

THE EAST AFRICAN COMMUNITY

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THE EAST AFRICAN COMMUNITY

**THE EAST AFRICAN COMMUNITY CROSS BORDER TRADE IN
PROFESSIONAL SERVICES BILL, 2017**

MEMORANDUM

The object of this Bill is to provide for the conduct and regulation of Cross Border Trade in Professional Services in the Community, and to make provisions for purposes connected to the practice of professions through borders of the Community.

The Bill is premised on Article 104 of the Treaty for the Establishment of the East African Community, under which the Partner States undertook to adopt measures to achieve the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the Community.

The Bill in addition seeks to operationalise Article 76 of the Treaty which provides for free movement of labour, goods, services, capital and the right of establishment. The Bill takes into account the provisions of the Protocol on the Establishment of the East African Community Common Market, in particular Article 10 on free movement of workers and Article 11 on harmonisation and mutual recognition of academic and professional qualifications.

HON. FRED MUKASA MBIDDE,
Member East African Legislative Assembly.

THE EAST AFRICAN COMMUNITY CROSS BORDER
TRADE IN PROFESSIONAL SERVICES BILL 2017

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THE EAST AFRICAN COMMUNITY CROSS BORDER
TRADE IN PROFESSIONAL SERVICES BILL, 2017

A Bill for an Act

ENTITLED

**THE EAST AFRICAN COMMUNITY CROSS
BORDER TRADE IN PROFESSIONAL SERVICES
ACT, 2017.**

An Act to provide for the conduct and regulation of cross border trade in professional services in the Community and to make general provision for other related purposes.

ENACTED by the East African Community and assented to by the Heads of State

PART I—PRELIMINARY

1. This Act may be cited as the East African Community Short title
Cross Border Trade in professional services Act, 2017.

2. In this Act, unless the context otherwise requires— Inter-pretation

“client” includes any person who, as a principal or an agent on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, expressed or implied, to retain or employ an professional;

“Community” means the East African Community established by Article 2 of the Treaty for the Establishment of the East African Community;

“costs” includes fees, charges, disbursements, expenses and remuneration;

“Council” means the Council of Ministers established by Article 9 of the Treaty;

“cross border trade in professional services” means professional activities of any professional enrolled in one Partner State that are rendered in another Partner State, whether or not the professional is physically present in that other Partner State;

“Disciplinary Committee” means the East African Community Professionals Disciplinary Committee established by section 17;

“disciplinary record” includes any of the following, unless reversed on appeal or review—

(a) any action taken by a governing body as a result of discipline; (b) disbarment;

(c) a practitioner’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;

(d) restrictions or limits on a practitioner’s entitlement to practice; and

(e) any interim suspension or restriction or limits on a practitioner's entitlement to practice imposed pending the outcome of a disciplinary hearing;

“discipline” includes a finding by a governing body of any of the following—

(a) professional misconduct;

(b) incompetence;

(c) conduct unbecoming of a practitioner;

(d) lack of physical or mental capacity to engage in the practice of law; and

(e) any other breach of a practitioner's professional responsibilities;

“entitled to practice” means allowed, under all of the legislations and regulations of a home Partner State, to engage in the practice of the subject professional in the home jurisdiction;

“home Partner State” means the Partner State where the practitioner acquired the right to bear his or her professional title;

“host Partner State” means any other Partner State where the practitioner conducts or carries on cross border activities other than the home Partner State;

“indiscipline” includes a finding by a governing body of any of the following—

(a) professional misconduct;

(b) incompetence;

- (c) conduct unbecoming of a practitioner;
- (d) lack of physical or mental capacity to engage in professional practice; and
- (e) any other breach of a practitioner's professional responsibilities;

“Partner State” means the Republic of Burundi, the Republic of Kenya, the United Republic of Tanzania, the Republic of Rwanda, the Republic of South Sudan, the Republic of Uganda and any other country granted membership to the Community under Article 3 of the Treaty;

“practicing certificate” means a certificate issued by the Registrar to a practitioner, authorizing him or her to practice in any of the Partner States;

“practitioner” means any person whose name is duly entered on the list of practitioners of the said profession in a Partner State;

“Practitioners Council” means the East African Community Practitioners Council established by section 6;

“professionals society” means the East African Community Professionals Council established by section 4;

“register” means a register of eligible practitioners for only substantive professions;

“roll” means the list of practitioners kept in accordance with the Acts of the Partner States;

“Treaty” means the Treaty for the Establishment of the East African Community.

