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THE EAST AFRICAN COMMUNITY

**BILL SUPPLEMENT**

**No. 1**

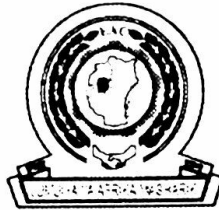
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THE EAST AFRICAN COMMUNITY

**THE EAST AFRICAN COMMUNITY CROSS BORDER LEGAL  
PRACTICE BILL, 2014**

**MEMORANDUM**

The object of this Bill is to provide for the conduct and regulation of cross border legal practice in the East African Community and to make general provisions for purposes connected to the legal profession.

The Bill is premised on Article 126 of the Treaty for the Establishment of the East African Community which, *inter alia*, requires the Partner States to take steps to harmonise legal training and certification, and encourages standardisation of the judgments of courts within the Community.

The Bill also 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 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. DORA C. KANABAHITA BYAMUKAMA,  
*Member, East African Legislative Assembly.*

THE EAST AFRICAN COMMUNITY CROSS BORDER  
LEGAL PRACTICE BILL, 2014.

ARRANGEMENT OF CLAUSES

*Clause*

PART I—PRELIMINARY

1. Short title.
2. Interpretation.
3. Objectives.

PART II—THE EAST AFRICAN COMMUNITY  
LAW COUNCIL

4. Establishment of the East African Law Council.
5. Functions of the Law Council.
6. Proceedings of the Law Council.
7. Secretary to the Law Council.

PART III—CERTIFICATION OF ADVOCATES

8. Eligibility and register of advocates.
9. Reciprocal enforcement of suspensions and striking – off  
in Partner States.
10. Notification to East Africa Law Society.
11. Complaints against advocates.
12. Review of decisions.
13. Report and action on complaint.
14. Appeal against order of the Law Council.
15. Effect of disciplinary action.

PART IV—ACCOUNTING FOR ADVOCATES

16. Remuneration and client funds.

PART V—MISCELLANEOUS PROVISIONS

17. Regulations.
18. Act to take precedence.

**THE EAST AFRICAN COMMUNITY CROSS  
BORDER LEGAL PRACTICE BILL, 2014**

A Bill for an Act

ENTITLED

**THE EAST AFRICAN COMMUNITY CROSS  
BORDER LEGAL PRACTICE ACT, 2014**

**An Act to provide for the conduct and regulation of cross border legal practice in the Community and to make general provisions for purposes connected to the legal profession.**

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 Cross Border Legal Practice Act, 2014. Short title.

2. In this Act unless the context requires—

Inter-  
pretation.

“advocate” means any person whose name is duly entered as an advocate on the Roll of Advocates in a Partner State;

“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 advocate;

“cross border legal practice” means professional activities of an advocate enrolled in one Partner State that are rendered in another Partner State, whether or not the advocate is physically present in that other Partner State;

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

“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 lawyer’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 lawyer’s entitlement to practice; and

- (e) any interim suspension or restriction or limits on a lawyer's entitlement to practice imposed, pending the outcome of a disciplinary hearing.

"entitled to practice law" means allowed, under all the legislations and regulations of a home Partner State, to engage in the practice of law in the home jurisdiction;

"host Partner State" means any other Partner State where the advocate conducts or carries on cross border activities other than the home Partner State;

"home Partner State" means the Partner State where the advocate acquired the right to bear his or her professional title;

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

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

"liability insurance" means compulsory professional liability errors and omissions insurance required by a governing body;

“Law Council” means the East African Community Law Council as established by section 4;

“Law Society” means the East Africa Law Society;

“Partner State” means a Partner State of the East African Community;

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

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

“register” means a register of eligible advocates for cross border legal practice;

“Registrar” means the Registrar of the High Court or similar court of the home Partner State;

“Sectoral Council” means the Sectoral Council provided for under Article 14 of the Treaty for Establishment of East African Community.

Objectives.

3. The objectives of this Act are to—

- (a) promote cross border legal practice within the Community;
- (b) promote harmonisation of legal training and certification;
- (c) provide common standards and rules to regulate cross border legal practice within the Community; and
- (d) facilitate free movement of legal professional services;

PART II—THE EAST AFRICAN COMMUNITY LAW COUNCIL.

4. (1) There is established an East African Community Law Council which shall act in collaboration with the national Bar Associations and Law Councils of the Partner States.

Establishment of the East African Law Council.

(2) The Law Council shall consist of—

- (a) a representative of the national Law Council from each of the Partner States;
- (b) a representative of the East African Law Society who shall be the Secretary; and
- (c) a representative of the East African Court of Justice who shall preside over the Law Council.

(3) Members of the Law Council shall hold office for a period of three years renewable once.

(4) The office of a member of the Law Council shall fall vacant upon his or her—

- (a) death;
- (b) resignation in writing addressed the Chairperson;
- (c) misconduct;
- (d) inability to perform his or her duties by reason of infirmity of body or mind; or
- (e) vacation of office by virtue of which the appointment was made.

5. The functions of the Law Council shall be to—

Functions of the Law Council.

- (a) regulate cross border legal practice;

- (b) advise and make recommendations to the Sectoral Council on policy matters relating to cross border legal practice;
- (c) advise and make recommendations to the national bar associations and law councils on matters relating to cross border legal practice;
- (d) exercise disciplinary control over advocates engaged in cross border legal practice; and
- (e) exercise any power or perform any duty authorised or required by this Act.

