

Use of outsourced IT personnel in Central and Eastern Europe





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Use of Outsourced IT personnel in Central and Eastern Europe, 2023

While Europe is the most impacted region by the ongoing war in Ukraine, the IT service markets in Central and Eastern Europe (CEE) are expected to continue to grow by nearly 6% and 7% in 2022 and 2023, respectively.

Many international technology companies have already opened their R&D centres in the CEE region.

Investments in software will drive most technology spending in Europe in 2022, and software will be the fastest-growing technology group. Eastern Europe, and Ukraine in particular, have highly skilled and experienced IT talent with deployable skills for broad range of outsourcing projects.

The EU has launched a number of initiatives to study work transition dynamics in CEE that will shape employment standards in IT industry in the region in the next few years.

This high-level guide is designed to help companies wishing to use outsourced staff in CEE. It provides information on key legal issues that arise when considering the use of outsourced IT personnel in the region. We consider issues such as:

Can IT specialists be engaged/contracted directly by a foreign company?

Can teams be hired via an intermediary (an outsourcing company) and is this common?

What kind of agreements should be entered into between the IT specialist and a foreign customer?

We focus on eight jurisdictions:

- | | | | |
|------------------|-----------|------------|-----------|
| — Bulgaria | — Hungary | — Romania | — Turkey |
| — Czech Republic | — Poland | — Slovakia | — Ukraine |

IT outsourcing is a process that frequently requires advice and step-by-step guidance to reach a successful completion. CMS is a full-service law firm with a strong market presence in all of the countries covered by this guide.

Our multijurisdictional team has a wealth of experience in helping multiple IT companies with outsourcing their work in the region and we are available to support you.

Bulgaria

Can IT specialists be engaged/contracted directly by a foreign company?

Yes

Tax and social security specifics should be considered in hiring relationships.

Can IT staff be engaged as contractors?

Yes

However, the specific terms and conditions of the engagement should be carefully considered in order to avoid the risk of requalification of a service contract as employment contract.

Should contractors be registered as private entrepreneurs (or equivalent)?

No

Nevertheless, registration as private entrepreneurs (or equivalent) could be a fact mitigating the risk of requalification of a service contract as an employment one. It could also be more favourable for the assigning company from tax and social security perspective.

Can teams be hired via an intermediary (an outsourcing company) and is this common?

Yes

Proper drafting of the agreement is required to avoid risks of violation of employment legislation and financial liability for the assigning company.

What is the risk of re-qualification into employment relationships?

Possible, depending on the specific circumstances in the case — The specific terms and conditions of the engagement should be considered, and the agreement should be carefully drafted to mitigate the risk of requalification.

Is a local presence for the foreign company mandatory to hire an IT team?

No

This will depend on the specific case and may have some practical aspects.

If a local presence is mandatory, what form should it take?

N/A

Are any regulatory approvals needed to hire an IT team?

No

Can a foreign company lease premises locally for the hired team?

Yes

This may under certain circumstances create an obligation to pay corporation tax due to a permanent establishment having been created.

Can a customer compensate a contractor (intermediary) for the leased premises?

Yes

What kind of agreements should be entered into between the IT specialist and a foreign customer?

Depending on the case, a service contract or an employment contract with proper provisions on assignment or licensing of intellectual property rights — Please note that the maximum permitted term for the licence of copyright and related rights currently is ten years.



What kind of agreements should be entered into between a foreign customer and an intermediary?

A service contract with proper provisions on assignment or licensing of intellectual property rights. Where personal data is processed in the performance of the contract, a data processing agreement is also likely to be required.

Can payments between the contractor (intermediary) and a customer be made in a foreign currency (USD, EUR, GBP)?

Yes

Nevertheless, registration as private entrepreneurs (or equivalent) could be a fact mitigating the risk of requalification of a service contract as an employment one. It could also be more favourable for the assigning company from tax and social security perspective.

Can moral rights be transferred to a customer?

Depends on the specific contractual relations of the case — In the context of employment relations, the general set up is that the copyright over computer programmes and databases created under employment belongs to the employer. In the case of service contracts, it is possible to agree direct vesting of copyright and related rights to the assignor. Nevertheless, attribution rights are not transferrable, i.e. the right to claim authorship and the right to be recognised as the author.

Is ‘work for hire’ recognised in your jurisdiction?