3. The objectives of this Act are to—
- Objectives
of the Act
- (a) promote cross border trade in professional services within the Community;
 - (b) promote harmonization of professions training and certification;
 - (c) facilitate free movement of trade in professional services in the Community.

PART II—THE EAST AFRICAN PRACTITIONERS COUNCIL

4. (1) There is established a council known as the East African Community Practitioners Council.
- Establishment of the
East African
professional
practitioners
Council.
- (2) The Council shall consist of—
- (a) a representative of the national professions council from each Partner State; and
 - (b) a representative of the East African Practitioners Society who shall be the secretary.
- (3) Members of the Practitioner’s Council shall hold office for a period of two years and shall be eligible for reappointment.
- (4) The office of the member of the Practitioners Council shall fall vacant upon his or her—
- (a) death;
 - (b) resignation in writing addressed to the Chairperson;
 - (c) misconduct;
 - (d) inability to perform his or her duties by reason of any infirmity of body or mind. or

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(e) vacation of office by virtue of which the appointment was made.

Functions of
the
Practitioners
Council.

5. (1) The functions of the Practitioners Council shall be to—

(a) regulate cross border trade in professional services;

(b) advise and make recommendations to the national professionals' associations and professionals' councils on matters relating to cross border trade in professions services;

(c) exercise, through the medium of the Disciplinary Committee, disciplinary control over professionals engaged in cross border trade in professional services; and

(d) exercise any power or perform any duty authorised or required by this Act.

(2) The practitioner's council shall in conducting its business determine its own procedure, and for such purpose may make rules to guide it in the discharge of its functions.

Secretary of
the
Practitioners
Council.

6. (1) There shall be a Secretary to the practitioners Council.

(2) The Secretary to the Practitioners Council shall be representative of the Council, and shall keep custody of the seal and all official documents of the Council.

(3) Any expenses incurred by the practitioners Council in the performance of its functions under this Act shall be drawn from fees payable by practitioners upon issuance of an East African Practicing Certificate.

PART III—CERTIFICATION OF PROFESSIONALS

7. (1) Every national practitioners council shall on an annual basis, submit a list of eligible practitioners for trade in professional services to the Secretary to the Practitioners Council. Register of
pro-
fessionals

(2) The Secretary shall upon receipt of the lists of professionals submitted under sub-section (1) compile a register of eligible professionals for that current year.

(3) The Secretary shall have custody of the register of eligible professionals submitted under sub-section (1).

(4) For the avoidance of doubt, an professional eligible to practice in one Partner State shall be eligible to practice in any other Partner State.

8. (1) If a practitioner is suspended from practice in a Partner State or struck off the roll of professionals by order of a competent court or other competent authority in that Partner State, that professional shall be ineligible to practice in any of the other Partner States. Reciprocal
enforcement
of
suspensions
and
striking-off
in Partner
States

(2) The secretary shall cause a note of the suspension or strike off of a professional to be entered against the name of the professional in the register of eligible professionals.

(3) Where a professional is reinstated on the roll of professionals in the Partner State, that professional shall be eligible for reinstatement on the register of eligible professionals under this Act.

9. The Secretary of the Practitioners' Council shall notify the Secretary of the East Africa Practitioners Society of any entry in the register, in respect of any professional under this Act. Notification
to East
Africa
Practitioners
Society

PART IV — DISCIPLINE OF PROFESSIONALS

Professional
Disciplinary
Committee **10.** There is established a Committee known as the East African Community Professionals Disciplinary Committee.

Composition
of the
Disciplinary
Committee **11.** The Disciplinary Committee shall consist of the following members—

- (a) a retired Judge appointed by the Practitioners Council, who shall be the Chairperson of the Committee;
- (b) one member nominated by the East Africa Practitioners Society;
- (c) one eminent professional from each Partner State with at least fifteen years' experience as a legal practitioner in the Partner State, nominated by the respective national bar association;
- (d) the Counsel to the Community; and
- (e) one representative of the Attorney General or the Minister of Justice from each Partner State.

Tenure of
office **12.** A member of the Disciplinary Committee shall each serve a three-year term, renewable once.

Vacation of
office **13.** The office of the member of the Disciplinary Committee shall fall vacant upon his or her—

- (a) death;
- (b) resignation in writing addressed to the Chairperson;
- (c) misconduct; or,
- (d) inability to perform his or her duties by reason of any infirmity of body or mind.

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14. The Powers-of the Committee shall be to address complaints against the professionals that arise from cross border trade in professional services within the Community.

