

The Ministry of Finance has received a number of questions in regard to the procedure for conclusion of an Engagement Letter for the provision of Legal Advice and Procedural Representation in International Arbitration Case No. ARB/24/2, filed by Nexo AG, NDS EOOD, and Mirastar EOOD against the Republic of Bulgaria before the International Centre for Settlement of Investment Disputes. The Ministry of Finance provides answers below each question.

1. We understand that, in addition to the hourly rates, the price offer should also include a binding cap for the services provided within a single calendar month. Could you please confirm whether this monthly cap is a “hard” cap or whether it will be possible to invoice work provided in excess of the cap in subsequent months?

Pursuant to Art. 2.21 of the proposed template for an Engagement Letter: “In the event that the compensation, determined according to the hourly rates agreed in Article 2.19 and the actual hours worked, exceeds the monthly limit agreed in Article 2.20, the compensation/services for the difference over the respective monthly limit may be paid to the Law Firm within the allowable monthly limit for the following 3 (three) months after the month in which the work was performed. Such carried-over payments are made on a monthly basis, subtracted from the monthly limit for the respective month for which the payment is carried over, whose amount is reduced by the corresponding sum.”

That being said, it is possible to recover the remuneration for the work performed in excess of the cap in the subsequent (up to three) months.

Attention should be drawn to art. 2.22 as well which stipulates as follows: “In the months when deadlines for submitting written defenses in the main phases of the proceedings expire, and in the months when hearings of the case are held, as well as in the two months preceding the months in which the said deadlines expire or the said hearings are held, the agreed monthly limit may be increased by 50 to 100 percent. The increase can be made after a reasoned request from the Law Firm and only after the express consent of the Ministry of Finance. The decision on the validity of the request belongs entirely to the Ministry of Finance. The increase in the agreed monthly limit for these months does not prevent the application of Article 2.21 in relation to the compensation accrued for the months in which the agreed monthly limit has been increased.”

2. Are consortia admitted to participation in the procedure?

According to Section II, point 1.1. of the General standards and rules for assigning the representation of the Bulgarian state in international arbitration cases any law firm that has proper registration **as a law firm** according to its national legislation may participate in the procedure for concluding an Engagement Letter. Pursuant to the clarifications provided for in section II, point 1.2, the attorneys put forward for participation should be members of the firm, i.e., are partners or have a contractual relationship with it, which creates a relationship of exclusivity. In that sense, the participation of consortia is not permissible according to the rules applicable to the procedure.

3. Should the provision of art. 2.10. of the Engagement Letter be interpreted as (not) including procedural representation in administrative proceedings on the grounds of the general provision provided for in the Bulgarian Code of Administrative Procedure and/or the special provisions in special administrative acts?

The provision of art. 2.10. of the Engagement Letter should be interpreted **as including** procedural representation in administrative proceedings on the grounds of the general provision provided for in the Bulgarian Code of Administrative Procedure and/or the special provisions in special administrative acts.

4. Should the provision of art. 2.10. of the Engagement Letter be interpreted as (not) including procedural representation in civil cases pursuant to the Bulgarian Civil Procedure Code before the general civil courts and/or pursuant to the Bulgarian Code of Administrative Procedure if these cases are under the jurisdiction of the administrative courts (for example Art. 1 of the Bulgarian Act on the Liability for Damage Incurred by the State and the Municipalities in relation to Art. 204 of the Bulgarian Civil Procedure Code)?

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5. Should the provision of art. 2.10. of the Engagement Letter be interpreted as (not) including procedural representation or acting as a defence counsel in cases pursuant to the Bulgarian Criminal Code or the Bulgarian Criminal Procedure Code?

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