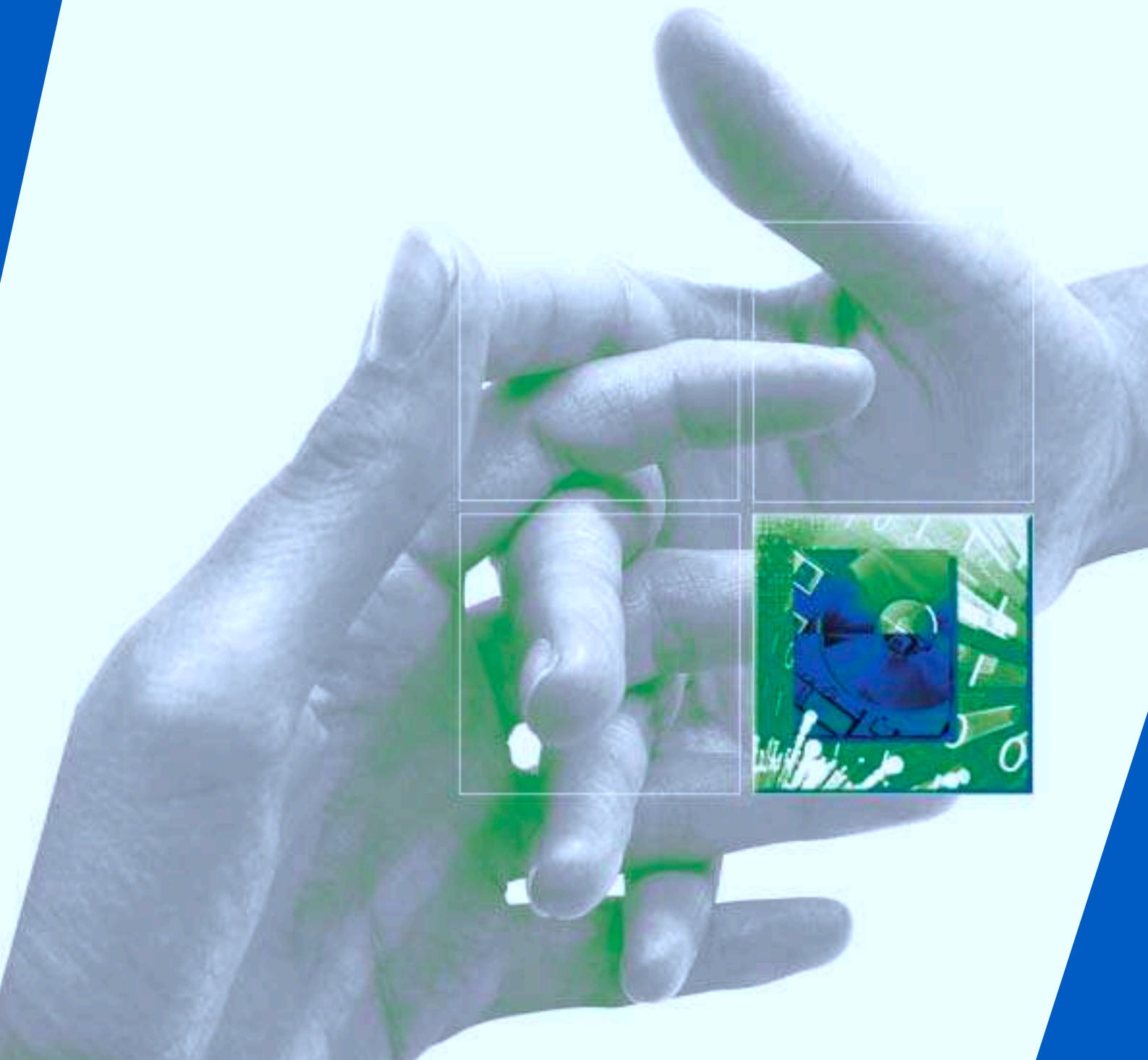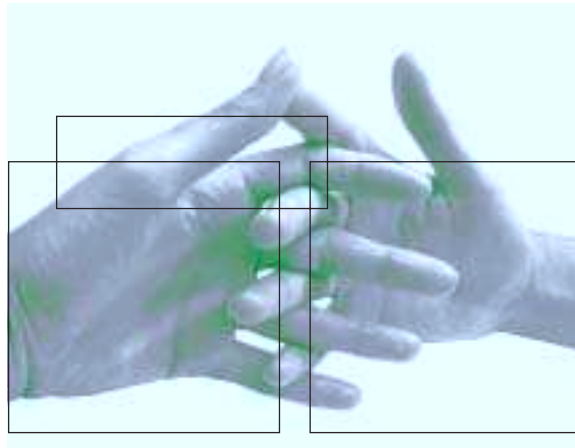# Outsourcing - IT

IT outsourcing defined

The outsourcing of information technology (IT) or information systems (IS) is a well-established practice. In essence, it is the transfer of an organisation's information systems function to a service provider or a number of service providers.

The market for IT outsourcing is highly developed with a number of well-known service providers. Such maturity brings advantages to the market place for customers. The advantages include sophisticated pricing mechanisms based on unit pricing models (price per usage of resource) and more transparent and competitive pricing.

