

GUIDELINES
BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY
(BOCRA)
PANEL OF LAW FIRMS & OUTSOURCING OF LEGAL
MATTERS

1. Objectives and rationale

- 1.1 These guidelines support the Botswana Communications Regulatory Authority's ('BOCRA' or 'the Authority') legal policy.
- 1.2 The objective of the guidelines is to improve management of BOCRA's legal risk through control over the nature of the instructions, quality of service and the performance of each law firm.
- 1.3 The Panel of law firms ("Panel") will enable the Legal Department ("the Department") to introduce best practice policies and procedures to the law firms and manage their observance more effectively.
- 1.4 In a bid to ensure cost containment and improve cost efficiencies BOCRA can negotiate discounts on hourly rates and other value-added services from firms selected to be on its Panel.

2. Standards and Ethics

- 2.1 BOCRA, rather than a particular member of staff or a department is the law firm's client.
- 2.2 Law firms must conduct themselves in accordance professional standards that are beyond reproach in the execution of their instructions which shall be executed due care, skill and attention.
- 2.3 The highest possible ethical standards in protecting the confidentiality of BOCRA's information and avoiding conflicts of

interests between BOCRA and other clientele must be adhered to.

- 2.4 Law firms must deliver high quality legal services in the most cost-efficient and effective manner and adhere to agreed turnaround times.

3. Scope

These guidelines apply:

- 3.1 To all BOCRA personnel with regard to outsourcing legal work of all and any kind vis-à-vis law firms;
- 3.2 To all external law firms with regard to their dealings with BOCRA.

4. Panel Selection Process

- 4.1 The process of selecting a new panel is done at the lapse of the two-year period.
- 4.2 The criteria for selection of law firms into the panel shall be in line with the attached Questionnaire which includes but not limited to the following:
 - 4.2.1 Experience
 - 4.2.2 History/track record
 - 4.2.3 Cultural fit
 - 4.2.4 Financial stability
 - 4.2.5 Size
 - 4.2.6 Capability/ business acumen/professional reputation within the industry
 - 4.2.7 Identification of key resources dedicated to the BOCRA's matters
 - 4.2.8 Technical considerations/ competence
 - 4.2.9 Business management

- 4.2.10 Security of data/ BOCRA information Confidentiality
 - 4.2.11 Strategic alliances
 - 4.2.12 International connections and exposure to international jurisdictions
 - 4.2.13 Current customers
 - 4.2.14 Premise security
 - 4.2.15 Fees and payment terms
 - 4.2.16 Accessibility of key personnel
- 4.3 The Authority shall share the Questionnaire with firms in the approved panel for completion towards the end of each financial year.
- 4.4 The responses to the questionnaire and any other relevant information in the possession of the BOCRA will be utilised to determine the continued membership of law firms to the Panel and/or the inclusion of new firms on the Panel. BOCRA however has the discretion to exclude any law firm from the Panel at any time before such review.
- 4.5 In terms of clause 5.5, the existence of the Panel does not bar the BOCRA from using the services of other law firms outside the Panel.
- 4.6 The Panel will be divided into categories in accordance with the matters that need legal input as follows:
- 4.6.1 A – complex legal matters;
 - 4.6.2 B – conveyancing and property matters;
 - 4.6.3 C – debt collection matters;
 - 4.6.4 D- labour / industrial relations matters;
 - 4.6.5 E- Alternative Dispute Resolution mechanisms.
- 4.7 Firms are allowed to apply for the above categories. If successful, a particular law firm may appear in one or more

categories. General legal advice may be obtained from any law firm on the Panel.

- 4.8 Where possible, and where it does not pose a material legal risk to BOCRA, preference will be given to law firms where citizens hold the majority interest in such firm, particularly in the case of categories B, C and E.

5. Instructions to law firms

- 5.1 All instructions will be issued in writing encompassing a comprehensive brief, through the Director, Legal or through a designated officer. In the event that, for commercial expediency this is not possible, and any other BOCRA representative instructs a law firm, the Director, Legal and/or a designated officer must be advised in writing by the instructing BOCRA representative, accompanied by the brief given to the instructed law firm.
- 5.2 All instructions shall be in writing and acknowledged by the law firm in writing within 3 working days of receipt of same.
- 5.3 Any engagement of a law firm must be in accordance with these Guidelines. Any instructions to law firms not on the Panel must be in terms of clause 4.6 above.
- 5.4 All instructions to law firms involving particularly large or complex transactions (i.e. generally instructions to law firms in category A) may be done on the basis of competing quotes stating the following:
- 5.4.1 a detailed description of the work to be performed and evidence of experience in doing the work in the past;
 - 5.4.2 a breakdown of the hours to be worked by each person, their seniority and their hourly rates;
 - 5.4.3 a breakdown of all third-party disbursements (i.e. briefing advocates or other specialists); and
 - 5.4.4 a breakdown of all disbursements.

5.5 It is envisaged that external law firms may or may not be instructed for the following matters, as the Authority has sufficient in-house capabilities to handle the matters:

5.5.1 regulatory matters;

5.5.2 review of all new or amendment to existing legal documents, including but not limited to transactional documents or third party vendor agreements;

5.5.3 opinions on industry related legal issues in the ordinary course of BOCRA business.

6. Rates and basis of fees

6.1 As part of the selection process of the law firms to be included in the Panel, law firms shall submit, for negotiation, a schedule of their fees/rates for the entire array of legal work which the law firms deal with and as charged by the various types and levels of professionals in the employ of the law firms, inclusive of disbursements.

6.2 Subject to clause 6.3, upon agreement between BOCRA and the law firms to their fees, such schedule of fees shall remain in effect for a year and be reviewed annually thereafter by agreement between the parties, or any shorter period at the discretion of the Authority.

