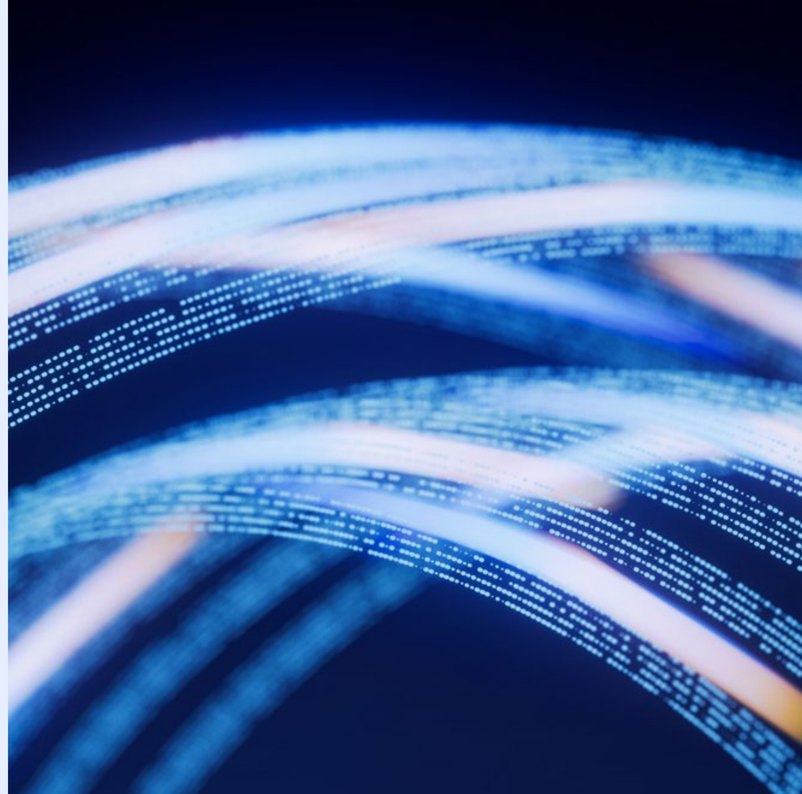
Clifford Chance

BRIEFING



Strategic contracting uncovered: Real-world perspectives from legal, business and technology leaders

Summer 2026

Designing technology contracts for the real world

When technology deals unravel, issues often arise when the contract does not fully reflect how the deal, the product or the service will be delivered in practice.

As part of **The Society of Computers & Law: *"What Every In-House Lawyer Should Know"*** series, Clifford Chance hosted an in-person event with panellists from legal, advisory, and business backgrounds to explore the practical challenges that in-house lawyers face when contracting for complex technology, including in relation to data migration, transitional services, use of AI, and regulatory change.

Clifford Chance's Zayed Al Jamil, Partner and Head of UK Complex Contracting and Technology Outsourcing, Tech Digital, moderated a panel consisting of Nicholas Levey, a Partner within the M&A Integrations and Separations team at Deloitte LLP and previously a business consulting leader at HSBC; Midori Takenaka, a Senior Associate within the Tech Digital team at Clifford Chance; and Jasmin Thielen, a Senior Legal Advisor, at Fujitsu UK.

The discussion focused on IT projects and transactions where technology plays a pivotal role - including standalone technology arrangements, M&A transactions and complex outsourcing models. Drawing on first-hand experience, panellists explored the realities underpinning migration, data, governance, licensing and exit, why contracts can struggle once tested in live operational environments, and top tips to avoid common issues.

A recurring theme was the risk created when contracts are drafted in a vacuum, without sufficient input from operational teams or appreciation of the cultural, organisational and technical dynamics that shape execution and delivery.

The panel emphasised that the greatest legal and commercial exposure often arises after signing where obligations are deferred or loosely defined. Data issues, transitional services agreements (TSAs) and open-ended commitments around future cooperation or "agreements to agree" were identified as consistent pressure points, alongside misaligned expectations around governance, change control, unplanned termination and exit. The panellists highlighted the importance of early stakeholder

alignment, designing contracts so they have utility in real-world conditions and mechanisms that prioritise remediation and governance over termination. Ultimately, effective technology contracts must be built not just to allocate risk, but to support sustainable long-term delivery when relationships, assumptions, or circumstances inevitably change.

Key takeaways

1. **Strategic contracting is a cross-functional discipline.** Early stakeholder alignment is critical and must reflect delivery realities and cultural dynamics, not just legal risk. Lawyers are most effective when they understand how the business operates and engage the right stakeholders at the right time.

