

IT, Outsourcing & Data Privacy

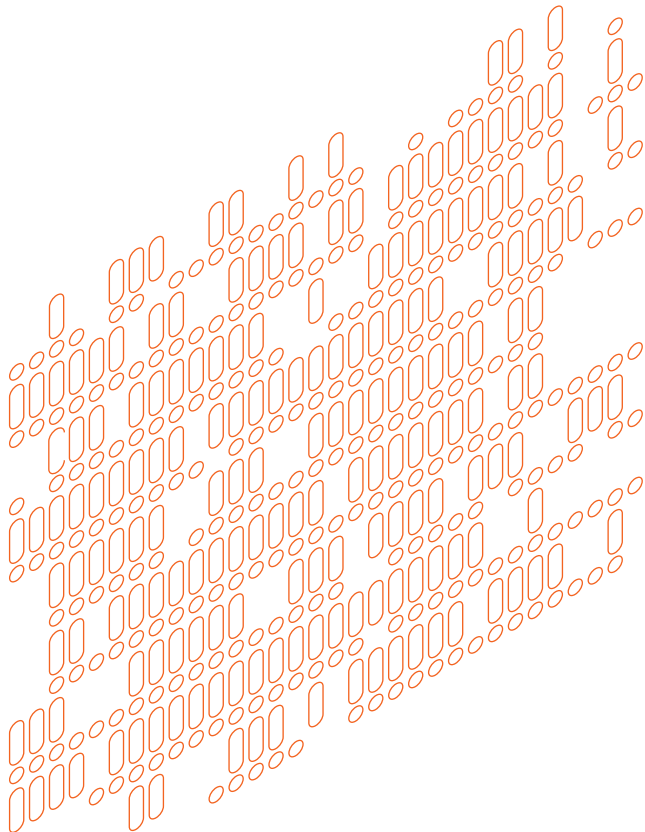




You can do
whatever you
like with the
digital revolution.
Except ignore it.

