



## **TERMS OF REFERENCE FOR A LEGAL DRAFTER FOR THE SADC MODEL LAW ON PUBLIC FINANCIAL MANAGEMENT**

### **1. Introduction and background to assignment**

The SADC Parliamentary Forum is the apex inter-parliamentary organisation in Southern Africa which is established as an institution of the Southern African Development Community (SADC) under Article 9(2) of the SADC Treaty. Over the last decade, the Forum has implemented several initiatives to advance democratisation in the SADC region and perpetuate the democratic drive through the promotion of good governance and accountability by targeted parliamentary action.

One of the central objectives of the Forum is to develop Model Laws which act as benchmarking references for national Parliaments. Model Laws facilitate the understanding of the theme dealt with, accelerate the legislative process, and ensure progressive domestication of international norms and best practices contained therein. Moreover, Model Laws are developed through a thorough situational analysis and evidence-based research from an African perspective, and thus constitute a reliable source of legislative information which can influence parliamentary strategies at national level and be adapted to local contexts. Model Laws are developed by the Forum and formulated with a background component together with protective and enforcement legislative provisions which can be easily tailor-made and imported into domestic legislation by Parliament.

Over the years, the SADC-PF has earned merits in the development and capacity building for the domestication of Model Laws, notably the SADC Model Law on HIV (2008), SADC Model Law on Child Marriage (2016) and SADC Model Law on Elections (2018). These Model Laws are now in the process of domestication with close monitoring conducted by the Regional Parliamentary Model Laws Oversight Committee, established as a high-level MP-driven organ of the Forum.

At the onset, the Forum has reckoned that the promotion of democratisation and socio-economic development across the SADC region will remain unattainable goals unless the region achieves a healthy public financial management system. From the Forum's perspective, public financial management is the administration of funds by Government for the delivery of public services, with the necessary checks and balances that ensure

transparency and accountability. Since Parliament is the principal oversight institution over Government action, it is thus naturally incumbent on the Forum to develop a Model Law on Public Financial Management for the incorporation of its 15 Member Parliaments. The Model Law will contain essential features which can ensure an appropriate oversight by Parliament of the budgeting process and promote the progressive mainstreaming of gender equality, sexual and reproductive health rights and the Sustainable Development Goals (SDGs) which are targets that have been largely subscribed by SADC Member States. In addition, the Model Law will provide for the review by Parliament of the Annual audited accounts of public expenditures and that of statutory bodies, the establishment of programme-based budgeting with Key Performance Indicators, and provisions for the safety of public debt ceilings, among others.

The 46<sup>th</sup> Plenary Assembly of the Forum which was held in Swakopmund, Namibia, in December 2019 considered the recommendations of the Trade, Industry, Finance and Infrastructure Committee as well as the Human and Social Development and Special Programmes Committee of the SADC-PF, and unanimously resolved to proceed with the SADC Model Law on Public Financial Management in order to consolidate financial regimes across the Southern African region and promote better prudential planning.

With the current COVID-19 health crisis, a financial and economic crisis has likewise followed which has led to uncertain visibility and predictability of public finances for the years 2020 and 2021. It is thus indeed an opportune time for the Forum to develop the Model Law in Public Financial Management in view of ensuring that there are no lapses in financial management by Member States, notwithstanding the prevailing economic crisis.

In this respect, the Forum intends to hire a legal drafter to develop the SADC Model Law on Public Financial Management. The legal drafter will liaise with a Technical Expert Working Group led by the Forum and will interact with stakeholders through progressive steps in view of developing the Model Law. It is expected that the Model Law will be adopted by the 48<sup>th</sup> Plenary Assembly of the Forum which will be held by the end of 2020.

## **2. Overall objective to the assignment**

The overall objective of the assignment is to deliver the following outputs:

- Prepare an inception Report containing a situational analysis on the state of public financial management in SADC Member States;
- Prepare a draft of the Model Law which will be issued for consultation with stakeholders and validated through Workshops/Webinars to be conducted under the auspices of the SADC-PF;
- Engage with the Technical Expert Working Group at all times which will confer directional guidance for the development of the Model Law in line with standing Forum policy;

- Prepare a final version of the Model Law and facilitate its adoption by the appropriate Standing Committee(s) of the Forum, and thereafter by the SADC-PF Plenary Assembly;
- Prepare a User Guide for the Model Law which will speak to the main features of the Model Law in view of facilitating its domestication in Member States;

### **3. Time frame for the assignment**

The assignment will occur on 85 staggered working days of the Assignee, in accordance with a Work Plan to be mutually agreed between the Technical Expert Working Group and the Assignee.

