

The Investment Climate Facility for Africa (ICF)

Harmonisation of Commercial Laws of East African Community Partner States

Invitation to submit pre-qualification information and detailed implementation proposals

ICF is funding the East African Community (EAC) Secretariat project to assist the EAC in the harmonization of commercial laws of the EAC Partner States comprising Burundi, Kenya, Rwanda, Tanzania and Uganda in key priority areas. This assignment involves a close examination and review of existing commercial laws of the five Partner States that have direct bearing and impact on the EAC Common Market and Monetary Union requirements as well as on a common investment regime and making of concrete proposals for the harmonization of the relevant commercial laws to assist in the deepening of the EAC's integration.

Kenya, Tanzania and Uganda have legal systems primarily based on English Common Law but there is need to assess and address the divergence, gaps and differences in the commercial statutes and laws that have evolved in these countries over the last three decades. Rwanda and Burundi follow the European Civil law system and their commercial laws need to be similarly examined to assess the extent to which they facilitate or impede the promotion of the common investment area and effective functioning of a common market. Various measures already taken or to be taken by the EAC Partner States towards the establishment of an EAC common market include (1) the Customs Union which will be effective as of January 2010 with Burundi and Rwanda expected to accede to the Customs Union in July 2009; (2) the envisaged adoption of the Protocol on the EAC Common Market by the Partner States by November 2009; (3) the envisaged establishment of a Monetary Union by 2012; and (4) initiatives in the Partner States to move towards a common investment area.

EAC Secretariat has determined that the commercial laws to be harmonized should be within the following broad clusters namely:

1. the banking laws (covering legislation on banking; banking and lending institutions; development banking; bills of exchange and arrangement; micro-finance, etc);
2. the business transactions laws (covering legislation on bankruptcy; building societies; business organizations; capital market development; chattels transfer; the co-operative movement; export processing zones; transfer of businesses etc.);
3. finance and fiscal legislation;
4. insurance and re-insurance legislation;
5. investments (covering legislation on foreign investments; investment disputes; privatization; copyrights; patents and trademarks; etc.);

6. procurement and disposal of assets legislation;
7. monetary legislation (covering exchange rates; interest rate; inflation; etc.);
8. standardization, quality assurance and metrology legislation;
9. and trading law (covering legislation on bulk sales; business premises; contract, customs; external trade; import and export transactions; sale of goods, etc).

However the focus of the assignment should be on two priority areas of those specific commercial laws that support ongoing key EAC programs e.g. the implementation of the Customs Union and the establishment of the Common Market as well as the measures to establish a common investment regime. Accordingly the identification (in consultation with EAC and private sector and other relevant stakeholders within partner states) of and recommendation on the two priority areas of commercial laws to be reviewed and focused on for harmonization from the wider range of laws pertaining to the nine commercial law clusters specified above would be a key task to be undertaken by the Consultants in the initial stage of the assignment. This would determine the critical focus of the assignment.

The assignment is to be carried out in two phases. The first phase entails the overall review of the relevant commercial laws within the nine clusters of commercial laws specified above and the identification of two priority areas (each comprising three commercial laws of the partner states) and the diagnostic analysis of the three commercial laws in these two priority areas and the convergences, gaps and differences in these laws in the EAC member countries and making of recommendations as to the laws in the two priority areas to be harmonized. The second phase would be the drafting, preparation and elaboration of three (3) EAC legislation and partner states laws in the identified and agreed priority areas to be enacted by Legislative Assembly of the EAC and Parliaments of partner states. The second phase would be conditional upon the successful outcome of the first phase as determined by ICF and EAC and the approval of ICF and EAC to the second phase.

The detailed terms of reference (TOR) for the consultancy are set out in the TOR document accompanying this Invitation.

ICF is looking for a firm or consortium of firms which has strong commercial and business law experience in English Common Law and European Civil Law and in EAC Partner states laws and possesses the requisite expertise and experience and the human and technical resources to undertake the above assignment. For that purpose ICF invites eligible firms to indicate their interest in carrying out the assignment and submit their proposals as stated below. Firms based outside EAC partner states who apply for this assignment will be expected to have counter-part consortium arrangements with local firms as they may select with appropriate local expertise.

