

Contractors working abroad - protecting your payment

When you work in foreign countries, you have to protect yourself as best you can so that you will be paid.

Different Legal Systems

Foreign legal systems are not necessarily like those of the UK. Here we have a robust court system, one in which a civil suit can be concluded in a reasonable period of time, and with solid case law to base claims on. Companies know this and most pay you on time as a result.

But this is not the case in many other countries. While most countries have procedures for handling small claims. In France, for example, you could find a way to win a judgement for a claim and to enforce it in within the course of six months. But in Italy, for example, you would wait nearly two years, and then the claim would be unenforceable afterwards.

Do not believe that such claims are limited to undeveloped or exceptional countries. In the US, believe it or not, you could very quickly win a small claims court judgement and then you would find that it is almost certainly unenforceable.

So What Can You Do?

Obviously, the best thing to do is to only work for reliable agencies, recommended by other contractors whom you know. It's also obvious that this won't always be possible.

Arbitration

If you are working with an agency you don't know, the best course is to negotiate an arbitration clause into your contract. The process of arbitration, in which both parties to a contract are obliged to accept judgement from a specified judge, or arbitrator, can prove to be the best option when you are working abroad.

As a spokesman for the UK [Chartered Institute of Arbitrators](#) points out, arbitration is enforceable in law in almost all nations of the world. Almost every judicial system accepts that it is better for the parties to work out their differences with an arbitrator. It saves them time and money, and it saves the judicial system costs. So courts will enforce arbitration awards, and usually pay your costs in obtaining the award, assuming you've put it all in your contract.

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Courts all over the world will
enforce an arbitration award”

Chartered Institute of Arbitrators

Arbitration has a lot of advantages. You don't have to travel to the place you worked for court appearances: arbitration can be conducted entirely on paper if you specify that in the contract. You don't have to wait a long time for a decision either; normally you simply contact the arbitrator and there is no waiting.

Arbitration Is Not Free

The downside of arbitration is that it costs money. It's not cheap, although the fee can vary widely between countries.

What is very important in working with arbitration is the way you word the arbitration clause in your contract. This should include:

Who will do the arbitration

Where it will take place

Under what rules it will be held (i.e. rules of the Arbitration Association)

That the arbitration will take place in written form

What will happen in the case of an award

What will happen if the agency refuses to arbitrate

If you are in a dispute with an agency in, for example, Italy, the arbitration clause should state that you will arbitrate in Italy, under the rules of the Italian Arbitration Association, with an arbitrator who is a member of the Italian Arbitration Association.

The clause should state that, if one party refuses to arbitrate, the other party may go to court to order the arbitration, and the party that refuses must pay the costs. Similarly, if one party refuses to pay the award, the costs of collecting the award will be added to the award.

Can You Get It In Your Contract?

Sounds good? You do have the problem of getting the arbitration clause in the contract in the first place. Obviously, agencies will resist. Perhaps the best

tactic is to point out that an arbitration clause costs the agency nothing, and will never cost the agency anything so long as they pay you according to the contract's terms.

If the agency still resists, you might also point out that perhaps they are not serious about making payment on time? In fact, if an agency refuses the arbitration clause point blank, you might wonder about whether you should be working for them. Especially in a country where you will have trouble enforcing your legal rights.

If You Decide To Go Anyway

Okay, so you are being offered a fortune to do the project of your dreams, and you don't care about the arbitration clause. If you don't get paid, what can you do?

Every country in Western Europe, and many others around the world, have organisations for temporary work agencies. Some have contractor organisations; sadly there are far fewer of these. You can get help, however, from either one.

Says Denis Pennel, managing director of the European Confederation of Private Employment Agencies: "In almost every case, there is a person at the national organisation to whom you can address your complaint. That person will help you. The legal powers of these organisations are limited, but they often can bring pressure on the agency to get you paid."

It's a slow process, and it may not work, but it will be the best port in a storm should you not be paid in a foreign country. Unless that particular country, like the UK, has a court system you can count on.

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