

Lesson 2

Appraiser contract or employment contract

In this lesson you will learn more about:

- how to choose the correct type of contract for an individual
- the difference between employment contracts and contracts with appraisers
- the potential consequences of choosing the wrong type of contract
- how to deal with former GIZ interns to whom you wish to offer a local appraiser contract
- how to choose the right contract for former GIZ employees

2. Contracts with appraisers

Contracts with appraisers are a type of contract for services/work/labour. As a general rule, competitive tendering is to be carried out in accordance with contract award legislation. The discretionary award procedure is a non-formal procedure requiring the comparison of at least three offers. Only if an appraiser has unique characteristics, which are well documented, the comparison of offers is not necessary. The cost-effective award of contracts is assured through compliance with the fee schedule (see lesson 4) and the use of framework agreements.

2.1 Appraiser or employment contracts - When to use which contract?



Before entering into a contract with an appraiser for a lengthy period of time, you need to consider whether to use this type of contract or whether a temporary GIZ employment contract is more appropriate. You also need to avoid false self-employment, i.e. where a contract has been signed with an appraiser but a de facto employment relationship exists.

The prime criterion in assessing whether an employment relationship exists is that of **personal dependence**, i.e. in particular whether the person concerned will be obliged to comply with instructions and will be integrated into the employer's working organisation. If either of these is the case, a contract of employment will probably be required.

In this context, it is always necessary to assess the situation as a whole, taking into account not only the contents of the contract (e.g. duration and terms of reference) but also the way the contract is implemented in practice. Strong indications for the existence of an employment relationship are:



- ┐ a duty on the part of the contractor to obey the client's instructions (e.g. rules on working hours, place of work, nature and scope of work)
- ┐ use of the client's equipment and materials (e.g. office, PC, software, writing materials and business cards)
- ┐ access to DMS, GIZ mailbox
- ┐ continuous duration of the services provided by an appraiser (the individual contract or all contracts together run for more than six months) or regular agreement of limited-term contracts
- ┐ previous status as a GIZ employee performing the same work
- ┐ monthly payment of remuneration
- ┐ sick pay
- ┐ entitlement to paid leave
- ┐ authority of the contractor to issue instructions to other employees of the client
- ┐ arrangements to deputise with other employees of the client
- ┐ responsibility for the work results of other employees of the client (e.g. local experts)
- ┐ working exclusively for one client
- ┐ description of work inputs worded in general terms and based on working hours
- ┐ allocation of frequently recurring tasks of a permanent nature
- ┐ integration into the GIZ hierarchy

By contrast, a freelance activity is characterised by the fact that the input is 'owed' and described in the terms of reference either in considerable detail (in the case of contracts for services) or entirely in terms of results (in the case of contracts for work/labour), and no stipulations of the type listed above are made. The input to be provided by an appraiser has a limited duration and, in general, a clearly defined content.

P+R Rule: Distinction between consultant (appraiser) contracts and contracts of employment

The Procurement and Contracting Division must ensure that contracts are not entered into with consultants/appraisers where such contracts might constitute false self-employment from a social security perspective. The officer responsible for the commission (or the officer responsible for the cost centre) must ensure that service contracts are implemented in a way that avoids a possible charge by the authorities of false self-employment.

In the case of contracts with consultants/appraisers with a place of residence in the country of assignment or a neighbouring country, the GIZ office that enters into the contract must ensure compliance with local laws.

<https://gizonline.sharepoint.com/sites/pur/SitePages/Rules.aspx?id=118>

2.2 Consequences for GIZ if the wrong contract is chosen

In Germany, the following consequences may arise from false self-employment or a de facto employment relationship:

- ▣ retroactive payment of social security contributions by the client (employer's share and liability for the employee's share);
- ▣ client's liability for payment of total income tax;
- ▣ liability for VAT due to unjustified input tax deduction by GIZ;
- ▣ contractor may apply to the courts for a ruling establishing an unlimited-term contract of employment.

The circumstances described above must be closely examined, especially for assignments lasting **6 months or longer**, taking account of the total length of an assignment (i.e. including follow-up contracts and intermittent assignments). The period of 6 months is based on experience and is not limited to the calendar year. Successive contracts may also be an indication of false self-employment.

Legislation may differ from country to country. However, **the wrong** choice of contract can turn out to be very expensive for GIZ, so it is important to check local legislation before making a decision. The GIZ office must consult a local lawyer.

2.3 Individuals with an existing employment relationship with GIZ Head Office



2.3.1 Field staff, staff with Head Office functions and project staff in Germany

According to P+R, contracts with appraisers (for services or work/labour) may not be entered into with individuals who currently have an employment relationship with GIZ. This also applies to the following categories of individuals:

- employees on leave of absence from the employment relationship;
- part-time employees;
- employees in the exemption phase of age-related part-time work.

Employees in the categories described above may still take on additional tasks to a certain extent, but only within the framework of the employment relationship.

This rule does not apply to staff members who are currently on leave of absence for personal reasons and are living abroad during this period (in particular partners accompanying seconded staff). Contracts with appraisers may be concluded with such staff members (up to 100 days per calendar year) but must always be drawn up by the Procurement and Contracting Division (E 200).



2.3.2 Former interns being considered for local appraiser contracts



Individuals whose 'habitual place of abode' is Germany must not be offered a local contract – either as a local intern or as an appraiser. If you wish to offer a local contract to a seconded intern, the contract must be concluded and all the legal options examined by the Procurement and Contracting Division (E200).

E 200

Local interns whose habitual place of abode is in the country of assignment or in the region and who in most cases will be nationals of their home country may in certain justified circumstances be offered a local appraiser contract once they complete their internship (with due regard for the points laid out in section 2.1 above).

In such cases, it is important to consult the GIZ office's HR team and a local lawyer to ascertain whether an appraiser contract can be offered following an internship without exposing GIZ to risks under employment law.

2.3.3 National personnel

Contracts with appraisers/consultants cannot be entered into with national personnel either.



The allocation of any additional tasks to national personnel within the framework of the current employment contract must comply with employment legislation in the partner country. If the office wishes to assign an employee temporarily to another project (possibly even in another country), the GIZ

office is to charge the employee's salary costs to the other project's project number on the basis of time.

Both cases must be discussed with all those involved (employee, officer responsible for the commission and GIZ office) and must be documented.

Keep in mind:

Reasons for choosing a contract of employment

- Work is not done independently
- Salary (fee) is paid for sick leave and for annual leave
- Other employees act as deputy
- Routine work or jobs that are done regularly
- Part of the organisational structure of the project or GIZ office
- Working exclusively for GIZ

Employment contracts cannot be combined with contracts with appraisers

Contracts with appraisers cannot be awarded to GIZ employees.



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