data cabling system, server rack system, mark, and others as specified in the TIA-942 standard or equivalent; ▪ The room's floor must be able to support weight of at least 800 kilogram/m²; ▪ A service provider must have knowledge about the standard of room to be used and define their own standard levels.



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>5. Are there specific regulations governing the design and construction of data centers? <i>(continued)</i></p>	<ul style="list-style-type: none"> ▪ Data Center Decree ▪ Data Center Licensing Decision 	<p>Technical Standards:</p> <p><u>Network connection</u></p> <ul style="list-style-type: none"> ▪ The data center must remain directly connected to the Lao National Internet Center or internet service provider in order to facilitate connections with other network providers. <p><u>Data storage:</u></p> <ul style="list-style-type: none"> ▪ Must have tools for monitoring and storage for all customer data which must ensure the ability to store data on a regular basis, in an accurate and reliable manner according to the standards defined by the MPT; and must have an adequate data backup storage system. <p><u>Equipment:</u></p> <ul style="list-style-type: none"> ▪ Equipment used must align with technical standards as defined by the MPT; ▪ Must have available spare parts and necessary equipment in order to provide good quality service as well as follow the decisions, advice and notifications of MPT; ▪ All equipment must be in Lao PDR and must be energy-saving and not create air and noise pollution. <p><u>Network plan:</u></p> <ul style="list-style-type: none"> ▪ A licensee must provide a network plan for installed equipment and hardware; ▪ All operating systems shall comply with technology and standards as defined by MPT. <p><u>Safety Standard:</u></p> <ul style="list-style-type: none"> ▪ Detailed regulations on management, maintenance, and emergency response system; ▪ A safety system including monitoring access-entry and CCTV systems at every point of entrance-exit; ▪ Fire prevention system; ▪ Installation of attack prevention system (Firewall, anti-DDOS) from both internal and external sources; and ▪ Data filtering system.



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>6. Is a foreign-owned data center permitted to sublease rack space? If so, are additional licenses or permissions required?</p>	<ul style="list-style-type: none"> ▪ Data Center Decree ▪ Data Center Licensing Decision 	<p>There are no specific regulatory provisions dealing the sublease of rack space. According to the MPT's Department of Technology and Communication, the MPT may consider to sublease on a case-by-case basis.</p>
<p>7. Can foreign investors own property for the purpose of developing data centers?</p>	<ul style="list-style-type: none"> ▪ Law on Land (№ 70/NA, 21 June 2019) (“Land Law”) ▪ Law on Investment Promotion (№ 14/NA, 17 November 2016) (“Investment Promotion Law”) ▪ Decree on Special Economic Zone (№ 188/Gov, 07 June 2018) 	<p>The Land Law allows foreign investors to lease land from Lao nationals/companies or lease or hold a concession over State land.</p> <p>The maximum land lease term from Lao PDR citizens or entities is a period not exceeding 30 years but which is extendible on a case-by-case basis by obtaining authorization from the provincial administration authorities at the request of the Provincial Natural Resources and Environment Division. Land lease agreements must be certified by the village administration, notarized with a notary authority and registered with the District Natural Resources and Environment Office where the land is located.</p> <p>If a data center is set up in a special economic zone (“SEZ”), the foreign investors who obtain land-use rights in the SEZ can transfer their rights to other investors for the remaining term of the land-use rights.</p> <p>Further, foreign investors are permitted to own immovable property such as buildings and structures and other items constructed on the land during the term of the lease or concession. This right is protected under the Land Law and the Investment Promotion Law.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>8. Can security over data center property (i.e., mortgage, charges, etc.) be granted to a foreign lender? Can a foreign lender take ownership of real property in the event of a foreclosure?</p>	<ul style="list-style-type: none"> ▪ Civil Code (No 55/NA, 6 December 2018) (“Civil Code”) ▪ Land Law 	<p>The Civil Code governs the creation of security interests. Under the Civil Code, three types of security interest can be created by contract in the Lao PDR: (i) pledge, (ii) mortgage, and (iii) guarantee. Security interests can be taken over the following types of assets and rights:</p> <ul style="list-style-type: none"> ▪ Security over immovable assets such as land use rights, land and building lease agreements, buildings, and fixtures. Immovable assets can be pledged or mortgaged with the principal difference being that under a mortgage the mortgagor retains possession of the mortgaged asset and under a pledge, the pledgee is given possession of the pledged asset (unless the parties agree otherwise). ▪ Security over movable assets such as precious objects, machinery, vehicles, warehoused goods or raw materials for manufacturing, agricultural produce, consumer or consumable goods and other types of movable property as agreed between the parties. Movable assets can be pledged or mortgaged with the principal difference being that under a mortgage the mortgagor retains possession of the mortgaged assets and under a pledge, the pledgee is given possession of the pledged asset (unless the parties agree otherwise). ▪ Security over rights such as debt receivables, transferrable financial documents such as bonds or promissory notes, bank accounts, intellectual property, share certificates, gains over projects (such as agricultural harvests) and other rights as agreed between the parties. <p>Due to foreign ownership restrictions for certain business activities or for the ownership of land in the Lao PDR, self-help remedies are curbed, and a foreign creditor routinely makes use of a 100% Lao owned onshore collateral agent or otherwise nominated a 100% Lao owned entity or Lao citizen to be the transferee of a sale of the secured assets.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>9. What is the structure for Power Purchase Agreements (PPAs)? Can data centers buy power from Independent Power Producers (IPPs)?</p>	<ul style="list-style-type: none"> Law on Electricity (№ 19/NA, 9 May 2017) (“Electricity Law”) 	<p>A data center cannot buy power directly from IPPs, as the Electricity Law provides that all electricity generating projects need to transmit electricity through the national transmission grid, with certain exception (which are not applicable to a data center). The data center will need to have a PPA with Électricité du Laos (EDL).</p>
<p>10. What data protection and cyber security laws regulate or restrain the operation of a data center? What data retention obligations are placed on data center operators? Are there any restrictions on transferring personal data into or out of the jurisdiction?</p>	<ul style="list-style-type: none"> Law on Prevention and Combating Cyber Crime (№ 61/NA, 15 July 2015) (“Cyber-Crime Law”) Law on Electronic Data Protection (№ 25/NA, 12 May 2017) (“E-Data Protection Law”) 	<p>The relevant data protection laws are the Cyber-Crime Law and E-Data Protection Law.</p> <p>The Cyber-Crime Law applies to individuals, legal entities and organizations (both domestic and foreign) that exist on, perform activities with, and study the use of computerized systems and computer data in the Lao PDR. The Cyber-Crime Law requires service providers who provide service in the field of communicating information through the computerized system and/or computer data maintenance service providers (such as a data center), among others entities, to guarantee the development of electronic data protection activities.</p> <p>Relevantly, the Cyber-Crime Law prohibits service providers (such as a data center) disclosing or deleting information of service users without such users consent.</p> <p>The E-Data Protection Law applies to domestic and foreign individuals, legal entities and organizations that live and operate in the Lao PDR (such as the data center and the Lao-based users). Pursuant to the E-Data Protection Law, a “data owner” is an individual, legal entity or organization that owns electronic data, while a “data manager” is an individual, legal entity or organization which has the duty of managing electronic data, such as, electronic service providers.</p>



1. QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>10. What data protection and cyber security laws regulate or restrain the operation of a data center? What data retention obligations are placed on data center operators? Are there any restrictions on transferring personal data into or out of the jurisdiction? (continued)</p>	<ul style="list-style-type: none"> ▪ Law on Prevention and Combating Cyber Crime (№ 61/NA, 15 July 2015) (“Cyber-Crime Law”) ▪ Law on Electronic Data Protection (№ 25/NA, 12 May 2017) (“E-Data Protection Law”) 	<p>The data manager may maintain electronic data for a necessary period in accordance with the objectives of collection and other objectives. Afterwards, personal data may be deleted, or access blocked, where the laws determine otherwise.</p> <p>In relation to the transferring of personal data, the E-Data Protection Law provides that the transfer of data anywhere requires the data owner’s consent. Further, it explicitly restricts the transfer or transmission of data, both general and specific data, outside the Lao PDR without the consent of data owner or which is otherwise in contravention of any laws of the Lao PDR.</p> <p>The transfer of data by a data manager to any third party must be consistent with the following principles of the E-Data Protection Law:</p> <ul style="list-style-type: none"> ▪ authorization is obtained from the data owner, and the recipient of the data must guarantee that the transferred data can be protected; ▪ the data is password-protected for “important electronic data” (being financial data, banking data, investment data and accounting data); ▪ there is no falsification of the source of transmission or transfer; ▪ the transfer of data is consistent with the contract between the transferor and the recipient (this implies that an underlying data-sharing agreement must already be in place); and ▪ the transferor must cease the transfer if the recipient refuses to accept the transfer.



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>11. Are there specific compliance obligations related to Health, Safety & Environment (HSE)?</p>	<ul style="list-style-type: none"> ▪ Law on Environmental Protection (№ 29/NA, 18 December 2012) ▪ Decree on Environmental Impact Assessment (№ 21/PM, 31 January 2019) ▪ Decision on Ministerial Agreement on the Endorsement and Promulgation of List of Investment Project and Activities Requiring for Conducting the Initial Environmental Examination or Environmental and Social Impact Assessment (№ 8056/MONRE, 17 December 2013) (“ESIA Decision”) ▪ Law on Labor (№ 43/NA, 24 December 2013) (“Labor Law”) ▪ Decree on Occupational Safety and Health (№ 22/GoV, 5 February 2019) (“Occupational Safety and Health Decree”) 	<p>Per the Environmental and Social Impact Assessment (ESIA) Decision, the “<i>construction of a telecommunication network</i>” requires an initial environmental examination (IEE) and an environmental management and monitoring plan (EMMP). An environmental compliance certificate approving the IEE and EMMP from the Department of Natural Resources and Environment is required.</p> <p>The Labor Law sets out general health and safety obligations applicable to all labor units. Additionally, the Occupational Safety and Health Decree defines occupational safety and health as a joint activity between employers and workers to ensure occupational safety and health in the work premises, which includes the working environment risk evaluation, appropriate measures to reduce hazards and risk, methods to prevent labor accidents, prevent injury and prevent the occurrence of occupational disease, and create a culture of safety culture in the work premises.</p>

