

# EXPLORING OPPORTUNITIES: DIGITISE TO SURVIVE AND THRIVE - SIX STEPS TO A SUCCESSFUL DIGITAL TRANSFORMATION (GLOBAL)

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Legal Briefings - By **Mark Robinson; Lily Fitzpatrick; Fatim Jumabhoy; Natasha Blycha; Harry Evans; Miriam Everett; Julian Lincoln and Nick Pantlin**

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The need to digitise has never been so relevant and important for business.

Global trade has been disrupted and reshaped – the ability to ensure critical operations can continue and to rapidly adjust to a very dynamic situation has become a determiner of business survival.

Only those businesses that transform digitally will survive and even thrive longer term, and many are already rethinking and accelerating their digital transformation strategies.

At its core, digitalisation involves businesses engaging technology to become more flexible and agile. It can create efficiencies and enhance service delivery. Digitalisation can also create novel customer experiences and products, allowing businesses to stay relevant and competitive.

Companies that have transformed digitally are better able to continue operations and predict business impact during disruption, and can adapt to new circumstances more easily and resiliently.

We've shared our top tips for developing and implementing a successful digital transformation from a legal perspective.

## **1. THINK HOLISTICALLY**

Successful digital transformations go beyond simply automating an existing step in a business' operations. Transformation requires consideration of all aspects of the business, such as supply chains, employees, products and services, distribution channels, and business processes.

Digital transformation often begins with technology, but should involve an overarching strategy for the company's products or services and its interactions with customers through digital channels.

Strategies may also vary between digitalisation to safeguard operational viability, digitalisation of operating models for efficiency, expansion of core areas of the business through digital means, and engagement with digital third parties.

Successful strategies tend to involve the digital connection of internal systems and business relationships – for example, using smart legal contracts to drive efficiencies and flexibility.

We see businesses stumble with their digital strategies where they do not have a clear and complete vision for the scope of their transformation. A more piecemeal or kneejerk approach can be perilous from both legal and business perspectives.

## **2. DO YOUR DILIGENCE**

The development of an overall digital transformation strategy should be combined with a detailed review of existing arrangements to identify potential pathways or obstacles

Typically the focus of diligence from a legal point of view will be on employees, contracts with third parties, intra-group arrangements, intellectual property, data, technology, licensing and regulatory, financing, corporate structures and insurance.

Due diligence should also be conducted on any relevant existing or new third parties involved. Areas identified can be managed in a way that facilitates digital transformation while mitigating risk. Businesses are also placing more emphasis on stress-testing arrangements going forward to ensure that they are always digitally ready.

## **3. EMPOWER YOUR EMPLOYEES**

When implemented well, digital transformation can help your people to work in different ways and create a workforce for the future through building capability, empowering workers, improving productivity, enhancing communication and promoting employee engagement.

However, digital transformation also requires culture and behaviour changes, in areas such as innovation, collaboration and customer experience. This may cause employees to worry about job security and the protection of their employment rights, which may trigger workforce activism. To combat this, leaders will need to find new ways to engage with their workforces, including a more proactive and transparent discussion of corporate values and ambitions.

Needless to say, leadership teams within each business need to be strongly committed to the transformation and to working with employees to achieve the desired changes. For those in regulated industries, particular care must be taken to ensure proper governance and oversight where senior management/individual accountability regimes apply.

#### **4. USE YOUR DATA**

Digitalisation often creates enormous amounts of data and, increasingly, data shapes the way business decisions are made. Implementing digitalisation in a way that will allow a business to leverage, analyse and extract insights from their data is essential.

Businesses will want to use data in different ways depending on their digital strategy, potentially sharing it with group companies, associates and third parties as part of the digital transformation.

Data may be a fundamental tenet of the digital transformation strategy. Companies will need to be mindful of the relevant categories of data and how they are used, particularly given regulatory, contractual and other restrictions on and requirements for data and the increased focus and possible sanctions with respect to the misuse of data. Data will need to be mapped, usually as part of the diligence process, and risks and impacts assessed and recorded.

#### **5. SECURE YOURSELF**

One of the major risks with increased digitalisation arises from security of technology, data and other digital assets. Companies will need to focus more than ever on cybersecurity.

Businesses will need to develop or review their cybersecurity strategy and framework and tools to help prevent, detect and address cybersecurity threats, and document their cybersecurity response and recovery plan or playbook. This plan will detail processes to be followed in the event of a breach, including notification to regulators, insurers and authorities, dealing with privilege, ensuring the preservation of data assets, and business continuity.

Regular evaluation of the effectiveness of such internal controls should be conducted and measured against the risk appetite and tolerance limit of the business. Technology may help with this; for example, blockchain can assist by decentralising risks with digital assets and prevent fraud and theft.

#### **6. CONSIDER YOUR IP**

Digital transformations require speed, flexibility, trust, talent and diversity. Above all, digital transformations require the close cooperation of multiple parties – internally and externally.

With so many interested parties, it can be difficult to clearly identify each party’s ownership of, and right to use and exploit, the IP existing in multi-faceted digital solutions.

As a result of this dynamic, we are seeing a shift away from the traditional focus on “IP ownership and enforcement”. Companies are now focussing on “IP access and collaboration” (other than perhaps for core, bespoke assets).

Access regimes may range from traditional ownership and licensing arrangements, to open source platforms and open innovation/application programming interfaces, among others. Each regime has a varying level of collaboration, structural flexibility and openness to external parties. In turn, each stakeholder has its own business objectives and goals with respect to IP ownerships and exit rights.

The changing landscape does not mean that IP is becoming any less important – indeed, it may be becoming *more* important. It is crucial for a party to map the IP ownership and licensing arrangements applicable to a digital solution in order to understand both its rights to use the solution, and the rights of others to exploit it.

In this context, businesses are developing or reviewing IP policies in order to ensure that they are fit for the new challenges and address the risks posed by digital transformation

Digital transformation is a major undertaking, but in the current environment businesses will need to accelerate their programmes in order to adapt, survive and thrive. However, a rushed response without due consideration of the strategy and approach could be counterproductive and indeed very dangerous in today’s world.

We have dedicated specialists around the world who support clients on digital transformations within their businesses. In addition, we have a team dedicated to supporting client legal teams (as well as lawyers in our firm) to take advantage of the opportunities and challenges of digital transformation within their function (called Digital Law Group, click [here](#) to find out more)

Click [here](#) to access our webinar on Digital Transformation.

[More on Catalyst //](#)

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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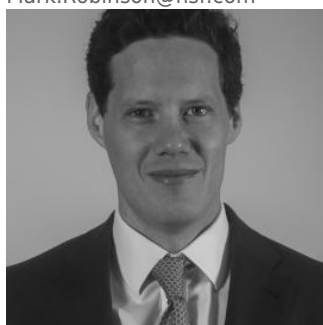
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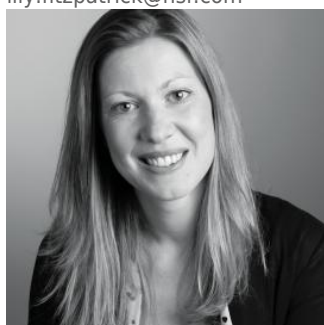
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