

How to buy IT-services from Ukraine?

Ukraine is becoming an attractive IT and outsourcing destination in Europe. The Global Sourcing Association (GSA) UK nominated Ukraine as the offshoring destination of the year in 2017. Many European, including Norwegian companies, are using Ukrainian IT-providers. The main reasons are the access to a high number of IT-specialists, their technical skills and low price level. Ukraine is turning towards Europe and many companies are seeking European, including Norwegian partners. This creates opportunities for Norwegian companies in need for IT-services. For companies thinking about engaging an IT-company in another country, it is not always easy to know how to move forward. This one-pager provides some tips and advices on how to outsource to Ukraine. The one-pager is based on the report "Ukraine: IT business guide" conducted by KPMG Ukraine and KPMG Norway for the Norwegian-Ukrainian Chamber of Commerce (NUCC) (hereinafter "KPMG-report"). NUCC has written the one pager and is responsible for the content. Below you will find some of our pieces of advice:

1. Be prepared

- Consult a legal counsellor who knows the peculiarities of the Ukrainian legal system prior to contracting with a Ukrainian partner. A qualified specialist will not only ensure that the contract complies with all requirements of the Ukrainian legislation, but will also assist with evaluating a potential partner and selecting the appropriate business model.
- Contact NUCC to get an overview over the risks and opportunities of doing business in Ukraine.

2. Find the right partner

- Check the reputation and references to your potential partners. Many Ukrainian IT companies are familiar with Norwegian or similar business culture. Most members of NUCC know the Western European and Scandinavian market.
- Conduct a background check of your potential partner. You can find an overview on what to look for in the KPMG-report. Although the risk is low, you should also check if any of the beneficial owners are on any international sanction list, as a part of the standard procedure. NUCC can help check information in publicly available registers.
- Verify the authorities of the representatives of the contractor. This can be done by checking the power of attorney, a written authorization, or the company's Charter.
- Consider conducting a pilot to test the provider's actual ability to deliver the requested task.

3. Conclude a proper contract

- To be valid contracts between Ukrainian and Norwegian parties must include all essential (substantial) terms of a contract, such as full name of goods/services, contract price, procedure of payments and procedure for delivery. Find a complete list in the KPMG-report.
- It is recommended to choose an arbitration as a dispute resolution method and a governing law you are familiar with and which gives you some flexibility. Selection of the arbitration as a dispute resolution method is implemented in the form of an arbitration clause or arbitration agreement that must include all relevant to arbitration provisions covered in the KPMG-report.
- Include an anti-corruption clause in the contract. NUCC has an anti-corruption clause, which can be used by members as a sample.

4. Protection of intellectual property rights

- If you have a business idea that is not transformed into a product or a prototype, you should include a non-disclosure section in the contract with the Ukrainian company (or alternatively sign a non-disclosure agreement (NDA)).
- Transfer of the IP-rights to the digital product being developed should be regulated in the contract. The parties can agree on the volume of the property right to be transferred. The preferred volume of IP-rights transferred to a customer, for example, the right to sell, transfer or make changes to the source code of the program, should be specified in the contract.
- To get the IP-rights to the product you are buying transferred, make sure that transfer of IP-rights is properly covered in the contract between the company and its employees/private entrepreneurs working on the project or that the Ukrainian company has registered its IP object in accordance with Ukrainian legislation. IP objects can be registered in the State registers on IP related matters.

5. Protection and transfer of data

- Include a clause in the contract which describes in detail the procedure of collection, transfer, processing, access and storage of data.
- Make sure that Ukrainian IT-company knows the requirements arising from the EU General Data Protection Regulation (GDPR). Ukrainian IT-companies with customers in the European Economic Area (EEA) should have systems compliant with the GDPR. You could request a document proving the company's compliance with the GDPR.

6. Duties and taxes in Norway and Ukraine

Norway

- Provision of services is not subject to the customs regulations in Norway.
- Payment for the outsourcing services from Ukrainian companies is subject to 25% value added tax (VAT). When supplying services regarded as remote, such as development of digital products, the recipient in Norway is responsible for paying the VAT.

Ukraine

- Export of services from Ukraine is not subject to the customs regulation and is usually not subject to currency control regulations.
- Export of services treated as supplied at the customer's place of registration, such as development and testing of digital products, is not subject to VAT.