

Working Worldwide Newsletter November 2005



Welcome to the November edition of Working WorldWide. As always we take a wide-ranging look at developments in Immigration, Tax and Employment Legislation throughout Europe, The Middle East, Africa, The Americas and Asia Pac.

In an initiative started during the last quarter we have been running a series of Breakfast Seminars, focused on UK Public Sector procurement, covering the following topics:

- An independent OGCBuying.solutions presentation on The Transformation from S-Cat to Catalist
- Compliance Update: 'When are agency workers employees?' By Lee Pelling, Glotel Contract & Compliance Manager UK & the EU
- A Market Update: By Jason Power, Glotel Director of Delivery, EMEA

So far these seminars have been well received by the Client representatives attending, and we are looking to roll-out further seminars. If you are interested in attending either this or a similar seminar, or have a specific idea for a topic you would like covered, please contact Bronwen Richards on brichards@gotel.com

I hope that this Newsletter continues to be a valuable source of information for you, and welcome your feedback on any of the articles covered lpritchard@gotel.com

Regards,
Lara Pritchard
Tax & Compliance Director

The information contained in this newsletter is strictly confidential and may only be read, copied and used by the intended recipient. This newsletter is intended as a general guide only, and the application of its contents to specific situations will depend on the particular scenario(s) involved. Consequently, we recommend that readers seek appropriate professional advice regarding their particular circumstances.



European Union (EU)

Despite shelving the Agency Workers Directive, it is not all good news from The EU.

During September the European Union (EU) announced they were to shelve the Agency Workers Directive (AWD) as part of a bid to cut red tape. Though the AWD in its current guise is now dead in the water, there are plans to redraft the directive in the future.

To temper this good news, it seems that supporters of the AWD now seem likely to block the EU Service Directive. The Service Directive was designed to introduce a single market for services in the same way there is already a single market for goods, allowing U.K. recruitment companies to operate across the EU without having to comply with local regulations.

A European Citizen Action Service Report (ECAS) reviews migration from the accession countries to the U.K., Ireland and Sweden.

The ECAS report, published in August, showed that far more immigrants entered UK, Ireland & Sweden from Eastern Europe, than

was anticipated. In the U.K. 175,000 workers registered from the accession countries. In Ireland 85,000 new social security numbers were created for new EU members and in Sweden 22,000 immigrants from the eight new countries arrived.

The immigrants were mainly in the 18-34 age group and male, though the educational standard of these immigrants was not recorded. The most frequently taken jobs were waiters, manual workers and dentists.

The immigration numbers have far outstripped predictions of between 5,000 and 10,000 per country per year.

The U.K. has increased the cost of the workers registration scheme required by nationals of the new EU countries from £50 to £70 to cater for the additional work created by the increased number of applicants.



Estonia

The legality of Temporary Agency Work (TAW) is under discussion in Estonia.

In August 2005, the question whether TAW is legal was raised by trade unions and the Labour Inspectorate. The position of employers is that TAW should not be considered illegal just because it is not yet sufficiently regulated in Estonia. However, both the Labour Inspectorate and the Confederation of Estonian Trade Unions (EAKL) declared that TAW is actually an illegal activity. This is supported by Juhan Salum, the deputy General Director of the Labour Inspectorate, who says TAW is illegal because there is no legislation regarding agency workers, or shelter from inappropriate employment contracts. In addition, if an accident at work occurs, nobody is directly responsible in the case TAW is used. Further, there is also the concern that 'personnel renting' ignores the Employment Contract Act and should be only allowed for temporary worker replacement.

Conversely, the Employment Service Act lists different types of employment services including employment mediation. Niina Siitam, the director of the legal department of the Labour Inspectorate, stated that as the employment mediation and renting of personnel are similar in their goals and content, then the renting of the personnel can be also treated as employment mediation. As there is no specific legislation dealing with the tripartite employment relationships, then all issues should be solved in the framework of valid legislative acts. In their activities, enterprises dealing with TAW are directed mainly from the Employment Contracts Act and Law of Obligations Act. If the companies' activities are directed to other member states of the European Union, then they have to follow also the Directive 96/71/EC of the European Parliament and Council concerning the posting of workers in the framework of the provision of services.

