

THE DOLLARS AND 'SENSE' OF ALTERNATIVE FEE ARRANGEMENTS - DLA PIPER

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Innovative AFAs can provide law firms with a competitive edge and help forge long-term relationships with new and existing clients, say Craig V. Rasile and Rachel Nanes



The difficult, global economic conditions currently confronting clients have caused many of their counsel to reconsider traditional, hourly billing rates in favour of alternative fee arrangements (AFAs). Consequently, an increasing number of law firms have begun focusing their efforts on finding new and innovative ways to maximise value for their clients while simultaneously retaining profitability and realisation. With careful structuring and management, AFAs yield many benefits for clients and law firms.

The key to a successful AFA is the matching of a client's needs with a law firm's resources. For example, a multi-national corporation with legal needs in a variety of practice areas within a multitude of jurisdictions may be hesitant to engage a firm strictly on an hourly basis for fear of unmanageable risk and uncertain costs. In such instances, a global annual fee arrangement may be more appropriate. This type of AFA is often successful because clients build a strong relationship with a single law firm, as opposed to several firms, and come to expect consistent legal services at a predictable cost.

Before committing to an AFA, it is critical for a law firm to carefully plan for the specific engagement in order to ensure the client's goals are met while still maintaining a profit. At the outset, law firms should map out the course of the litigation or transaction, discuss staffing issues to ensure high performance and efficiency, and analyse ways to reduce costs. Billing data from similar, successfully completed engagements can be a reliable indicator of future billing expectations and is therefore a useful tool during this critical planning stage.

With a greater understanding of the client and the resources needed to accomplish the legal services it requires, law firms are primed to select the best AFA to offer a client. Some of the most successfully implemented AFAs include the following:

Flat fee with risk sharing element

This AFA is appropriate where a strict flat fee is not well-suited to a particular matter because of the presence of various contingencies that may drive the costs of the engagement up or down. Under this approach, the firm and client agree that a flat fee will be charged for a single matter or for taking the matter through a certain point. If the case or transaction is concluded successfully for less than that fee, the firm retains all or part of the difference or is entitled to a success fee in the form of a percentage share of the money collected by the client. If the matter cannot be concluded for that sum, the firm agrees to share the excess costs equally with the client.

Fee deferral

This AFA is appropriate for corporate transactional work. Under this approach, the firm and client agree that fees will be deferred and later paid on a contingency basis exclusively based upon the success of the transaction. For example, a law firm may have the opportunity to perform legal work for a start-up company looking to increase its enterprise value by acquiring new business lines. The firm may agree to perform all of the client's transactional work for a certain period of time in exchange for a payment formulated based upon a percentage share of the increase in the enterprise value of the client. This AFA ties the firm to the financial success of the client.

Fixed fee for consultation

These arrangements make a firm available to the client for unlimited consultation in an agreed subject area during a fixed period, at a flat fee agreed upon in advance. The advantage of this approach, particularly in an area of law which is highly regulated, is that it removes the client's inhibitions about asking for help early. Because no bill will follow the call, the client can obtain current legal advice immediately, without having to obtain budget authority. Employment or regulatory advice are good candidates for this type of fixed fee consultation work.

An innovative AFA can provide law firms with a competitive edge and can be used to forge stronger and lasting relationships with new and existing clients. The right arrangement will reward a law firm for its skilled management and efficiency with higher profit margins, fewer fee disputes and steady work flow. Clients also benefit from successful outcomes, lower costs and consistent legal services.

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