The Philippines



The Philippines



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>1. Can a foreign data center manager operate a data center without establishing a local entity?</p>	<p>Republic Act 11232 (Revised Corporation Code)</p> <p>NTC M.C. No. 02-05-2008</p> <p>Republic Act 7042 (Foreign Investments Act)</p>	<p>Data centers must establish a local presence and secure a license with the Securities and Exchange Commission (“SEC”) and National Telecommunications Commission (“NTC”) in order to conduct its business in the Philippines. Under NTC M.C. No. 02-05-2008, part of the requirements for the issuance of the Certificate of Registration with the NTC is the submission of a Certified True Copy of its SEC Registration or Department of Trade and Industry Registration.</p>
<p>2. What are the foreign ownership restrictions for data center business?</p>	<p>1987 Philippine Constitution</p> <p>Republic Act 11232 (Revised Corporation Code)</p> <p>Republic Act 7042 (Foreign Investments Act)</p> <p>Republic Act 11659 (Public Service Act)</p>	<p>With the enactment of Republic Act 11659 (“RA 11659”), which excludes telecommunications from the definition of public utilities, which are subject to a 40% foreign ownership restriction, the operation of data centers should no longer subject to foreign ownership restriction. However, the NTC appears to maintain its policy of only registering value added service (“VAS”) providers that are at least sixty percent (60%) Filipino-owned, pending the issuance of the implementing rules and regulations of RA 11659.</p> <p>An operator of a data center may be classified as a VAS provider, which is broadly defined under Republic Act No. 7925 or the “Public Telecommunications Policy Act of the Philippines” (“RA 7925”) as “an entity which, relying on the transmission, switching and local distribution facilities of the local exchange and inter-exchange operators, and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers.” Under NTC M.C. 02-05-2008, no entity shall provide value-added service without a valid certificate of registration from the NTC. This means that while RA 11659 now allows 100% foreign ownership in telecommunications entities, such as VAS providers, an entity that is more than 40% foreign-owned will not be able to operate as a VAS provider until the NTC reverses its policy to align with RA 11659.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>3. What are the general licenses required to develop and operate a data center?</p>	<p>NTC M.C. No. 02-05-2008</p> <p>Republic Act 11232 (Revised Corporation Code)</p> <p>Republic Act 7160 (Local Government Code)</p> <p>Republic Act 8424 (National Internal Revenue Code)</p> <p>Republic Act 11199 (Social Security Act)</p> <p>Republic Act 9679 (Home Development Mutual Fund Law)</p> <p>Republic Act 7875 (National Health Insurance Act)</p> <p>Rule 1021 (DOLE Occupational Safety and Health Standards)</p> <p>BSP MORFXT</p>	<p>Apart from the certificate of registration that an operator of a data center needs to obtain from the SEC and NTC, it will also be required to secure the permits typically required to operate a business in the Philippines. These general permits and licenses are as follows:</p> <ul style="list-style-type: none"> a) Local Business Permit with the local government unit where the data center will be located; b) Registration with the appropriate Revenue District Office of the Bureau of Internal Revenue prior to commencement of commercial operations, for purposes of national internal revenue tax compliance; c) Registration under employee welfare and related laws, which shall include registration with, and regular remittance of contributions to, the Social Security System, the Philippine Health Insurance Corporation, and the Home Development and Mutual Fund, and registration with the Department of Labor and Employment; d) Registration of foreign equity investments with the Bangko Sentral ng Pilipinas, <i>(to allow the corporation to purchase foreign currency from the banking system to fund the payment of dividends or the repatriation of the capital of the investors/shareholders); and</i> e) Importer Accreditation with the Bureau of Customs <i>(in case the corporation will be importing equipment and facilities for their data center)</i>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>4. What are the legal rights and obligations applicable to data center interconnectivity?</p>	<p>Republic Act 7925 (Public Telecommunications Policy Act)</p> <p>NTC M.C. No. 02-05-2008</p>	<p>A data center duly registered with the NTC as a VAS provider will be allowed to competitively offer its services and/or expertise, and lease or rent telecommunications equipment and facilities from licensed public telecommunications entities that may be necessary to provide VAS services, in the domestic and/or international market in accordance with network compatibility. It is allowed to use its own equipment capable only of processing, routing and storing messages in whatever format, provided that, it strictly complies with the service performance standards set by NTC. A data center that will be connecting to a public telecommunications network will need to ensure that its relevant equipment is type-approved by the NTC. Under Section 14 of RA 7925, “telecommunications subscribers shall be allowed to use within their premises terminal equipment, such as telephone, PABX, facsimile, data, record, message and other special purpose or multi-function telecommunication terminal equipment intended for such connect; provided, that the equipment is type-approved by the [NTC].” Only NTC type approved customer premises equipment shall be connected to a public telecommunications network, the network operator is authorized to disconnect from its network any equipment of the data center that is not type approved by the NTC. NTC Memorandum Circular No. 02-01-2001 lists down the customer premises equipment that may be allowed for connection to a public telecommunications network, subject to type approval by the NTC.</p>
<p>5. Are there specific regulations governing the design and construction of data centers?</p>	<p>Presidential Decree 1096 (National Building Code)</p> <p>Republic Act 7160 (Local Government Code)</p>	<p>Prior to the construction of data center, it must secure a building permit from the relevant local government unit (“LGU”) where the data center will be located. After construction, the project will be inspected for compliance with the National Building Code which provides for all buildings and structures, a framework of minimum standards and requirements to regulate and control their location, site, design, quality of materials, construction, use, occupancy, and maintenance. Under the National Building Code, no building or structure shall be used or occupied until a Certificate of Occupancy is issued by the office of the building official of the LGU certifying that the building/structure was completed and can be occupied/used in accordance with the approved use.</p>