2. **Post-completion risk is where contracts are most often tested.** Clauses that require action post-completion tend to mask complex operational work and must clearly answer what needs to be done, by whom and under what constraints, with TSAs negotiated alongside (not after) the Sale and Purchase Agreement (SPA).

3. **Contracts must be designed to survive strain, not steady state.** Governance, escalation and remediation mechanisms matter more in practice than theoretical termination rights.

Why this matters for boards now

With the speed of technological change, technology contracts, SPAs, and related TSAs are no longer static legal instruments negotiated in isolation. They sit at the centre of operational delivery, regulatory compliance, data governance, and long-term value creation. As organisations pursue digital transformation (including AI-enabled services and business) at pace - whether by way of technological adoption, JVs, acquisition or otherwise - it is the gap between contractual intent and operational reality where risk most often crystallises.

Against that backdrop, the panellists shared practical, behind-the-scenes perspectives on what helps contracts work well in practice, where they fail and how in-house lawyers can engage proactively and most effectively.

The panellists focused on four critical themes: stakeholder management, matching contracts to reality, preparing for things going wrong and recurring “war stories” that continue to trip up organisations.

1. Stakeholder management: securing alignment and buy-in

One of the clearest messages from the discussion was that misalignment between stakeholders is rarely a peripheral issue; it is often the root cause of downstream contractual failure.

Achieving alignment can often usefully be anchored around clearly agreeing product or service descriptions, scope, time scales for delivery as well as roles and responsibilities early on. The panelists agreed that this activity and agreement is crucial not only between buyers and sellers, but also across legal, commercial, technical, and operational teams within one's own business.

Panellists emphasised that legal teams operate at the intersection of multiple cultures, whether national, business, organisational or otherwise. In global organisations, this complexity is amplified. Differences in

communication styles, risk appetite and decision-making norms can materially affect how contracts are negotiated and delivered. For example, practices that are taken for granted in one jurisdiction, such as direct disagreement in meetings, may be culturally inappropriate or ineffective elsewhere. Awareness of these differences and an ability to translate legal risk into terms the business understands is critical to building trust. Without that trust, legal teams risk being seen as deal blockers or, even worse, late-stage "rubber stampers," brought in after key decisions have already been made.

From a transaction perspective, confidentiality and deal dynamics can further limit engagement. In many M&A processes, deal information is tightly controlled and operational stakeholders (including those who will ultimately have to deliver post-completion) are sometimes consulted late, if at all. This creates significant implementation risk. As one panellist observed, the party least considered in many transactions is often the target business itself and the people who will take delivery forward may not have been consulted.

External advisers can play a valuable role in this context. Acting as an independent or even deliberately assertive voice can help surface uncomfortable issues, rebalance internal dynamics and prevent stakeholders from becoming entrenched. Used well, this more neutral voice from outside the business can function to create space for difficult conversations before positions harden and timelines compress.

Effective stakeholder management requires deliberate structuring, including early scoping workshops, clear escalation routes, defined decision gateways, and issue logs, all of which operate as practical risk-mitigation mechanisms and proactive project management rather than process overhead.

2. Matching the contract to operational reality

A recurring theme across the discussion was that the most heavily negotiated clauses are not always the most contentious. Instead, problems tend to arise where contracts fail to reflect how the business and technology operate in practice.

Data and migration were consistently identified as pressure points. In an M&A scenario, buyers often assume that "all data" and technology will be available and easily transferable, including systems such as email or historical customer information. In reality, legal constraints, regulatory obligations, and technical limitations frequently make this far more complex, timely and costly. If SPAs or TSAs do not clearly address how technology and data is to be handled (including within data rooms), how it will be transferred and what will or will not be provided, these assumptions quickly unravel.

TSAs are an area where optimism often overtakes reality. They are frequently treated as a safety net and something that can be finalised quickly after signing. In practice, particularly in regulated or large organisations, TSAs can be difficult to implement and even harder to exit. Panellists stressed the importance of negotiating TSAs alongside the SPA, with realistic timelines and a shared understanding of what "good" looks like at both during operation and at exit.

From a technology perspective, understanding what is being provided - and what happens if delivery fails - is essential. Liability exclusions that look standard on paper can be commercially unacceptable where the

technology in question is fundamental to revenue generation or core operations. This risk is magnified in AI-enabled services, where organisations may be relying on systems to make or inform high-value decisions. Contracts must reflect not only how the technology is intended to work, but how failure, geopolitical disruption and/or regulatory change will be managed.