Practical key issues

While IT outsourcing raises a number of issues in common with all forms of outsourcing, certain commercial and legal considerations feature more predominantly. Regard should be paid, in particular, to the following issues.

Determination of IT function

Businesses often have a separate IT department. However, any business also needs to consider whether there are units, which are providers of IT to users within the organisation, which are attached to separate functions of the business and whether these should be retained in-house or outsourced. Functions, which are typically outsourced in an IT outsourcing are as follows:

- Mainframe and midrange services - the provision of processing services, application management performance availability and capacity management
- Desktop services – the provision and support of end user computing facilities
- Network services – the provision and support of WANs, LANs, remote access services, voice services and internet services
- Professional services – the provision of consultancy services, project and programme management, design and development services
- Procurement services – the acquisition of commodity products and services and non-standard items
- Disaster recovery services

Structuring

The simplest structure is for the business to transfer the IT assets to one service provider, which supplies services using the transferred assets exclusively to the customer. Such a structure enables a business to manage one relationship and look for performance from one service provider.

However, businesses should be conscious of alternatives to this traditional structure. Shared IT services, where a number of corporate users have the same IT facilities, might benefit a customer, through lower prices as a result of increased economies of scale. A type of shared service arrangement sometimes suitable for small and medium businesses is a service provided by application service providers (ASPs). These are providers which host and manage normally standard software for a number of customers. These customers access the service via the internet or via a dedicated network.

Businesses should also be aware of the dependencies in any IT functions and the effect that this may have on the structuring of the relationship.

" *Businesses should also be aware of the dependencies in any IT functions and the effect that this may have on the structuring of the relationship.* "

The IT function will have a number of existing third party suppliers. Ideally, these will be transferred to the prime contractor to manage as its subcontractors. Circumstances can arise, however, where the customer has a multi-vendor outsourcing relationship, with two or more different suppliers.

Due diligence and transfer of IT assets
It is very important for any business to review its IT assets prior to any outsourcing transaction to determine whether any third party consents will be required for their transfer to the service provider.

IT assets will typically include owned and leased hardware, proprietary and third party software and a variety of hosting, service and management contracts. Third party software typically takes centre stage. The business will either wish to assign or novate third party software licences or sub-licenses the right to use the software to the service provider.
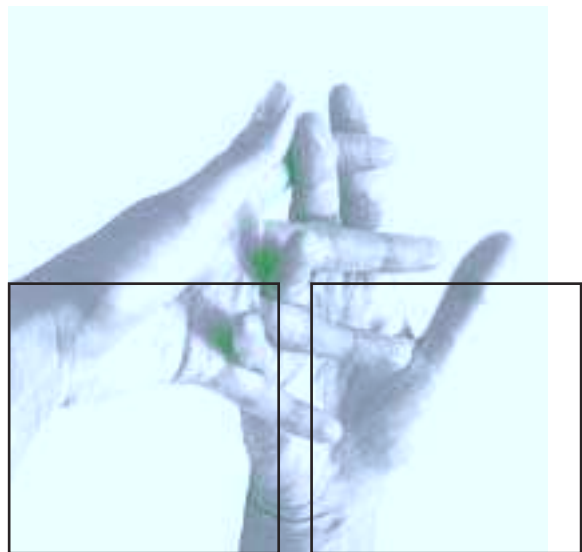
However, software licences commonly include restrictions on the transfer of rights to an outsourcing supplier. Such transfer without a licensor's consent would be an infringement of a licensor's intellectual property rights. The business will therefore need to approach licensors where consent is required. In some instances, the business will need to pay a licensor an additional charge for such consent. A failure to obtain important consents, or demands for a material charge could have a significant effect on any proposed IT outsourcing.

Determination of service levels
Typical IT service levels include those relating to availability and performance. An IT department may already monitor and record certain internal performance indicators. However, the client business should consider, in advance, what additional outputs are material and need to be monitored and should implement processes for determining existing performance

levels a number of months prior to the migration to the service provider. This information should be provided to the service provider during the procurement process. A failure to determine existing levels can often result in a delay to the signing of the outsourcing agreements, or can result in agreements being executed prior to determination of the existing service levels.

Improvements and flexibility
In the light of inevitable technology advances during the term of any outsourcing relationship, it is essential that the service arrangements can cater for changes in technology and to the services. Both suppliers and customers will wish to ensure there is a flexible change control procedure to provide a framework for variations during the term. Businesses often look for the benefits of improved service performance in any outsourcing and any such targets should be properly ▶

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> "…it is essential that the service arrangements can cater for changes in technology and to the services. "

documented in the agreements. A realistic approach, however, needs to be taken by customers. Higher levels of performance normally come at a cost; a customer needs to determine what level of service it genuinely requires and the amount it is prepared to pay for such service.

How can CMS Cameron McKenna help?

We consider that an understanding of the commercial as well as the legal issues in any IT outsourcing is important to any legal advice in such a transaction.

As a firm, we have the knowledge and experience to participate actively in the whole process of an IT outsourcing. We can assist both customers and suppliers in:

- the preparation required in determining and developing solutions for the key commercial and legal issues in any IT outsourcing
- performing due diligence on the IT assets and identifying the information required by a prospective service provider in the procurement process
- drafting and negotiating contractual documentation appropriate for a successful outsourcing relationship.

If you would like to find out more about IT outsourcing, please contact the following members of our Outsourcing group:

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