The Philippines



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>6. Is a foreign-owned data center permitted to sublease rack space? If yes, are additional licenses or permissions required?</p>	<p>Civil Code of the Philippines</p>	<p>A foreign-owned data center may lease or sublease rack space, provided there is no prohibition under its lease contract with the lessor of land or building. Under Article 1650 of the Civil Code, a lessee may sublet the thing leased, in whole or in part if it is not prohibited by its lease agreement with the lessor.</p>
<p>7. Can foreign investors own real property for purposes of data center development?</p>	<p>1987 Philippine Constitution</p> <p>Republic Act 7652 (Investors' Lease Act)</p> <p>Presidential Decree 471 (Fixing a Maximum Period for the Duration of Leases or Private Lands to Aliens)</p> <p>Republic Act 7042 (Foreign Investments Act)</p>	<p>Under the Philippine Constitution, only Filipino citizens and corporations owned by at least 60% Filipinos may purchase and own land in the Philippines. Foreigners, regardless of the purpose cannot own land in the Philippines. They are only allowed to lease land. Such lease may be for a period of up to 50 years and renewable for a period of not more than 25 years, if the lease is for purposes of and in connection with the activities listed under the Investments Priorities Plan ("IPP") prepared by the Board of Investments ("BOI"). Under BOI Memorandum Circular No. 2021-001 (General Policies and Specific Guidelines to Implement the 2020 Investment Priorities Plan), data center is listed among the telecommunications infrastructure that forms part of the 2020 IPP.</p> <p>There is no foreign ownership restriction on buildings. For as long as the ownership of buildings do not include inchoate ownership or interest in the land underlying such buildings, a foreigner or foreign-owned corporation can own such buildings.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>8. Can security over data center real property (i.e. mortgage, charge, etc.) be granted to a foreign lender? Can a foreign lender take ownership of real property in the event of a foreclosure?</p>	<p>1987 Philippine Constitution</p> <p>Civil Code of the Philippines</p> <p>Republic Act No. 4882 (Amendment to Republic Act No. 133 on Authority to Mortgage Real Property)</p>	<p>Security may be created over real assets owned by a data center to secure loans obtained from a foreign lender. This will include leasehold rights over the land underlying the data center, as well as data center buildings. In case the data center is qualified to own land in the Philippines, it may mortgage such land to any foreign lender. Under the law, a foreign lender is allowed to take a mortgage over land (even if disqualified from owning land), provided it does not take possession of the mortgaged land except after default and for the sole purpose of foreclosure or enforcement proceedings, and in no case for a period of more than five (5) years from actual possession thereof. It is also prohibited from bidding or taking part in any foreclosure sale of the land. Thus, for the land subject of foreclosure, the foreign lender will need to appoint a qualified entity to bid for or purchase and take ownership of the land, and the sale must occur within five (5) years from the foreign lender's actual possession thereof. The foreign lender will only be allowed to receive the net proceeds from the foreclosure sale of the land. For other real properties such as leasehold rights and buildings, there is no ownership restriction so a foreign lender may bid for and purchase these real properties during a foreclosure sale. For buildings, however, a foreign entity may own buildings for as long as the ownership of such buildings does not include inchoate ownership of land.</p>
<p>9. What is the regime for Power Purchase Agreements? Can data centers buy power from Independent Power Producers (IPP)?</p>	<p>Republic Act 9513 (Renewable Energy Act)</p> <p>Republic Act 9136 (Electric Power Industry Reform Act)</p> <p>Department of Energy Circular No. 2015-06-0010</p>	<p>Power generating companies may enter into a bilateral agreement with distribution utilities or end users for the purchase and supply of power, subject to the review of the Energy Regulatory Commission.</p> <p>Yes, data centers may purchase power from Independent Power Producers.</p>

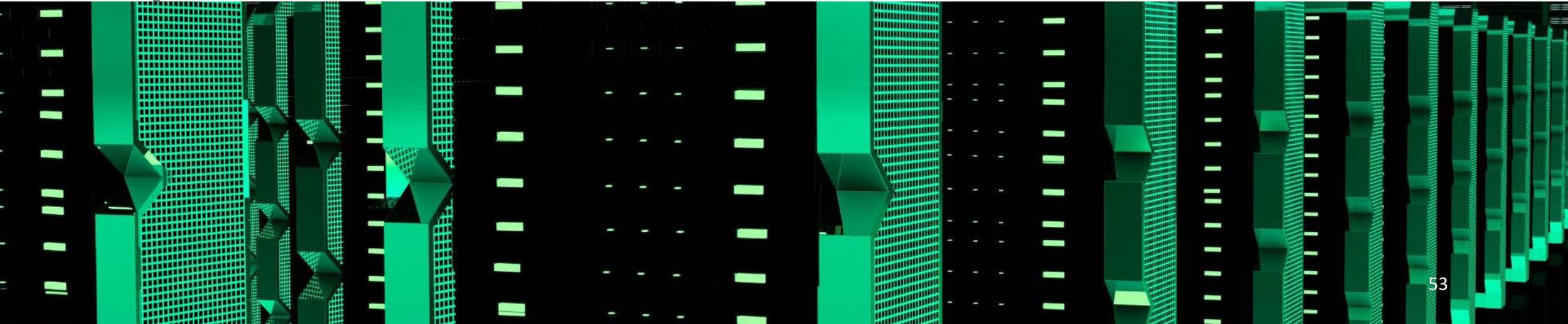


QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
10. What data protection / cyber security laws regulate or constrain the operation of a data center? What data retention obligations are placed on data center operators/developers? Are there any restrictions on transferring personal data into or out of the jurisdiction?	Republic Act 10175 (Cybercrime Prevention Act) Republic Act 10173 (Data Privacy Act)	Data centers shall be guided by the Data Privacy Act of 2012 in processing personal and sensitive personal information. Data centers are also regulated by the Cybercrime Prevention Act on criminal acts performed online.