6.3 Where the law firms are instructed in connection with particular projects and the nature of the instructions necessitate a different basis of charging, the law firms must seek prior authorisation from the Director Legal for a variation of the fee schedule for that particular project before the commencement of the project.

6.4 This schedule of fees shall not include Debt collection matters, for which a standardized tariff is in place.

7. Billing and payment of fee notes

7.1 Law firms are to bill BOCRA on a monthly basis in arrears, or more frequently if the volume of work is high. Where the law firms carry out a project or major transaction work the BOCRA may be billed at intervals agreed at the outset of the project.

7.2 Fee notes will be paid by BOCRA in accordance with the BOCRA' standard terms of payment. These are that, as a minimum, payment will be made within 30 days from date of receipt of the fee notes.

7.3 Each fee note must contain:

7.3.1 The name of the BOCRA representative who requested the work;

7.3.2 A reasonably detailed description of the work performed (including any project name), except in connection with project work and major transactions which, generally, need contain only a general narrative;

7.3.3 A breakdown of the hours worked by each professional and their seniority and their hourly rates; and

7.3.4 A breakdown of third party disbursements and of all disbursements.

8. Instructing others on the Authority's behalf

8.1 In cases where the law firm considers it necessary to instruct outside professionals on BOCRA's behalf, such as foreign lawyers, advocates or other specialist advisors, prior written consent must be obtained from the Director Legal or the Chief Executive. The fees of such external professionals are to be included and itemised in the law firms' fee note.

8.2 Law firms are required to obtain an estimate of such advisors' fees in advance unless it is impracticable.

9. Reporting

- 9.1 Law firms must submit to the Director Legal or a designated officer a monthly report on all the matters they have been instructed on by the Authority.
- 9.2 On an annual basis at the end of September and February of each year, law firms must submit to the Director Legal or a designated officer a composite report on all the matters they have been instructed on, giving a summary of the status of the matters and the fees paid by the BOCRA to date on each matter.

10. Completed legal work

- 10.1 All completed legal work, in particular legal opinions, must be handed over to the Director Legal or a designated officer for record keeping.
- 10.2 If a legal opinion is sought or required from a law firm, a check must be conducted by the Director Legal or a designated officer to ensure that the BOCRA does not instruct a law firm on an opinion that has already been given and remains relevant and up to date.

11. Conflict of interest

- 11.1 Law firms must carry out a conflict of interest check whenever they are instructed to act for the BOCRA. Any potential conflict must be discussed with the Director Legal or a designated officer at the time of engagement or as soon as the conflict or potential conflict becomes known.
- 11.2 Subject to any applicable confidentiality arrangements or regulatory controls, law firms must inform the Director Legal or a designated officer if they act for any institution or entity which BOCRA regulates.

12. Confidentiality

12.1 Confidential information that comes into the law firms' possession that may relate to a BOCRA customer, product or service, which may concern the BOCRA's internal procedures and positions on important legal issues and the BOCRA's commercial objectives (the list is not exhaustive) must be treated as confidential and privileged even after the law firm ceases to act for BOCRA. Any written confidential information must be returned to the Authority upon request and any such electronic information must be deleted upon request.

12.2 Law firms must ensure that all data and information relating to BOCRA that is stored by the law firms, whether physically or electronically, is safeguarded in accordance with the highest standards for information security.

12.3 With the exception of factual matters already in the public domain, law firms must not make any statements to the media about the Authority without securing advance approval from the Chief Executive.

12.4 If law firms wish to disclose that they are acting for BOCRA or if law firms wish to publish advertisements or other material with statements to that effect, they must have prior written consent of the Chief Executive even if the fact that the law firms representation of the Authority is widely known.

12.5 All uses of the BOCRA name, logos or trademarks in any material published by law firms must be agreed in advance with the Chief Executive. Where consent is given to such use, the standard of reproduction of the BOCRA's marks must be of appropriate quality.

13. Personnel

13.1 BOCRA expects continuity of the law firms' personnel acting on its behalf (subject to absences for normal reasons), to be informed of the names and the status of all fee earners involved in its work and the changes of such personnel.

13.2 The Authority shall not pay for any familiarisation time if any hand-over of its work is necessary as a result of changes in personnel dealing with its work.

14. Ownership of work done by law firms

14.1 All documents which the law firm have created for BOCRA in executing the Authority's instructions are the property of BOCRA.

14.2 Upon completion of the execution of instructions, BOCRA may request for all the physical documentation in relation to such instructions and the deletion of electronic information in relation thereto. The law firm shall comply with such request within 5 working days of written request and confirm compliance in writing to the Manager.

14.3 Upon the exclusion of a law firm from the Panel, such law firm shall surrender to the Manager, all physical documents submitted to them by BOCRA and created by such law firm in the execution of BOCRA instructions and delete any such electronic information. The law firm shall comply within five working days of written request and confirm compliance in writing to the Director Legal or a designated officer.

15. Professional indemnity

15.1 Law firms are required to maintain levels of professional indemnity cover sufficient to meet claims in respect of the types of work for which they are engaged by BOCRA (subject to the requirements of any relevant policy or law).

15.2 Upon inclusion on the Panel and thereafter yearly by end of February, the law firms shall submit a copy of the covers to BOCRA.

16. Relationship Management

16.1 The Director Legal or a designated officer has overall responsibility for co-ordinating the relationship meetings with

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law firms, ensuring that arrangements agreed with individual law firms are met on both sides and for generally ensuring that the relationship is managed to expected levels.

- 16.2 On an annual basis the Director Legal or a designated officer and the law firms shall have individual relationship and operational meetings where issues of general concern shall be discussed (although meetings may be requested by either party as necessary). Such meetings are to be attended by the principal partner or client contact(s) of the law firms.