The conflicting statements of EAKL and the Labour Inspectorate triggered protests from individual employers and the Estonian Employers' Confederation (ETTK). ETTK argues that even though TAW is not regulated in Estonia, it does not mean that it is illegal. The position of employers is that the use of TAW is useful for both employers (diminishing their recruiting costs) and temporary agency workers (it is better to have temporary job than to be unemployed). ETTK also states that there are no problems regarding work accidents as they can be treated similarly to work accidents that happen when ordinary bipartite work relations are used.

The common understanding is that Estonia has to regulate TAW in the near future. So far, there is no legislation concerning TAW and the first temporary work agencies only started operations in Estonia three years ago. According to Ministry officials they are working on the general concept of TAW regulations at the moment and the laws regulating TAW are supposed to be ready to be presented to the Parliament in 2006-2007.



Ireland

A new Irish Green Card System allows highly skilled migrants to be joined by their spouses immediately.

The Employment Permits Bill is currently going through the Oireachtas (Irish Parliament) and will be passed by the end of the year and implemented by early 2006.

The green card system, which is for highly skilled migrants, will now allow recipients to bring their spouses with them immediately with residency becoming automatic after one year.

The Irish government expects around 2,000 applicants, mainly from the science and technology sectors. Salary and qualifications are the determining factors in deciding whether an applicant will be successful. By allowing more flexibility the government hopes the Irish will be able to compete better for highly skilled individuals.



The Netherlands

On 24 August, 2005 a new decree was issued on the 30% tax ruling for expatriates.

The new decree aims to address a number of issues that have arisen regarding the 30% ruling and how it applies to the following:

- Benefits that are not paid in cash (benefits in kind) will qualify under the 30% ruling from 1 January, 2006. This will include the cost of phone calls and company cars.
- Bonuses and benefits from employee option schemes received after the termination of the 30% ruling period - However, if the bonuses and stock options were realised after the termination of the 30% ruling, the ruling can only be applied if the employee had unconditional right to the benefit during the period that the 30% ruling was applicable.
- Additional tax assessments following an audit – However, if any underpayment is a legitimate mistake, the 30% ruling is still applicable.
- Final assessment components (e.g., Christmas gifts) - are not applicable if the final assessment components are not calculated individually for each employee.
- Who files the application/payroll - It is regular practice within multinationals that the Dutch group company files for the 30% ruling and includes the employee in the payroll administration. The Decree indicated that it should be the foreign group company that makes the application if this company remains the employer from a civil law perspective and therefore the foreign company should also set up a payroll in the Netherlands.



Romania

An extensively revised Labour Code has been adopted.

A Government Emergency Ordinance, published in July of 2005, has brought into force a revised Labour Code in Romania. The Code has been amended to bring national legislation into line with EU law in areas such as fixed-term contracts; dismissals and redundancies; working time; and training. The amendments follow lengthy negotiations with representative trade unions and employers' organisations.

The main amendments and additions to the Labour Code refer to:

- Relaxation of restrictions on concluding individual fixed-term employment contracts. The new regulations extend the maximum duration of a fixed-term employment contract from 18 to 24 months. There can be no more than three successive fixed-term employment contracts within this period. After which, the employer must fill the vacancy with an indefinite-duration employment contract.
- Simplifying record-keeping procedures relating to employees.
- Making regulations on individual dismissal and collective redundancies more flexible.
- Setting less rigid rules for working hours and overtime – The reference period for calculating the maximum number of working hours per week (48 hours - beyond which limit overtime is officially acknowledged) has been extended from three weeks to one month.
- Regulating co-operation between employers and trade unions over work quotas (by observing the regulations in force and with the approval of trade unions or employee representatives, including the possibility of resorting to arbitration in the case of disagreements).
- Introduction of new regulations on paid annual leave. Holiday pay will not be lower than the basic wage and will be calculated based on the average daily pay entitlements over the last three months including permanent indemnities and bonuses recorded in the individual employment contract.
- Improving provisions on vocational training for employees.
- Revision of the legal system of contravention and penalties related to work relationships.
- Non-competition clause regulation - Subsequent to the termination of an employment contract (the former employee concerned must receive an indemnity of no less than 50% of the average gross wages in the six months prior to the end of the employment contract) if the employment contract specifies the activities prohibited to the employee, duration of prohibition, the third parties which the employee must not work for as well as the prohibited geographical area.