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>11. Are there specific compliance obligations related to Health, Safety & Environment (HSE)?</p>	<p>Presidential Decree 1586 Administrative Order No. 4 (s. 2002) (Establishing the Environmental Impact Statement System)</p> <p>Presidential Decree 856 (Code of Sanitation Philippines)</p> <p>Republic Act 8749 (Clear Air Act)</p> <p>Republic Act 9275 (Clean Water Act)</p> <p>EMB M.C. No. 005, (s. of 2014) Revised Guidelines for Coverage Screening and Standardized Requirements Under the Philippine EIS System</p>	<p>Data centers shall register and comply under the regime of Occupational Safety and Health Standards. As an employer, access to welfare facilities such as medical facilities, lactation stations, and adequate sanitary and washing facilities among others must be provided to its employees.</p> <p>The data center as an employer must also ensure that it has implemented the proper program and policies related to Occupational Safety and Health Program, and general HSE rules (such as Drug-free Workplace, Anti-sexual harassment, Prevention and Control of HIV/AIDS, Prevention and Control of Hepatitis B, Mental Health Policy and Program; Prevention and Control of Tuberculosis, Lactation policy, breast-feeding program, Alcohol-free Workplace, Smoke-free Workplace, Family welfare program, etc.)</p> <p>Furthermore, data centers are required to secure an Environmental Compliance Certificate before the Department of Environment and Natural Resource (DENR) certifying that the proposed operation of a data center will not cause significant negative environmental impact and the simultaneous implementation of the Environmental Management Plan. This is one of the requirements under the Environmental Impact Statement System. Other permits that may be required include, permit to operate air pollution source installation, registration as a hazardous waste generator, and sanitary permit, among others.</p>

Thailand





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>1. Can a foreign data center manager operate a data center without establishing a local entity?</p>	<p>Telecommunication Business Act B.E. 2544 (2001) (TBA)</p>	<p>A data center manager with physical facilities in Thailand is required to obtain a Telecommunication Service License Type 1, which may only be held by an entity incorporated in Thailand pursuant to the determination of the Office of National Broadcasting and Telecommunications Commission (NBTC).</p> <p>If a data center manager is providing such services without a physical presence in Thailand (i.e. on a contractual service basis without local employees) the data center manager is permitted to provide such offshore services to a data center located in Thailand.</p>
<p>2. What are the foreign ownership restrictions for data center business?</p>	<p>Foreign Business Act B.E. 2542 (1999) (FBA)</p>	<p>A data center with physical facilities located in Thailand is considered to be operation of a service business, which is restricted under the FBA. Under the FBA any foreign ownership in an entity conducting a restricted business may not exceed 49% of the total shareholding or must obtain governmental permission to conduct such business as a foreign majority owned entity.</p> <p>Foreign majority ownership of a data center is permitted if the foreign entity obtains a Foreign Business License (FBL) or a Foreign Business Certificate (FBC) from the Ministry of Commerce (MOC). We note that data center business is promoted by the Thai Government through the Board of Investment of Thailand (BOI) under category 7.9.2.3, provided that the business operator fulfills certain prescribed investment conditions. Where the business operator is granted a BOI promotion certificate it must also obtain an FBC.</p>
<p>3. Can a foreign data center manager operate a data center without establishing a local entity?</p>	<ul style="list-style-type: none"> ▪ Telecommunication Business Act B.E. 2544 (2001) ▪ Foreign Business Act B.E. 2542 (1999) 	<p>The general business licenses required to conduct a data center business in Thailand are as follows:</p> <ul style="list-style-type: none"> ▪ Telecommunication Service License Type 1 issued by the NBTC. ▪ FBL or FBC In case the operator is majority foreign owned then such operator must obtain an FBL or FBC prior to conducting such business operations.



