



COUR DE JUSTICE

TRIBUNAL DE JUSTIÇA

COMESA



COURT OF JUSTICE

CALL FOR APPLICATIONS

CONSULTANT TO REVIEW COMESA

COURT OF JUSTICE ARBITRATION RULES (2003)

Introduction

1. The Court of Justice of the Common Market for Eastern and Southern Africa (COMESA Court of Justice) was established in 1994 under Article 7 of the COMESA Treaty (the Treaty) as one of the Organs of COMESA. The Court is comprised of two Divisions; the Appellate Division and the First Instance Division. The Court is composed of twelve Judges five of whom constitute the Appellate Division and seven constitute the First Instance Division.

2. The Court's primary function is to uphold the rule of law in the enforcement of the COMESA Treaty by ensuring adherence to the law in the interpretation and application of the Treaty. Its general jurisdiction is to adjudicate as well as to give advisory opinions and arbitrate on any matters that may be referred to it under the Treaty. These matters may be between Member States, Member States and the Council, the Common Market and Member States, between Legal and Natural persons resident in Member States or between COMESA or its institutions and their employees.

Background

3. Reference is made to Article 28 of the Treaty which accords the Court special jurisdiction to hear and determine any matter:

(a) arising from an arbitration clause contained in a contract which confers such jurisdiction to which the Common Market or any of its institutions is a party; and

(b) arising from a dispute between Member States regarding the Treaty if the dispute is submitted to it under a special agreement between the Member States concerned."

4. The current Arbitration Rules date back to 2003 and were formulated pursuant to Article 38 of the Treaty. Unfortunately, these Rules contain many lacunae and are in many instances wanting in terms of clarity and form. They have for example neither taken into account the two tier system of the Court nor the ad hoc nature of the sittings and do not incorporate the relevant changes brought to the 1985 Model Law on International Commercial Arbitrations which was amended and updated in 2006 and the UNCITRAL Arbitration Rules as revised in 2010. There is therefore need to revise the Rules in order to ensure that they are at par with the best international practices and meet the needs of the international arbitration community.

5. There is also need for the Court to come up with a framework for the use of modern technology in its procedures and this calls for the formulation of appropriate rules and procedures.

6. In tandem with the new Medium Term Strategic Plan (2016-2020) of the Court, court rules are required to provide greater access to justice and simplify conduct of proceedings and also facilitate the accelerated disposal of cases. The Court aims to develop new or amended draft Arbitration Rules by the end of 2017.

Terms of Reference

7. Specific Aims of Amending the Rules

- To review the relevant changes brought to the 1985 Model Law on International Commercial Arbitrations as amended and updated in 2006, the UNCITRAL Arbitration Rules as revised in 2010 and the ICC International Court of Arbitration Rules 2012 (as amended in 2017) in order to incorporate best practices in arbitration;
- To make the rules simpler;
- To enhance the efficiency of arbitration under the Rules
- To clarify the procedure for appointment of arbitral tribunals given that the Court now has two divisions;
- To clarify the duties of all parties;
- To support more efficient and effective access to justice in the timely and low-cost disposal of cases while embracing appropriate use of technology;
- Increase the speed of moving cases through the court;
- Provide rules in language which is both accessible and unambiguous;
- To review and improve the conduct of arbitral proceedings and establish rules in relation to the form, effect and interpretation of the award;
- To provide detailed provisions on interim measures;
- To include procedures for challenge and/or replacement of an arbitrator;
- To provide for a review mechanism regarding the costs of arbitration; and
- To place the Court at par with other international arbitral tribunals.

8. Purpose of Assignment

The purpose of this assignment shall be the updating and amendment of the current COMESA Court of Justice Arbitration Rules (2003).

9. Task of the Consultant

It shall be the task and responsibility of the Consultant to:

- i. Review the current Arbitration Rules and acquaint her/himself with their provisions;

- ii. Consult with relevant stakeholders on the requirement of new rules and/or amendment of existing ones;
- iii. Propose necessary components, amendments and/or additions to the existing Rules;
- iv. Review the 1985 Model Law on International Commercial Arbitrations as amended and updated in 2006, the UNCITRAL Arbitration Rules as revised in 2010 and the ICC International Court of Arbitration Rules 2012 (as amended in 2017) for comparison and bench marking;
- v. Prepare a working draft of the amended Rules which will be shared for consultation and review by the Rules Committee of the Court before submission to the Administrative Meeting of the Court for approval prior to finalization;
- vi. Undertake any other work necessary in order to complete the task of perfecting the Rules;
- vii. Develop the final draft that will be presented by the Registrar to the Legislative Drafting Sub-Committee Meeting; and
- viii. Work closely with the Registrar in the performance of these tasks and submit and share with her the progress of activities as agreed from time to time.

10. **Documentation**

Documentation to be provided to the Consultant by the Court of Justice shall include the following;

- (i) Copy of the COMESA Treaty;
- (ii) COMESA Court of Justice Arbitration Rules (2003);
- (iii) COMESA Court of Justice Rules of Court (2016);
- (iv) The 1985 Model Law on International Commercial Arbitrations as amended and updated in 2006, the UNCITRAL Arbitration Rules as revised in 2010 and the ICC International Court of Arbitration Rules 2012 (as amended in 2017); and
- (v) Where available, the Arbitration Rules and Regulations used by sister RECs to enable comparison and possible adoption of the best practices.

11. **Output**

The Consultant will produce a document containing Draft Revised Arbitration Rules of the Court.

12. **Qualifications and Experience**

- a) Bachelors Degree in Law or related field;

- b) Must be a practicing member of a recognised arbitration body from within the COMESA region;
- c) Demonstrated knowledge and experience in legislative drafting specifically of arbitration rules will be an added advantage;
- d) Relevant regional and international experience will be an added advantage

13. Time lines

The report should be presented within two months of being awarded the contract.

14. Travel and subsistence

COMESA Court will cover transport costs and daily subsistence allowance for the Consultant in cases of travel.

15. Deadline for Submission of Applications

Written applications should be submitted electronically to the Registrar at NMbatia@comesa.int with copy to NJuddoo@comesa.int by **10th May, 2017** and should include the following:

- i. Updated CV including e-mail and telephone number;
- ii. Cover letter detailing their understanding of the task and highlighting experience and expertise in similar works; and
- iii. Copies of academic qualifications.

Only individual consultants with the required profile are encouraged to apply.