Powers of
the
Disciplinary
Committee

15. The Disciplinary Committee shall in conducting its business determine its own procedure, and for such purpose may make rules to guide it in the discharge of its functions.

Proceedings
of the
Disciplinary
Committee

16. Any professional who establishes in a host Partner State shall abide by the rules regarding forbidden or incompatible occupations as they are applied to professionals of that Partner State.

Incompatible
occupations

17. (1) Professional misconduct under this Act includes—

Professional
misconduct

(a) unsatisfactory professional conduct of an professional where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence;

(b) conduct of a professional whether occurring in connection with the practice of professions or occurring otherwise than in connection with the practice of professions that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in trade in professional services;

(c) practicing as a professional without possession of a valid practicing certificate or when the practicing certificate has been suspended or cancelled; or

(d) any other conduct recognised as a professional misconduct by the national laws of the home Partner State.

(2) For finding that a professional is not a fit and proper person to engage in trade in professional services, regard may be had to the suitability matters that would be considered if the practitioner were an applicant.

Complaints
against
professionals

18. (1) A complaint against a professional for professional misconduct may be made to the Disciplinary Committee by a national bar association, a practitioners society or an aggrieved person.

(2) Upon receipt of a complaint, the Secretary to the Disciplinary Committee shall refer the complaint to the Committee.

(3) The Disciplinary Committee shall give the professional against whom the complaint is made an opportunity to appear before it, and shall furnish him or her with a copy of the complaint, and of any affidavit made in support of the complaint, and shall give him or her an opportunity of inspecting any other relevant document not less than seven days before the date fixed for the hearing; but where in the opinion of the Committee the complaint does not disclose any prima facie case of professional misconduct, the Committee may, at any stage of the proceedings, dismiss the complaint without requiring the professional to whom the complaint relates to answer any allegations made against him or her and without hearing the complainant.

(4) After hearing the complainant and the to whom the complaint relates, if he or she wishes to be heard, and considering the evidence adduced, the Disciplinary Committee may order that the complaint be dismissed or, if of

the opinion that a case of professional misconduct on the part of the professional has been made out, the committee may order that—

- (a) the professional be admonished;
- (b) the professional be suspended from practice for a specified period not exceeding two years;
- (c) the name of the professional be struck off the roll.

(5) The Disciplinary Committee may make any such order as to payment by any party of any costs or witness expenses and of the expenses of the Committee in connection with the hearing of any complaint as it may think fit.

(6) The Disciplinary Committee may issue a warrant for the levy of the amount of any sum ordered to be paid by virtue of this section on the immovable and movable property of the professional by distress and sale under warrant, and the warrant shall be enforced as if it were a warrant issued by the High Court of the Partner State.

(7) The Disciplinary Committee may order any professional against whom a case of professional misconduct has been made out to restore any property in his or her possession or under his or her control to the person appearing to the committee to be entitled to the property.

(8) Any order made by the Disciplinary Committee under this section relating to the payment of compensation, costs or expenses, or to the restoration of property, shall be drawn up by the High Court.

(9) At the time of awarding any damages in any subsequent civil proceedings relating to the same matter, the court determining the civil suit shall take into account any sum recovered in pursuance of an order made under sub section (6).

Review

19. Notwithstanding any provisions of this Act, the Disciplinary Committee may review its decisions.

Report and
action on
complaint

20. (1) Upon the termination of the hearing of a complaint, if the Disciplinary Committee does not dismiss the complaint, the Committee shall compile its findings and the order or orders made by it in the form of a report to the High Court of the home Partner State which shall be delivered to the Registrar, together with the record of evidence taken and any documents put in evidence.

(2) The Registrar shall give to the complainant and to the professional to whom the complaint relates notice of delivery of the report, together with the record of evidence taken and any documents put in evidence.

(3) Where under any provision of this Act the name of a practitioner is struck off the Roll or a practitioner is suspended from practice, that practitioner's practicing certificate shall be deemed to have been cancelled or in case of suspension, cancelled for the duration of the suspension.

PART IV — MISCELLANEOUS PROVISIONS

Accounting
for
professionals

21. A professional carrying out cross border trade in professional services shall comply with the laws of host Partner State regarding remuneration, accounting and handling of client's funds, management of trust funds, liability insurance and defalcation compensation funds.

Regulations

22. The Council of Ministers may, upon recommendation of the Practitioners Council make regulations for the effective carrying out of the provisions and purposes of this Act.

Act to take
precedence

23. This Act shall take precedence over the Partner States laws with respect to any matter to which its provisions relate.