

## About the right of substitution clause

There is been much debate about the Right of Subtitution clause.

Contractors have lept on the clause as being an essential clause in a contractual agreement in order to ensure they fall outside of the IR35 legislation.

The facts are:

1. it not that clause alone which needs to be included.
2. if you are an "expert" in your field, then you probably don't need it.
3. if you do have a Right of Substitution clause in your contract, it should be an unfettered right to substitute.

To continue on the last point....

Many clauses have statements which state that "...has the right to substitute another representative of the Company to provide the Services provided that the Client is satisfied that the proposed substitute possesses the necessary skills, expertise and resources to perform the Services...."

This statement is not actually required. The reason being that if you do not supply the services in the contract, by sending in someone without the skills, then it is a breach of contract.

A more relevant term would be to say "Any costs incurred in providing a substitute will be at the expense of the Company."

That nullifies the risk of sending in the substitute who cannot do the job.

If you put in the piece about the client having control over the substitute choice, then it could lessen your chance of making it through IR35, if the courts get mixed up with the issue.

So....don't put it in.

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