Professor Peter Bräutigam





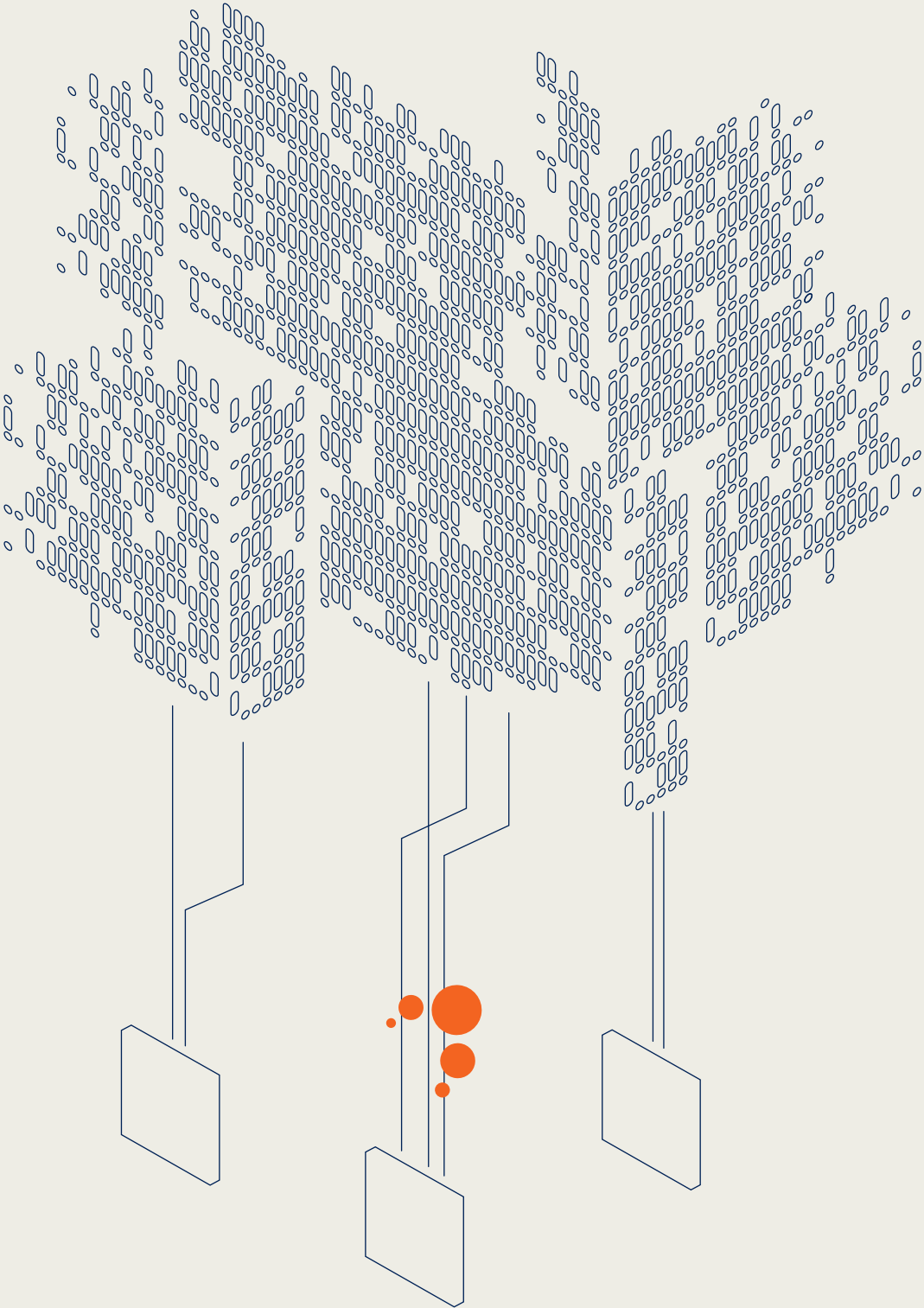
/YOUR CHALLENGES

Information technology systems are becoming an integral part of almost all new products entering the market and are affecting more and more different aspects of their users' lives. This is driven by advances in miniaturisation, the steady fall in the price of hardware components and the rapid progress made in the development of the necessary software. The production, marketing and use of these products frequently give rise to IT- and data privacy-related legal questions.

At the same time, substantial increases in data capacity and the practically unlimited scalability of new IT systems mean that it is possible to implement business models that were previously unheard of, for instance in the e-commerce sector or in data evaluation and marketing. This is reinforcing the trend towards centralisation within company groups or outsourcing of IT services relevant for businesses that has already existed for many years.

While companies' business models and activities are often designed with cross-border activities in mind, the legal conditions under which they operate are generally dictated by national rules and regulations in the jurisdictions concerned. As a result, companies are faced with significant compliance requirements.

Likewise, increasing digitalisation is presenting a challenge to legislators. They are required to keep track of rapid technological developments by maintaining a continuous exchange between legal practitioners, politicians and academics. The amount of data produced is growing exponentially. Data is on the way to becoming the new commodity in industry and commerce. Where digitalisation is concerned, the secret of success is to mobilise innovation and know-how when using the new market. Commercial digitalisation is unregulated in many areas. The challenge faced by companies is to check that current employment contracts, confidentiality rules and protection of know-how are effective. In the field of IT law, the focus is mainly on aspects such as data protection, IT security and IT infrastructure/cloud. Apart from this, digitalisation creates new requirements on the contents of contracts, for example in relation to the ownership of data generated in the "smart factory".



For many years, Noerr's IT and e-commerce practice has been among the leaders in legal advice in the field of technology. Our specialists provide interdisciplinary advice on all legal and tax-related IT issues, from traditional contract law advice and IT compliance to complex cross-border outsourcing projects.

You benefit from our extensive experience: for many years, we have advised both IT service providers and clients, from SMEs to large international groups, on IT projects, the use of IT and all issues of IT law.

Our advice focuses on:

- Digitalisation/Industry 4.0
- Data privacy
- Outsourcing
- Cloud computing
- IT and software projects
- E-commerce
- IT litigation and conflict resolution

Digitalisation/Industry 4.0

Digitalisation is rapidly transforming nearly all areas of the economy, society and daily life. The internet, mobile communications and digital apps have been commonplace for some time. Now the Internet of Things is becoming a reality: more and more products and machines are linked to each other. Digital technologies will change the processes of value creation and innovation. Industry is driving this transformation and is driven by it.

