

# ANNEXURE C

## SCOPE OF WORK

---

### 1. SCOPE OF SERVICES

The CEF legal department are responsible to providing objective, value adding and innovative legal advisory services/solution to the CEF. They ensure that CEF and its subsidiaries' legal risks are managed adequately and reduces CEF's exposure to litigation. To these end CEF seek to establish a panel of external legal firms from whom assistance shall be sought on a need basis. The overall objective is to appoint:

- Suitable, qualified and competent legal firms with adequate capacity ,in good standing within the legal fraternity and with experience in dealing with legal matters in various areas of the law;
- Trust Advocates who have the authority to work independently without a need to being briefed through attorneys;

These panel of legal firms and advocates will be utilized to provide legal services to the CEF Group of Companies for the areas of the law listed below.

Bidders must be specific and clearly indicate the work stream/s that they will be bidding for and **submit separate files/bid documentation** (i.e per **work stream, category**) supporting skillset in the said selected/chosen work streams/category.

Appointment letters will be issued per each working stream or category. Multiple working streams or categories will be allocated to a law firm that qualifies for the work streams they have clearly indicated they are bidding for and have met the minimum qualification threshold for that work stream.

Skill transfer and partnership/ supplier development is encouraged between large law firms and small and/or emerging law firms for the duration of the panel whenever CEF specifies such when a need arises.

The required legal advisory services have been categorised into 19 categories or below as reflected below.

<b>WORKING STREAM/SERVICE CATEGORY</b>	<b>SCOPE OF WORK</b>	<b>SKILLS REQUIRED</b>
<b>1. Energy Law:</b> <ul style="list-style-type: none"> <li>• Mineral Resources;</li> <li>• Petroleum and other;</li> <li>• Renewable Energy (IPP Programme), Renewable Energy Laws/regulations;</li> <li>• Power Generations and Electricity Regulations and Laws;</li> <li>• Natural Gas legislations, regulations, acquisition, storage, pipeline and trading, in both South African and SADC etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Provision of legal services, such as writing legal opinions on energy laws, as well as possible averment of litigation when required</li> <li>• Negotiation of complex infrastructure projects, contracts, general advisory legal services and opinions.</li> <li>• Drafting and review of all upstream, midstream and downstream related agreements.</li> <li>• Facilitation and Workshops on commercial matters.</li> <li>• NEC, EPC &amp; FIDIC Contracts or other.</li> <li>• Alternative Disputes Management.</li> </ul>	<p>Proven record of accomplishment and comprehensive understanding of the energy law and relevant specialisation.</p>
<b>2. Labour Relations and Employment related laws</b>	<ul style="list-style-type: none"> <li>• Provide legal opinions on labour, employment benefits and employment law related matters.</li> <li>• Assist in disciplinary hearings, arbitrations and other dispute resolution.</li> </ul>	<ul style="list-style-type: none"> <li>• Experience in labour and employment law litigation</li> <li>• Understand the regulatory</li> </ul>

	<ul style="list-style-type: none"> <li>• Assist in CCMA matters.</li> <li>• Appeals and reviews of Labour Court cases</li> <li>• Labour Facilitation and Workshops.</li> <li>• Inquiries and investigations related to policy infringement , misconduct and other as may be required by CEF</li> <li>• Recommendation and appointment of hearing transcribers and minute taking at hearing/disciplinary.</li> <li>• Initiation of grievance/disciplinary hearing and chairing therefore on behalf of the organisation.</li> </ul>	<p>framework governing public service employment</p> <ul style="list-style-type: none"> <li>• An understanding of labour law and employment law jurisprudence for purposes of providing legal opinions</li> <li>• Knowledge of Bargaining Council and other dispute resolution forum.</li> <li>• Management of Labour litigation</li> <li>• Skill transfer. Workshops on new and updated legislation.</li> </ul>
<b>3. Constitutional, Administrative Law, and/or Regulatory matters;</b>	<ul style="list-style-type: none"> <li>• Provide legal opinions in respect of constitutional and administrative law matters.</li> <li>• Provide necessary advisory on National Treasury Regulations, PFMA, Companies Act and other.</li> </ul>	<ul style="list-style-type: none"> <li>• Experience in providing opinions in constitutional and administrative law matters.</li> </ul>

