



LEGAL  
**PARAMETERS**  
TO ADDRESS BEFORE  
**SIGNING AN**  
**IT OUTSOURCING**  
CONTRACT



# WHY TO BRUSH THROUGH IT OUTSOURCING LEGAL PARAMETERS?

Before outsourcing your IT projects, there are few legal factors you need to consider. Laying the accurate legal groundwork before signing a contract can prove to be a convoluted and difficult process. Often, clients and vendors need to navigate through various foreign laws and jurisdictions. Becoming familiar with legal parameters that govern IT outsourcing contracts is a mandate to project completion and client satisfaction.

Self acquaintance with key legal issues will help you to seek legal counsel and assistance on time. Minimal legal awareness is one of the primary reasons why outsourcing seems intimidating to many. A strong outsourcing contract backed by a sound legal counsel will help you and your vendor to sustain the outsourcing relationship in an efficient and secure manner.

A well-forethought outsourcing contract helps in trust building and confidence in your outsourcing partner, which is essential for team management and collaborative dynamics. Primarily, avoiding legal issues helps you to complete software projects and achieve IT goals at ease and in no time.

This eBook would familiarize you with several legal parameters influencing outsourcing relationships, with specific focus on the United States, the United Kingdom, and India.

- **Focus on jurisdictional issues, local labor laws and taxation concerns.**
- **Prepare and protect a mutually beneficial contract.**
- **Pivoting in important contractual sections will secure your business interests.**
- **Manage your offshore IT project efficiently.**

THIS SECTION  
WILL GUIDE YOU  
TO GET YOUR  
**FUNDAMENTALS**  
**ON POINT**

## Enforcement areas?

- What are the labor laws and other important concerns?
- What are the subjective of tax concerns?

## Choose the Most Suitable Jurisdiction to Enforce the Contract

Before preparing a mutually consented contract document, it is important to address its enforceable area. Usually, contractors and service providers agree to a mutually convenient jurisdiction. However, on failing to do so, contractors can enforce the contract in their countries.

## Scenario in the UK and the USA

- ✓ Regulating IT outsourcing through national law is still a far fetched idea for the UK owing to its unavailability in their constitution. Given the situation, Britain's exit from the European Union might be a game changer. Lack of clarity regarding the intersection of British and European Union laws is pushing many businesses to choose the offshore location as their contract jurisdiction.
- ✓ The legal system in the United States is unique yet complex. Both federal and state level laws are applicable to businesses that seek to outsource data to offshore vendors. Financial and healthcare businesses should comply with Health Insurance Portability and Accountability Act(HIPAA), The Health Information Technology for Economic and Clinical Health (HITECH Act) and the Gramm-Leach-Bliley Act.

## Why Choose India As An Offshore Destination?

- ✓ India gives you the freedom to choose your specific jurisdiction. Under the Indian Civil Procedure Code (Sections 13, 15 and 44A) and Indian Evidence Act (Section 41) allows clients to enforce contracts in their chosen jurisdiction post which decisions taken by the court would be held conclusive.

## Note

Global transactions should invariably fulfill European Union's regulations regarding data privacy. Thus, complying with General Data Protection Regulation (GDPR) becomes a dire necessity despite your American business outsourcing origin to India.

## Acquaint Yourself With Local Labor Laws

Labor laws change across jurisdictions basis political climate. Before signing any such contracts, thereby, it becomes a strict mandate to assess the local labor situations along with its political air. Some countries are particularly lenient towards foreign companies outsourcing business, owing to the high foreign exchange earned. Due to India's transparent Labor laws, not only both the clients and vendors are protected, but also have a business-friendly approach.

## Scenario In The UK And The USA

- ✔ Companies operating in the UK needs to comply with the Transfer of Undertakings Protection of Employment Regulations 2006(TUPE). Though the law has been derived from the European Union, but, Britain has confirmed its retainment post Brexit. However, it increases the expenses for the companies to operate in Britain as they need to adhere to the EU-level labor benefits.
- ✔ The Worker Adjustment and Retraining Notification Act (WARN) ) is applicable in case of a mass lay off. However, employees are not transferred to the provider under American laws. If you are adding offshore employees to your team, and you're not engaging in mass lay-offs, the law is clearly on your side.

## Why Choose India As An Offshore Destination?

Planning to outsource your IT projects to India? This needs to be carefully executed under the Indian Contract Act 1872 (ICA) as you would get remedies in case of breaching of contract. Owing to the strictness of the labor laws in India, both the employer and employees' interests are taken into consideration.

### Note

While British labor laws tend to be stringent, American laws allows a room for leniency. However, building an offshore team in India is a legally sound option because you and your offshore team are both protected by stable laws.

## Understand The Nuance Between Differing Tax Laws

Choosing to outsource your IT requirements opens up different tax liabilities both nationally and globally. During cross-border outsourcing, you should keep an eye on the transfer pricing. For instance, transfer pricing helps tax authorities to adjust the cost for cross border transactions while the rules and regulations are influenced by the Organisation for Economic Co-operation and Development(OECD) guidelines. Transfer mispricing occurs when multinational companies trade between their subsidiaries in other offshore locations but end up diverting profits into safe heavens which are located outside all concerned tax jurisdictions. Corporate tax is an add on that you need to pay!