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>4. What are the foreign ownership restrictions for data center business?</p>	<p>Telecommunication Business Act B.E. 2544 (2001)</p>	<p>Subject to prior acquisition of the licenses as listed above, an operator may conduct a data center business in Thailand. However, the licensed operator is obliged to, among others, submit periodic performance reports, pay annual licensing fees, notify any change to corporate formality and comply with other particulars, and comply with the Data Privacy and Protection Act B.E. 2562 (2019).</p>
<p>5. Are there specific regulations governing the design and construction of data centers?</p>	<ul style="list-style-type: none"> ▪ Telecommunication Business Act B.E. 2544 (2001) ▪ Building Control Act B.E. 2522 (1979) ▪ Town Planning Act B.E. 25652 (2019) 	<p>Certain devices and equipment may be subject to standard requirements and inspection as prescribed by the NBTC. In addition, the construction of data centers, such as the building and structure, location of the servers and the IT equipment must comply with the construction requirements under the Building Control Act and Town Planning Act.</p>
<p>6. Is a foreign-owned data center permitted to sublease rack space? If yes, are additional licenses or permissions required?</p>	<p>Telecommunication Business Act B.E. 2544 (2001) (TBA)</p>	<p>Sublease of rack space to third parties is not prohibited under the TBA nor FBA in particular. The licensed operator can perform such activity, provided that this subleasing activity is specified clearly in the application submitted to the NBTC and MOC.</p>
<p>7. Can a foreign data center manager operate a data center without establishing a local entity?</p>	<p>Land Code</p>	<p>While foreign majority owned entities are generally prohibited from owning land under the Land Code, a data center development is eligible for ownership by a majority foreign owned entity subject to obtaining an approval to own the real property pursuant to an investment promotion certificate granted by the BOI.</p> <p>We note that foreign majority owned entities legally permitted to conduct a data center business are permitted to both own buildings and lease real property without additional permissions.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>8. Can security over data center real property (i.e. mortgage, charge, etc.) be granted to a foreign lender? Can a foreign lender take ownership of real property in the event of a foreclosure?</p>	<ul style="list-style-type: none"> • Civil and Commercial Code • Land Code 	<p>Securities over data center’s real property, e.g. machinery, equipment, in the form of mortgage or business security can be granted to foreign lenders, as foreigners are subject to land ownership restrictions under the Land Code, the foreign lender would not be able to enforce the mortgage registered over land through foreclosure and would benefit public auction upon mortgage enforcement.</p>
<p>9. What is the regime for Power Purchase Agreements? Can data centers buy power from Independent Power Producers (IPP)?</p>	<p>Energy Industry Act B.E. 2550 (2007)</p>	<p>Private companies are allowed to purchase power from licensed IPPs. However, a Power Purchase Agreement may be subject to operational requirements imposed on the licensed operators under the Energy Industry Act.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>10. What data protection / cyber security laws regulate or constrain the operation of a data center? What data retention obligations are placed on data center operators/developers? Are there any restrictions on transferring personal data into or out of the jurisdiction?</p>	<p>Personal Data Protection Act B.E. 2562 (2019) (PDPA)</p>	<p>The PDPA applies to data controllers and data processors located outside Thailand if they process personal data of Thai residents. Any collection, use, disclosure, or processing of the personal data requires explicit consent by the data subject or having legal basis as provided under the PDPA. Upon collection of personal data, the data controller is obliged to notify the data subject of required particulars, such as the purpose of data collection and the retention period. PDPA allows for the estimation of retention periods, if the actual time frame for precise retention is not specified. The cross-border data transfer requires adequate data protection standards for the destination country, unless otherwise exempted by the PDPA, and shall be carried out in accordance with the rules for the protection of personal data as prescribed by the Personal Data Protection Committee.</p>
<p>11. Are there specific compliance obligations related to Health, Safety & Environment (HSE)?</p>	<p>Occupational Safety, Health and Environment Act B.E. 2554 (2011) (OSHA)</p>	<p>The employer is required to arrange and maintain the workplace in safe and hygienic conditions and environment, such as provision of fire prevention and control, and compliance with requirements as set out under OSHA, including preparation of safety handbooks and provision of safety trainings for the employees. In addition requirements are imposed on the employers for performance of work relating to electrical equipment (e.g. arrangement of trainings for employees, installation of warning signs, provision of working equipment with insulated materials and regular inspection and maintenance of the electrical system and equipment).</p>

Vietnam





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>1. Can a foreign data center manager operate a data center without establishing a local entity?</p>	<p>Law on Investment No. 61/2020/QH14 dated 17 June 2020 (“Law on Investment”)</p> <p>Decree No. 25/2011/ND-CP dated 6 April 2011 (as amended) (“Decree 25”)</p> <p>Vietnam’s WTO Commitments dated 27 October 2006 (“Vietnam’s WTO Commitments”)</p> <p>Other international agreements relating to investment and services, of which Vietnam is a member, including ASEAN Framework Agreement on Services (AFAS), Vietnam Japan Economic Partnership Agreement (VJEPA), Vietnam-Korea Free Trade Agreement (VKFTA), Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), EU-Vietnam trade and investment agreements (EVFTA) (“Other International Agreements”)</p>	<p>Yes, a foreign data center manager has the option to enter into a business cooperation contract (“BCC”) with a local partner to operate a data center in Vietnam, without establishing a local company. Establishment of a local company is also another option, but given that the data center business would likely be classified as a telecommunication service under Vietnam’s WTO Commitment and Vietnamese law, the local entity must be a joint venture (“JV”). By law, a BCC or a JV is a form of investment which must be registered with Vietnamese authority in accordance with the investment registration procedures.</p> <p>Vietnam’s WTO Commitments do not provide any specific business lines relating to data center service, but it may reasonably be classified as “on-line information and database retrieval” (CPC 7523**) and/or “on-line information and data processing (including transaction processing (CPC 843), which is a value added service under telecommunication services.</p> <p>In a recent draft amending the Law on Telecommunications No. 41/2009/QH12 dated 23 November 2009 (the “Draft”), data center business is clearly classified as a communication service. As of 15 June 2023, the Draft has not yet been finalized or passed.</p>
<p>2. What are the foreign ownership restrictions for data center business?</p>	<p>Law on Investment</p> <p>Decree 25</p> <p>Vietnam’s WTO Commitments and Vietnamese law</p> <p>Other International Agreements</p>	<ol style="list-style-type: none"> In case of BCC: As per agreement in the BCC, but foreign ownership must be less than 100% in the BCC since there must be at least one local partner. In case of JV: foreign ownership must not exceed 65% in the JV, if it is a non facilities-based service; and not exceed 50% in the JV, if it is a facilities-based service. Under certain Other International Agreements, the foreign ownership ratio may be greater. A foreign investor cannot own more than 20% charter capital in a Vietnamese data center company if it already owns more than 20% charter capital in another Vietnamese telecommunication enterprise.





