

INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA

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

7 AUGUST 2018

Comments by ICPAU

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THE EAST AFRICAN CROSS BORDER TRADE IN PROFESSIONAL SERVICES BILL, 2017			
4.	<p>Memorandum of the Bill</p> <p>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 the purposes connected to the</p>	<p>The memorandum of the Bill is premised on Article 104 and 74 of the Treaty for the Establishment of the East African Community (EAC), which provide for adoption by the partner states of measures to achieve the free movement of persons, labour and services ; enjoyment of the right of establishment and residence and establishment of a Common Market among the Partner States respectively.</p>	<p>Whereas this is an ideal premise given the overall object of the EAC Common Market Protocol (CMP)¹, There are still a number of evident implementation challenges under the Common Market Protocol which may hinder progressive application of the provisions of the Bill. Although the Bill seems to be clothed to cover all professions, not all professionals have been covered by the Protocol. The schedules of the Common Market in their current format are not open for all professionals but certain sectors. Whereas the CMP guarantees the free movement of workers who are citizens of the Partner States, Annex II of the Protocol only permits the free movement of highly skilled workers. This does not reflect the spirit of Articles 76 and 104 of the EAC Treaty that guarantee the free movement of workers without any exception. This may need to be harmonized first.</p> <p>Secondly some partner states are yet to harmonise their laws in line with adoption of common approaches on the matter. One of the partner states cited within the Bill, (Republic of South Sudan), seems</p>

¹ See Article 4(1) of the Protocol

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	practice of professions through boarders of the community.		to lack concrete progress in setting up formal professional bodies to enable it benefit from the provisions of the Bill. Others like the Republic of Tanzania have also not fully harmonised their laws to cater for this.
2.	Preliminary Section 2 definition of 'discipline' vis a vis 'indiscipline'	In the first instance, the proposed Bill gives the definition of discipline to include (a)..... (b)..... (c)..... (d) lack of physical or mental capacity to engage in the practice of law; and... While indiscipline is defined to include; (a)..... (b)..... (c)..... (d) lack of physical or mental capacity to engage in professional practice; and...	Clause (d) within the definition of discipline seems to carry no meaning and hence likely to pose interpretation challenges while clause (d) within the definition for indiscipline is likely to require further clarity as one may wonder what would be the measure of sufficient physical or mental capacity to carry on professional practice. Secondly defining both terms that is discipline and indiscipline in the same format defeats understanding and intention of the drafts person since 'discipline' can never be 'indiscipline.' <u>Proposed Amendment</u> We propose that the suggested definitions be deleted <u>Justification:</u> To avoid confusion while interpreting provisions of the Bill.
2.	'Practicing certificate' means a certificate issued by the Registrar to a practitioner, authorizing him	Within the definition provided for the term practicing certificate, reference is made to a registrar. However, the registrar is not explicitly mentioned anywhere within the Bill. Clause 7 of the Bill only refers to the Secretary of the	There is need to explicitly provide for the registrar for purposes of issuing practicing certificates. We therefore propose to insert within the definition section the following; <u>Proposed Amendment</u> "Registrar" means the Secretary to the Practitioners' Council

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	or her to practice in any of the Partner States	Practitioners' Council who upon receipt of lists of professionals will compile a register of eligible professionals	<u>Justification:</u> To provide clarity
2.	'Register' is defined to mean a register of eligible practitioner for only <u>substantive professions</u>	The inclusion of the term ' <u>substantive professions</u> ' seems to introduce confusion within the definition.	The memorandum of the Bill seeks to provide for the conduct and regulation of provisional services without any qualification. However, later in the Bill the register to be developed will only be for substantive profession services. Such qualification does not only create more confusion but it also dilutes the spirit of the Bill. We propose to delete the term 'substantive' for the definition to read as follows; <u>Proposed Amendment</u> "Register" means a register of eligible practitioners for all eligible professions as provided for under the Common Market Protocol. <u>Justification:</u> To provide clarity and an all embracing definition which is in tandem with the memorandum of the Bill
3 (b).	The objectives of this Act are to- (a)..... (b) promote harmonization of professions training and certification.....	The Bill seeks to provide for harmonization of professions training and certification.	This objective of professions training and certification seems not to be captured anyway within the Bill. The lack of clarity of this particular objective introduces confusion on which kind of training and certification is being referred to here. Is it the initial professional training or the continuous professional training as required by a number of professions? Depending on the nature of the training, the corresponding certification may also be open to discussion.
4 (2)(a).	The East African Practitioners Council	The Bill provides for the East African Practitioners Council to consist of a representative of the	We take note of the following: (a) The 'national professions council' being referred to is not defined.

