



DEVELOPING AND STRENGTHENING ARBITRATION IN SADC

MEMORANDUM OF ASSOCIATION BETWEEN THE SADC LAWYERS' ASSOCIATION (SADC-LA) AND THE ARBITRATION FOUNDATION OF SOUTHERN AFRICA (AFSA)

In 2019, SADC-LA and AFSA signed a Memorandum of Association in which the parties agreed and committed to the promotion, development, strengthening and enhancement of commercial alternative dispute resolution practices, modelled on AFSA's services, in the SADC countries by way of a joint initiative between SADC-LA and AFSA.

This collaborative effort led to the creation of the AFSA SADC Division. The Management of the AFSA SADC Division was entrusted to a Committee appointed by the AFSA Board, with equal representation by SADC-LA and AFSA. This joint initiative was designed to support the work and activities of the AFSA SADC Division, ensuring the success of this project and the inclusion of all parties involved.





SADC-LA

The SADC-LA is an independent voluntary association comprising Law Societies, Bar Associations and individual lawyers from 16 member countries in the Southern African region.



The Arbitration Foundation of Southern Africa
NPC

THE ARBITRATION FOUNDATION OF SOUTHERN AFRICA (AFSA)

AFSA is an independent, private, non-profit dispute resolution institution that provides comprehensive alternative dispute resolution services for domestic and international disputes, maintains panels of arbitrators, adjudicators, and mediators, and offers training in arbitration and mediation.

AFSA is headquartered in Sandton, Johannesburg, and has branches in Cape Town, Pretoria, Durban, the Eastern Cape, and the Garden Route.



AFSA SERVICES: EXPERTISE IN DISPUTE RESOLUTION

AFSA'S ARBITRATION SERVICES

AFSA is renowned for its expertise in managing a broad spectrum of commercial disputes and is committed to delivering fair and efficient resolutions.

AFSA provides arbitration services tailored to the unique needs of both local and international commercial users.

Services include:

- **Expert arbitration management:** AFSA administers arbitrations focusing on efficiency and adherence to a clear procedural framework.
- **Rigorous arbitrator selection:** AFSA prioritises a meticulous selection process for our arbitrators, ensuring that only those with exceptional expertise and proven impartiality are chosen. This commitment to high standards fosters fairness and credibility in all arbitration proceedings.
- **Procedural and logistical support:** Arbitration proceedings are seamless and efficient, regardless of their complexity or geographical location. AFSA provides comprehensive logistical support, including state-of-the-art venues with the latest technology. Facilities are also set up for remote hearings using a licensed Zoom platform. These remote settings are enhanced with live translation services and real-time transcription capabilities, ensuring that all parties can fully engage in the proceedings, regardless of language and location. This integration of advanced technology ensures that our arbitrations are accessible, transparent, and practical, meeting the highest standards of international dispute resolution.
- **Tailored arbitration rules:** AFSA rules are crafted to meet the parties' specific needs while upholding international standards.
- **Financial and administrative oversight:** AFSA manages all financial aspects of our administered arbitrations, including the assessment and collection of fees. Our fee structure is transparent and competitive, providing clarity and predictability to all parties involved.
- **Award scrutiny and enforcement:** AFSA scrutinises international awards before release to ensure compliance with the applicable legal framework, enhance enforceability, and minimise grounds for challenge.

PROVEN RULES AND PROCEDURES

AFSA's Commercial Rules, drafted by experienced practitioners, address nearly every aspect of the arbitral process. These well-tested rules have established a robust framework for commercial arbitration. For smaller or urgent cases, AFSA offers Expedited Rules to facilitate quicker resolutions.

Comprehensive Arbitration Framework

AFSA's Rules: <https://arbitration.co.za> to view the rules

AFSA offers a well-established and thoroughly tested set of six rules for managing both domestic and international commercial arbitrations.

Our Commercial Rules provide a solid foundation for arbitration proceedings, ensuring clarity and consistency. For arbitrations that require swift resolution, the AFSA Commercial Expedited Rules streamline the process without compromising the fairness or thoroughness of the arbitration.