Yes

The term “work for hire” is not used by Bulgarian law. The general notion of “work for hire” applies to the creation of computer programmes and databases under employment. Also, under service contracts it is possible to agree on direct vesting of copyright and related rights at the assignor. Nevertheless, attribution rights are not transferrable, i.e. the right to claim authorship and the right to be recognised as the author.

What documents are necessary to transfer proprietary IP rights properly?

IP assignment agreement or employment agreement (in the case of employment).

Are non-compete/non-solicitation arrangements enforceable?

Non-compete/non-solicitation arrangements are common but difficult to enforce and might be considered void — For example, non-compete arrangements for a period after the expiration of an employment contract are generally considered void as restricting the constitutional right to work.

Can foreign law govern contracts between the customer and a contractor (intermediary)?

Yes

However, pursuant to Regulation (EC) No 593/2008 (Rome I), where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

Czech Republic

Can IT specialists be engaged/contracted directly by a foreign company?

Yes

Can IT staff be engaged as contractors?

Yes

Should contractors be registered as private entrepreneurs (or equivalent)?

Yes

Can teams be hired via an intermediary (an outsourcing company) and is this common?

Yes

Yes, common — In practice, this depends on the size of the team to be hired. Generally it is possible, but several legal requirements must be met. A recent amendment to employment laws established the liability of the customer who allows hidden agency employment. Therefore, both parties (and not only the one which provides the workforce) might be held liable for conduct whereby someone (an intermediary) provides the workforce without having an employment agency licence. In the case of outsourcing, it is crucial to pay close attention to the contractual arrangements to prevent potential risk of liability for hidden agency employment.

What is the risk of re-qualification into employment relationships?

Low

If the work does not show signs of work dependent on the customer under the Labour Code. This should be assessed on a case-by-case basis in light of the wording of the particular agreement and factual operation of the respective contractual relationship. If the performance of work qualifies as dependent work under the Czech Labour Code, there is a high risk of re-qualification.

Is a local presence for the foreign company mandatory to hire an IT team?

No

If a local presence is mandatory, what form should it take?

N/A

Are any regulatory approvals needed to hire an IT team?

No

Can a customer compensate a contractor (intermediary) for the leased premises?

Yes

Yes, but not recommended — Leasing the office directly without having a local presence may create a risk of a permanent establishment, and unnecessary tax risks. It can also increase the risk of re-qualification into an employment relationship. This should be analysed on a case-by-case basis.



What kind of agreements should be entered into between the IT specialist and a foreign customer?

Contractor agreement (contract for work and IT services agreement).

What kind of agreements should be entered into between a foreign customer and an intermediary?

Contract for work, IT services agreement.

Can payments between the contractor (intermediary) and a customer be made in a foreign currency (USD, EUR, GBP)?

Yes

Can IT staff be engaged as contractors?

No

Is 'work for hire' recognised in your jurisdiction?

Yes

Computer programmes, databases, and cartographic works created by a contractor on hire, which are not collective works, are considered employee works where the client has right to exercise the economic rights to such works.

What documents are necessary to transfer proprietary IP rights properly?

IP assignment agreement — Proprietary rights are transferrable to industrial property, databases and other intangible assets which are not specifically regulated, e.g. know-how and trade secrets. From the perspective of copyrightable works, we note that economic rights are, as moral rights, non-transferrable.

Are non-compete/non-solicitation arrangements enforceable?

Generally yes, however it depends on the wording — This depends on the wording of the non-compete/non-solicitation arrangement. In general, non-compete clauses are in practice easier to enforce than non-solicitation arrangements (regarding burden of proof). However, this depends on the governing law of the contract and the place of enforcement.

Can foreign law govern contracts between the customer and a contractor (intermediary)?

There is no specific legal regulation on warranties. Indemnity is recognised by law. Both concepts are a common part of agreements. They should always be adjusted to local rules

Hungary

Can IT specialists be engaged/contracted directly by a foreign company?

Yes

Can IT staff be engaged as contractors?

Yes

Should contractors be registered as private entrepreneurs (or equivalent)?

Yes

Can teams be hired via an intermediary (an outsourcing company) and is this common?

Yes

Yes, common — It is advisable to contract IT staff through intermediaries (IT outsourcing companies), in which case the risk of re-qualification into employment and tax risks can be excluded.

What is the risk of re-qualification into employment relationships?