The key is to keep track of rapid technological developments by maintaining a continuous exchange between legal practitioners, politicians and academics. Companies have a great deal of individual responsibility, especially in contract law: particularly when setting up R&D collaborations, allocating rights, protecting trade secrets and implementing outsourcing, cloud computing and insurance solutions.

Our services at a glance:

- Advising on developing and launching digital business models (Industry 4.0) and a coordinated digitalisation strategy
- Drafting agreements for rights of use
- Guidelines for implementing statutory regulations
- “Health checks” (legal due diligence + legal review of the facts established and proposals for improvement)
- Litigation (enforcing warranty and/or liability claims, for example)
- IoT platforms
- Blockchain & Smart Contracts
- Ensuring data privacy

Data privacy

Progressive digitalisation and networking lead to seemingly unlimited opportunities for capturing, analysing and commercialising personal data. New business models, existing business models modified by the extended use of data and business processes must be adapted to the relevant data-privacy framework. And of course creative solutions must be found. At the same time, a globalised world needs international strategies and solutions to protect data privacy which are practically feasible while meeting the various applicable regulations.

Advice on and structuring of data-privacy law matters must always take into account also the legal framework conditions of other areas of law, such as contract law, consumer protection law, antitrust and employment law. Our focused full-service approach with specialists from all areas allows us to provide you with precisely the integrated advice you need.

Our services at a glance:

- Implementing rules on corporate data privacy compliance, including international data transfer (to the US for example)
- Centralising IT infrastructure in companies and groups, e.g. launching centralised HR administration tools and skills databases
- Involving external service providers and outsourcing providers (onshore and offshore)
- Advising on cloud computing solutions
- Handling intra-group data transfer, especially in matrix organisations (national and international)
- Promoting and setting up customer relationship management systems and customer loyalty schemes
- Advising on Big Data applications
- Advising on affiliate marketing, email retargeting and other methods of individually attracting customers and potential customers
- Advising on developing new technology in compliance with data privacy law and on privacy by design
- Advising on regulating the personal use of company IT tools, especially email and the internet
- Drafting rules for the issue of “bringing your own device”
- Advising on data-privacy compliance when scanning company email accounts, such as during internal investigations or international court cases
- Auditing the data-privacy status of companies and designing structures that comply with data-privacy law (national and international)
- Training data-privacy officers and employees on data protection

IT and business process outsourcing

The decision to outsource has far-reaching consequences both for SMEs and large corporations. Outsourcing can have many benefits if handled properly. Pooling competencies, achieving higher output at lower cost and responding faster to changes, to name but a few.

To draw the maximum benefit from IT or business processing outsourcing, many obstacles must be overcome. Projects must be planned with an eye to the future and coordinated in detail at all levels. This is the only way to ensure a smooth transition of services to the outsourcing provider. Of course, contract design is crucial in such a project. The outsourcing agreement is the basis of the entire collaboration, and – as people often forget – also the basis for terminating collaboration later on.

Our services at a glance:

Outsourcing project modules

- Advising on the legal framework (e.g. regulatory or data-privacy law) prior to outsourcing
- Performing a legal cost-benefit-risk analysis of outsourcing
- Drafting state-of-the-art national and multi-national outsourcing agreements and assisting with negotiations
- Advising on structuring and managing a retained organisation
- Renegotiating existing outsourcing agreements
- Supporting and providing legal advice for tenders
- Providing comprehensive post-contract advice: ongoing support, fine-tuning and adjustment of the outsourcing agreement
- Helping reach agreement on second and third generation outsourcing
- Assisting with special constellations such as SIAM or multi-vendor sourcing

Advising on outsourcing in a crisis

- Conducting an outsourcing-specific analysis even in complex situations, including developing and implementing options for legal action
- Reviewing the legal relevance of all technical and organisational circumstances and effects in outsourcing
- Supporting calls for tender for outsourcing projects
- Reversing or winding up failed outsourcing initiatives
- Providing advice and comprehensive support for (re)insourcing

Cloud computing

Companies that shift their infrastructure, platform and software to the “cloud” can achieve major savings, especially thanks to requirements-based scalability and billing. Data security is also greatly enhanced by the cloud providers’ normally high-spec data centres. Standardising services also leads to standardisation of the contractual basis for them; at the same time, service provision is becoming increasingly globalised, as is the related legal framework.