AFSA International Rules 2021

Crafted to address the complexities of global commerce, these rules incorporate the latest developments in international arbitration to ensure fair, efficient, and transparent dispute resolution. Reflecting AFSA's commitment to upholding the highest standards and best practices, they are particularly effective for cross-border disputes. Designed to be adaptable, these rules provide procedural flexibility to accommodate the diverse needs of international parties.

Introducing the AFSA Court

The AFSA Court plays a crucial role in maintaining high standards. It oversees the administration of arbitrations under the AFSA International Rules, ensuring that all procedures are conducted with the utmost integrity and professionalism. The Court provides authoritative guidance on procedural matters, appoints arbitrators when necessary, and ensures that the arbitration process adheres to applicable rules. The involvement of the AFSA Court guarantees that all arbitrations are managed with transparency, consistency, and impartiality, further enhancing the trust and reliability of AFSA's services.

AFSA Specialised Rules

In addition to our international and domestic rules, AFSA offers specialised arbitration rules for ad hoc construction arbitration, mediation, and business rescue, each tailored to meet these sectors' unique challenges and requirements. Refer to www.arbitration.co.za for more information.

EXPERIENCED ARBITRATORS

AFSA ensures that arbitrators selected or appointed have the necessary experience and expertise to resolve disputes competently. The AFSA panel includes many professionals, from junior practitioners to senior attorneys, advocates, accountants, and businesspeople, including retired and former judges.

AFSA's arbitrator panels are organised into specialised panels including International, SADC, Domestic, Business Rescue, Mediation, and a Panel of Experts. Each panel comprises experts in their field, ensuring that every arbitration benefits from in-depth legal understanding and extensive practical experience.

This diversity enables AFSA to match arbitrators with disputes according to their expertise, ensuring competent and precise resolution of complex issues. Whether handling cross-border disputes, local matters, business restructuring, mediation, or industry-specific arbitrations, AFSA's structured approach guarantees high-quality arbitration services tailored to each case's unique needs.

ACCREDITED ARBITRATION AND MEDIATION TRAINING

AFSA offers a unique, accredited training course in collaboration with the University of Pretoria. The Advanced Certificate in Alternative Dispute Resolution equips legal practitioners, accountants, HR professionals, and businesspeople with essential arbitration, mediation, and negotiation skills.





INTERNATIONAL LINKS

AFSA is honoured to be associated with leading organisations worldwide, which significantly enhances AFSA's global reach and credibility.

Global Partnerships

AFSA's global reach and expertise in alternative dispute resolution are bolstered through strategic partnerships with respected organisations. As a member of the International Federation of Commercial Arbitration Institutions (IFCAI), AFSA is part of a global network that enriches our service delivery. Our cooperation with the Permanent Court of Arbitration (PCA) in the Netherlands allows us to share best practices and align with global standards, ensuring the highest quality of our arbitration services. Collaborations with the Asian International Arbitration Centre (AIAC), Indonesian Dispute Board (IDB), and the Australian Centre for International Commercial Arbitration (ACICA) further extend our presence and expertise in Asia and Australia. Additionally, our involvement with the BRICS Legal Forum supports cohesive and collaborative legal frameworks within the BRICS nations.

Africa Partnerships

African partnerships play a crucial role in promoting regional stability and legal development. AFSA collaborates with the SADC-LA and the Malawi Law Society to enhance legal cooperation within the Southern African Development Community. AFSA supports regional legal cooperation through the SADC Alliance Charter, strengthening our regional influence. Our collaboration with the Center of Excellence for Dispute Resolution in the Indian Ocean Rim Association (IORA) Region advances dispute resolution within the Indian Ocean Rim region.

China Partnerships

Our strategic partnerships in China significantly enhance our arbitration practices and expand our visibility. AFSA collaborates with the South Africa-China Economy and Trade Association (SACETA) to promote economic and trade dispute resolution between South Africa and China. Our cooperation with the Guangzhou Arbitration Commission (GZAC) and the Shenzhen Court of International Arbitration (SCIA) strengthens our arbitration services in China. Our partnership with the Shenzhen Lawyers Association (SZLA) also supports legal training and professional exchanges. AFSA also works with the International Commercial Dispute Prevention and Settlement Organization (ICDPASO) and the China Maritime Arbitration Commission (CMAC).