Low

In general low, however this risk should be considered on a case-by-case basis — The risk of re-qualification into employment depends on various factors that need to be carefully evaluated. In general, if the IT specialist is contracted for a certain task or project, the risk of re-qualification is low, however if the IT specialist is contracted to take the *position* of an IT specialist that involves the continuous performance of various tasks arising from that position, the re-qualification risk is high. To exclude this risk, it is advisable to contract with IT staff through an intermediary IT outsourcing company.

Is a local presence for the foreign company mandatory to hire an IT team?

No

If several IT professionals are contracted directly for a permanent period, a local presence is advisable to comply with rules regarding investments by foreigners in Hungary.

If a local presence is mandatory, what form should it take?

N/A

Are any regulatory approvals needed to hire an IT team?

No

Can a foreign company lease premises locally for the hired team?

Not recommended — Leasing an office directly without having a local presence can create a risk of permanent establishment, and unnecessary tax risks. It may also increase the risk of re-qualification into employment. This should be analysed on a case-by-case basis.

Can a customer compensate a contractor (intermediary) for the leased premises?

Yes



What kind of agreements should be entered into between the IT specialist and a foreign customer?

Contractor agreement with appropriate IP assignment and licence clauses — GDPR applies to the IT specialist/ intermediary if the foreign customer, the IT specialist/intermediary, or both of them have an establishment in the European Union.

What kind of agreements should be entered into between a foreign customer and an intermediary?

IT services agreement with appropriate IP assignment and licence clauses — If the IT specialist processes personal data on behalf of the foreign customer, GDPR will apply and a data processing agreement will have to be concluded (see the remarks above).

Can payments between the contractor (intermediary) and a customer be made in a foreign currency (USD, EUR, GBP)?

Yes

Can moral rights be transferred to a customer?

No

Is 'work for hire' recognised in your jurisdiction?

No

What documents are necessary to transfer proprietary IP rights properly?

IP assignment agreement and licence agreement depending on the case — As a rule, copyrights are not transferable under Hungarian law. However, copyright in software is an exception. Where non-transferable copyrights are concerned, an exclusive, perpetual and irrevocable licence should be granted. The licence agreement must be in writing which means a wet-ink agreement or electronic document signed with advanced or qualified e-signature.

Are non-compete/non-solicitation arrangements enforceable?

Yes

Can foreign law govern contracts between the customer and a contractor (intermediary)?

Yes

The limitations set forth in the Rome I regulation should be considered: where a choice of law is made and all other elements relevant to the situation are in a country other than the country whose law has been chosen, the choice of law should not prejudice the application of the provisions of the law of that country, which cannot be derogated from by agreement.

Are warranties/indemnities recognised concepts?

Yes

Poland

Can IT specialists be engaged/contracted directly by a foreign company?

Yes

Can IT staff be engaged as contractors?

Yes

Should contractors be registered as private entrepreneurs (or equivalent)?

Optional — Contractors can act either as independent contractors, with a registered commercial activity, or dependent contractors acting as individual persons with no registered commercial activity.

Can teams be hired via an intermediary (an outsourcing company) and is this common?

Yes

Yes, common — If the end-client contracting with the outsourcing entity strongly supervises the third-party IT staff, the end-client runs the risk that the IT specialist may try to establish a direct relationship with the end-client. Further risks might be relevant if the outsourcing structure is deemed to be temporary work service provided by the entity without having a proper licence. Additionally, the signing or ending of the outsourcing agreement could trigger a TUPE/ARD automatic transfer of IT staff from the end-client to the outsourcing company or vice versa.

What is the risk of re-qualification into employment relationships?

Low to high — The reclassification risk would be relevant if the company treats the contractor on a day-to-day basis as an employee, in particular if the company asks him/her to sign an attendance list, tells him/her when and how she/he must perform the tasks, issues binding work orders and subjects him/her to strong supervision, runs employee-like appraisals; pays him/her for absences due to sickness or holiday, etc.

Is a local presence for the foreign company mandatory to hire an IT team?

No

A hiring entity that has no legal presence in Poland and engages Polish contractors potentially faces a tax risk of creating a permanent establishment (PE) in Poland and paying local corporate tax. The PE concept is quite broad. It exists when a foreign entity carries on a commercial activity in a foreign country through a “fixed” place of business (or “dependent agent”).

If a local presence is mandatory, what form should it take?

N/A

Are any regulatory approvals needed to hire an IT team?

No

Can a foreign company lease premises locally for the hired team?