Customer acceptance of cloud services requires clear contracts which meet the demands of the relevant markets for legal compliance. Dedicated communicating about proactive legal compliance boosts customer acceptance and thus sales, too.

Our services at a glance:

- Advising on data-privacy issues and compliance within the framework of national, European and global cloud solutions (including developing data export strategies)
- Optimising, negotiating and managing contracts for cloud computing services
- Drafting standard cloud computing contracts for service providers
- Handling copyright issues and industrial property matters in cloud computing, particularly licensing rights
- Resolving conflicts in cloud computing relationships (in and out of court)

IT projects

Developing software or, more often, implementing complex standard software in a company, requires intensive collaboration between client and contractor with a clear division of responsibilities set out in the contract. Both sides also need contractual instruments to support project management.

Spotting risks or problems early on should be promoted in the contract so that the project can be a success. And if anything does go wrong, it takes a detailed and technically solid analysis of the project situation and clear recommendations based on this analysis to solve the crisis.

Our services at a glance:

- Planning, conducting and supporting complex IT projects, including recording the legal risks and requirements and advising on suitable measures
- Performing a legal cost-benefit-risk analysis of IT projects
- Drafting, reviewing and optimising contracts for IT products and services, plus supporting with ongoing contract management
- Planning and drafting contracts and licensing models, including supporting with software licence management
- Advising and assisting in drafting and implementing IT restructuring plans, including after a merger or joint venture
- Supporting special constellations (such as international software platforms or open-source projects)
- Advising on employment law for IT employees
- Advising and supporting the realignment of crisis-hit IT projects and protecting rights upon premature termination

E-commerce

Companies are leveraging the opportunities of e-commerce and mobile commerce. In addition to new business models and online platforms, many companies are expanding their traditional sales channels with multi-channel distribution structures. This sustained trend has arrived in all industries. In this dynamic environment, we are at the cutting edge of innovation together with our clients. And this requires creative and forward-thinking legal solutions.

We help our clients not only with individual aspects, but with all legal issues throughout the value chain. Our interdisciplinary e-commerce experts specialise in various areas of law and collaborate closely with each other to produce workable and efficient solutions with you.

Our services at a glance:

- Advising on designing a legally watertight website, online store, platform model and other e-commerce/mobile commerce solutions
- Drafting terms of use, privacy policies and declarations of consent, including implementing the requirements of consumer protection law
- Advising on internationalising online stores and other online business models
- Advising on dual distribution systems and distribution antitrust law
- Supporting with logistics fulfilment
- Advising on FinTech, e-payment and payment methods
- Assisting with online banking and online brokerage
- Advising on social commerce
- Handling issues of competition, marketing and advertising
- Reviewing the data-privacy compliance of digital business models
- Advising on domains (trademarks and copyrights, registrations and transfers)
- Supporting in the field of e-gaming and e-betting

IT litigation and dispute resolution

Disputes in the field of IT are often a major risk to the business operations of IT solution customers, as they are highly dependent on their IT infrastructure being available constantly and free of problems. On the other hand, IT service providers often face huge compensation claims from customers in the event of problems with IT services. Such claims can threaten the survival of these service providers. Legal advisors cannot solve such problems simply with knowledge of the relevant national code of procedure, particularly in cross-border matters. What is needed is detailed knowledge of substantive IT law and excellent conflict-resolution skills, also in alternative dispute resolution.

Noerr's IT law experts combine these two types of knowledge to ensure optimum representation of your interests in conflicts, on both the customer and service provider sides. In doing so, we do not narrow our focus to a court-based assertion of claims, but consider in our analysis the options of alternative dispute resolution, or ADR for short. Our comprehensive knowledge of all kinds of IT contracts benefits us in this context.