Mediation Partnerships

AFSA's mediation capabilities are bolstered through several key partnerships. Benchmark Chambers International (BCI) and Benchmark International Mediation Centre (BIMC) provide global top-tier mediation and arbitration services. AFSA is involved with Belt and Road mediation projects through the International Commercial Mediation Center for the Belt and Road Initiative (BNRMC) and supports mediation through the Law Ascertainment Center (Guangzhou) for BRI (BNRLAC) in China.

Additional Collaborations

Providing access to international arbitration resources through Jus Mundi and partnering with the International Council for Commercial Arbitration (ICCA) demonstrate our commitment to maintaining high standards in arbitration. Our dedication to sustainability is reflected in our support for the Campaign for Greener Arbitrations (CGA), which promotes environmentally sustainable practices in arbitration.

TAILOR-MADE FACILITIES

AFSA offers various venues for arbitrations and training events. Sandton venues can accommodate large and small arbitrations; many are equipped for virtual meetings.



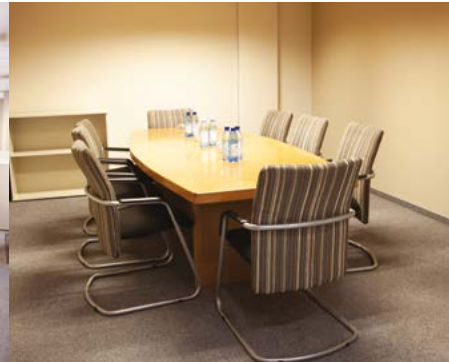
GRIQUA ROOM



ALABAMA ROOM



AFRICA ROOM



CHINA ROOM



SPECIALIST DIVISIONS AND INITIATIVES

To address the growing need for specialised dispute resolution services, AFSA has established various specialist divisions and initiatives, including:

- **AFSA Domestic:** Resolving disputes between South African parties.
- **AFSA International:** Resolving international disputes.
- **AFSA SADC:** Disputes resolution within the Southern African Development Community.
- **AFSA Mediation:** Facilitating private settlements with trained mediators.
- **AFSA Training:** Skills development
- **AFSA Construction:** Specialising in construction-related arbitration
- **AFSA/SARIPA Business Rescue:** Speedy arbitration process for business rescue disputes.
- **Young AFSA:** Cultivating a community of young professionals and students in arbitration.

WHY AFSA

- **Local Expertise with International Standards:** AFSA combines in-depth local knowledge with standards on par with global best practice. This unique blend makes AFSA particularly adept at handling disputes in Southern Africa and across Africa. AFSA ensures that every arbitration adheres to internationally recognised best practice and procedures while being sensitive to local nuances.
- **Specialised Services:** Unlike many other arbitral institutions, AFSA offers specialised arbitration services tailored to specific sectors such as finance, mining, engineering, and construction. These sectors are pivotal to the African economy, and our tailored approach ensures their unique needs and challenges are met.
- **Commitment to Development:** AFSA is dedicated to promoting and training in best arbitration practices through our training programs, workshops, seminars, and conferences. These initiatives foster a deeper understanding of arbitration across the continent, contributing to developing a robust legal framework and arbitration community in Africa.
- **Accessibility and Support:** Users choose AFSA for our responsive and supportive approach, ensuring that all parties receive the assistance they need throughout the arbitration process.
- **Proven Track Record:** With years of successful dispute resolution, our track record speaks for itself. Parties looking for a reliable and effective arbitration institution find a trusted partner in AFSA.
- **Innovative Practices:** AFSA stays ahead of industry trends by incorporating the latest in arbitration practices and technology, making our processes more efficient and accessible.

AFSA is dedicated to upholding the highest arbitration standards and providing an impartial, effective platform for dispute resolution. Our comprehensive services and commitment to excellence and innovation make us a preferred choice for users seeking effective dispute-resolution solutions.





AFSA-SADC DIVISION

The enactment of the International Arbitration Act in 2017 positioned South Africa, through AFSA, as a leading international arbitration center in Southern Africa. This development led to a Memorandum of Association between AFSA SADC and the SADC-LA in 2019 to enhance commercial alternative dispute resolution practices in the SADC region.