Yes

This could enhance the reclassification and the permanent establishment risks. In practice, some companies recharge the costs of using the premises to the contractor and increase the fee to compensate for it.

Can a customer compensate a contractor (intermediary) for the leased premises?

Yes

See above.



What kind of agreements should be entered into between the IT specialist and a foreign customer?

Service contract together with IP assignment arrangements.

What kind of agreements should be entered into between a foreign customer and an intermediary?

IT service agreement together with IP assignment arrangements.

Can payments between the contractor (intermediary) and a customer be made in a foreign currency (USD, EUR, GBP)?

Yes

Can moral rights be transferred to a customer?

No

Is 'work for hire' recognised in your jurisdiction?

No

There is a similar concept of employee-created software. The economic copyrights to such software, created as a result of performing employment obligations, are vested by operation of law with employer. For copyrightable works other than software, e.g. documentation, created by employees as a result of performing employment obligations, the economic copyrights are transferred by operation of law to the employer. Those rules only apply to employment relationships and can be modified by contract.

What documents are necessary to transfer proprietary IP rights properly?

Written agreement on the transfer of IP rights, in particular economic copyrights.

Are non-compete/non-solicitation arrangements enforceable?

Limited — The enforceability of non-competition/non-solicitation provisions depends on whether the contractor is a dependent or independent contractor; on the scope of the restrictions; whether they apply during or after the duration of the contract; and on the company's and the contractor's position on a given market. Given the complexity of this issue, we recommend running a careful analysis on a case-by-case basis.

Can foreign law govern contracts between the customer and a contractor (intermediary)?

Yes

The choice of foreign law may be partially limited regarding, e.g. the transferability of certain IP rights, by some provisions of Polish law which may apply regardless of the foreign law governing a contract.

Are warranties/indemnities recognised concepts?

Yes

Yes, they are often used in practice but need to be adjusted to local rules to be effective.

Romania

Can IT specialists be engaged/contracted directly by a foreign company?

Yes

Can IT staff be engaged as contractors?

Yes

Should contractors be registered as private entrepreneurs (or equivalent)?

Yes

IT staff can be hired under services or consultancy agreements. They can be organised either as freelancers or they can also use micro-companies for this purpose (small limited liability companies set up by the respective IT persons).

Can teams be hired via an intermediary (an outsourcing company) and is this common?

Yes

Yes, common.

What is the risk of re-qualification into employment relationships?

Yes

Under Romanian tax legislation, in certain cases the tax authorities have the right to re-qualify transactions/activities carried out by individuals from independent activities into dependent activities, if certain criteria set forth in the Romanian Fiscal Code are met, e.g. if the service provider has only one client or if the service provider uses the facilities of the company. Consequently, the same tax regime as for individual employment agreements would apply to these services agreements, which might have a financial impact on both the company and the service provider. Hence, IT companies should be careful when using services agreements with IT personnel rather than employment agreements.

Is a local presence for the foreign company mandatory to hire an IT team?

No

In principle no, but it depends on the size of the team and how the personnel are to be hired, e.g. under employment agreements or services agreements. If the foreign company prefers to hire IT personnel under employment agreements, it would need to register as an employer with the Trade Registry. For this purpose, it can use a subsidiary, set-up and registered in Romania as a separate legal entity, a branch, or a representative office. If the intention is to retain the personnel under services/consultancy agreements, this can be done directly by the foreign entity, but there are cases where a local presence may be necessary for tax reasons.

If a local presence is mandatory, what form should it take?

N/A

In principle no, but it depends on the size of the team and how the personnel are to be hired, e.g. under employment agreements or services agreements. If the foreign company prefers to hire IT personnel under employment agreements, it would need to register as an employer with the Trade Registry. For this purpose, it can use a subsidiary, set-up and registered in Romania as a separate legal entity, a branch, or a representative office. If the intention is to retain the personnel under services/consultancy agreements, this can be done directly by the foreign entity, but there are cases where a local presence may be necessary for tax reasons.

Are any regulatory approvals needed to hire an IT team?

No



Can a foreign company lease premises locally for the hired team?

Not recommended — Leasing the office directly without having a local presence can create the risk of a permanent establishment, and related tax risks. Such scenario should be assessed on a case-by-case basis.

Can a customer compensate a contractor (intermediary) for the leased premises?

Yes

This should be assessed on a case-by-case basis given the risks related to permanent establishment and related tax risks.

What kind of agreements should be entered into between the IT specialist and a foreign customer?

