

The Ministry of Finance has received the following question in regard to the procedure for conclusion of framework agreements for procedural representation and legal advice.

1. I refer to Section III.2.4 of the attached tender documentation which requires the submission of a legal opinion by the tenderers participating in the above-captioned tender. Section III.2.4 requires, in relevant part, the submission of a legal opinion by a lawyer who does not work for the law firm-tenderer and “who is licensed to practice law in the jurisdiction in which the said law firm is registered.” (p.7) That legal opinion should address, inter alia, “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.” (s.III.2.4(d), p.7) Section III.2.6, in turn, requires the law firm to submit “[d]ocuments certifying the license of the partners put forward for participation in the tender to practise law.” (p. 8)

At the same time, the tender documentation provides that “[p]artners put forward by a law firm for participation in the procedure may be based in several offices of the law firm in several states different than the registration state of the law firm.” (p. 5).

In light of the above provisions, there could be a situation in which a law firm is registered, for example, in England and Wales but one of the partners put forward for participation may be based outside of England and Wales and have a practising certificate issued by another jurisdiction (e.g., Spain). In such a situation, a legal opinion issued by a “lawyer licensed to practice law in the jurisdiction in which the law firm is registered” (e.g., England and Wales) can only opine on whether the documents submitted by the law firm in satisfaction of item III.2.6 are the documents issued “in the jurisdiction of the participating law firm” (i.e., England and Wales) as evidence of license of the partners to practice law. Consequently, such a lawyer cannot opine on whether the practicing certificate of the participating partner based outside of the jurisdiction of the law firm (e.g., Spain) is a document issued in that jurisdiction as evidence of this circumstance.

In this situation, can you please confirm that no separate and additional legal opinion is required to certify the practicing certificate of the partner who may be put forward from an office outside the “jurisdiction of the participating law firm” and that it would be sufficient for the law firm to submit such practicing certificate as an original and, if not possible, a copy, in accordance with Section III.2.6 of the tender documentation.

The Ministry of Finance provides the following answer to the question posed:

Section III.2.4 requires a law firm - tenderer to provide a legal opinion by a lawyer who does not work for the same firm but who practices in the same jurisdiction. The legal opinion should 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 (firm registration documents) and III.2.6 (practicing licences of partners put forward) are the documents issued in the jurisdiction of the participating law firm as evidence of these circumstances.

However, if a tenderer puts forward a partner whose practicing licence is from a jurisdiction for which the lawyer providing an independent legal opinion under Section III.2.4 could not opine, the legal opinion should not deal with this matter. In this case, it is sufficient if the law firm provides the practicing licence of this partner and a short explanation signed by him or her stating that this is the document ordinarily issued in this jurisdiction and, if possible, some reference to the law or other sources confirming this.