	<ul style="list-style-type: none"> <li>• Assist in drafting of public or private agreements to be entered into by the CEF group.</li> <li>• Ensure technical quality, adherence to best practice and consistency with the Constitution and other Acts of Parliament.</li> <li>• Advise on the legal interpretation and legal implications of existing or proposed public or private agreements to be entered into by the CEF group</li> <li>• Attend to Regulatory Tribunals and reviews.</li> </ul>	
<b>4. Tax law</b>	<ul style="list-style-type: none"> <li>• Advise on, and providing legal opinions on tax law.</li> </ul>	<ul style="list-style-type: none"> <li>• Knowledge and understanding of South African tax regime, including but not limited to principles of taxation, forms of taxation and tax reforms</li> <li>• In some cases, understanding specialized areas of tax legislation, such</li> </ul>

		<p>as insurance taxation, environment taxation, financial products and trusts</p> <ul style="list-style-type: none"> <li>• Knowledge of Customs and Excise legislation</li> <li>• Understanding international tax and double taxation agreement/s regime and arrangements.</li> <li>• Knowledge of tax legislation</li> <li>• Appeal and review of tax practices.</li> </ul>
<p><b>5. Supply Chain / Procurement related Law/ Public Law (including expertise in PFMA, Public Procurement and other applicable SCM legislation impacting CEF, its subsidiaries</b></p>	<ul style="list-style-type: none"> <li>• Provide advice on public procurement and BBBEE</li> <li>• Assist where necessary with public procurement process.</li> <li>• Request for information and excess.</li> <li>• Vetting, drafting and advising on policy and procedures related to supply chain, BBBEE and other enabling legislation</li> </ul>	<p>Comprehensive and understanding on public/ private procurement matters.</p>

	<p>related to the subject matter.</p> <ul style="list-style-type: none"> <li>• In-house training, skill transfer and capitation.</li> </ul>	
<b>6. Litigation: criminal/Civil Law</b>	<ul style="list-style-type: none"> <li>• Litigation management on behalf of the CEF Group.</li> <li>• Conduct forensic investigation as well as reporting, additionally assist with security regulatory advisory</li> <li>• List of expert 3 consultant/s with in-depth knowledge in civil law &amp; criminal law including determination of damages, recovery of assets related matters linked to supply chain disputes of others.</li> <li>• Legal oriented audit and assessment.</li> <li>• List of associations and relations with International law firms linked to South African legal firms.</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct litigation on behalf of CEF and CEF Group (e.g. handling of litigation process)</li> <li>• Provide oral and written legal advice throughout litigation process</li> <li>• Avoid prescriptions, barring and default judgments.</li> <li>• Propose and arrange settlement mechanism.</li> <li>• Attend to alternative dispute mechanism and/or arbitration.</li> <li>• Provide comprehensive internal legal audit gap analysis on policies, procedures, legal process, pending legal matters,</li> </ul>

		<p>pending government enactment and provide advisory opinions on improvement, legislative review and development.</p> <ul style="list-style-type: none"> <li>• International litigation management, opinions and advisory on issues of Laws, conflicts and International Customary Rules and Laws.</li> </ul>
<b>7. Competition Law</b>	<ul style="list-style-type: none"> <li>• Advise on all aspects related to Competition Law in South African and other.</li> </ul>	Experience in Competition Law.
<b>8. Minerals/Mining Laws</b>	<ul style="list-style-type: none"> <li>• Advice on all aspects related to mining and mineral commodities licensing in South Africa and SADC including relevant applicable legislation and legal practices.</li> </ul>	Experience in mining establishment, social and stakeholder engagement, licence applications, disposal and closures.
<b>9. Information Technology Governance</b>	<ul style="list-style-type: none"> <li>• Advice on all aspects of IT law, such as inter alia, service level agreements</li> </ul>	Experience in IT law and communication, including cyber law.

	<p>pertaining to system integration, software, website development etc.</p> <ul style="list-style-type: none"> <li>• Advisory on application of promotion of access to information legislation/s regulating security, data, data capturing, data storage, dissemination and disposal.</li> <li>• Cyber law and information management and security law.</li> </ul>	
<b>10. Transport, Shipping and Marine Laws</b>	Provide necessary advisory on different mode of transport legislation/s framework and regulation/s as well as on Marine Laws.	Experience in transport and shipping laws including application of INCOTERMS.
<b>11. Environmental Laws</b>	Provide necessary advisory on environment, preservation of eco-systems inconsideration to applicable NEMA legislation/s framework and regulation/s as well as other laws affecting the ecology.	<ul style="list-style-type: none"> <li>• Assist with Environmental compliance and Audit reviews and planning.</li> <li>• Assist with EIA applications, reviews and compliance.</li> <li>• Assist with SHEQ and Occupational health and Safety related legal matters and issues.</li> </ul>