Our services at a glance:

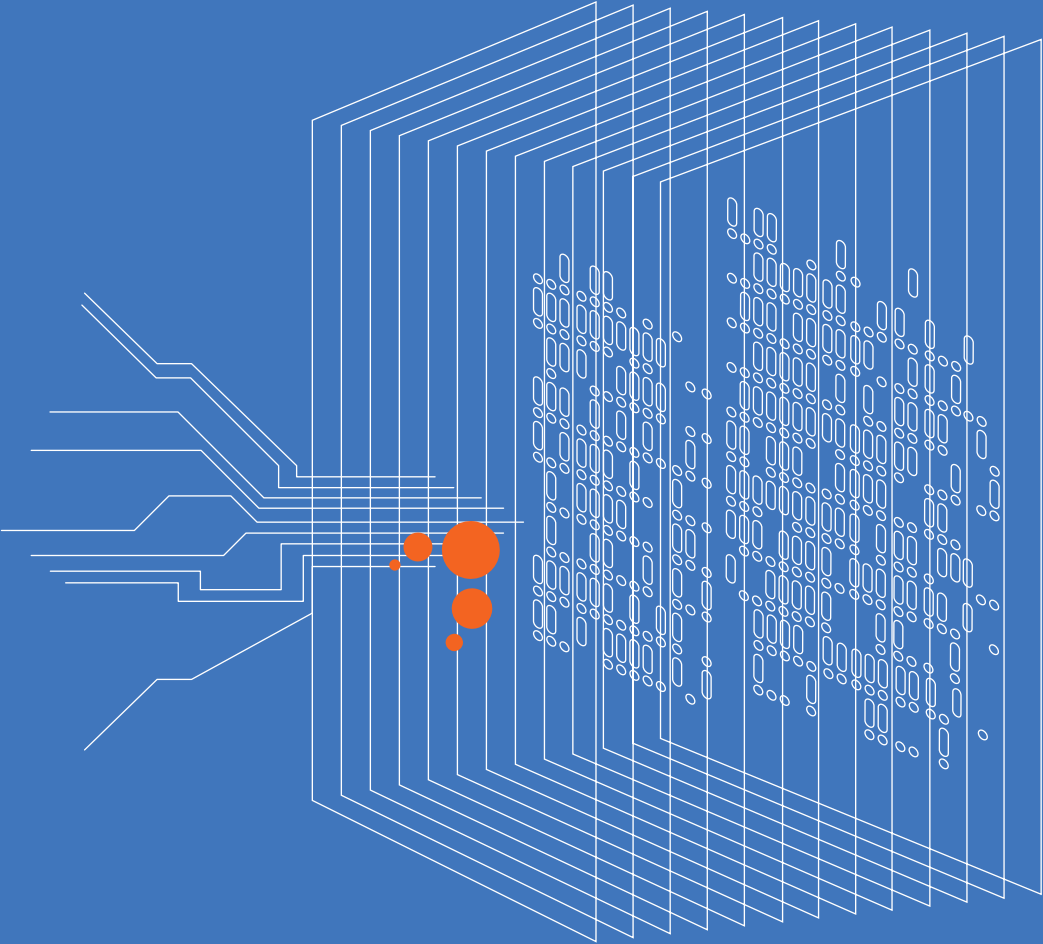
- Advising on IT projects in crisis
- Preparing to assert claims
- Submitting the required legal declarations and developing strategies
- Negotiating on claims out of court
- Supporting with the negotiation of settlements
- Producing lawyers' compromises and other settlements
- Acting as legal counsel in IT mediation
- Acting as mediators and arbitrators
- Providing legal representation before the arbitration board of the German Society for Law and Computer Science (DGRI)
- Acting as legal counsel in arbitration proceedings (e.g. ICC, DIS)
- Providing legal representation in IT proceedings before the courts of law at first instance
- Providing legal representation in IT proceedings before the courts of law in appeals
- Supporting in proceedings before the German Federal Court of Justice (in conjunction with a firm of lawyers admitted to the FCJ)



Only one thing
is more valuable
today than data:
knowing how to
use it intelligently.

Dr Daniel Rücker





Based on their extensive experience and all-round expertise in IT and data-privacy law, our experts develop practical, effective and innovative solutions for all your IT-related legal issues.