Russia

The Federal Tax Service has issued official procedures so taxpayers can confirm the amount of tax paid.

A non-resident legal entity may apply to a local tax office where it, or the withholding agent, is registered in order to obtain confirmation of the amount of tax paid or withheld. The applicant shall provide the tax office with a copy of the relevant tax return (its or the withholding agent's) and a copy of the payment order to the bank to transfer the amount of tax to the "State Budget."

The tax officers should check whether the information provided by the applicant corresponds with the data of the tax office. If no mismatches are found, the Head or the Deputy Head of the tax office certifies with his signature the relevant pages of the copy of the tax return.

The Letter states that a "similar" procedure applies to requests from the competent authorities of treaty states under the exchange of information procedures, without specifying whether the foreign competent authorities are expected to provide copies of tax returns and payment orders. When a request is received from a non-treaty country, the Letter instructs the tax authorities to forward the request to the Head Office of the Federal Tax Service in Moscow.



Ukraine

The Ukraine has abolished the tourist and business visa requirements for nationals of the European Union, Canada, Japan, Switzerland and the United States.

The decision was to increase visitors to the Ukraine (particularly tourists) and the move seems to have worked with more than 1.6 million EU nationals arriving in the Ukraine between April and June 2005.

The move is part of the Ukraine's ultimate ambition of joining the EU. This means tourists and businessmen do not need visas for holidays, attending meetings and training.



Egypt

From 1 July, 2005 a new tax law came into force affecting employment income.

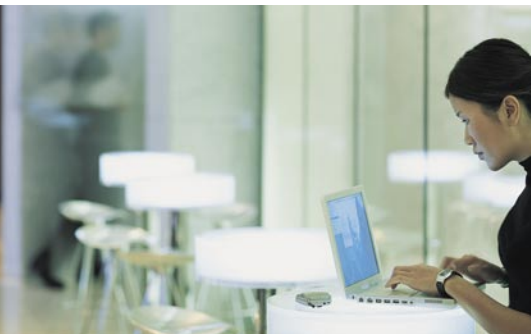
The changes are summarised below:

- All taxpayers, irrespective of marital status or gender, are provided with an annual aggregate exemption of EGP 9,000 (approx. USD 1,561).
 - Pensions, end of service bonuses, vacation salary and profit-sharing distributions are tax exempt.
 - Premiums, etc. relating to life and health insurances are tax exempt up to 15% of the taxpayer's net income.
 - Group housing, meals, transportation, medical insurance, uniforms, work tools, etc. provided as benefits-in-kind are tax exempt.
 - Non-resident employees are subject to a flat 10% tax.
 - The tax base has been expanded to include (1.) Egyptians exercising an employment outside Egypt but deriving such employment income from an Egyptian source; (2.) individuals employed and performing work in Egypt regardless of where the salary is paid from; (3.) non-Egyptians who are permanently resident in Egypt or who are in Egypt for more than 183 days in a 12-month period; and (4.) non-Egyptians who derive income from Egyptian sources.
- The top tax rate for resident employees will be 20% on income greater than EGP 40,000 (approx. USD 6,937).
 - The 2% state development tax has been abolished.
 - Resident employers are required to withhold their employees' tax liability and remit the same to the tax authorities, while taxpayers employed by non-resident employers are liable for their own tax reporting and payment.



Malawi

In Malawi the withholding tax on fees has been reduced from 20% to 10% from 1 July, 2005.



Canada

The Canada Revenue Agency (CRA) has turned its attention to the compliance of non-resident employers.

Many companies assume, wrongly, that they are only responsible for the payroll obligations of employees working in the home country. However, Canada aggressively enforces payroll obligations on both local and non-resident employers. Some of our readers will be aware of the requirement for non-resident employers to withhold 15% Canadian tax from payments to employees working in Canada on a temporary basis.

