

TERMS OF REFERENCE TAX AND LEGAL ADVISORY SERVICES

1. Introduction

FSD Africa wishes to contract qualified, experienced lawyers or legal firms (the “Consultant”) on a retainer basis to advise the company in the performance of its functions and the discharge of its duties in accordance with prevailing laws and regulations (the “Services”).

FSD Africa’s requirements for advisory support are varied and will necessitate working with a wide range of stakeholders both internally and externally. We would like to identify firms with whom FSD Africa can call on to work on specific assignments as and when needed.

2. FSD Africa

FSD Africa is a specialist development agency working to reduce poverty by strengthening financial markets across sub-Saharan Africa. Based in Nairobi, FSD Africa’s team of financial sector experts work alongside governments, business leaders, regulators and policy makers to design and build ambitious programmes that make financial markets work better for everyone. Incorporated in 2015, FSD Africa is a non-profit company limited by guarantee in Kenya. It is funded by UK aid from the UK government.

FSD Africa transforms financial markets in sub-Saharan Africa and the economies they serve to create jobs, build resilience and reduce poverty. It does this through technical know-how, capacity support, market insights, and grants. Where there are opportunities to drive financial market transformation more quickly and intensively through capital investment, FSD Africa will deploy equity, loans or guarantees as the situation requires, through FSD Africa (Investments) Ltd (“FSDAi”), the investment arm of FSD Africa.

FSDAi finances high risk businesses and funds operating in the financial sector that have potential for high impact in financing the real economy and bringing about systemic financial market change. FSDAi is set up as a separate legal entity from FSD Africa but shares a common governance structure and operational policies with FSD Africa.

Please visit www.fsdafrica.org for more information.

3. Scope of work

The scope of work includes tasks that may be requested on an ongoing support basis for particular one-off assignments or transactions.

- Provide legal opinion on labour and employment law as may be required
- Review and endorse all existing documents prepared by FSD Africa, including but not limited to service contracts, grant agreements, employee contracts, as well as amendments and extensions to such contracts and agreements, memoranda of understanding and non disclosure agreements, in accordance with prevailing laws and regulations
- Ensure the legal form and contents of all documents prepared and signed by FSD Africa are correct
- Provide legal assistance in the process of contract negotiations, legal endorsement of performance guarantees or any other guarantee and signing of contract/grants/investment agreement
- Provide legal assistance against any litigation arising out of its daily business affairs or during contract, grant, or investment administration

- Represent and defend FSD Africa before Courts of Law including but not limited to labour courts, tribunals and federal sharia courts for cases filed by FSD Africa against contractors, suppliers, grantees, sub-contractors, employees - or by the same against FSD Africa
- Interact on behalf of FSD Africa with relevant government authorities as and when required about contractual, commercial, corporate and legal matters
- Provide legal assistance in dispute resolution at International or national arbitration tribunals
- Providing legal opinion and advice on day to day business affairs of FSD Africa

The Consultant will also, on an ad hoc basis, provide tax advice as and when needed on matters such as corporation tax, withholding tax, PAYE/Income tax, deferred tax, tax on royalties, including but not limited to the items listed below:

- Review tax implications of different revenue sources
- Confirm which taxes FSD Africa needs to be registered for after reviewing the organisation's legal documents and contracts
- Review and confirm tax efficient structures for FSD Africa and FSDAi
- Advise on measures to ensure FSD Africa and FSDAi are tax compliant
- Review Host Country Agreement and income tax exemption letter and confirm these conform with current practice; assist if necessary in the issuance of a formal tax exemption certificate
- Advise where appropriate on the correct tax treatment of local and international consultants.

4. Timing and deliverables

The services of Consultant are required for one year commencing from the date of coming into force of the agreement; which may be extended for another year subject to mutual agreement.

5. Request for Proposals

FSD Africa is seeking proposals from qualified, experienced lawyers or legal firms for tax and legal advisory support.

Proposals should contain:

- names, curriculum vitae of personnel
- full daily rate inclusive of all overheads (indicating clearly whether the rate quoted includes necessary taxes - such as withholding, and value added)
- details of relevant previous experience.
- at least three references from organisations in the Development and/or Investment sectors

Proposal documents should be as concise as possible and not exceed a total of 5 pages (excluding annexes). Proposals exceeding this limit may be disqualified. This should be sent by email to FSD Africa at by noon (EAT) on Tuesday 4 June 2020 under a subject line reading '**Invitation to tender: tax and legal advisory support.**

Applications received after the deadline will not be considered.

6. Basis of award

Mandatory requirements
Reputable legal firm specialising in corporate, commercial, employment law
Relevant professional experience - at least 10 years' experience
Recognition by relevant legal rating agencies - Chambers Global, IFLR 1000 or Legal 500
Membership to a professional organization

Assessment criteria	Weighting (%)
Relevant professional experience and qualifications of proposed team	30%
Track record in relevant areas of expertise sought	25%
Cost	25%
Responses from referees	20%
Total	100%

7. Contact

Questions or comments in respect of these terms of reference should be directed by email to: bids@fsdafrica.org on or before 12 noon (EAT) 25 May 2020, and a response will be provided by 12 noon (EAT) on 28 May 2020.

8. Applicable Taxes

As per Kenya's tax law, FSD Africa will pay the Consultant after withholding the appropriate taxes at the applicable rate between Kenya and the Consultant's country of tax residence, considering any tax treaties in force. It is the responsibility of the Consultant to keep themselves apprised of these applicable taxes. The below table however provides guidance on the applicable rates as per tax regimes:

Country	WHT Rate
Kenya	5%
United Kingdom	12.5%
Canada	15%
Germany	15%
Zambia	15%
India	10%
Non-resident rate for citizens of EAC member countries	15%
All other countries	20%