The East African Community

4. East African Legislative Assembly (EALA)

The East African Community Cross Border Legal Practice Bill, 2013

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PROPOSED DRAFT OF THE BILL
THE EAST AFRICAN COMMUNITY

THE EAST AFRICAN COMMUNITY CROSS BORDER LEGAL PRACTICE BILL, 2013

MEMORANDUM

The object of this Bill is to provide for the conduct and regulation of cross border legal practice in the East African Community (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 (Treaty) which, inter alia, requires 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 operationalizes Article 76 of the Treaty which provides for free movement of labour, goods, services, capital, and the right of establishment. It 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 Harmonization 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 ACT, 2012.

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THE EAST AFRICAN COMMUNITY CROSS BORDER LEGAL PRACTICE BILL, 2013

A Bill for an Act

ENTITLED

THE EAST AFRICAN COMMUNITY CROSS BORDER LEGAL PRACTICE BILL, 2013

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, 2013.

2. In this Act unless the context requires –
   “Advocate” means any person whose name is duly entered as an Advocate on the Roll of Advocates in any of the Partners;

   “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 physical present in that other Partner State;

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

   “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;

   “The East African Community Law Council” means the East African Community Law Council as established by Section 4 of this Act.
“Disciplinary Committee” means the East African Community Advocates Disciplinary Committee established by Section 17 of this Act.

“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.

“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 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 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.

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

“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 East African Partner States.

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

“register” means a register of eligible advocates for cross border legal practice; and
2) The East African Community Law Council shall consist of-

(a) A representative of the Law Council from all East African Community Partner States;
(b) A representative of the East African Law Society who shall be the Secretary;
(c) A representative of the East African Court of Justice who shall preside over the Law Council.

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

4) The office of a Member of the East African Community 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;
(e) Vacation of office by virtue of which the appointment was made.

PART II- THE EAST AFRICAN COMMUNITY LAW COUNCIL

4. Establishment of the East African Community Law Council

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

2) The East African Community Law Council shall consist of –

(a) A representative of the Law Council from all East African Community 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.

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(e) Vacation of office by virtue of which the appointment was made.
5. Functions of the East African Community Law Council

The functions of the Law Council shall be to-
(a) To regulate cross border legal practice;
(b) Advise and make recommendations to the Sectorial 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 authorized or required by this Act.


The East African Community 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.

7. Secretary of the East African Community Law Council

1) There shall be a Secretary to the East African Community Law Council.
2) The Secretary to the East African Community Law Council shall be a representative of the East African Law Society.
3) Any expenses incurred by the East African Community 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

8. Eligibility and Register of Advocates

(1) Every national Law Council shall on annual basis, submit a list of eligible advocates for cross border legal practice to the Secretary of the Law Council;
(2) The Secretary of the East African Community Law Council shall upon receipt of the list of advocates submitted under sub – section 1 compile a register of eligible advocates for that current year;
(3) The Secretary of the East African Community Law Council shall have custody of the register of eligible advocates submitted under sub – section 1.
(4) An advocate eligible to practice one Partner State shall be eligible to practice in all other Partner States.
9. Reciprocal enforcement of suspensions and striking-off in partner States

(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.

(2) The Secretary of the East African Community 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. Notification to East African Law Society

a) The Secretary of the East African Community 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.

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

11. Complaints against advocates

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

(2) (a) The East African Community 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;

(b) Where in the opinion of the East African Community Law Council the complaint does not disclose any prima facie case of professional misconduct, the East African Community 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.

(b) For avoidance of doubt, the hearing of the complaint shall observe the rules of natural justice.
(4) 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 East African Community 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 East African Community 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;

(c) the name of the advocate be struck off the roll;

(5) The East African Community 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 East African Community Law Council in connection with the hearing of any complaint as it may think fit.

(6) The East African Community 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 of the Partner State.

(7) The East African Community 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 East African Community Law Council to be entitled to the property.

(8) Any order made by the East African Community Law Council under the provisions of this Section relating to the payment of compensation, costs or expenses, or to the restoration of property, shall be drawn up by the East African Community Law Council and shall thereupon be executable by the National Law Council as a decree of the High Court.

(9) 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).

(10) Decisions of the East African Community Law Council shall be deemed to have the same effects as decisions of the National Law Council for enforcement purposes.

12. Review of decisions

Upon receipt of apparent facts, notwithstanding any provisions of this Act, the East African Community Law Council may review its decisions.
13 Report and action on a complaint

The Secretary of the East African Community Law Council shall furnish the complainant with a record of the proceedings and ruling upon determination of the hearing.

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

14. Appeals against order of the East African Community Law Council

(1) Any party aggrieved by any order of the East African Community Law Council made under this Act may, within fourteen days appeal against the order to the High Court of 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 shall set down for hearing any appeal filed under sub section (1) and shall give to the East African Community 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 East African Community 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 lapses before the hearing of the appeal, in which event he or she shall be entitled to practice after the period of suspension has expired.

15. Effect of disciplinary action

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 V: ACCOUNTING FOR ADVOCATES

16. Remuneration and Client funds

An advocate carrying out cross border legal practice 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 of compensation funds.
PART VI: MISCELLANEOUS PROVISIONS

17. Regulations

The Council upon recommendation of the East African Community Law Council may make regulations for the effective carrying out of the provisions and purposes of this Act.

18. Act to take precedence

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