The latest audit initiative is to review the tax returns filed by individuals and trace employment income to ensure that all the necessary payroll obligations of foreign employers have been met.

Unless a Regulation 102 Waiver or exemption has been obtained the foreign employer may be required to withhold, remit and report Income Tax withholding, Canadian Pension Plan (CPP) contributions and/or Employment Insurance (EI) premiums. If the

foreign employer has failed to comply with all the necessary regulations, they are open to penalties and interest on both the amounts not paid and the fact that these have not been reported in adherence to the relevant procedures.

New application process to obtain an Individual Tax Number for non-resident individuals

Certain non-residents who provide irregular services in Canada may not be eligible for a Social Insurance Number (SIN), but they could still have filing requirements and can now apply for an Individual Tax Number (ITN). One example of such an individual is a non-resident who is subject to tax withholding as referred to in the previous article.

The application should be filed as soon as the individual becomes aware of his/her Canadian tax obligations and must be accompanied by documentation supporting their identity and basis for being in Canada.



United States

Update on H-1B numbers available for candidates holding U.S. Master's degrees.

Although the 2006 H-1B cap of 65,000 was reached on August 10, 2005, there continue to be numbers available for those candidates who hold a Master's degree or higher issued by a U.S. college or university. The United States Citizenship and Immigration Service has reported that 11,855 have been used against the FY 2006 allotment of 20,000 for those with advanced degrees. Those who wish to sponsor a candidate with an advanced degree are encouraged to file their petition as soon as possible.

U.S. consulates begin accepting E-3 visa applications for Australian citizens.

On 12 May, 2005, President Bush signed into law legislation that created a new visa for Australian nationals called the E-3 visa. Since that time we have been awaiting the final rules and guidance on who qualifies for the category and how to obtain the visa. This guidance has recently been issued and is detailed in the paragraphs below.

Eligibility Requirements

The requirements for the E-3 visa are similar to the H-1B visa for professional workers. The position offered in the United States must be for a "specialty occupation" that requires the services of an individual possessing at least a U.S. Bachelor's degree or foreign equivalent in a field related to the job. Unlike the H-1B visa, however, it is not necessary for the prospective employer to obtain approval from U.S. Citizenship and Immigration Services (USCIS) before the foreign national can apply for an E-3 visa. The law provides that an Australian citizen who is outside of the United States can apply for a visa directly at a U.S. consulate or embassy, so long as he or she has a pre-arranged job offer in the United States.

Employers will, however, have to obtain a certified Labor Condition Application (LCA) from the Department of Labor (DOL) and provide it to the prospective employee.

E-3 visas will be valid for up to two years and can be renewed indefinitely. This is unlike the H-1B visa, which is generally only valid for a maximum period of six years.

There will be a maximum of 10,500 E-3 visas available each year to principal beneficiaries. Spouses and children accompanying or

joining the principal E-3 applicant are not subject to the numerical limitation and need not be Australian nationals. After entering the United States in E-3D (dependent) status, spouses will be eligible to apply to the USCIS for employment authorization.

Application Procedures

To qualify for an E-3 visa an applicant must (1.) demonstrate that he or she is an Australian national; (2.) satisfy the definition of specialty occupation; (3.) present an approved LCA to the consular officer; (4.) present to the consular officer evidence of academic or other qualifying credentials; and (5.) present a job offer letter or other documentation to substantiate that the proposed position in the United States qualifies as a specialty occupation and that the applicant will receive the higher of either the actual or prevailing wage for the position.

Applicants must also comply with all other application requirements, including the submission of a properly executed Form DS-156 (Nonimmigrant Visa Application) with photograph; submission of Form DS-157 by all male applicants between the ages of 16 and 45; submission of a valid passport and payment of all required fees.

At this time, the USCIS is not accepting applications for change of status to E-3 for Australian nationals already in the U.S.

USCIS raises application fees due to inflation

In the September 26, 2005 issue of the Federal Register (Vol. 70, No. 185), the USCIS announced that beginning October 26, 2005, visa fees will be increased due to inflation. Most fee increases will be between \$5.00 and \$10.00, however some will increase by as much as \$20.00. Please go to the following web address for access to the Federal Register text containing details on the fee increase:

<http://www.archives.gov/federal-register/news.html>



Australia

The Victorian Workcover Authority is introducing a new on-hire classification system effective 1 January, 2006.