Interested firms or consortium must submit:

1. pre-qualification information on the firm or consortium comprising information showing their professional expertise, capability and experience to carry out the assignment accompanied by detailed CVs, brochures and similar literature on the firms, description of similar assignment carried out them, experience in working in similar conditions in Africa or in EAC partner states, availability of appropriate skills and experience among key personnel to be utilized in the assignment and other relevant information;
2. detailed technical proposals on how the consultants would carry out the assignment and the tasks described in the TOR in respect of both phases 1 and 2 and the proposed time frame for undertaking these tasks and submitting the project deliverables of the assignment; and
3. detailed financial proposals setting out the total fee (and the basis of its calculation) for the assignment and the estimated total costs of carrying out the assignment including costs of proposed travel to EAC and partner states and proposed travel schedule for holding consultations with stakeholders in partner states and the costs of holding, organizing and conducting workshops and seminars in partner states to discuss draft legislation prepared by consultants.

The technical and financial proposals shall be submitted at the same time with the pre- qualification information. The pre qualification information, technical proposals and the financial proposals shall be submitted in separate sealed envelopes. The Consultants proposals shall be valid for a period of four months starting from the date of the proposal to enable ICF and EAC to evaluate the proposals, make decision on award, and finalize the contract negotiations and award.

The expression of interest and proposals must be submitted in one original and 2 (two) copies to

The Investment Climate Facility for Africa

Markus Faschina

Director Projects Development,

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An electronic copy (PDF format) of the expression of interest and the proposals should also be submitted at the same time to ICF in the form of memory stick, flash disc or DVD in a sealed envelope addressed to ICF for the attention of **Markus Faschina**.

The deadline for the submission of the expression of interest and proposals will be at 12.00 hours East Africa time on Friday 12 June 2009.

The selection of the consultants for the assignment will be on quality and cost based selection (QCBS) procedures in accordance with the ICF procurement guidelines for selection and engagement of consultants. ICF procurement guidelines are available for downloading from the ICF website.

Pre qualification criteria and scores

All external consultants must be pre-qualified to ensure that they have the resources, capacity and reach to perform the service for which they are to be appointed. Criteria to be considered for pre-qualifying external consultants are as follows: [] indicates minimum pass score for each criteria.

| Criteria | Comment | Score |
|-----------------------------|------------------------------------------------------------------------------------------------------------|--------------|
| Financial Viability | Ensure that the Consultant is financially stable | 0 – 5[5] |
| Key Personnel | Does Consultant have human resources necessary to carry out assignment | 0 – 30[22] |
| Professional Qualifications | Does Consultant have necessary qualifications/licences for assignment | 0 – 15[10] |
| Statutory Compliance | Ensure that the Consultant is statutorily compliant (e.g. regulatory licences, tax clearance certificates) | 0 – 10[5] |
| Geographical Scope | Does the Consultant have the geographical knowledge and reach to effectively carry out the consultancy | 0 – 10[5] |
| Prior Experience | Does the Consultant have any similar experience that will support it in carrying out the assignment | 0 – 30[23] |

In order to pre qualify consultants should obtain minimum pass score for each criteria marked in [] and the total minimum score of 70.

Quality evaluation criteria and scores

The first figure in the table below indicates the minimum score required and the second figure the maximum obtainable for each criteria set out below.

| Quality evaluation criteria | Points |
|------------------------------------|---------------|
| Consultants specific experience | 7 - 10 |
| Methodology | 30 - 40 |
| Key Personnel | 23 - 30 |
| Transfer of Knowledge | 5 - 10 |
| Participation by nationals | 5 - 10 |
| Total | 70-100 |

In order to pass consultants should obtain the minimum pass score for each criteria and the total minimum score of 70 points.

The sub-criteria that will be considered within the following criteria are as follows:

Consultant's specific experience:

Similar project work
Similar area of work
Business law area of work
Experience in Africa /Region

Methodology

Innovation
Level of detail.

Key Personnel

General qualifications, general education training, time with consultancy firm and experience
Adequacy for assignment
Experience in Africa/region
Knowledge of the local language, culture, administrative system, government organization,

Each proposal shall be evaluated on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve a minimum technical score specified in the this Invitation.

The selected consultants will be offered the opportunity to negotiate a consultancy contract which will be entered into by the consultants with ICF.

The Investment Climate Facility for Africa (ICF)

Harmonisation of Commercial Laws of East African Community Partner States

Terms of reference

ICF is funding the East African Community (EAC) Secretariat project to assist the EAC in the harmonization of commercial laws of the EAC Partner States comprising Burundi, Kenya, Rwanda, Tanzania and Uganda in key priority areas. This assignment involves a close examination and review of existing commercial laws of the five Partner States that have direct bearing and impact on the EAC Common Market and Monetary Union requirements as well as on a common investment regime and making of concrete proposals for the harmonization of the relevant commercial laws to assist in the deepening of the EAC's integration. Although there is a preference for the simultaneous harmonization of all nine (9) clusters of commercial law areas listed in the Invitation, the emphasis should be on two priority commercial law areas that supports ongoing key EAC programs e.g. the implementation of the Customs Union and the establishment of the Common Market.

