

## Signing on the dotted line could land you in Timbuktu!

Did you know that most commercial contracts contain an exclusive jurisdiction clause which obliges the parties to litigate any disputes between them in the courts of a specific country? And only that country?

In the case of **Apple Computer International -v- Digit SRL** it was held that an Italian company could not prevent an Irish company from suing it in England. Both companies had agreed by contract that any dispute that could not be resolved between them could only be litigated in the English courts. Nonetheless, Digit commenced proceedings in Italy and Apple commenced proceedings in England. Digit tried to stop the English proceedings but failed on the basis that there was an express contractual term that litigation would take place in England.

Indeed, in **Society of Lloyd's -v- Peter Everett White & Others** it was held that an English court could restrain a party to a contract, over whom it had personal jurisdiction, from commencing or continuing proceedings in a foreign court if that was in breach of an exclusive jurisdiction clause. This was the case even where the foreign claim was based upon breaches of security legislation which could only properly be dealt with in the foreign jurisdiction.

What these two cases, and the more recent cases of *Equitas Limited v. Allstate Insurance Company* and *ACP Capital Ltd v. IFR Capital plc* in which they were followed, demonstrate is that dealing with the question of relevant law and relevant jurisdiction is fundamental both when negotiating the terms of a contract or when dealing with another party's standard terms and conditions. With the latter, the relevant clause will usually be hidden in the small

print some way towards the end and may easily be overlooked.

If you deal with companies that are either based overseas or have their main corporate headquarters other than in England, you will invariably find a clause in their standard terms and conditions which stipulates that the courts of that country will have exclusive jurisdiction to deal with any disputes. The question to consider then is whether that term is negotiable:

- If it is, will the other party agree to an exclusive English jurisdiction clause? If not, can an alternative venue be agreed upon which is appropriate and more acceptable or should a compulsory arbitration clause be considered instead?
- If it is not negotiable, can you afford to take the risk of having to fight an expensive and time consuming dispute in another country where your witnesses will have to attend, where language may be a problem and where the rules of law may be completely different?

Even where there is no exclusive jurisdiction clause there are complex rules based upon case law and international conventions which require a dispute to be dealt with in a particular country. That country may be the home ground of the other party or even the country where the contract was to be performed or where the breach/damage occurred. This clearly leads to even greater uncertainty.

An exclusive jurisdiction clause avoids that uncertainty and avoids potentially expensive and time consuming preliminary arguments as to the appropriate venue. Even so, unless it is borne in mind when negotiating a contract or when dealing on the other

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party's standard terms and conditions, it could mean that you end up fighting a dispute on the other side of the world.

If you are ever sued in another country and you have not agreed to the **exclusive** jurisdiction of that country you should take legal advice immediately as to whether or not to contest jurisdiction. This should be done as soon as you are served with proceedings and before you enter any kind of appearance in those proceedings whether by letter or other legal document.

This information sheet has been prepared to highlight some key issues relating to contract jurisdiction. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at January 2009 and may be affected by subsequent changes in the law.

Should you require any specific legal advice on the issues covered, please contact Kamal K Aggarwal by email at [kamal.aggarwal@ts-p.co.uk](mailto:kamal.aggarwal@ts-p.co.uk) or call Kamal on 01322 623700.