		<ul style="list-style-type: none"> <li>• General environmental advisory pertaining to legal and compliance expectations on ecology, SHEQ and health and safety during project initiations and rollout.</li> </ul>
<b>12. Intellectual Property Law</b>	Provide legal opinions on intellectual property.	Comprehensive and understanding on intellectual property matters
<b>13. Financial Instruments and Insurance Laws</b>	Knowledge of application of Insurance legislations, indemnities and financial instruments ("LC", bonds, guarantees etc.) Laws and regulations.	Experience in drafting, reviews of terms, conditions of insurance, claim management, LC, bonds, guarantees and general advisory.
<b>14. Commercial and Corporate law</b>	<ul style="list-style-type: none"> <li>• Advise on M&amp;A and corporate finance transactions, as well as banking &amp; finance;</li> <li>• Advise on governance and regulatory related issues.</li> <li>• Provide legal opinions of a corporate law nature;</li> <li>• Drafting, review and advise on commercial agreements etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Experience in working with transactions of corporate law nature;</li> <li>• Excellent research and drafting skills, for purposes of preparing legal opinions of a corporate law nature.</li> </ul>

	<ul style="list-style-type: none"> <li>• Advise on legal issues arising from asset, risk and debt collection and management.</li> </ul>	<ul style="list-style-type: none"> <li>• Ability to work and delivery on specific outputs on time and lead team legal work stream.</li> <li>• Experience in providing advice in general commercial transactions.</li> <li>• Understanding regulatory framework governing public entities and security regulations.</li> </ul>
<b>15. Corporate Governance and forensic investigation reporting and security regulatory advisory</b>	Advise on governance and regulatory related issues. Conduct investigations, security assessment, clearance or employment vetting.	Understanding regulatory framework governing public entities and security regulations.
<b>16. Merger and Acquisitions, Structured finance, Corporate finance and Project finance</b>	Advise on merger and acquisitions transactions. Also sale and disposal of assets.	Understanding and experience in merger and acquisitions transactions
<b>17. International Law</b>	<ul style="list-style-type: none"> <li>• Advise on INCOTERMS, Forex Trading Laws and regulations.</li> <li>• Advise on currency transfer and exchange rules and regulations.</li> <li>• International law advisory and assistance mainly</li> </ul>	International presence, footprint & expertise

	commercial, litigation and administrative law.	
<b>18. International Law firms</b>	List association, expertise and presence of offices in other countries which CEF may at times require use thereof, when so required.	International presence, footprint & expertise.
<b>19. Advocates</b>	Advocates with trust accounts and fidelity certificates capable of practicing independently without being briefed by Attorneys	

It is critical that the Tenderers/bidders demonstrate the following high-level expertise and competencies in relation to the above-mentioned areas of the law.

- (i) High quality legal opinions and / or interpretations of Statutes;
- (ii) Act as transaction legal advisors on projects, inter alia providing legal support in interpretation, clarifications or inputs in respect to information and details required to achieve compliance levels;
- (iii) Assist with vetting, clearance, security advisory and legal forensic investigations including potential litigations matters;
- (iv) Conduct legal due diligence and assessments exercises as may be required;
- (v) Acting as consultants and providing ad hoc advice in areas of expertise where CEF Group or in-house legal advisors may require the necessary support in respect of the essential experience and expertise;
- (vi) skill set on ccontracts drafting/ vetting / reviewing , negotiation and interpretation of commercial agreements. Also offer pro-bono service when so requested by CEF Group on certain matters.
- (vii) In-house training on new and changing legislations and case law developments or any other development in law.

**NOTE:** Firms that are part on the current established CEF panel of legal experts/firms will not automatically be part of this new panel of legal experts and any such firm wishing to be participate again or to be appointed again to the new panel will have to respond to this invitation to tender for consideration.