### Scenario In The UK And The USA

- ✔ The US tax code allows American businesses to seek Foreign Tax Credit if they have already paid taxes in foreign nations. Despite the reduction of the tax rates by the United States reaching to global average, high labor cost and difficulty of accesibility of the United States reduced its tax rates recently and is now in finding skilled labors compels them to run for offshore teams.
- ✔ The UK government has set a corporate tax rate of 19% for the year 2019 and 17% starting from April 1, 2020. Apparently, it could be a low per cent, however other additional expenses strides up the organizational growth directly affecting the hiring of resources in the United Kingdom.

### Why Choose India As An Offshore Destination?

Corporate tax rates ranges between 25% and 34.9% in India. The Indian government offers certain tax concessions to vendor companies to encourage outsourcing, which will help you to reduce your final tax expenditure.

#### Note

Though, corporate tax seems higher in India; overall cost of hiring and completing IT projects is significantly lesser in India. Importantly, businesses can claim tax credit for having paid taxes in India, making it further affordable to build offshore IT teams.

A PERFECT  
IT OUTSOURCING  
CONTRACT ANSWERS  
**10 QUESTIONS**

1. Which jurisdiction(s) will your project come under?
2. What are the local labor laws that may affect your project?
3. Which are the tax laws applicable for your project?
4. What are the key terms and conditions?
5. Have the financials been discussed and mutually finalized?
6. How to secure your intellectual properties?
7. How to settle disputes, and who will help you?
8. How do you plan to manage your outsourced project and offshore teams?
9. Procedures of contract termination.
10. What happens after the project is completed?

## Arriving At A Consensus On Key Terms And Conditions

Many outsourcing relationships often falter because the key terms and conditions regarding how a project will be completed, what it entails, and what technology will be used is not communicated transparently. In addition to the labor laws, scope of addressing tax concerns and methods of payment, and the legal jurisdiction where the contract shall be enforceable, one needs to outline the scope of the outsourcing relationship.

Following are the key terms and conditions that should be covered in a contract.

- ✔ Define the key terms pertaining to the project. This may include technologies, proprietary software programs, or methodologies that will be used to manage and execute the project.
- ✔ Elucidate the obligation of both the parties. These general obligations should cover roles and responsibilities, deliverables, and other information precisely.
- ✔ You may also include Scope of Services instead of general obligations, or retain it as a separate section. This can be added as a separate entity if the deliverables are complex and lengthy.



- ✔ Describe the length of the contract, the type and instructions related to changing orders. This section may also include how to notify each other.
- ✔ List all the laws and regulations that both the parties need to comply with. Accordingly, confidentiality will be maintained.
- ✔ Training, transition and startup issues should be addressed.
- ✔ Security system and contingency plans.
- ✔ Highlight the professional and performance standards, and the Key Performance Indicators (KPIs).
- ✔ Identify liability for loss or damage, and indemnification terms.
- ✔ Termination for convenience, by mutual agreement or by default.
- ✔ Post termination issues such as intellectual property rights, after-sales support, and maintenance.
- ✔ Disclaimers.

BELOW  
MENTIONED  
ARE THE  
**MOST IMPORTANT  
SECTIONS  
OF THE CONTRACT**

- Financials
- Confidentiality and Data Security
- Intellectual Property Rights

## Financials

Foreign clients outsourcing to India should familiarize themselves with the Foreign Exchange Management Act 1999(FEMA), which lays down regulations regarding shares, debentures and warrants. In addition to this, most IT outsourcing contracts should specify the mode of payments, compensation form, and under what conditions payments will be made or rejected.

Include the following points compulsorily:

- ✔ If there is a fixed fee, the final amount shall not exceed that, including hidden costs.
- ✔ Invoices will be raised on time and payments will be made promptly after reviewing and resolving disputes, if any.
- ✔ Highlight the final payment that shall be made at the completion of the project, if such an arrangement has been discussed.
- ✔ That prompt payments will be made to subcontractors and that the subcontractors shall not bring a claim against the client.
- ✔ Specify the right to inspect and audit the contractor's compliance at any given time.
- ✔ A clause that covers inflation, currency fluctuations and money transfer fees within the contract.

# Data Security, Privacy And Confidentiality

Even if the service provider and the contractor are not located in the European Union, all data needs to be compliant with GDPR. If you are dealing with health-related data, you may have to comply with HIPAA guidelines as well. Regulatory requirements vary across international borders and a clear understanding of all compliance requirements is required before signing contracts.

- ✔ Define what is confidential information. This shall include information designated as confidential by the disclosing party.
- ✔ Define what is customer confidential information. This usually includes the deliverables, software programs in different stages of development, drawings, designs, ideas and even concepts.
- ✔ Specify what can be disclosed and not disclosed. A separate non-disclosure attachment to the contract is often advisable.
- ✔ Highlight the importance of safeguarding personally identifiable data in order to comply with GDPR.
- ✔ Include regular security audits within the contractual agreement and require that all data is destroyed when it is no longer required.
- ✔ Make sure that all technology that will be used during the project complies with stipulations laid down by various regulatory bodies.