It had long been noted that there were anomalies within the classification system, especially for labour hire firms where contractors perform duties on client sites in many varied industries. The Victorian Workcover Authority issued a discussion paper in March 2004 where three options were outlined. The options were discussed, and after consultation with a number of industry representatives including RCSA, Ai Group, Group Training Australia and VECCI, a new classification system was agreed upon.

Under the new classification system, labour hire firms provide details of remuneration paid to contractors and details of the client

sites where the contractors work. The client's workplace industry classification(s) will then be allocated to these workplaces in order to calculate the premiums.

A new classification has been created for the internal administrative staff of labour hire firms, who are employed in either recruitment/placement services and/or on-hire administration.

The new classification system for contracting activities will provide a greater incentive to end clients to improve workplace health and safety, and remove any inequity between labour hire firms and other employers.

More information is obtainable from www.workcover.vic.gov.au



China

The scope of social security has widened and the Chinese authorities issued new regulations which amend the administration of employment permits for nationals from Hong Kong, Macau and Taiwan.

These rules came into force on 1 October 2005 and encompass the following:

Social Security

- Hong Kong, Macau and Taiwan nationals working in China are subject to local social security rules. This will also apply if they are employed by a non-Chinese firm for a period of longer than three months in a calendar year. However, it is expected that these nationals will also be entitled to claim social security benefits in the same way as other Chinese nationals.

- Other foreign nationals continue (for the time being) to be exempt from social security.

Employment Permit Changes

- Tighter rules on the age limit of applicants and the documents that need to be submitted by an employer including the business licence of the employer; ID papers and health certificates of the employee; employment contracts; and proof of qualifications.

There are also revised penalty provisions for non-compliance with the new rules.



India

India introduced Fringe Benefit Tax (FBT) on 1 April, 2005.

FBT is charged at the rate of 30% on the deemed value of various employee benefits. The deemed value may differ from the actual cost to the employer of providing the benefit.

The categories are:

- Employer reimbursement of personal travel expenses - 100% of the actual cost.
- Employer contributions to a superannuation (pension) fund – 100% of actual cost.
- Fringe benefits for employee welfare (group insurances medical cover, business travel) - 20% of the total cost of the benefit.

Fringe benefits for other benefits (festival celebrations, social/health club, education) - 50% of the total cost of the benefit.

A recent court case imposes service tax on the reimbursement of expenses.

The Mumbai Tribunal recently determined that payments made to a U.S. company to acquire know-how, process technology and technical assistance, are taxable under the royalties article (article 12(4)) of the India -U.S. tax treaty.

The Tribunal also held that the reimbursement of expenses was also subject to service tax because the expenses were essentially a part of the fees. The Tribunal also determined that training fees paid for learning to use the know-how is also subject to service tax, but this has been referred back to the appellate commissioner to determine whether the training services fall within the scope of the exclusion in article 12(5)(a) of the treaty, so as to qualify as non-taxable in India.



Indonesia

The draft revisions of the Income Tax Law and the General Rules and Procedures of Taxation are complete and the intent is that the changes become effective 1 January, 2006.

The proposed changes include:

Income Tax Rates

Single corporate tax rate of 30% (further reduced to 28% in 2007 and 25% in 2010). Reduction in income tax rates for individuals, with progressive rates ranging from 5% to 35% (33% in 2007 and 30% in 2010).

Withholding Taxes

A change is proposed in the way in which a beneficial owner is determined for withholding tax (WHT) purposes. Specifically:

- The domicile of a non-resident (other than one carrying out activities through a Permanent Establishment (PE) in Indonesia) would be determined based on the habitual abode or place of incorporation of the beneficial owner.
- If the beneficial owner is a corporate entity, the country of domicile would be the country where the owner or majority shareholder (more than 50% shareholding) is incorporated or where its effective management is located.

- If the beneficial owner is an individual, the country of domicile would be the country where the person habitually lives or is present.

