

5 June 2015

3HR Legal Weekly

Commercial

Choice of Law/ Jurisdiction Clauses in Contracts

The Court of Appeal has made two recent decisions which serve as a reminder that an exclusive English jurisdiction clause and choice of English law clause in a commercial contract or agreement will not always ensure that any disputes are heard in England and that English law is applied.

In *Integral Petroleum S.A. v SCU-Finanz AG* the issue was which law applied to the issue of whether the signatory to the contract was authorised to bind the company, despite the express choice of English law in the contract. The company was incorporated in Switzerland and the Court of Appeal held that Swiss law applied. The case highlights the need to ensure that contracts are properly entered into in accordance with the law of a company's place of incorporation.

In the second case, *Marzellier, Dr Meier & Dr Gunther Rechtsanwaltsgesellschaft mbH v AMT Futures Limited*, the English courts did not have jurisdiction over a claim for inducing breach of contract, where the underlying contract contained an exclusive choice of English jurisdiction and English choice of law clause. This case showed that claims connected with a contract will not necessarily be heard by the court chosen in the contract.

The two cases demonstrate how the courts will not necessarily follow what has been contracted between the parties and will instead look deeper into the circumstances surrounding the case, as well as other European laws. It should act as an important reminder to directors or other signatories to the contract to carefully review the situation in its entirety, and not just what has been agreed in writing.

Should you wish to have your contracts, and in particular the jurisdiction and choice of law clauses, reviewed, please contact our dedicated Commercial Law team who will be able to assist you.

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Immigration

Home Office Audits

Q. Are we likely to receive an audit visit from the Home Office and what will happen if they visit us?

A. Most sponsors can expect to receive a visit from the Home Office to audit their practices and procedures at some point during the lifetime of their sponsor licence. Many will in fact experience more than one. You can also expect the visit to be unannounced, meaning that you need to be ready at all times.

When the Home Office visit, they will be looking to ensure that you, as sponsor, are complying with all of your sponsor duties. This will include all of the record-keeping functions as well as ensuring that you have updated the Home Office appropriately as to any relevant matters and also that you have the necessary systems in place to adequately monitor your migrant workers.

In addition, the Home Office are likely to interview your Authorising Officer to make sure that they understand their duties and they are also likely to interview various migrant workers. This will be primarily with a view to ensuring that they are compliant with their immigration status in the UK and are working in accordance with their Certificate of Sponsorship if applicable (i.e. working in the correct role, at the correct address, for the correct salary, etc.).

If the Home Office finds that you are not compliant then the consequences can be severe. This can include being placed on an "action plan", which involves you paying a fee and then improving your systems to evidence that you will in future be compliant. In more serious cases it can even result in revocation of the licence, which will of course prevent you from continuing to employ migrant workers. It is vital therefore that you are confident in your systems and procedures and fully understand your duties.

We can carry out our own audits of your systems to test their compliance with Home Office requirements and provide further guidance where necessary.

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HR

Avoiding an induction crisis

Q. Recently several employees have resigned after a very short time with us. Why might this be, and what can we do about it?

A. It can be unsettling for co-workers if many employees leave soon after starting employment.

We recommend making time to design and implement a well-planned induction to your Company. "Induction crises" can occur when a new recruit does not properly understand the purpose of their new job, or when the reality of the work is different to what they were expecting. It pays to be honest with candidates at the recruitment stage in order to manage their expectations and make sure they are the right fit for your Company and the role. An accurate job description is a useful tool for both parties throughout the process.

Consider designing and sending an information pack to applicants at the recruitment stage –including information about your Company's successes, goals and values. This will boost your employer brand and will likely attract people who will be a good fit.

If you already have an induction process and you are experiencing a high turnover of staff, it may be time to evaluate its effectiveness and make some changes. As well as satisfying legal requirements (for example giving the new starter Health and Safety information) a good induction will ensure employees feel comfortable and aware of what is expected of them. They will therefore more likely become successful and productive in their role.

The beginning of the employee's relationship with you is the ideal time to champion your employer brand and company culture. If several new joiners are starting at around the same time, group sessions can be held to save resources and will provide the added benefit of giving the recruits opportunities to bond with their new colleagues.

For more information on avoiding an induction crisis, please contact 3HR.

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