# Intellectual Property Rights

Indian intellectual property laws are similar to Britain or Australia. Indian legal authorities enforce IP-related regulations to protect your intellectual property rights regardless of where you are. When outsourcing to India, you can rest assured that your rights shall be protected by the law of the land. Here are some of the clauses to be mentioned in the contract:

- ✔ Specify the retained rights clause. This should state that both the parties retain all rights of pre-existing intellectual property.
- ✔ Provider should not use third party pre-existing intellectual property unless they have the right to do so.
- ✔ Service provider should grant the client to use pre-existing intellectual property if it has been used in the deliverables with no limits whatsoever across jurisdictions.
- ✔ All pre-existing intellectual property that shall be included in the deliverables will be mentioned in the contract, along with necessary approvals.
- ✔ All deliverables shall belong to the client without any claim other than the compensation mutually agreed upon.
- ✔ Customer intellectual property will be used in a limited manner to complete the project and the provider has no rights over it.

MAKE YOUR  
CONTRACT  
**STRONGER WITH  
THESE TIPS**

- Lay Down the Groundwork for Managing your IT Project
- Specify How Disputes Shall Be Settled
- Under What Circumstances Will the Contract Be Terminated
- Describe the Post Termination Situation

## Managing Offshore IT Projects

Your contractual agreement should clearly state how the project will be managed by your offshore team, and how you will manage your offshore team. Most often, clients are advised to search for vendors who are agile in nature. This ensures that there will be regular scrum meetings which oversee the development process. An agile management strategy will also help you with key metrics to evaluate the success of the project.

- ✔ Make sure to elaborate how your offshore team will be organized and managed along with the manager assigned to oversee it.
- ✔ Ask for a point of contact who will also act as the ScrumMaster in order to manage team meetings. This could also be the point of contact who would be responsible for escalations. Lay down the framework for managing the entire project and describe this within the contract.

# Possible Disputes Management

Disputes usually occur due to the performance of the vendor, financial conflicts, intellectual property misuse, material breach, insolvency, and technical issues. Considering the possibilities, scenarios including discontinuity of the contract can occur even without any reason. While preparing the contract, all possible disputes needs to be stated from both the client and vendor perspectives. Doing so will help you to avoid unsavory situations in the middle the contractual relationship if you begin to have second thoughts.

- ✔ Have a clear understanding regarding how the contract will be terminated and where the disputes will be resolved.
- ✔ Take your vendors' perspectives into account and include them within the contract.
- ✔ Allow for a clause that clearly states how and when the contract will be renewed if disputes are settled.
- ✔ Agree to a mutually convenient jurisdiction for the contract to be enforced.



# Termination Clauses

While all projects have to come to an end, many of them do end on a sour note. As a contractor, you need to be prepared to terminate your IT outsourcing contract in a manner that is most beneficial to you. In addition, this preparedness should be written down into the contract. Make sure to include all the clauses listed below in your contract.

- ✔ Regular termination: Specify the conditions for terminating a contract under normal circumstances. This usually includes when all the deliverables have been satisfactorily received.
- ✔ Material breach: When the performance is subpar or there is a failure to perform, the aggrieved party may seek material breach.
- ✔ In case of insolvency or unforeseen circumstances: You can also include insolvency events and natural disasters as reasons for termination. However, you may not be able to claim damages.
- ✔ Termination of convenience: With mutual consent of everyone involved, a contract can be terminated for the sake of convenience. However, dues may need to be cleared before enforcing termination for convenience.

## Post-Termination Legalities

Once a contract has been terminated for any of the reasons specified above, it is important to address intellectual property rights and data management. In addition, the contract should also specify post development support and maintenance, if the following has been agreed to.

- ✔ Always include post-termination management of data and intellectual property within the contract.
- ✔ Assess how data will be destroyed when it is no longer required by either party.
- ✔ Specify who owns what information and who can lay claim to software products once the contractual relationship has completed.
- ✔ Post-development support and maintenance can be provided by the service provider at an extra cost.
- ✔ How the contract can be renewed, if it needs to be.



# FIND THE ANSWERS TO THESE QUESTIONS BEFORE SIGNING A CONTRACT

An enforceable contract is the crux of a successful IT outsourcing relationship as it lays the basic obligations and duties of both the outsourcer and the service provider. Such a contract helps everyone involved to focus on security and confidentiality, while maintaining legal compliance across borders.

A well-negotiated contract eliminates disputes arising from payment terms and intellectual property rights. It helps you decide and choose the location of arbitration when disputes arise and instructs both the parties how to resolve disputes quickly without having to escalate matters. Most importantly, a strong outsourcing contract helps you to familiarize yourself with local taxation and other laws.

Last but not the least, it helps you prepare yourself for a positive relationship with your vendor post successful termination of the project. A strong post-termination relationship helps you to seek after sales support and guidance related to future IT requirements.

As technology is rapidly evolving, a relationship based of trust and legal framework helps you to avoid having to look for newer partners for different projects. To understand how we can help you with your IT requirements and ensure that you are backed by a strong contract, contact us today.