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>3. What are the general licenses required to develop and operate a data center?</p>	<p>Law on Investment</p> <p>Law on Telecommunication No. 41/2009/QH12 (as amended) ("Law on Telecommunication")</p> <p>Decree 25</p> <p>Circular No. 03/2013/TT-BTTTT, dated 22 January 2014, on application of technical regulations and standards to data centers, as amended by Circular No. 23/2022/TT-BTTTT dated 30 November 2022 ("Circular 03")</p>	<p>In case of BCC: An Investment Registration Certificate ("IRC") will be required for the BCC parties to proceed with the investment under the BCC. In addition, to carry out the operations of the data center in practice, theoretically a Telecommunication Service Business License ("Telecom License") will also be required. The BCC local partner is responsible for obtaining the Telecom License in its own name , cooperates with the foreign partner to establish the project management office under the BCC, opens bank account, hires labor, etc.</p> <p>In case of JV: An IRC and an Enterprise Registration Certificate ("ERC") will be required for the establishment of the JV. In addition, to carrying out the operations of the data center in practice, a Telecom License will also be required. The JV is responsible for obtaining the Telecom License in its own name.</p> <p>If the data center business is a facilities-based service, an Investment Policy Approval will also need to be obtained from the Prime Minister before issuance of the IRC.</p> <p>In addition, the BCC local partner or the JV will also be required to make a declaration of the conformity of the data center with regulatory technical regulations and standards, and prior to putting the data center into operation, obtain an acknowledgement of such declaration from the Vietnam Telecommunications Authority.</p>
<p>4. What are the legal rights and obligations applicable to data center connectivity?</p>	<p>Law on Telecommunication</p> <p>Decree No. 72/2013/ND-CP dated 15 July 2013, on management, provision, and use of internet and cyber information service, as amended by Decree No. 27/2018/ND-CP dated 1 March 2018 ("Decree 72")</p>	<p>The Law on Telecommunication sets outs certain general principles of telecommunication interconnection, which may be applicable to data center connectivity. Pursuant to such principles, a telecommunication enterprise has the right to interconnect its telecommunication network to the telecommunication network or services of another telecommunication enterprise, and has the obligation to allow another telecommunication enterprise to interconnect to its telecommunication network or services, based on negotiation.</p>



QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>5. Are there specific regulations governing the design and construction of data centers?</p>	<p>Circular 03</p>	<p>Yes, Circular 03 requires the design, construction, operation and exploitation of data center to comply with certain specific national standards and national technical regulations, notably (i) the national standard of data center and requirement of telecommunication technical infrastructure in TCVN 9250:2021 (or ANSI/TIA-942-B:2017 standard or the Tier standard of Uptime Institute), (ii) the national technical regulation (“NTR”) on fire prevention and fighting equipment applicable to houses and works in QCVN 06:2021/BXD, (iii) the NTR on lightning protection applicable to telecommunication substations and telecommunication peripheral cable networks in QCVN 32:2020/BTTTT, and (iv) the NTR on earthing for telecommunication stations in QCVN 9:2016/BTTTT.</p>
<p>6. Is a foreign-owned data center permitted to sublease rack space? If yes, are additional licenses or permissions required?</p>	<p>Decree 72</p>	<p>Currently, Vietnamese law is silent on this specific activity. Whether this activity is permitted may be subject to being included as a detailed business line within the services “on-line information and database retrieval” (CPC 7523**) and/or “on-line information and data processing (including transaction processing” (CPC 843) and then set out in the key data center licenses. If this is the case, then no additional licenses or permissions would be required.</p> <p>In a recent draft decree amending Decree 72 on management, provision, and use of internet and cyber information service (“Draft Amendment of Decree 72”), which has not been promulgated yet, the service “leasing space in data center”, which may be used to support the sublease of rack space without additional licenses or permissions, will also be permitted once this Draft Amendment of Decree 72 is issued.</p>
<p>7. Can foreign investors own real property for purposes of data center development?</p>	<p>Law on Land No. 45/2013/QH13, dated 29 November 2013 (the “Law on Land”)</p>	<p>In case of BCC: No. The real property must be owned by the local partner and contributed into the BCC.</p> <p>In case of JV: Technically, the JV cannot own land. The JV may only lease land from the State or sub-lease land in an industrial zone from an industrial zone developer, for development of data center. The JV can own the data center building works constructed on such land, and must register ownership over assets attached to land with land authority.</p>





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>8. Can security over data center real property (i.e. mortgage, charge, etc.) be granted to a foreign lender? Can a foreign lender take ownership of real property in the event of a foreclosure?</p>	<p>The Law on Land Civil Code No. 91/2015/QH13, dated 24 November 2015</p>	<p>No. Under the Law on Land, a mortgage over real property in Vietnam can only be granted to and enforced by licensed credit institutions permitted to operate in Vietnam. Certain structures nonetheless have been developed over the years to enable foreign lender to indirectly take mortgage over real property in Vietnam through a Vietnam licensed credit institution (e.g., a Vietnamese bank) acting on behalf of the foreign lender that receives and performs other assignments in relation to the collateral, but these structures have issues.</p>
<p>9. What is the regime for Power Purchase Agreements? Can data centers buy power from Independent Power Producers (IPP)?</p>	<p>Law on Electricity No. 28/2004/QH11, dated 3 December 2004, as amended</p>	<p>Vietnamese law does not specifically stipulate that a special power purchase agreement is required for data center operation purpose. Besides, Vietnamese law is still silent on the mechanism for power purchase from the IPP (except an IPP operating a rooftop solar power system).</p> <p>In a recent draft of a decision of Vietnam’s Prime Minister on the pilot program on the direct power purchase agreement between renewable power and electricity consumers, any renewable power plants and electricity consumers willing to participate in the pilot program must register with Vietnam’s Ministry of Industry and Trading (the “MOIT”), for the MOIT to assess and issue a list of the renewable power plants and the electricity consumers eligible for the pilot program. And an electricity consumer (e.g., the data center operator) would only be allowed to directly purchase power from the IPP if it is included in such list. The draft has not yet been finalized or passed as effective regulations but is expected within 2023 following issuance of Vietnam’s Power Development Plan 8 recently issued on 15 May 2023.</p>





