

## **IBA Law Firm Governance Initiative**

### **Best Practice Guidelines**

Law firms around the world face challenges that vary from country to country: some relate to the increasing power of governments; some to the increasing complexity and intrusiveness of regulation; some to the weakness of the processes of justice and to corruption in its various forms; some to social change and the changing expectations of society; all to the need to serve clients more effectively in an increasingly complex world.

Many law firms perceive the need for the profession to reinforce its ethical and professional standards in order to face these challenges from a position of greater strength. An important element of this will involve adapting the way law firms are run: to provide an environment in which the best lawyers can develop their skills and in which law firms are successful and strong enough to stand up to the challenges they face.

These guidelines attempt to identify certain general principles and standards that may help law firms manage their practices in a way that will achieve these objectives. Some of its points may be of more relevance to larger firms, or to those with a broader element of international work. Some may fit more naturally in certain cultures and less so in others. Some may need to be adapted over time to reflect changing conditions and concerns. There will be few firms (if any) that will adopt every provision. But all law firms should benefit by thinking about the extent to which each of the guidelines applies to them and could make them more effective and successful.

The points dealt with below are, in general, expressed in terms of obligations, almost as though they represent a mandatory code of practice. This is not the intention. It is more of a checklist of issues to consider. It is inevitable that most firms having considered the possible adoption of all of the suggestions will decide that some of them are not applicable. There is nothing wrong with that. The process of considering their applicability and of challenging accepted wisdom or traditional thinking has a value in itself.

#### **1. The firm**

- (1) The firm should set out in writing its governance and decision-making structure.
- (2) It should have a transparent process for the selection of leaders and the appointment of managers.
- (3) It should establish an appropriate mechanism for partners to communicate with each other and with the firm's leadership/management.
- (4) The capital structure of the firm should be described to partners in a clear way which distinguishes between different kinds of capital and explains the way in which capital can be contributed and withdrawn by partners.
- (5) The way in which the profits of the firm are distributed among the partners should be clearly described to all partners in the firm.
- (6) All those who are held out as partners should be treated as such, whatever legal and financial arrangements exist between them. Being a partner in a firm should involve the acceptance of a clearly defined role and a set of rights and responsibilities.

## **2. Its people**

### ***Recruitment and retention***

- (1) The firm should set out its recruitment policies and processes in writing so that all potential recruits (partners, associates and support staff) have access to enough information to allow them to make an informed decision about whether or not they wish to pursue recruitment discussions with the firm.
- (2) Firms should adopt recruitment and promotion policies and processes that are non-discriminatory and that are designed to encourage diversity at all levels within the firm.
- (3) When hiring new recruits (at any level) who have previously worked for another firm, the hiring firm should do what it can to ensure that the recruit does not thereby breach lawful duties owed to the previous firm.
- (4) The firm should ensure that every new recruit receives an appropriate induction which introduces him or her to the firm, its values, policies and procedures.

### ***Training and development***

- (5) The firm should offer appropriate support to those within the firm (whether or not they are lawyers) who are studying for or taking relevant professional qualifications.
- (6) It should give qualified lawyers associated with it appropriate support and encouragement to undertake relevant continuing professional education and to develop their personal and professional skills.
- (7) A firm should identify career transition points that are relevant to those within the firm and offer support to those reaching such points in their careers. A career transition point is a moment in a person's career when his or her role changes significantly. Examples in respect of lawyers include admission to the bar, admission to partnership, promotion to a management role and retirement.
- (8) A firm should encourage every person in the firm (at whatever level) to produce and maintain a written training and development plan which is suited to their needs and to the culture and structure of the firm.
- (9) Firms should ensure that all lawyers receive appropriate supervision and are given an opportunity to undertake a suitable range of work. Lawyers should be encouraged to develop a range of skills and to undertake a variety of work.