The assignment is to be carried out in two phases. The first phase entails an overall review and identification of the commercial laws in the partner states within the nine broad clusters of commercial laws that have a direct bearing and impact on the EAC Common Market and Monetary Union requirements as well as common investment regime and identifying the two priority areas of commercial laws to be subject of the detailed review and diagnostic analysis by the Consultants; the undertaking of diagnostic analysis of the relevant commercial laws in these two priority areas and the convergences, gaps and differences in these laws in the EAC member countries and making recommendations as to the harmonization of the laws in the two priority areas. The second phase would be the drafting, preparation and elaboration of the EAC legislation and enabling partner states laws in the identified and agreed priority areas to be enacted by Legislative Assembly of the EAC and Parliaments of the partner states. The second phase would be conditional upon the successful outcome of the first phase as determined by ICF and EAC and the approval of ICF and EAC to the second phase.

In undertaking the work for both phases of the Project, the Consultants shall use the criteria of evaluation, relevance, effectiveness, efficiency, impact and sustainability in reviewing the five Partner State's commercial laws with a view to harmonizing them.

Phase 1 of the Assignment

In Phase 1 the Consultants shall among other things:

1. undertake an overall review and identify (in consultation with EAC and private sector and other relevant stakeholders within partner states) the commercial laws in the partner states (within the nine broad clusters of commercial laws) specified in the Invitation that have a direct bearing and impact on the EAC Common Market and Monetary Union requirements as well as common investment regime and recommend for approval of EAC the two priority areas of commercial laws (each priority area comprising three commercial laws of the partner states) to be the subject of detailed review and diagnostic analysis by the Consultants as per item 2 below;

2. undertake a detailed review of the identified commercial laws within the two priority areas of the five Partner States approved by EAC Secretariat and carry out a diagnostic analysis to determine synergies, convergences, gaps and differences in these laws within the partner states;
3. identify and examine the ongoing law reforms taking place in the Partner States in relation to the identified commercial laws to determine best practices and standards that are emerging in the partner states and compare the same to the international best practices and standards being developed in relation to the identified commercial laws areas in countries outside the partner states both with Common Law and Civil Law systems;
4. review existing and emerging key international treaties/protocols on commercial laws that have a direct bearing and impact on the identified commercial laws of the five Partner States with a view to establishing best practices for the East African Community partner states;
5. recommend a prioritization of laws (in the identified commercial law areas) to be harmonized;
6. submit to the Monitoring Consultant and EAC periodic time schedules of proposed activities and tasks and reports on the progress of the execution of the tasks in the above items every 14 days and at such other intervals as required by EAC;
7. prepare and submit to the Monitoring Consultant and EAC Secretariat a draft final report (not exceeding 20-30 standard A4 pages with standard font) which clearly presents the needs, the method and the strategy on harmonization of the commercial laws of the five Partner States (in the identified commercial law areas). The report should include outcome of tasks 2, 3 and 4 above and recommendations on priorities concerning the harmonization procedure, i.e. which law should be harmonized first; what should be the appropriate approach; and what would be the proposed time frame and the fees and estimated costs to undertake phase 2 of the assignment;
8. prepare and submit to the Monitoring Consultant and EAC Secretariat the final report on item 7 above as required by EAC.
9. attend and participate in meetings with EAC Secretariat and the Monitoring Consultant as required by EAC Secretariat. It is envisaged that there may be at least three face to face meetings between Consultants and the EAC Secretariat and the Monitoring Consultant namely, the first on the commencement of the assignment, the second to present recommendations on the two priority areas of commercial laws to be the subject of detailed review and diagnostic analysis and the third to present the draft final report.

Key Project deliverables and Outputs of Phase 1

The key project deliverables would be:

1. recommendations on the two priority areas of commercial laws to be subject of detailed review and diagnostic analysis as per items 1 and 2 of the Phase 1 tasks above;
2. the report on review and diagnostic analysis of the identified commercial laws within the two priority areas specified in item 2 of phase 1 tasks above;

3. reports on item 3 and 4 of phase 1 tasks above;
4. the periodic reports on progress and outcomes of phase 1 tasks;
5. draft final report specified in item 7 of Phase 1 tasks above for comments and consideration of the EAC;
6. final report specified in item 8 of phase 1 tasks above.