IT services agreement or consultancy agreement. These should also include IP assignment provisions.

What kind of agreements should be entered into between a foreign customer and an intermediary?

IP assignment agreement.

Can payments between the contractor (intermediary) and a customer be made in a foreign currency (USD, EUR, GBP)?

Yes

Can moral rights be transferred to a customer?

No

Is 'work for hire' recognised in your jurisdiction?

No

Romania follows the general rule that the person who actually creates a work is the legally recognised author of that work, confirming that, for works created in the performance of duties specified in the individual employment contract, the economic rights belong to the author of the work created. However, the use of the work by the employer, within the scope of its activity, does not require the authorisation of the employee-author.

What documents are necessary to transfer proprietary IP rights properly?

IP assignment agreement.

Are non-compete/non-solicitation arrangements enforceable?

Yes

Non-compete and non-solicitation clauses are quite often used in practice. Nevertheless, in the case of a breach, it may be difficult to prove the damages incurred. We are not aware of many legal cases in this respect.

Can foreign law govern contracts between the customer and a contractor (intermediary)?

Yes

Are warranties/indemnities recognised concepts?

Yes

Commonly used in practice in agreements, although not expressly regulated as such by Romanian law.

They should be adjusted to local rules and concepts — The concepts of warranties and indemnities are not recognised as such under Romanian law, but there are similar Romanian law concepts which can be adapted to match these English law concepts. Additionally, they are widely used in practice in Romanian contracts, but less tested in case-law.

Slovakia

Can IT specialists be engaged/contracted directly by a foreign company?

Yes

Can IT staff be engaged as contractors?

Yes

Should contractors be registered as private entrepreneurs (or equivalent)?

Yes

IT staff can be hired under services or consultancy agreements. They can be organised either as freelancers or they can also use micro-companies for this purpose (small limited liability companies set up by the respective IT persons).

Can teams be hired via an intermediary (an outsourcing company) and is this common?

Yes

Yes, common.

What is the risk of re-qualification into employment relationships?

Yes

Under Romanian tax legislation, in certain cases the tax authorities have the right to re-qualify transactions/activities carried out by individuals from independent activities into dependent activities, if certain criteria set forth in the Romanian Fiscal Code are met, e.g. if the service provider has only one client or if the service provider uses the facilities of the company. Consequently, the same tax regime as for individual employment agreements would apply to these services agreements, which might have a financial impact on both the company and the service provider. Hence, IT companies should be careful when using services agreements with IT personnel rather than employment agreements.

Is a local presence for the foreign company mandatory to hire an IT team?

No

In principle no, but it depends on the size of the team and how the personnel are to be hired, e.g. under employment agreements or services agreements. If the foreign company prefers to hire IT personnel under employment agreements, it would need to register as an employer with the Trade Registry. For this purpose, it can use a subsidiary, set-up and registered in Romania as a separate legal entity, a branch, or a representative office. If the intention is to retain the personnel under services/consultancy agreements, this can be done directly by the foreign entity, but there are cases where a local presence may be necessary for tax reasons.

If a local presence is mandatory, what form should it take?

N/A

In principle no, but it depends on the size of the team and how the personnel are to be hired, e.g. under employment agreements or services agreements. If the foreign company prefers to hire IT personnel under employment agreements, it would need to register as an employer with the Trade Registry. For this purpose, it can use a subsidiary, set-up and registered in Romania as a separate legal entity, a branch, or a representative office. If the intention is to retain the personnel under services/consultancy agreements, this can be done directly by the foreign entity, but there are cases where a local presence may be necessary for tax reasons.

Are any regulatory approvals needed to hire an IT team?

No



Can a foreign company lease premises locally for the hired team?

Not recommended — Leasing the office directly without having a local presence can create the risk of a permanent establishment, and related tax risks. Such scenario should be assessed on a case-by-case basis.

Can a customer compensate a contractor (intermediary) for the leased premises?

Yes

This should be assessed on a case-by-case basis given the risks related to permanent establishment and related tax risks.

What kind of agreements should be entered into between the IT specialist and a foreign customer?

IT services agreement or consultancy agreement. These should also include IP assignment provisions.

What kind of agreements should be entered into between a foreign customer and an intermediary?

IP assignment agreement.

Can payments between the contractor (intermediary) and a customer be made in a foreign currency (USD, EUR, GBP)?

Yes

Can moral rights be transferred to a customer?