### ***Performance management***

- (10) Firms should ensure that every person in the firm receives a clear written statement of the performance and behaviour expected of them. The role and responsibilities of each person and their duties to the firm should be clearly stated.
- (11) Firms should ensure that every person in the firm is given clear feedback in respect of performance and behaviour. Where appropriate, feedback should be gathered on a 360 degree basis including upward feedback from those supervised by the person concerned. Those giving feedback should be encouraged to express their views frankly and in appropriate cases in a confidential and non-attributable manner.

- (12) A firm should have a clear and transparent appraisal process and procedure. Appraisals should take place at least annually (for everyone, including partners) and should be properly prepared and, where appropriate, documented. The appraisal process should include a face-to-face meeting with the person being appraised and should be conducted on a confidential basis. In appropriate cases immediate oral feedback should also be encouraged in the day to day working environment.

#### ***Remuneration and benefits***

- (13) Firms should adopt a remuneration and benefits policy which is designed to ensure that the firm takes a consistent approach when determining the remuneration and benefits to be received by all its people. This policy should be clearly communicated to all those within the firm.

#### ***Dealing with problems***

- (14) A firm should ensure that everyone in the firm has an appropriate opportunity to complain about or comment on the work or behaviour of any other person in the firm. Complaints should be dealt with fairly and with due regard to the well-being of all concerned. Once a complaint has been investigated all those involved should be given appropriate feedback and guidance. In appropriate cases complaints should be dealt with on a confidential basis.
- (15) Firms should have a written grievance procedure. This should seek to ensure that any grievance of any person in the firm is dealt with in a fair and sympathetic manner.
- (16) Firms should adopt clear policies and procedures for communicating both exceptional performance and poor performance to persons in the firm (including partners). Firms should identify a member of the firm to be responsible for this.
- (17) Firms should pay due regard to any personal problems experienced by anyone in the firm. In appropriate cases firms should offer help and support to those seeking to overcome such problems, provided that doing so is consistent with preserving a high performance working environment.

#### ***Career development***

- (18) Firms should state clearly and openly the basis on which people are promoted to higher positions in the firm (including partnership). Selection criteria and processes should be clearly and fairly described to all interested parties (both those currently within the firm and potential recruits).
- (19) Where possible, firms should seek to allow people in the firm to undertake secondments to other parts of the firm, to other firms or to clients. Secondment opportunities should be clearly and fairly described, as should the terms of any secondment.
- (20) Firms should state clearly whether and in what circumstances flexible working is permitted. In this context flexible working includes part-time work, reduced working hours and increased holiday entitlements. Firms should also state their policies on parental leave.
- (21) Firms should recognise and support efforts by persons in the firm to balance the demands of their job with the need to have a rewarding life outside of the office environment (work/life balance).
- (22) Firms should seek to ensure that their support staff are respected and included in the firm's activities. Integration between support staff and lawyers should be an objective of every firm.
- (23) Where possible, firms should seek to maintain contact with people who have left the firm (alumni), providing them with appropriate information about the firm and fostering a continuing relationship

between such persons and their former firm. In this context, firms should regard both former members and future recruits as relevant stakeholders.

### **3. Its culture**

- (1) Firms should seek to define and communicate a limited number of fundamental values which underpin and inform decisions taken by the firm.
- (2) Firms should encourage their lawyers to undertake pro bono work. They should develop and communicate a policy for pro bono work undertaken by the firm and by members of the firm with its support. The policy should explain how the firm decides whether to undertake a particular piece of work on a pro bono basis, how that work is allocated and valued if it is undertaken and how the policy of the firm is affected by relevant bar requirements.
- (3) Firms should develop, communicate and encourage participation in their community service policy. In this context community service means voluntary work in or with local communities in countries where the firm operates.
- (4) Firms should develop and communicate a policy on charitable giving. This should deal with giving by the firm itself and also any support which the firm offers to charitable efforts by persons in the firm.