General Rules and Procedures of Taxation

- The legal requirement to obtain a tax ID number and/or VAT registration number will be enforced more stringently.
- The date for filing the annual corporate tax returns would be the end of the fourth month after the close of a tax year.
- Individual tax returns would need to be filed by the end of the third month after the end of a tax year.
- The statutory limit for issuing a tax assessment would be reduced from 10 years to five years.

The law will also incorporate the provision of stricter penalties including criminal charges and imprisonment for taxpayers that fail to comply with tax obligations.



Philippines

A ruling by the Bureau of Internal Revenue (BIR) has deemed that there is no FBT to be paid on welfare benefits (e.g., life insurance policies) where the premiums are paid in full by the employer.

The BIR confirmed that the premium contributions are neither subject to withholding tax on compensation nor to fringe benefit tax. While these contributions (granted in addition to basic salaries) are treated as fringe benefits, the Tax Code specifically provides that "contributions of the employer for the benefit of the employee to retirement, insurance and hospitalisation benefit plans" are not subject to fringe benefit tax.



United Kingdom

What are the obligations with regards to fixed-term contracts after the implementation of Fixed Term Employees Regulations 2002.

The definition of a fixed-term contract is a contract that is not intended to be permanent and that it will terminate either on a specific date, on the completion of a specific task, or on the occurrence of an event.

The 2002 regulations prohibited fixed-term employees from being treated less favourably than permanent employees. Furthermore, the employer was bound to inform fixed-term employees of any permanent positions within the company.

Whereas many employers realise that the early termination of a fixed-term contract constitutes a dismissal, many fail to notice that the expiry and non-renewal of a fixed-term contract is also a dismissal. The employer will therefore have to justify the non-renewal of a fixed-term contract with one of the fair reasons that apply to normal dismissals, provided of course that the fixed-term employee has more than one year's continuous service.

Under the regulations any fixed-term employee who has been on a fixed-term contract for four years and has this extended again will automatically transfer to a permanent contract of employment unless another fixed-term contract can be objectively justified. The period covered by this new regulation does not start until 10 July, 2002 so any fixed-term employees starting before that date can work up until 10 July, 2006 before becoming a permanent employee.

Work Permits U.K. have clarified the rules regarding points for past earnings in the HSMP.

Under the rules of the Highly Skilled Migrant Program (HSMP) applicants can claim up to 50 points for their previous year's earnings. Applicants who had been sent overseas within the last 12 months but whose salary had continued to be paid in their home country are currently assessed against the country in which they worked. This practice has been changed. Effective September, 2005, past earnings will be considered against the income band of the country in which the position is normally held and payment has been made.

For example an American working for Coca-

Cola in San Francisco who is seconded to Coca-Cola in Ghana, continues to receive his U.S.A. salary plus an overseas allowance. His income level remains on par with someone working in the U.S.A. and therefore, it is the U.S.A. income thresholds that are appropriate when calculating points for the HSMP.

The new TUPE regulations have once again been delayed. They were expected to come into force on 1 October, 2005, but have now been delayed until 1 April, 2006.

The new TUPE regulations are being brought in because the Government admitted the present regulations "are working less effectively than they might."

The principal changes will be:

- Extend the application of TUPE to "service provision changes," (i.e., contracting out situations).
- Clarify when employers can lawfully dismiss or vary terms and conditions for reasons related to the transfer.
- Require transferors to notify transferees of the employment liabilities, which the transferee will inherit.
- Make both the transferor and the transferee jointly and severally liable for any failure to inform and consult about a TUPE transfer - Addressing the problem that the transferee is currently liable for the transferor's breach of collective consultation obligations.
- Promote a 'rescue culture' to save jobs where the transferor is insolvent by allowing flexibility to agree changes to terms and conditions, and by protecting the transferee from liability for statutory insolvency payments. This will remain with the Secretary of State.

The Government hopes the new regulations will see the uncertainty of TUPE cases fall to about 5-10% from 20% currently. The standard definitions of a transfer will be updated in line with case law and there will be a further definition to cover service provision changes - On first generation outsourcing, the changeover of contractors and taking services back in-house.

