

# PepsiCo Law Department Policy for the Selection of Legal Services

March 2019

At PepsiCo, we believe the business imperative for diversity is incontrovertible. We recognize that to compete, grow and win in the 21st century, a workforce that reflects the diversity of our customer and consumer base is not optional; it is essential to our long-term success. Likewise, when we procure external legal services, we seek partners who share our values and believe, as we do, that diversity is integral to retaining legal representation that is the highest quality available anywhere in the world.

One of the hallmarks of the legal profession is that it boasts highly intelligent, creative and experienced legal minds from all quarters; this notwithstanding, however, the legal field enjoys the least diversity among comparable professions. As a major consumer of legal services, PepsiCo has both the opportunity and responsibility to help drive those changes critical to improving diversity within the legal profession, particularly at law firms.

PepsiCo supports the implementation of American Bar Association Resolution 113 to expand and create opportunities for diverse attorneys through a variety of initiatives, including adaptation of the ABA's Model Diversity Survey to collect information about the firms and lawyers we engage.

Accordingly, to further the goals discussed herein, as well as promote accountability and transparency, the Policy for the Selection of Legal Services ("the Policy") is as follows:

1. When selecting outside counsel, the primary objective is to engage the best counsel for a particular matter. When assessing outside counsel, in addition to cost and technical expertise, PepsiCo attorneys must also consider diversity, specifically the diversity of those individuals who appear on billing charges for PepsiCo matters; individuals who receive origination or "relationship" credit for PepsiCo matters; and individuals who comprise the professional ranks of the firm at issue.
2. All law firms engaged with PepsiCo in the U.S. must complete the PepsiCo Diversity Survey (an adaptation of the ABA Model Diversity Survey) ("the Survey") on an annual basis, except for limited engagements with annual billings of less than \$25,000.00.
3. Law firms not already engaged with PepsiCo must complete the Survey before they may be considered for PepsiCo work. In addition to the requested metrics, the returned survey must reflect the proposed attorneys who will staff the matter under consideration.
4. Using data collected from the Survey, each firm will receive a Diversity Index Score ("DIS") (the formula is attached as Appendix A) and be ranked among its peers based on its presence in the U.S., either big (301+ attorneys), large (101-300 attorneys), or medium/small (15-101 attorneys) firms. Surveys from firms with less than 15 attorneys will be assessed individually based on relevant criteria and such firms will be selected for engagement based upon principles consistent with this policy. All firms completing PepsiCo's survey will be provided their score and are encouraged to have an on-going dialogue with PepsiCo about their diversity and inclusion efforts.
5. U.S.-based PepsiCo attorneys may, consistent with applicable approval procedures and guidelines, use their discretion when engaging a law firm that has a median or higher DIS, according to the most current survey results.
6. If a U.S.-based PepsiCo attorney wants to engage a law firm that has a DIS below the median score for a new matter, s/he must obtain written approval from PepsiCo's General Counsel prior to engagement consistent with the following procedures:
  - a. When seeking approval, the PepsiCo attorney must provide: (i) which, if any, law firm at or above the median score was considered but not selected and why; and (ii) why the selected law firm is uniquely positioned to handle the matter(s).
  - b. Approval may be obtained for individual matters or groups of related matters, as defined by PepsiCo's General Counsel.
  - c. All written approvals from PepsiCo's General Counsel must be submitted to the Legal Department's Director of Business Operations.
7. On a monthly basis, the Director of Business Operations will cross-check newly opened matters to confirm: (a) the engaged law firms have completed the Survey; and (b) either (i) the engaged law firms have a median or higher DIS OR (ii) PepsiCo's General Counsel has provided written approval to engage a firm that does not have a median or higher DIS.
8. When PepsiCo attorneys based outside of the U.S. hire law firms with at least one U.S. office, they will consider the firm's DIS, even if the billing attorneys are based outside of the U.S.
9. Annual performance review for Senior Vice Presidents in the Legal Department will include an evaluation of their teams' adherence to these guidelines and their efforts to promote diversity within the legal profession through this Policy and other initiatives.

## APPENDIX A

### DIVERSITY INDEX SCORE FORMULA

[Overall Minorities %] + [Overall LGBT %] + [Overall Women %] + 2\*[Minority Partners %] + 2\*[LGBT Partners %] + 2\*[Women Partners %] + 3\*[PEP Minorities %] + 3\*[PEP LGBT %] + 3\*[PEP Women %] + 10\*[0, 1, 2, or 3 for minority, LGBT, and/or female Relationship Partner<sup>1</sup>] + 2\*[# of “yes” for Question 18<sup>2</sup>] + 10\*[# of minority, female, or LGBT associates promoted to partner] + Up to 50 Discretionary Points based on certifications achieved and additional information provided.<sup>3</sup>

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<sup>1</sup>“Relationship Partner” is the partner who receives origination credit for PepsiCo work (if applicable) and is the primary point of contact for advising on the firm’s subject-matter experts and overseeing the firm’s overall engagement relationship with PepsiCo. Each category ----- minority, LGBT or female ----- receives one point. If the Relationship Partner fits more than one category, points may be accumulated for a total of 3. If the Relationship Partner fits none of the categories, the number is zero.

<sup>2</sup>Question 18 of PepsiCo Diversity Survey:

- Firm has a written diversity strategy that has been communicated to all firm attorneys.
- Firm gives billable credit for work that is directly related to diversity efforts (but is not pro bono work).
- Firm ties a component of partner compensation to diversity efforts.
- Firm has a diversity committee that includes senior partners and that reports to the firm’s highest governing body.
- Firm has a full or part-time diversity professional who performs diversity-related tasks.
- Firm has affinity or employee resource groups for its women and diverse attorneys, which meet at least quarterly.
- Firm has a succession plan that specifically emphasizes greater inclusion of women and diverse lawyers.
- Firm mandates and monitors that minority and women attorneys have equal access to clients, quality work assignments, committee appointments, marketing efforts and firm events.
- Firm requires inclusion of at least one diverse candidate in all hiring decisions.
- Firm policy specifically prohibits discrimination based on sexual orientation, gender identity and gender expression.
- Firm provides opportunity for attorneys to voluntarily disclose their sexual orientation or gender identity and expression through Firm data collection procedures.
- Firm policy specifically provides for paid maternity leave.
- Firm policy specifically provides for paid paternity leave.
- Firm has a formal, written part-time policy that permits partners to be part-time.
- Firm has a flex-time policy.
- Firm provides for or mandates diversity training for all lawyers and staff.
- Firm has a supplier diversity program.

<sup>3</sup> Discretionary points are awarded based on information provided in response to Part B and Part C of the Supplement to the PepsiCo Diversity Survey.