### **4. Its clients**

- (1) A firm should ensure that it has a clear understanding of the needs and expectations of its client before beginning any piece of chargeable work for that client. Where possible, client requirements and expectations should be recorded in writing.
- (2) A firm should adopt procedures and processes designed to ensure that every client knows the terms on which the firm is acting for that client. Terms of engagement (including billing and fee arrangements) should be recorded in writing.
- (3) It should develop a policy on dealing with conflicts of interest which has due regard to the rules and requirements of relevant Bars (as well as the laws applicable in the jurisdictions in which the firm operates). Such policies should include a mechanism by which possible conflicts of interest are to be identified and dealt with. Firms should ensure that clients know the circumstances in which the firm may cease to act for them.
- (4) Billing practices should be clear and transparent. Clients and people in the firm should be able to understand how the firm decides what to bill and when to bill it. Clients should be clear about the way in which they can influence the basis on which work for them is to be billed.
- (5) Firms should adopt and implement procedures to ensure that confidential information relating to clients (and its people) is protected. In appropriate cases (and to the extent permitted in the relevant jurisdiction) such policies should also deal with the development and operation of information barriers within the firm.
- (6) Firms should encourage their clients to give feedback on work done and on the client satisfaction with the people in the firm dealt with by the client. Firms should consider developing a written complaints procedure which is available to those clients of the firm who request it. The firm should inform those involved when a client complaint is received and give them an opportunity to respond to it.
- (7) In appropriate cases firms should make arrangements for handling client money.

## **5. Wider engagement**

- (1) Firms should seek to maintain a courteous and professional relationship with other law firms and other professional advisers and should seek to ensure that their people comply with all applicable professional rules and ethical standards.
- (2) A firm should seek to maintain a good relationship with, and give appropriate support to, every Bar to which persons in the firm belong and should encourage such persons to become active in the work of the Bar.
- (3) The firm should seek to support the work of the judiciary in each of the jurisdictions it operates in and to promote the rule of law.
- (4) Firms should seek to engage with, and play an appropriate role in, the local community in each location where the firm practices.
- (5) Firms should seek to apply consistently high ethical standards in relation to all of their work and activities.
- (6) Firms should seek to play an appropriate role in relation to relevant domestic and international law reform projects and in the evolution of the legal environment.
- (7) A firm should take appropriate steps to promote the good standing and development of the legal profession. It should provide opportunities for its lawyers to participate in the activities of legal professional bodies and support those who do so.
- (8) Firms should play an active role in promoting the rule of law and access to justice.
- (9) Firms should actively promote the independence and values of the legal profession.
- (10) Firms should do all they reasonably can to promote human rights and the freedom of the individual.

## **6. Legal and regulatory compliance**

- (1) A firm should seek to ensure that its lawyers comply with the laws and regulations applicable in the jurisdictions in which it operates and the requirements of every Bar of which its lawyers are members.
- (2) A firm should put in place appropriate processes and procedures to promote compliance with regulatory obligations imposed on the firm and its people. Firms should have particular regard to the impact of money laundering regulations so as to develop policies and procedures that comply with such regulations in a way that is properly consistent with other professional obligations.
- (3) A firm should seek to operate according to the highest professional and ethical standards. To this end, it should establish a framework, perhaps by putting in place a code of conduct, to encourage its people not only to comply with relevant laws and regulations but also to respect the concepts and principles that lie behind them. Each firm should identify a member of the firm to be responsible for this.

- (4) Firms should seek to maintain good relations with regulators and regulatory bodies in each jurisdiction they operate in.
- (5) If a firm operates in more than one jurisdiction it should seek to ensure that conflicts and inconsistencies between Bar rules or legal or regulatory requirements in each relevant jurisdiction are addressed and (where possible) resolved.

**7. Transparency**

- (1) Firms should seek to put in place mechanisms that encourage frank and effective internal communication.
- (2) If firms choose to disclose financial information they should ensure that it is fairly and accurately presented.
- (3) Firms should strive to be culturally inclusive, culturally aware and integrative in their dealings with their people and with clients and the wider community.