

The Ministry of Finance has received a number of questions regarding the procedure for conclusion of framework agreements for procedural representation and legal advice. The Ministry of Finance provides answers below each question.

1. In respect of our firm does the company registration and a certificate which shows us in 'good standing' suffice?

The Ministry of Finance understands that the question relates to Section III.2.3 which requires evidence that the law firm is registered and is in good standing. Documents that are ordinarily issued in your jurisdiction to show that your law firm was registered and in a good standing are sufficient.

However, the Ministry would like to draw your attention to Section III.2.4 which states that you should also provide a legal opinion by a lawyer who does not work for your firm. The legal opinion has to answer in short the following questions:

- a) in what legal form the law firm is organised;
- b) who may represent it and assume obligations in its name;
- c) what liability the firm and the partners have;
- d) whether the documents submitted by that law firm in satisfaction of item III.2.3 and III.2.6 are the documents issued in the jurisdiction of the participating law firm as evidence of these circumstances.

2. For investor state cases, is simply a link to the ICSID record acceptable?

Section III.2.5 requires participants to provide evidence that the partners put forward for participation in the tender have the required experience. For this purpose, they have to submit evidence that a) the partners have represented as lead counsel parties in investor-state arbitrations and b) that the representations were successful.

Accordingly, a link to the ICSID record would be considered sufficient if it contains a link to the final award showing that the partner put forward was a lead counsel in the case and that the representation was successful. If the link to the ICSID record does not show this, the participants would have to provide additional documents showing that the partners put forward were lead counsel and that the representation was successful.

3. For cases falling under, for example, UNCITRAL, would the case reference together with any supporting documents such as a redacted award be sufficient?

A case reference and a fully redacted award would not be considered sufficient because they could not establish who acted as lead counsel and what the outcome of the case was.

However, a case reference and a partially redacted award would be sufficient if the unredacted parts provide enough information who acted as lead counsel and what the outcome of the case was.

4. Which evidential documents need to be provided? It is not clear if all listed are required or just one which shows clearly the Partners' involvement. ('Awards, correspondence with an arbitral institution or tribunal, case transcripts, dispositive parts (holding) of arbitration awards, parts of contracts and all other documents clearly evidencing the successful representation of a party by the partners put forward.)

It is not required to provide all listed documents for each case. Participants may provide any of the listed documents as long as they allow the Ministry of Finance to establish with reasonable certainty that the partners put forward for participation in the tender have indeed acted as lead counsel in the specified cases and that the representation was successful.

5. We note that in exceptional circumstances, a senior partner can give sworn statement proving involvement in a case. Perhaps we want to clarify when this exceptional circumstance would occur? For example, partner X having been at another firm for many of his cases, may not be able to access the case.

Exceptional circumstances are considered to exist when the partner objectively has no access to the documents related to his or her previous cases due to a reason beyond his or her control. In the present case, the partner put forward for participation in the tender could provide a sworn statement describing the cases, his or her role and their outcome, and, in addition, a separate proof that the law firm that has the documents declined to provide them.

6. Are commercial arbitration awards required as evidential documents?

The Ministry of Finance understands that the question relates to Section III.2.5 which requires participants to provide evidence that the partners put forward for participation in the tender have represented as lead counsel parties in commercial arbitrations and that the representations were successful. Consequently, unredacted commercial awards would be good and sufficient evidence. However, given that in commercial cases confidentiality is more extensive, the Ministry would also accept other documents, such as partially redacted awards and partially redacted hearing transcripts, provided that they show who the lead counsel was and what the outcome of the case was.

7. Is settlement acceptable as a successful outcome?

Settled cases will not be considered as successfully completed cases. The reason for this is that it is very difficult to evaluate whether a particular settlement was successful without knowing the full details of the particular case and making a time-consuming analysis of the positions of the parties.

8. Are copies of documents acceptable, i.e. licences, insurance, SRA certificates etc. or do you require originals?

Copies of licenses, insurance policies and SRA certificates are acceptable provided that the person(s) representing the tenderer pursuant to its registration documents and the legal opinion under Section III.2.4, or by one of the partners put forward for participation in this procedure by the tenderer, on the basis of a power of attorney by the person(s) representing the tenderer, confirms that they are true copies.

9. Is a Senior Partner, a Senior Equity Partner or the Senior (Managing) Partner?

The Ministry of Finance understands that your question relates to the senior partner mentioned in Question 5 above and Section III.2.5. The sworn statement can be provided by the partner put forward for participation in the tender.