Proceedings  
of the Law  
Council.

6. The Law Council shall in conducting its business determine its own procedure, and for such purpose make rules to guide it in the discharge of its functions.

Secretary to  
the Law  
Council.

7. (1) There shall be a Secretary to the Law Council.

(2) The Secretary to the Law Council shall be a representative of the East African Law Society.

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

### PART III—CERTIFICATION OF ADVOCATES

Eligibility  
and register  
of  
advocates.

8. (1) Every national Law Council shall on an annual basis, submit a list of eligible advocates for cross border legal practice to the Secretary to the Law Council.

(2) The Secretary to the Law Council shall upon receipt of the list of advocates submitted under subsection (1) compile a register of eligible advocates for that current year.



(3) The Secretary to the Law Council shall have custody of the register of eligible advocates submitted under subsection (1).

(4) An advocate eligible to practice in one Partner State shall be eligible to practice in all the other Partner States.

9. (1) If any advocate is suspended from practice in a Partner State or struck off the roll of advocates by order of a competent court or other competent authority in the Partner State, that advocate shall be deemed ineligible to practice in any of the Partner States.

Reciprocal enforcement of suspensions and striking off in Partner States.

(2) The Secretary to the Law Council shall cause a notice of the suspension or strike off of an advocate to be entered against the name of the advocate in the register of eligible advocates.

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

10. (1) The Secretary to the Law Council shall notify the Secretary of the East Africa Law Society of any entry in respect of any advocate in the register under this Act.

Notification to East Africa Law Society.

(2) The East Africa Law Society shall maintain a register of eligible advocates.

11. (1) A complaint against an advocate for professional misconduct may be made to the Law Council by the national bar association or by any aggrieved person.

Complaints against advocates.

(2) The Law Council shall give the advocate 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 14 days before the date fixed for the hearing.

(3) Where in the opinion of the Law Council the complaint does not disclose any prima facie case of professional misconduct, the Law Council may, at any stage of the proceedings, dismiss the complaint without requiring the advocate to whom the complaint relates, to answer any allegations made against him or her and without hearing the complainant.

(4) For avoidance of doubt, the hearing of the complaint shall observe the rules of natural justice.

(5) After hearing the complainant and the advocate to whom the complaint relates, if he or she wishes to be heard, and considering the evidence adduced, the Law Council may order that the complaint be dismissed or if of the opinion that a case of professional misconduct on the part of the advocate has been made out, the Law Council may order that—

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

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

(7) The Law Council may issue a warrant which may be enforced by the national law council 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 advocate by distress and sale under warrant, and the warrant shall be issued by the High Court or similar court in the Partner State.

(8) The Law Council may order any advocate 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 Law Council to be entitled to the property.

(9) Any order made by the Law Council under this section relating to the payment of compensation, costs or expenses, or to the restoration of property, shall be drawn up by the Law Council and shall thereupon be executable by the national law council as a decree of the High Court or similar court in the Partner State.

(10) At the time of awarding 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).

(11) Decisions of the Law Council shall be deemed to have the same effects as decisions of the national law council for enforcement purposes.

**12.** Upon receipt of apparent facts, notwithstanding any provisions of this Act, the Law Council may review its decisions. Review of decisions.

**13. (1)** The Secretary to the Law Council shall furnish the complainant with a record of the proceedings and ruling upon determination of the hearing. Report and action on complaint.

(2) The record of proceedings furnished under sub-section (1) may be used by any aggrieved party to institute an appeal.

Appeal  
against  
order of the  
Law  
Council.

**14.** (1) Any party aggrieved by any order of the Law Council made under this Act may, within fourteen days appeal against the order to the High Court or similar court in the home Partner State by giving notice of appeal to the Registrar, and shall file with the Registrar a memorandum setting out his or her grounds of appeal within thirty days after the giving by him or her the notice of appeal.

(2) The High Court or similar court in the Partner State shall set down for hearing any appeal filed under sub section (1) and shall give the Law Council and the advocate not less than fourteen days' notice of the date of hearing.

(3) Pending an appeal under sub section (1), if the Law Council has ordered the appellant advocate's name to be struck off from the roll or has suspended his or her right to practice, the advocate shall not be entitled to practice except in the case where his or her right to practice has been suspended and the period of suspension has lapsed before the hearing of the appeal, in which event he or she shall be entitled to practice after the period of suspension has lapsed.

Effect of  
disciplinary  
action.

**15.** Where under any provision of this Act the name of an advocate is struck off the roll or an advocate is suspended from practice, that advocate's practicing certificate shall be deemed to have been cancelled on in case of suspension, cancelled for the duration of the suspension.

#### PART IV—ACCOUNTING FOR ADVOCATES

Remuner-  
ation and  
client funds.

**16.** An advocate carrying out cross border legal practice shall comply with the laws of the host Partner State regarding remuneration, accounting and handling of client's funds, management of trust funds, liability insurance and defalcation of compensation funds.

PART V—MISCELLANEOUS PROVISIONS

**17.** The Council may, upon recommendation of the Law Regulations.  
Council make regulations for the effective carrying out of the  
provisions and purposes of this Act.

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