



Key Sourcing Trends Through a Legal Lens

Dealing with an uncertain world



Global trends

Global recession?/
Inflation

Energy costs (and
more broadly cost
of living crisis)

Supply chain
disruption

Talent acquisition
and retention

Geopolitical
Conflicts / National
Security

Climate Change /
“Climate
Emergency”

UK adapts for stormy waters

The UK was settling into consensus on a growth strategy. UK / Europe is now plunging into a precarious and uncertain environment

Some learnings from the GFC in relation to tech /outsourcing contracts

- Flexibility: more re-negotiations of existing deals (i.e. earlier and more frequently)
- Costs: companies looking to slash costs wherever possible, key driver for deals

Expected contracting trends

- Renegotiation levers
 - Change management
 - Extension/renewal
 - Termination for convenience
 - Audit
 - Benchmarking
 - Extra-ordinary event/hardship
- Concrete ways to reduce cost
 - Relaxing contractual requirements
 - Neutralize supplier contingencies (e.g. offer a substantially de-risked contract and ask to see pricing impact)
 - Optimize scope
 - Optimize financial terms (invoicing terms)

UK adapts for stormy waters (2)

Negotiation trends

- Pressure to do things faster and cheaper, therefore leading to more "time-boxed" negotiations
- Overall strategies to reduce costs and focus on quick savings

Contract provisions expected to be increasingly impacted

- Termination flexibility (termination for convenience)
- Ability to scale down easily
- Price adjustment and **indexation**
- Financial distress
 - Customers consider
 - Regular reporting on financial status
 - Milestone payments
 - Parent guarantee
 - Suppliers push for:
 - Pre-payment / shorter payment terms
 - Faster termination for non-payment
- Force majeure/hardship



Dealing with an uncertain world: managing price change in the context of inflation

- Hottest negotiation area right now
- Traditional market norms being overridden

Our experience from negotiations is that:

- Providers initially unwilling to accept caps
- Indexes linked to location of resource delivering services more commonly
- We are seeing index shopping
- Negotiations are extremely tense

Focus-points

- Customers continue to seek caps and low indexes where possible
- Consider cap and collar approach to deal with hyper-inflation
- Not all costs are increasing, some technology costs are decreasing
- Cost sharing mechanisms on inflation
- Don't forget efficiency savings could offset some cost increases

Industry and tech changes in the market

What we are seeing - tech landscape



Use of the cloud in all sectors

Increasing **standardization of services** in the context of embedded offers

Used for "strategic" functions: core banking, most strategic apps and workloads

From **cloud transformation to business transformation**



Impact of **new(er) technologies** such as AI and blockchain

Increased **collaboration** required between client and service provider

The **rise and role of the FinTechs** in the supplier ecosystem



Shifting balance of power between customers and service providers

Service providers are becoming more and more **essential to companies** due to more advanced technologies

Difficult to find (and switch to) alternative providers

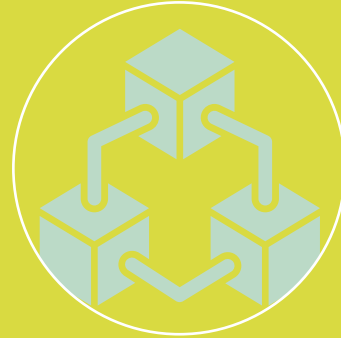
Users facing **increasingly heavy legal constraints**

Strong technological trends that change the balance

How the big players are changing the contracting landscape



Hyperscalers are systematically imposing their contractual documentation as basis for discussion. Standard offers. Very limited room for negotiations. Some documents cannot be modified (SLA, Security policy etc). This is 100% accepted by customers, albeit with the right amount of leverage negotiation does happen in certain areas.



Enterprise Software Vendors have the same approach. Limited room for negotiations (highly dependent on the revenue recognition of the deal). This is 90% accepted by customers.



Professional service providers accept to work on the basis of customer contractual documentation and are required to absorb on many projects (esp. Integration) the risks that the software editors and hyper scalers have refused to take.

Shift in the balance of contracting power

The rise of hyperscale cloud

Bespoking terms
remains difficult

Schrems II requiring
a rethink re: data
localisation and
regionalisation

Challenge with
securing compliant
terms

Issues remain
consistent:

- Extent of remedies
- Suspension Rights
- Ability to change services
- Liability caps
- Exit planning and assistance

What about SaaS /
platform providers /
fourth party rights?

Latest market trends in Outsourcing / Tech contracts

Deal size and structure

- Disaggregated supply-chain and move to "best of breed"
- Death of SIAM
- Smaller size deals
- New breeds of suppliers (e.g. hyperscalers, FinTechs)
- Consumption and "XaaS" models still most popular
- Rise of BPO and other specialisms

New technology stack means new rules

- Supplier's commonly carving out responsibility for 3rd party elements of the stack
- New battles over ownership of IP and suppliers wanting to own all IP
- Parts of the stack being licensed on "COTS" terms
- Focus on exclusivity / competitive advantage and "lock-in" – particularly with FinTechs

Thank you



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