## **20. ADDITIONAL INFORMATION ON SCOPE OF WORK**

- The responses must be clearly marked/indicate the areas of expertise for which bidders are tendering for (e.g. Energy Law, Labour relations etc.).
- Appointment under this Tender of any legal Firm may be revoked and terminated at any time by CEF on any grounds of valid, commercial sense, empowerment, conflict of interest and/ or any other administrative and operational requirements that were not foreseen at the time of the Request for Proposal being submitted and the Tender being awarded or on basis of tender related misconduct or poor performance.
- The legal firms appointed will form part of a panel of legal experts (for a period of three (3) years) and will provide ad hoc legal services to the CEF Group of companies including when so required and requested pro-bono services.
- **For every assignment, an RFP/ RFQ will be forwarded to the panel** as per the categories/category of expertise and responses will be evaluated accordingly. A Tenderer selected for further negotiations, if any, will be chosen on the basis of the greatest benefit (time and quality of service) to CEF and not necessarily on the basis of the lowest price proposal or offer but commitment to deliver required services.
- Service delivery levels, immediate availability without conditions on availability and quality of the work will be a measure of appointment and retention in the panel;
- The law firm will an may be required to sign a confidentiality and indemnity agreements with CEF and commitment undertaking contract for performance/ delivery of services;
- The legal firms must prior to acceptance of appointment as service provider declare any interest it has in an assignment as well as declare any possible conflict of interest with CEF in the pursuance of the proposed assignment(s)- request for recusal on basis of conflict amid the instructions will be consider a misconduct;

- In the event that any conflict of interest is discovered during the assignment, CEF reserves the right to summarily cancel the agreement and demand refund and blacklist the service provider and demand that all information, documents and be returned and/or destroyed;
- Being part of this panel of service providers does not guarantee any work for the duration of the panel;
- The legal firms will also be required to ensure transfer of skills where possible to CEF legal advisors and/or small and emerging Law firms with a turnover of less than 50 million per year (herein referred to as "Tier 2 Law firms"). In such instances, the Law firm with a turnover of more than R50 million may be required to provide CEF with a partnership structural agreement/arrangement that will detail the possible scope of work sharing and skills transfer;
- The legal firms (herein referred to as "Tier 1 Law firms") with a turnover of above R 50 million per annum, may be required at the discretion of CEF to partner with small and emerging law firms (herein deemed to be Tier 2 Law firms) for skill transfer and capacitation in certain projects and/or transaction where possible on a fee sharing structure to be agreed with CEF.
- The cost of every assignment will be negotiated with the relevant shortlisted service provider(s) and a letter of engagement will be issued for each assignment awarded, on basis of immediate availability to render services timely with outmost due care and professionalism. Thus implying that the price offer must be all inclusive of all necessary and required hourly rates/fees for all levels of staff, advocates and consultant(where necessary) including disbursements per awarded work;
- **The CEF reserves the right to consider the guidelines and prescribed hourly remuneration rates for consultants/law firms and advocates as provided in the National Treasury or legal Practice Council guidelines: for Cost containment measures., where relevant.**
- Legal firms will enter into a Service Level Agreement (SLA) with CEF. CEF reserves the right to remove a firm from the panel of experts if that firm does not meet the performance standards as per the SLA;
- CEF may as request the Service Provider upon assignment award to submit an insurance policy in respect of professional liability, the value of the policy will depend on each assignment;

- The Service Provider shall maintain the cover under the policy for the duration of the panel of legal expert for three (3) year period;
- The Service Provider shall at all times maintain an operational IT capability as required by CEF and shall inform CEF telephonically, as soon as is practically possible of any breakdown or other issue that may impact e-mail communication between the firm and CEF;
- CEF may require responsive Tenderers to present and discuss their proposals;
- Tenderers shall not issue any press release or other public announcement pertaining to details of their project proposal without the prior written approval of CEF;
- The successful Tenderer will be subject to service provider clearance process as prescribed by the National Treasury. This process includes, verification of service provider and its shareholders/directors/members' status on the list of defaulters and restricted suppliers.

## **21. RETURNABLE SCHEDULES :**

- Bidders shall submit their bid responses in accordance with the returnable schedule specified below:
- Cover page: The cover page must clearly indicate the RFP reference number, bid description, bidders name and category/work stream bidding for.
- SBD 1 and SBD 4 (duly completed and signed).
- Valid Tax compliance pin or CSD registration number.
- BBBEE verification certificate/sworn BBBEE affidavit indicating the contribution level of the bidding entity. For bidders with annual turnover of less than R10 million (EME) and for bidder with an annual revenue of between R10 million and R50 million (QSE) per annum, a sworn affidavit confirming annual total revenue and level of black ownership may be submitted.