OBJECTIVES AND IMPLEMENTATION

The AFSA SADC Division aims to:

- Establish a SADC panel of arbitrators and mediators.
- Standardise rules for arbitration and mediation across SADC countries.
- Provide an administrative secretariat for case handling.
- Disseminate information about the initiative to SADC-LA members, businesses, and investors.
- Offer training facilities for arbitrators and mediators.
- Participate in conferences and seminars to promote the division.

The division focuses on training, gaining support from SADC governments and law societies, and harmonising regional international arbitration practices.

THE AFSA SADC ALLIANCE

The AFSA SADC Alliance is a network of institutions committed to developing a shared arbitration framework and advancing international arbitration practice in the SADC region. It aims to create a standardised and harmonised arbitration framework, making Southern Africa a preferred destination for international commercial arbitration.

Signing Ceremony of the Alliance Charter

At the Johannesburg Arbitration Week in April 2024, Chief Justice Raymond Zondo highlighted the importance of arbitration shaped by the region's Ubuntu culture. The AFSA-SADC Alliance Charter was signed, marking a significant step in transforming arbitration practice in the SADC region.

Alliance Charter:

<https://sadcla-agmc.africa/sitepad-data/uploads/2024/07/AFSA-Alliance-Charter-2024.pdf>

Signatories

Representatives from Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Tanzania, Zambia, Zimbabwe, and the AFSA signed the SADC Charter.

Establishing the AFSA SADC Division and the AFSA Alliance represents a significant advancement in arbitration within the Southern African Development Community, aiming to stimulate growth and development in the region's dispute resolution practices.



THE ROLE OF AFSA INTERNATIONAL

PIONEERING INTERNATIONAL ARBITRATION IN AFRICA

Over the past eight years, AFSA International has become a leader in administering international arbitrations across Africa, enhancing the region's capacity for handling complex, cross-border disputes. This is crucial given Africa's dynamic economic landscape and the need for robust legal frameworks.

The new AFSA International Arbitration Rules, introduced on 1 June 2021, align with best practices from institutions like the ICC and LCIA, making them accessible to global African entities. This supports cost-effective dispute resolution, even for smaller arbitrations requiring expert handling.

The establishment of the AFSA Court ensures procedural fairness and mirrors international standards, boosting confidence among international investors and dispute parties.

These advancements position AFSA International as a pivotal player in the SADC region and a significant entity in global arbitration, enhancing Southern Africa's reputation as a leading arbitration hub.

AFSA International's initiatives contribute to a more effective and responsive African arbitration landscape, making it an attractive venue for resolving international disputes.

EFFICIENT DISPUTE RESOLUTION

Advanced Dispute Resolution Techniques

AFSA International's role in facilitating efficient dispute resolution extends beyond streamlined processes and adherence to international standards. AFSA employs advanced dispute resolution techniques tailored to the complexities of modern international commercial disputes.

Integration of Technology

AFSA International incorporates technology into the arbitration process, using a case management system, remote hearings, and electronic document submissions. This technology adoption accelerates the process and makes arbitration more accessible, especially when parties are in different locations. It reduces travel costs and allows for more flexible scheduling.

Multi-Tiered Dispute Resolution Clauses

Understanding the complexity of international disputes, AFSA promotes using multi-tiered dispute resolution clauses that require parties to mediate or negotiate before proceeding to arbitration. This approach often resolves disputes earlier, saving time and resources while reducing the adversarial nature of dispute resolution.

Customised Approach to Complex Disputes

For particularly complex disputes, AFSA International offers a bespoke approach, designing arbitration processes tailored to the parties' needs and the nuances of the case. This may involve appointing arbitrators with specific expertise relevant to the dispute or adopting unique procedural rules.

Training and Capacity Building

AFSA International is also an educator in the field, conducting training and workshops for arbitrators, legal professionals, and businesses. This enhances understanding of international arbitration and builds local capacity, ensuring that arbitration practices meet global standards and that the region develops a robust pool of arbitration professionals.

Collaborative Dispute Resolution

AFSA encourages collaborative dispute resolution, where parties work together under the guidance of skilled arbitrators to reach mutually beneficial solutions. This method often leads to more sustainable outcomes and helps maintain business relationships post-dispute.

Mitigating Cross-Border Investment Risks

Cross-border disputes are inevitable in international business. Prompt resolution of these disputes is crucial for businesses to thrive in today's fast-paced environment. The AFSA International Rules offer state-of-the-art protocols to manage cross-border disputes, supported by robust administrative expertise. This ensures disputes are resolved promptly and effectively.