No

Is 'work for hire' recognised in your jurisdiction?

No

Romania follows the general rule that the person who actually creates a work is the legally recognised author of that work, confirming that, for works created in the performance of duties specified in the individual employment contract, the economic rights belong to the author of the work created. However, the use of the work by the employer, within the scope of its activity, does not require the authorisation of the employee-author.

What documents are necessary to transfer proprietary IP rights properly?

IP assignment agreement.

Are non-compete/non-solicitation arrangements enforceable?

Yes

Non-compete and non-solicitation clauses are quite often used in practice. Nevertheless, in the case of a breach, it may be difficult to prove the damages incurred. We are not aware of many legal cases in this respect.

Can foreign law govern contracts between the customer and a contractor (intermediary)?

Yes

Are warranties/indemnities recognised concepts?

Yes

Commonly used in practice in agreements, although not expressly regulated as such by Romanian law.

They should be adjusted to local rules and concepts — The concepts of warranties and indemnities are not recognised as such under Romanian law, but there are similar Romanian law concepts which can be adapted to match these English law concepts. Additionally, they are widely used in practice in Romanian contracts, but less tested in case-law.

Turkey

Can IT specialists be engaged/contracted directly by a foreign company?

Yes

Can IT staff be engaged as contractors?

Yes

Should contractors be registered as private entrepreneurs (or equivalent)?

Yes

Can teams be hired via an intermediary (an outsourcing company) and is this common?

Yes

Yes, common.

What is the risk of re-qualification into employment relationships?

Yes

Low to high — The re-qualification risk would be relevant if the company treats the contractor on a day-to-day basis as an employee; in particular, if the company instructs the contractor when and how to perform the tasks, provides the necessary instruments to perform these tasks, issues binding work orders and subjects him/her to close supervision, etc. This criterion is examined by the Supreme Court on a case-by-case basis to determine the dependence of the person who performs these tasks and whether they should be treated as a party to an employment relationship.

Is a local presence for the foreign company mandatory to hire an IT team?

No

If a local presence is mandatory, what form should it take?

N/A

Are any regulatory approvals needed to hire an IT team?

No

Can a foreign company lease premises locally for the hired team?

Yes, not recommended — This may cause the leased property to be considered a workplace, which may result in the company generating income from the workplace to be interpreted as a company earning income in Turkey. Accordingly, the earnings and income resulting from activities performed in Turkey would be taxed accordingly.

Can a customer compensate a contractor (intermediary) for the leased premises?

Yes

Yes, with an agreement.

What kind of agreements should be entered into between the IT specialist and a foreign customer?

Service agreement, IP assignment agreement.

What kind of agreements should be entered into between a foreign customer and an intermediary?

Service agreement, IP assignment agreement.



Can payments between the contractor (intermediary) and a customer be made in a foreign currency (USD, EUR, GBP)?

Yes

It is possible to determine the amount of contractual consideration and other payment obligations under the contract in a foreign currency or based on a foreign currency if one of the parties is a company that has its corporate residence outside Turkey and becomes a party to the contract as an employer, or a client receiving the services through its branches, representatives, offices, companies which they directly or indirectly own over 50% or companies they co-control or control or companies incorporated in free-trade-zones to the extent of their operations in the free-trade-zone.

Can moral rights be transferred to a customer?

No

The moral rights are not transferable according to the Law on Intellectual and Artistic Works and an author of a work can exercise moral rights even after the material rights are transferred. However, an author may grant a licence to third parties enabling them to use the moral rights.

Is 'work for hire' recognised in your jurisdiction?

No

According to the provisions of the Law on Intellectual and Artistic Works, unless otherwise stated in or interpreted from the relevant agreement, rights pertaining to intellectual property created during employment may be used by the employers. This also applies to the administrative bodies of legal entities. Concerning intellectual property created in the context of a working relationship, whether or not the provision above applies to a work-for-hire scheme depends on determining if the working relationship stems from an employment agreement. If there is no employment relationship, then the provision does not apply.

What documents are necessary to transfer proprietary IP rights properly?

IP assignment agreement.

Are non-compete/non-solicitation arrangements enforceable?

