

January 31, 2021

Free Movement of Professional Services in post-COVID-19: Mutual Recognition Agreements in the EAC—A Way Forward

The full realisation and implementation of Mutual Recognition Agreements (MRAs) to facilitate the free movement of professional services in the EAC Common Market has remained a far-off reality since the commencement of the EAC Common Market Protocol. Post-COVID-19 the mutual recognition of professionals will be central to facilitating cross border movement and provision of professional services via online platforms.

Introduction

Growth and realisation of meaningful deeper economic regional integration and trade in the post-COVID-19 times will require revisiting the regulation of provision and trade in cross-border services. In the East African Community (EAC), the six Partner States committed, among others, to cooperate and adopt measures to achieve the free movement of goods, persons, labour, and services.

The current EAC Partner States—Burundi, Kenya, Rwanda, South Sudan Tanzania, and Uganda—are therefore bound by obligations under the *EAC Treaty* to undertake measures to achieve the free movement of services. This includes facilitating provision of cross-border professional services. However, the COVID-19 pandemic is a game changer for all Partner States in complying with these obligations.

The effects of the COVID-19 pandemic have not spared disrupting the provision of cross-border services and realisation of the freedom of movement of services. The imposition of restrictions on trade activities by respective EAC Partner States, like all countries in the world over, has necessitated a rethinking of the regulation of cross-border provision of

professional services under the EAC Common Market.

With the changing post-COVID-19 times, the cross-border provision of professional services continues to be adopted to measures facilitated by technology to ensure business continuity.

MRAs in EAC Common Market Protocol

Both the *EAC Treaty* and *EAC Common Market Protocol* (CMP) envisage the use of Mutual Recognition Agreements (MRAs) as a means of harmonising standards to ensure acceptability of services traded, in removing measures that restrict movement services and service suppliers in the EAC Common Market.

The EAC CMP has been in force since 2010. The Partner States negotiated and adopted regulations providing for a framework of recognition of academic and professional qualifications. The framework is set out under Annex VI to the *EAC CMP (Mutual Recognition of Academic and Professional Qualifications) Regulations* 2011. The free movement and trade of regulated professional services fundamentally hinges on the recognition and mutual licensing of professionals in both the home and host country. A MRA under the CMP and the *EAC CMP (Mutual Recognition of Academic and Professional Qualifications) Regulations* is the best fitted tool to enable effective recognition and licensing of professionals to trade and provide cross-border services.

While some professional bodies of the Partner States have concluded and signed MRAs, with some MRAs still in the pipeline, the question of full realisation and implementation of MRAs to facilitate the free movement of professional services in the EAC Common Market remains a far-off reality.

MRAs in the EAC have been concluded to facilitate mutual recognition and free movement of engineers, accountants, and veterinary doctors, with MRAs for advocates and land surveyors still in the pipeline.

The provision of professional services cannot be divorced from the mandatory regulatory and licensing requirements in each Partner State. However, what is the way forward with the current challenges to cross-border trade in professional services in this COVID-19 era? Post-COVID-19 the mutual recognition of professionals will be central to facilitating cross-border movement and provision of professional services via online platforms and medium.

Free Movement of Professional Services under the CMP

The EAC Partner States guaranteed the free movement of services supplied by nationals of other Partner States, and the free movement of service suppliers under the CMP. The CMP provides for four modes of services—

- (a) Supply of services from the territory of the home State of the supplier into another Partner State of the consumer (cross-border supply).
- (b) Supply of services in the home State of the supplier to consumers from another Partner State (consumption abroad).
- (c) Supply of services by a service provider through commercial presence of the supplier in the host State (commercial presence).
- (d) Supply of services by the presence of the natural person in the host State. (temporary presence of natural persons).

The EAC Partner States made specific commitments under Annex V to the *EAC CMP Schedule of Commitments on the Progressive Liberalisation of Services*. The Schedule includes liberalisation of professional services such as legal services, accounting, auditing and bookkeeping services, taxation services, architectural services, engineering services, medical and dental services, veterinary services, services provided by midwives, nurses, physiotherapists, and para-medical personnel.

The professional services under the Schedule are regulated services in the different Partner States. These services are subject to various licensing regulatory requirements that are tagged to standards and competency requirements.

Without instrumental MRAs among the regulatory professional bodies of the EAC Partner States, which establish mutual recognition of professional qualifications and licensing, the full realisation and implementation of the free movement and cross-border trade in services in the EAC Common Market remains a persistent challenge.

A Way Forward!

In the contemporary COVID-19 times, the Partner States and regulators of professional bodies ought to fast-track the conclusion of necessary MRAs for professionals, and the establishment of Mutual Recognition Procedures (MRPs) which accommodate the innovative ways of cross-border supply of professional services.

As the EAC Partner States renegotiate their specific commitments under the freedom of movement of services, there is need to clarify on a distinction between regulation of, on the one hand, the free movement and trade in professional services and, on the other hand, the provision of professional services under the freedom of movement of labour/workers. The question of whether professionals are “services” or “labour/workers” ought to be harmonised. This will lend clarity in the implementation of MRAs and MRPs without hindering the free movement of services. The significant potential contribution of the services sector to the recovery of the EAC economies in the COVID-19 times needs no further emphasis. Trade is the backbone of economic growth, and the effective trade in professional services in the EAC Common Market will depend on the resolution of the unresolved mutual recognition of professionals by the Partner States.

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