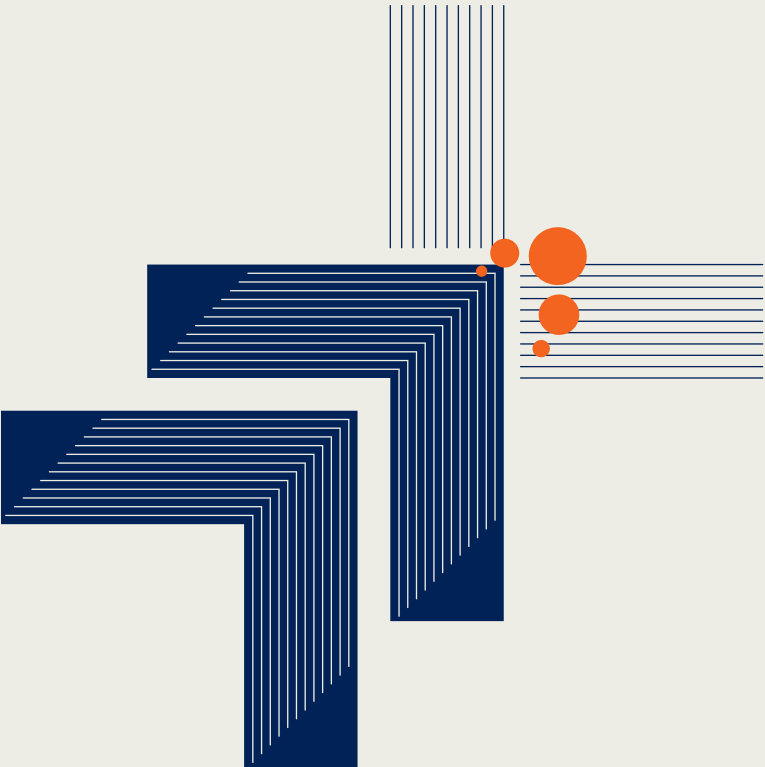
Our IT practice offers you more than simply legal advice: we also approach your challenge from a business perspective – whether you are responsible for a major corporation or an SME. You'll always receive clear, workable recommendations, even in new areas of business.

To help our clients leverage innovative technologies and tap into new markets, our advisors have been pioneers for decades in their legal work, for example on outsourcing projects or digital business models. Many of Noerr's partners are instrumental in shaping the evolution of IT law. This has also led to our leading position in IT law in all key rankings in Germany over many years.

The IT law experts at Noerr craft practical solutions for your business model in line with your business objectives. In doing so, we rely in each case on a lean, tailored core team of strong legal characters. If required, we bring on board specialists from our other practice groups such as corporate, antitrust and employment law, or experts in litigation, arbitration and ADR.

Where cross-border matters are concerned, our firm often acts as international lead counsel. After all, we know what's important to you in cross-border IT projects and we coordinate such projects on your behalf. You also benefit from our longstanding relationships with leading local IT law firms and our memberships (e.g. Lex Mundi) which allow us to involve the right local IT law experts in your project.

/YOUR BENEFIT



Noerr stands for excellence and an entrepreneurial approach. With highly experienced teams of strong characters, Noerr devises and implements solutions for the most complex and sophisticated legal challenges. United by a set of shared values, the firm's 500+ professionals are driven by one goal: our client's success. Listed groups and multinational companies, large and medium-sized family businesses as well as financial institutions and international investors all call on the firm.

Entrepreneurial thinking

Noerr's advisors make their clients' challenges their own and are always thinking one step ahead. In doing so, they assume responsibility and are at liberty to make their own decisions. The firm is committed to always going the extra mile for its clients and to resolving complex matters with the perfect mix of experience, excellence and sound judgement.

Innovative solutions

In complex and dynamic markets new approaches are regularly required – and delivered by experts who bring both the know-how and the necessary passion. This is precisely what Noerr excels at: implementing integrated and innovative solutions in the most efficient way.

Global reach

As one of the leading European law firms, Noerr is also internationally renowned. With offices in eleven countries and a global network of top-ranked "best friends" law firms, Noerr is able to offer its clients truly cross-border advice.

In addition, Noerr is the exclusive member firm in Germany for Lex Mundi, the world's leading network of independent law firms with in-depth experience in 100+ countries worldwide.

Capacity in Central and Eastern Europe

Noerr has long had its own offices in all major Central and Eastern European capitals. The firm regularly advises on greenfield investments, joint ventures, acquisitions and divestments in Central and Eastern Europe by investors from all over the world. With more than 100 professionals, Noerr is one of the leading law firms in the region.

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Where others
just see zeros
and ones, we see
challenges and
opportunities.

Professor Joachim Schrey



European Law Firm
of the Year and Law Firm
of the Year: Germany



The Lawyer European Awards 2019

European Law Firm
of the Year



British Legal Awards 2018

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