Phase 2 of the Assignment

In Phase 2, based on the EAC Secretariat decision on the priority commercial laws, harmonization strategy and method, the Consultants shall among other things:

1. prepare draft of three (3) EAC laws and draft of enabling partner states laws in the identified priority areas;
2. consult widely with main stakeholders in the EAC and Partner States and in so doing conduct workshops and seminars to collect and exchange views on the above EAC and national laws;
3. seek consensus of stakeholders in the private sector and partner states governments on the proposed legislation;
4. submit a detailed proposal on how the draft EAC laws and enabling partner states laws should be implemented;
5. provide written advice on Institutions/ Courts/ Training Centers/ Alternative Dispute resolution system that will govern and sustain the draft EAC laws and national laws;
6. submit to the Monitoring Consultant and EAC periodic time schedules of proposed activities and tasks and reports on the progress of the execution of the tasks in the above items every 14 days and at such other intervals as required by EAC Secretariat;
7. prepare and submit to the EAC and Monitoring Consultant a draft final report on the above tasks for comments and consideration of EAC;
8. prepare and submit to the EAC and Monitoring Consultant a final report on the above tasks on completion of the assignment;
9. attend and participate in meetings with EAC Secretariat and the Monitoring Consultant on the above tasks as required by EAC Secretariat.

Key Project deliverables and Outputs of Phase 2

The key project deliverables would be:

1. draft of three (3) EAC laws and draft of partner states laws;
2. proposals on how the EAC and Partner States should implement the draft EAC laws and partner states laws;

3. proposals on Institutions and other organizations that will support the implementation and the implementation of the proposed EAC laws and partner states laws as per items 4 and 5 of Phase 2 tasks above;
4. draft final report on the tasks above;
5. final report on the above tasks.

Expertise Required

The Consultants should:

1. have the necessary human resources to carry out the requested services for both phases of the assignment;
2. be statutorily compliant (e.g. regulatory licenses, tax, clearance certificates etc)
3. be a law firm or a consortium of law firms with strong commercial law experience in English Common Law and European Civil Law and in EAC Laws;
4. have a senior lawyer as lead consultant, with the above commercial law experience;
5. have the geographical knowledge and reach to effectively carry out the requested services;
6. have proven experience in consultancy of similar assignments;

Firms based outside EAC partner states who apply for this assignment will be expected to have counter-part consortium arrangements with local firms as they may select with appropriate local expertise.

Duration and Costs of Project

The Consultants should include in its proposals made to ICF the time frame and the fee (and the basis of its calculation) and the estimated costs in respect of each project deliverable and the total time frame and costs of the assignment including costs of proposed travel to EAC Secretariat and partner states and proposed travel schedule for holding consultations with stakeholders in partner states and the costs of holding, organizing and conducting workshops and seminars in partner states to discuss draft EAC and partner states legislation prepared by Consultants.

Monitoring and Reporting Arrangements

ICF's Monitoring Consultant and EAC Secretariat will monitor the execution of this assignment by the Consultants on an ongoing basis. The Consultants in the carrying out of this assignment will report to and liaise on an ongoing basis to the Monitoring Consultant and the designated official(s) in EAC Secretariat. The Consultants will submit schedules of proposed activities and progress reports every 14 days and at such other intervals as may be required by EAC. All periodic reports should be submitted to the Monitoring Consultant and the designated official(s)

in EAC Secretariat. All project deliverables of this assignment will be subject to approval of EAC Secretariat.

Methodology and Work Plan for Carrying Out Assignment

Consultants should submit as part of their technical proposals the proposed methodology and detailed work plan for carrying out the key tasks involved in the performance of the assignment in phase 1. In particular the Consultants should explain how they propose to carry out the review and identification of the relevant commercial laws in the five partner states within the nine broad clusters of commercial laws and identify the two priority areas of commercial laws. As regards phase 2 of the assignment it is expected that Consultants will submit at the outset proposed methodology and detailed work plan but that this may need to be modified in light of the outcome of phase 1 and, prior to commencing phase 2, the Consultants will submit the finalized proposed methodology and detailed work plan for phase 2 for approval of EAC Secretariat. The second phase would be conditional upon the successful outcome of the first phase as determined by ICF and EAC and the approval of ICF and EAC to the second phase.

Any general information that may be available with EAC Secretariat on the partner states commercial laws within the nine commercial law clusters will be provided to the Consultants by EAC Secretariat. However the Consultants would be expected to obtain all relevant information (including texts of laws) on the commercial laws and other information on law reform exercise and other matters required for the assignment from relevant stakeholders from the partner states directly as part of this assignment. Consultants should bear in mind that as regards the relevant commercial laws of Burundi and Rwanda if these laws are not available in English it will be necessary for the Consultants to translate or arrange the translation of the relevant laws from French to English as part of the assignment.