AFSA International has maintained a robust record throughout its eight years of operation, with not a single award being rejected enforcement. This track record underscores the professional and credible nature of AFSA International Awards, ensuring they are readily accepted in jurisdictions worldwide.

EXTENSIVE INTERNATIONAL EXPERIENCE

SADC Arbitrations

The number of SADC arbitrations conducted by AFSA International from 2017 to 2023 shows notable variability, reflecting fluctuations rather than a consistent trend. Fifty-four arbitrations peaked in 2018 and 2023, each recording 11 arbitrations, in contrast to the four arbitrations in 2020. This variability indicates that SADC arbitrations are highly responsive to external factors, such as economic conditions, shifts in business activities, and changes in the legal and political climates within the SADC region.

Proportion of Total Arbitrations

SADC arbitrations constitute approximately 36.73% of AFSA International's caseload, emphasising the region's significant role in AFSA's broader arbitration practice. This substantial share underscores the region's active participation in arbitration and highlights its importance to AFSA International's operations.

LEADING INTERNATIONAL ARBITRATORS

AFSA International prides itself on maintaining a distinguished panel of international arbitrators from a broad spectrum of jurisdictions worldwide. This panel includes experts from civil and common law backgrounds, encompassing regions such as Europe, Australia, America, South America, mainland China, Hong Kong, England, and Africa. The breadth of expertise allows AFSA International to provide parties engaging in arbitration with a choice of independent and seasoned professionals well-versed in various legal systems and specialisations.

The criteria for inclusion on AFSA's International panel are rigorous. Candidates must demonstrate proficiency and experience in arbitration through their curriculum vitae, letters of recommendation, and examples of redacted arbitration awards. This meticulous vetting process ensures that all arbitrators on the panel meet high standards of professionalism and integrity, upholding AFSA's reputation for delivering high-quality, efficient, and cost-effective dispute resolution services internationally.

This extensive and varied panel enhances the credibility and reliability of AFSA's International arbitration services and significantly contributes to its mission of providing world-class dispute resolution. Each arbitrator's commitment to upholding the highest standards of arbitration practice solidifies AFSA's position as a leader in the field, particularly within the dynamic and diverse landscape of international commercial disputes.

AFSA INTERNATIONAL ARBITRATIONS: AVERAGE COSTS AND DURATION

AFSA International released an updated report on the average costs and duration of arbitrations conducted under its rules. The findings from 2021 to 2023 highlight the exceptional efficiency and affordability of our arbitration processes, setting a high benchmark within the field:

- **Duration of Arbitration:** The analysis of 12 completed arbitrations for this period shows that the average time from the issuance of the Request for Arbitration to the final award is approximately one year and one month. This swift resolution process underscores our commitment to resolving disputes more quickly than typically seen in similar settings.
- **Costs of Arbitration:** During the observed period, the average cost of arbitration is US\$ 40,690.88. These costs are notably lower, ensuring that access to quality arbitration services remains economically feasible for all parties involved.

These statistics reinforce the practical benefits of partnering with AFSA International for dispute resolution and emphasise our dedication to transparency and excellence in arbitration, making AFSA a preferred choice for international disputes.

THE FIRST ESSENTIAL STEP

To ensure commercial disputes are efficiently resolved, including a dispute resolution clause in any commercial contract is crucial. The recommended AFSA International Model Clause for international contracts is as follows:

"Any dispute arising from or in connection with this contract shall be referred to and finally resolved by the Arbitration Foundation of Southern Africa in accordance with its International Arbitration Rules."

CONCLUSION

Establishing the **AFSA SADC Division** and the **AFSA SADC Alliance** represents a significant advancement in arbitration within the Southern African Development Community. AFSA aims to standardise arbitration practices, promote international commercial arbitration, and provide training and development opportunities for arbitrators and mediators through these initiatives.

These efforts are set to stimulate growth and development in the region's dispute resolution practices, positioning Southern Africa as a preferred destination for resolving international commercial disputes. AFSA's commitment to excellence and collaboration ensures a promising future for arbitration in the SADC region, fostering a more harmonious and effective approach to dispute resolution.



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