The output for the assignment should be delivered in editable word format, where documents are concerned, and in powerpoint format for presentations.

The TOR which stands a contract between the Assignor and the Assignee shall become effective as from the date of signature by both Parties.

### **4. Qualifications**

#### **a. Education:**

- Master's in law, with a degree in law, with specialisation in financial law, constitutionalism, human rights or a related field acceptable to the Forum.

#### **b. Competencies and Experience:**

- At least 3 years work experience in legislative drafting and delivering on similar assignments.

#### **c. Language and other skills:**

- English language fluency and strong writing skills is mandatory.
- Computer skills: full command of Microsoft word and common Internet applications will be required.

#### **e. Core Values:**

- Professionalism: knowledge and understanding of the context of the SADC-PF within the institutional framework of the SADC in Southern Africa;
- Planning and Organizing: allocates appropriate time and resources for completing assignment within the set deadline.

## **5. Assignment fee**

The Assignee will be paid a total assignment fee of USD 25,000.00 which will be paid upon delivery of the assignment output (deliverables) referred to in paragraph 2. This does not include transport costs which will be reasonably covered by the SADC-PF for approved travel related to the assignment.

The SADC-PF shall ensure that the deliverables meet acceptable standards as per the Terms of Reference and that the deliverables are endorsed and approved by the Office of the Secretary General. SADC-PF reserves the right to withhold payment for the services rendered if the deliverables are of unacceptable quality, provided that the Assignee shall, as soon as possible and in writing, be furnished with a detailed report of such inadequacies. Should the Assignee fail or neglect to address the said inadequacies forthwith after receipt of the notice advising of the need to address any identified inadequacies, the SADC-PF reserves the right to decline payment altogether.

## **6. Execution of the Assignment**

In the execution of this Assignment, the Assignee is encouraged to consult regularly with the Office of the Secretary General, and the Technical Expert Working Group, to ensure that the contractual expectations are met. The Assignee will be expected to present the draft of the deliverables in electronic, Microsoft Word version. The Secretary General or her delegated representative will provide a consolidated verbal/written feedback on the first draft after which the Assignee will incorporate the feedback and return the final copy via the electronic mode of communication.

The Assignment will be desk-based with interactions with the Forum and the Technical Expert Working Group concluded mainly by online means.

## **7. Termination of the Assignment**

In the event that the Assignee terminates his/her Assignment before submission of the deliverables, or in the alternative, the Forum terminates the Assignment, no payment will be made. The Forum's obligations to the Assignee will cease, except for payment of expenses incurred up to the date of termination. Termination may be based on, but not limited to, lack of work; uncooperative attitude and unsatisfactory relationship with the Forum; counterpart personnel, or co-workers; conflict of interest; incompetence; carelessness; insubordination; failure or refusal to work; or other acts of misconduct as determined by the Forum.

## **8. Confidentiality**

The Assignee shall not disclose or use at any time, either during or subsequent to the expiry of this Assignment, any confidential information or knowledge obtained or acquired by their being party to this Assignment, unless such information or knowledge is in the public domain without their own wrongdoing. The Assignee further agrees not to impart information relating to work or services performed hereunder to any person not entitled to receive it, and to safeguard any confidential or other classified data that may come into his/her possession by virtue of this Assignment.

## **9. Copyright**

The SADC-PF shall retain ownership and copyright of all materials delivered under this Assignment, and shall reserve the right to reproduce, edit or amend the material for official use by the Forum. The Forum shall, however, acknowledge the intellectual contributions of the Assignee.

## **10. Enforceability**

In the event that any provision of these Terms of Reference shall be held invalid or unenforceable, such invalidity or unenforceability shall apply only to that provision and shall not affect or render invalid or unenforceable any other provision of these Terms of Reference.

## **11. Medical Cover**

The Forum shall **NOT** be responsible for any costs relating to the Assignee's medical expenses during the course of this Assignment. The Assignee shall, therefore, be personally responsible for his/her own medical cover for the duration of the assignment.

## **12. Management of Assignment and Domicilium and Correspondence**

The management of the assignment shall be conducted by the Secretary General of the SADC-PF, Ms Boemo M. Sekgoma, and the address for correspondence shall be:

SADC Parliamentary Forum  
SADC Forum House  
Parliament Gardens  
P/Bag 13361  
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