

Legal guide to IT contracting abroad

Contracting opportunities too good to turn down may fall outside the UK. You may be working remotely, online and from the UK, or could be working in the client's country in person. When you contract abroad, there are a number of issues that may arise that will need to be addressed:

- Which country's law applies to the contract under which you work?
- Do any other local laws apply to the services you provide?
- How and where that contract can be enforced?

Which law applies when working overseas?

When you contract abroad, the law that applies to the contract under which you work (i.e. the contract between the client and you, your service company or an umbrella company) will dictate how it will be interpreted.

The law applicable to the contract primarily will be the law chosen by the parties in that contract. If there is no choice made under the contract, the applicable law generally will depend on the country in which the work is done. However, if this is in the EU, the contract will usually be governed by the law of the country where the worker has his "habitual residence".

Habitual residence is, for companies, the place of central administration and, for a person acting in the course of business, their principal place of business - so it may well mean local UK law applies anyway. If this cannot be determined, generally the contract is governed by the law of the country with which it is most closely connected.

Do local laws apply when working overseas, anyway?

Even if you choose the applicable law in the contract, the choice of law is still subject to the overriding mandatory provisions of the law of the country where you work. This means that, no matter what you do, you may still be subject to local statutory rights and obligations, although there is some small degree of consistency in these within the EU.

To make matters more complicated, there are additional general rules for specific types of contracts. For example, in the EU, consumer contracts are governed by the law of the country in which the consumer has his habitual residence. This applies where a professional "by any means, directs activities" to the country where the consumer lives. This could mean that contracts concluded over the internet are covered by laws local to the end user/hirer.

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Also local employment laws can apply to those who habitually carry out their work in that country. For example, if you work in Germany, German employment statutes may apply. If you work in Abu Dhabi, you will find UK employment law (such as the Agency Workers Regulations 2010) laws may not.

Enforcing contracts overseas

The applicable law will often dictate where and how any contractual disputes can be addressed. While the courts of England and Wales can ignore jurisdiction clauses if it is an unsuitable venue considering the interest of the parties and the ends of justice, **they can hear cases even if a defendant is outside of England and Wales**. But permission needs to be obtained first; you need to show reasonable prospects of success and that England and Wales is the proper place to bring the claim. This means that **should you wish to ensure you can more easily enforce a contract, you should state that the law of, say, England and Wales applies and any disputes should be dealt with in those jurisdictions**, otherwise you will have to enforce contracts locally often in the defendant's home country.

Other liabilities overseas

There are additional considerations that need to be looked at when contracting outside of the UK, such as immigration and taxation, the requirements of which may differ from country to country. As with the above, specific local advice may be best for you before agreeing to contract outside of your normal jurisdiction.

'Pre-flight' checks

Prior to working abroad, contractors wanting to take some legal due diligence steps should, as a minimum:

- Ensure any contract with the party that will pay them specifically states the law that applies and the jurisdiction where disputes will be heard; and
- If supplying services from the UK to another jurisdiction or actually working in another jurisdiction, get local advice on the other rules which may apply to the services provided.

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Further information for IT Contractors:

IR35
Agency workers directive
IT Contract Guides
IT contracting forum
IT contract jobs

Guides to S660/Income Shifting
Limited Company Guides
Umbrella Company Guides
Contractor Expenses
First Timers Guides

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