This draft goes much further than that required by the Acquired Rights Directive from Brussels, but does not cover the supply of goods, or possibly the supply or professional services.

It is unlikely that these changes will make it any easier for transferees to vary terms and



United Kingdom (continued..)

conditions and harmonisation will still be illegal. Any change will have to be proved that it is for an economic, technical or organisational (ETO) reason and not down to the transfer itself.

Any employee who is dismissed for an ETO reason and who is made redundant will be entitled to claim a redundancy payment but no longer for unfair dismissal.

There is now also a requirement for transferors to provide up to date employment liability information about all employees to the transferee in good time. Breaches are punishable with a maximum fine of £75,000.

The recent Case of Clearsprings Management Limited vs. BusinessLinx Limited and another shows how IT deals can go wrong if clear provisions for ownership of copyright and intellectual property rights are not clearly laid out.

As touched upon in recent issues of Working Worldwide, any customer entering into an IT deal cannot assume it will own the copyright of any software that is created as part of the deal.

If customers do not address the issue of copyright and intellectual property in contracts with developers and IT suppliers when commissioning software, then they are likely to lose the opportunity to obtain specific rights to the software that they have commissioned.

This was demonstrated in Clearsprings Management Limited v BusinessLinx and Another. C appointed B to develop a web-based database system for C to store information relating to the accommodation and related services that C provided to asylum seekers.

To develop the database, B used some software code from B's existing software and relied on information provided by C on C's business practices.

There were no express provisions in the contract covering copyright or IP rights. Under U.K. law, as the author, the rights first belonged to B. C therefore, had far fewer rights than they had assumed.

During the case, C argued that the contract implied that B would assign all copyright in software to C or that B would grant an exclusive, royalty free, perpetual, irrevocable

licence to C to repair, maintain and upgrade the software and to distribute and sub-licence it.

B accepted that C would be entitled to royalty free, perpetual, irrevocable licence to repair maintain and upgrade the software. But B did not accept that the licence should be exclusive, nor would it allow C the right to sub-licence the software.

B argued that it was common for software developers to re-use code from projects with one client in similar projects with another and an exclusive licence would prevent B from doing this.

The presiding judge rejected C's claim for an exclusive licence and imposed a restriction on B from making public any information about C's operating procedures.

In summing up, the judge stated:

- Unless a client specifically states that the software created should be entirely bespoke and created from scratch, the client should expect the developer to use some existing software.
- If an exclusive licence had been granted for the software as a whole, B would not have been to able re-use any of the code.
- However, as the project was an electronic embodiment of C's operating procedures, there had to be an implied term preventing B from using the code as a whole.
- The judge ruled there was insufficient evidence to show that C had indicated it wanted the right to a sub-licence, or that a sub-licence was implied without any further payment.

The effects of the case are that unless it is contractually stipulated, clients can not assume to own the copyright of work done for them and developers are allowed to re-use existing software, though not where it is client specific.

In the course of business many companies are often required to sign standard contracts. We look at the hidden dangers of signing standard contracts immediately and then dealing with changes on an "ad hoc" basis.

Some of the problems with standard supplier contracts that need to be addressed include the following:

The Tender: A customer often assesses several



United Kingdom (continued..)

potential suppliers, basing its decision on the supplier's responses. However, the supplier's responses may not be captured in the standard contract and will not apply if they are excluded from the contractual terms.

Assignment Structure: Key terms (e.g., price, invoice procedures, etc.) are often specified in purchase orders. It is better to agree as much as possible in the standard agreement so it is only 'special terms' that are contained in a purchase order.

Prices: Pricing options are sometimes given but exact prices and billing intervals should always be specified in the main agreement so there is no doubt about this. Prices should also be capped (e.g., for fixed annual rises).

Service Level Agreements (SLA's): There should be a service level agreement identifying the services, key targets and service credits if the services are not met. This ensures that limits of liability are fair to both parties and are sufficient to remedy severe breaches.

Termination: Termination events should be wider than just termination for breach or insolvency. Upon termination there should be an exit plan where the supplier assists the customer with a smooth migration of services.

By specifying requirements correctly in standard contracts both parties can benefit hugely and avoid any nasty disputes.

Glotel.