Governance provisions that defer key decisions by requiring parties to agree in the future and/or to “agree in good faith” may appear pragmatic, but they frequently mask unresolved complexity. Without clear allocation of responsibility and decision-making authority, these provisions tend to store up disputes rather than resolve them. Never mind the amount of litigation and case-law itself surrounding what "good faith" actually means in practice.

Turning to newer or unfamiliar areas - including AI-enabled business and services - panellists discussed how legal teams can rapidly build sufficient understanding to contract effectively, even where they are not subject-matter specialists.

Practical approaches included close collaboration with technical and commercial teams, targeted use of external expertise, and a focus on understanding how the technology is actually used and relied upon in practice.

The goal, panellists noted, is not to turn lawyers into technologists, but to ensure they can ask the right questions, identify hidden dependencies and spot where contractual assumptions diverge from operational reality.

3. When things go wrong: contracts under strain

Another consistent message was that contracts are rarely stress-tested when the relationships between parties are running smoothly - it is only when difficulties arise that their adequacy is revealed.

Panellists noted that legal teams are often brought in only after problems have escalated. By that stage, rights may already have been inadvertently waived, positions entrenched and options narrowed. Ongoing contract management, aligned closely with delivery teams, is therefore critical to spotting early warning signs and intervening before the point of escalation.

Insolvency scenarios were highlighted as a risk area. Assumptions about continued performance, access to systems and the availability of remedies can quickly break down when a counterparty enters financial distress. Contracts need to be drafted with a realistic appreciation as to how they will operate under strain and what can or cannot be enforced in these circumstances.

Termination is of course rarely the outcome parties want. Even so, termination rights and liability are usually given a great deal of focus and negotiation time. Whilst time spent here is important, those terms are designed for contracts which have collapsed and not to address the underlying business problem(s). Well-designed remediation and step-in mechanisms, by contrast, can provide boards and management with practical options that preserve continuity and reduce reputational harm.

4. War stories: recurring pain points to avoid

The panel's "war stories" reinforced just how persistent certain issues are in tech contracting.

Data transfer disputes were a popular example. Almost every significant deal sees data provisions challenged, whether due to unclear scope, unrealistic timelines, misaligned expectations, or terms that do not reflect data flows and responsibilities in real-life. These issues are compounded when post-signing operational teams are not involved early enough; their input can fundamentally change how services, data access and use as well as any carve-outs are structured.

Deferred commercial decisions or "agreements to agree" were repeatedly identified as red flags. Where parties are unable or unwilling to resolve key commercial points upfront, deferring them rarely makes them easier. Instead, they often become points of contention - whether from a cost and time perspective after signing or, worse, if and once a relationship breaks down.

Another recurring problem is over-engineering. Detailed drafting driven by stakeholders deeply embedded in day-to-day operations can result in contracts that are technically precise but practically unworkable. Clients may later seek simplification once the complexity becomes unmanageable. Contrast that with there not being enough detail on who is doing what, when, to what standard and for what cost. The challenge for lawyers is to strike a balance between sufficient certainty and long-term usability.

Finally, several panellists noted the human dimension of contracting. Contracts are not static documents; they govern relationships that may last for years. Aggressive negotiation tactics that secure a "win" on paper can damage relationships and make it increasingly difficult to work together when issues inevitably arise.

Closing Reflections

These insights point to a consistent conclusion: successful strategic technology contracting is about realism, alignment, foresight, and agility. Contracts that are grounded in how the business operates - informed by the people who will live with them after signing and designed to cope with change are far more likely to deliver value and success - and far less likely to become liabilities or failures.

For in-house teams, the opportunity lies in moving upstream: engaging earlier, asking the difficult questions and using contracts not just as risk-allocation tools, but as practical frameworks for delivery in an increasingly complex technology/digital, M&A and business environment.

Zayed Al Jamil
Partner, London

zayed.aljamil@cliffordchance.com
+44 207006 3005

Midori Takenaka
Senior Associate, London

midori.takenaka@cliffordchance.com
+81 3 6632 6628

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2026

Clifford Chance LLP is a limited liability partnership registered in England and Wales under no. OC323571. The firm's registered office and principal place of business is at 10 Upper Bank Street, London E14 5JJ. The firm uses the word "partner" to refer to a member of Clifford Chance LLP or an employee or consultant with equivalent standing and qualifications.

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest** • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague** • Riyadh* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

**Clifford Chance has entered into association agreements with Clifford Chance Prague Association SRO in Prague and Clifford Chance Badea SPRL in Bucharest.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.