Yes

Generally yes, however it depends on the wording — If the service agreement requalifies as an employment agreement, provisions under the Turkish Code of Obligations (“**TCO**”) would apply to regulate the relationship. Under the TCO, noncompetition does not include restrictions on the territory, time or type of work which would endanger the employee’s economic conditions, which are against the principle of fairness, and must not exceed two years. While only non-compete obligations are regulated in detail under the TCO, the Court of Appeals accepts that non-solicitation and confidentiality covenants should also be interpreted within the scope of the regulations on non-compete covenants.

Can foreign law govern contracts between the customer and a contractor (intermediary)?

Yes

If the agreement is requalified as an employment agreement, then, as stipulated under Article 27 of the International Private and Civil Procedure Law, employment contracts are subject to the laws of the parties’ chosen jurisdiction, except for the employee’s minimum right to retention/protection under the imperative provisions of customary employment law.

Are warranties/indemnities recognised concepts?

Yes

Ukraine

Can IT specialists be engaged/contracted directly by a foreign company?

Yes

Can IT staff be engaged as contractors?

Yes

IT staff can be engaged as contractors as either private entrepreneurs (independent contractors) or gig-contractors (special form of engagement available only to residents of [Diiia City](#)).

Should contractors be registered as private entrepreneurs (or equivalent)?

Yes

If contractors are engaged as private entrepreneurs (independent contractors), then such specialists must first be registered in the legal status of private entrepreneurs. If engaged as gig-contractors, no registration of specialists is required.

Can teams be hired via an intermediary (an outsourcing company) and is this common?

Yes

Yes, common — In practice, this depends on the size of the team to be hired. For more than ten people, intermediaries are normally engaged, primarily for logistics purposes.

What is the risk of re-qualification into employment relationships?

Low

For the engagement of IT specialists as independent contractors, the risk is traditionally assessed as low (if all documents are properly drafted and relations properly structured). For those engaged as gig-contractors, the risk is zero.

Is a local presence for the foreign company mandatory to hire an IT team?

No

If the IT team is engaged as private entrepreneurs, then normally a local presence is not required. But it depends on the size of the team and the way it is engaged (i.e. directly or via an intermediary). At times, a local presence is needed for tax purposes. If the IT team is to be engaged as gig-contractor, a company must have local presence in Ukraine and be registered as a resident of [Diiia City](#) legal regime.

If a local presence is mandatory, what form should it take?

N/A

A local presence is mandatory only for the engagement of IT team as gig-contractors. In such case, a company can decide on any legal form for the incorporation in Ukraine (typically, this is a limited liability company). Further to incorporation, a company that wants to engage the team as gig-contractors must register (become a resident) in the [Diiia City](#) legal regime.

Are any regulatory approvals needed to hire an IT team?

No

Can a foreign company lease premises locally for the hired team?

Not recommended — Leasing an office directly without having a local presence can create a risk of a permanent establishment, and unnecessary tax risks. This should be analysed on a case-by-case basis.



Can a customer compensate a contractor (intermediary) for the leased premises?

Yes

The wording should be properly drafted to avoid tax risks related to a permanent establishment.

What kind of agreements should be entered into between the IT specialist and a foreign customer?

IT services agreement; IP assignment agreement.

What kind of agreements should be entered into between a foreign customer and an intermediary?

IT services agreement; IP assignment agreement — If an intermediary is involved, the contractual relations between the intermediary and an IT specialist (at the Ukrainian level) should be carefully verified subject to proper IP assignment arrangements with the IT specialist/intermediary, otherwise there is a risk that the subsequent IP assignment to the end customer could be at risk.

Can payments between the contractor (intermediary) and a customer be made in a foreign currency (USD, EUR, GBP)?

Yes

Only regarding foreign customers.

Can moral rights be transferred to a customer?

No

Is 'work for hire' recognised in your jurisdiction?

No

What documents are necessary to transfer proprietary IP rights properly?

IP assignment agreement; Acts of acceptance — Acts of acceptance are not mandatory but may often be asked by the contractors (intermediaries) to confirm the fact of rendering the services as well as transfer of IP rights.

Are non-compete/non-solicitation arrangements enforceable?

No

This depends on the governing law of the contract and the place of enforcement. Also, non-compete is enforceable under the [Diia City](#) legal regime.

Can foreign law govern contracts between the customer and a contractor (intermediary)?

Yes

Are warranties/indemnities recognised concepts?

No

In a limited form, the concept of warranties is recognised in Ukraine.

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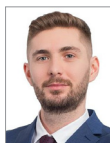


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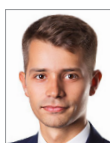


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2211-0167380-7