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>10. What data protection / cyber security laws regulate or constrain the operation of a data center? What data retention obligations are placed on data center operators/developers? Are there any restrictions on transferring personal data into or out of the jurisdiction?</p>	<p>Law on Cyber Information Security No. 86/2015/QH13, dated 19 November 2015</p> <p>Law on Cyber Security No. 24/2018/QH14, dated 12 June 2018</p> <p>Decree No. 13/2023/ND-CP dated 17 April 2023 on Personal Data Protection (“Decree 13”), taking effect from 1 July 2023</p>	<p>Although Vietnamese law presently does not set forth any specific requirement applicable to the operation of a data center in respect of data protection or cyber security, data center operators, which are involved in personal data processing or other activities affecting personal data, must strictly comply with the following key general regulations as provided in Decree 13, including but not limited to: (i) fundamental principles for personal data processing; (ii) consent requirement from personal data owner prior to data processing; and (iii) measures on basic and sensitive personal data processing. Also, all organizations and individuals operating and providing services relating to data center are required to respect Vietnam’s national defense and security, State confidential information, development of social and economics and to refrain from infringing upon cyber information security.</p> <p>Regarding the matter of personal data transfer, Decree 13 sets out restrictions on the transfer of Vietnamese personal data out of Vietnam, while the requirements applied to personal data transferred into Vietnam are not provided. Specifically, Vietnamese personal data may only be transferred to another country (i.e., any server located in a territory outside of Vietnam) if the transferring party that is allowed to process the personal data:</p> <ul style="list-style-type: none"> (i) prepares, retains, and submits a dossier for impact assessment of cross-border transfer of personal data to the Department of Cyber Security and Hi-tech Crime Prevention (“A05”) under the Vietnamese Ministry of Public Security (the “MPS”) within 60 days after the data has been processed; and (ii) submits a notification to A05 after successful transfer. <p>It is important to note that the MPS may inspect cross-border transfers of personal data, as performed by the transferring party, once per year.</p>





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>11. What data retention obligations are placed on data center operators/developers?</p>	<p>Law on Cyber Information Security No. 86/2015/QH13, dated 19 November 2015</p> <p>Law on Cyber Security No. 24/2018/QH14, dated 12 June 2018</p> <p>Decree No. 53/2022/ND-CP dated 15 August 2022 detailing a number of articles of the Law on Cyber Security (“Decree 53”)</p>	<p>Under Decree 53, anyone in Vietnam or outside of Vietnam providing telecommunications services, internet services, and value-added services in Vietnam’s cyberspace that collect, exploit, analyze, or process certain types of data (e.g. services of data storage and sharing in cyberspace as cloud storage) may be required to store certain types of data in Vietnam, including personal data of users in Vietnam, user-generated data in Vietnam, and data on the relationship of service users in Vietnam (the “Regulated Data”). This would apply to foreign and local data center developers/operators.</p> <p>A foreign entity conducting business in Vietnam may also be required to localize the Regulated Data and/or establish a branch or representative office in Vietnam if so requested by the MPS when it has been warned by the Department for Cybersecurity and Prevention of High-Tech Crime under the MPS that the services it provides have been used to commit a breach of the Law on Cybersecurity and it has not taken the required measures for avoiding, dealing with, fighting against, or preventing such breach, or it has resisted, obstructed, or disabled measures on cybersecurity protection performed by the specialized cybersecurity protection forces. This may apply to a foreign data center developer/operator. In that case the foreign entity must fulfill the requirements in data localization and the establishment of a local presence within 12 months of the request of the MPS.</p> <p>The data storage period is computed from the time of receipt of the MPS request until the end of the time prescribed in that request, with a mandatory minimum period of twenty-four (24) months.</p> <p>The Draft Amendment of Decree 72 sets out a broader scope of retention, both in terms of duration and the types of data that would need to be archived. As this is still only a draft decree and potentially conflicts with Decree 53, further guidance is required to determine how this revised Decree 72 will alter the current legal retention obligations of data centers.</p>





QUESTION	LEGAL FRAMEWORK	APPLICATION SCOPE
<p>12. What are the consequences and risks for foreign data center operators/developers who do not comply with Cybersecurity Law rules?</p>	<p>Draft decree of 2021 on penalties for administrative violations in the field of cybersecurity</p>	<p>Under this draft decree, the main sanctions are warnings and fines. Subject to the nature and severity of the violation, the violator could also be imposed additional sanctions (e.g. prohibited from practicing or doing work related to the violation, revocation of licenses/ permits) and remedial measures (e.g. confiscation of illegal gains derived from the violation).</p> <p>There is no specific sanction against violations of the Cybersecurity Law directly applied to foreign data center operators/ developers. However, a number of violations of personal data protection, which may concern data center operators/ developers, are set with fines ranging from VND 60,000,000 to VND 100,000,000 (approx. USD 2,541 to USD 4,235) for individuals and VND 120,000,000 to VND 200,000,000 (approx. USD 5,082 to USD 8,470) for organizations.</p>
<p>13. Are there specific compliance obligations related to Health, Safety & Environment (HSE)?</p>	<p>Labor Code No. 45/2019/QH14, dated 20 November 2019</p> <p>Law on Occupational Safety and Hygiene No. 84/2015/QH13, dated 25 June 2015</p> <p>Circular 03</p>	<p>There is no specific compliance obligation related to the HSE applicable to data center operation, except that under Circular 03, the data center must comply with certain national standards and national technical regulations in respect of safety. In general, as any other business in Vietnam, the foreign investors, the local foreign-invested enterprises involving data center operation, data center facilities in Vietnam, and their employees must comply with the HSE regulations provided in the Labor Code and the Law on Occupational Safety and Hygiene.</p>



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