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		<p><u>national professions council</u> from each Partner State;....</p>	<p>(b) The Bill seeks to provide for a number of professional services and hence professions, but where only one professional will be selected/appointed /elected to represent all the others may not be an ideal option especially where informed decision on each profession's activity is concerned as a way of ensuring trade facilitation.</p> <p><u>Proposed Amendment</u></p> <p>We therefore propose to delete the clause on the East African Practitioners Council and replace it with a clause within the Bill which will operationalise the provisions of each profession's MRA.</p> <p><u>Justification:</u></p> <p>(a) Each profession understands the dynamics of their profession well. To better appreciate the developments in each profession, mandate should be granted to each profession to discuss matters pertinent to their work cross border and conclude these in an understanding by way of MRA. The Bill should hence have a diverse approach to the different profession because no profession may be similar to the other or have similar priorities.</p> <p>(b) The alternative of each profession having its own East African Practitioners Council since no one Council can ably regulate all profession is equally not feasible.</p> <p>(c) The alternative of having each profession represented on the Council is equally not possible.</p>
4 (4)(b).	The office of the member of the practitioners Council shall fall vacant upon his	Reference is made to a resignation of any member being addressed to the Chairperson in writing	<p>From the said provision;</p> <p>(a) We note that the chairperson referred to here is neither defined nor specified.</p> <p>(b) What happens in instances where the chairperson him/herself resigns?</p>

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	or her (a).... (b) resignation in writing addressed to the Chairperson		<u>Proposed Amendment</u> We propose to delete this clause and let each profession's MRA should cater for this. <u>Justification:</u> No single East African Council will ably regulate all professions.
5.	The functions of the Practitioners Council shall be- (a).... (b) Advise and make recommendations to the national professionals associations and professionals councils on matters.... (c)..... (d) exercise any power or perform any duty authorized or required by this Act	Part (b) re-introduces the terms national professionals associations and professionals councils which in some EAC jurisdictions are one and the same Part (d) grants the Practitioners Council to perform any duties provided for in the Bill	The implications of this two provisions are: (a) Clause (b) compounds on the confusion on the term professionals councils since this is not defined anywhere. (b) Clause (d) seems to make any other role assigned to all the other committees irrelevant as the Council can do any of such roles. We thus propose to delete this clause <u>Proposed Amendment</u> We propose to delete this clause and let each profession's MRA should cater for this. <u>Justification:</u> Same as in 4 (2)(a) above
7(1).	Certification of Professionals	This requires every national practitioners council to submit a	It is important to note that quality issues underpin the intentions of the common market protocol. Where the Bill requires each national

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		list of eligible practitioners for trade in professional services	<p>professional regulator to submit a list of its practitioners, one wonders how the East African practitioners Council will verify and later on confirm the abilities of these practitioners. It is general knowledge that not all practitioners of a particular profession will have competence to handle the work. How this is likely to be handled remains a pertinent concern.</p> <p><u>Proposed Amendment</u></p> <p>We propose to delete this clause and let each profession's MRA should cater for this.</p> <p><u>Justification:</u></p> <p>Same as in 4 (2)(a) above</p>
11.	Discipline of Profession	The composition of this disciplinary committee is very biased. It gives an impression that it is set for the legal profession and not all the other professions as envisioned in the object of the Bill	<p>There is need to balance this committee for better appreciation of the works of the other profession to be considered, yet doing so seems not possible since not all profession can get representation on the committee.</p> <p><u>Proposed Amendment</u></p> <p>We propose to delete this clause and let each profession's MRA should cater for this.</p> <p><u>Justification:</u></p> <p>Same as in 4 (2)(a) above</p>
18.	A complaint against a profession for professional misconduct.	The Bill provides among other parties that can raise a complaint against a profession to include the national bar association.	<p>We believe opportunity to raise such complaints should be granted to the respective practitioners' societies and aggrieved persons. This provision can still be addressed within each profession's MRA.</p> <p><u>Proposed Amendment</u></p>

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			<p>We propose to delete this clause and let each profession's MRA should cater for this.</p> <p><u>Justification:</u></p> <p>Same as in 4 (2)(a) above</p>
23.	The Act is to take precedence over the Partner states laws.		This provision should be dropped
5.	General Comments	<p>(a) The Bill seems to provide for no option of appeal</p> <p>(b) There is no clear guidance on award of penalties for breach of provisions of the Bill</p> <p>(c) A number of professions have entered into clear Mutual Recognition Agreements (MRA) which have provided for a broader enabling environment than this Bill seeks to create. A case in point is the MRA concluded by the East African Institutes of Accountants in September 2011. This MRA provides for procedures on among others:</p> <ul style="list-style-type: none"> ▪ application for registration and practicing certificates ▪ Treatment of individuals with foreign accountancy qualifications ▪ Disciplinary matters ▪ Members' education and development ▪ Technical Guidelines and Resources ▪ Standard setting and implementation ▪ Audit Quality Reviews among others. A number of these aspects are not even mentioned of in the proposed Bill. <p>Our proposal therefore is to approach legislation of the cross border trade in professional services from an appreciation of the MRA by the different professional bodies.</p> <p>Lumpsum regulation of all professions may not only be hard to achieve but will also not enable the EAC achieve its desired objects as enshrined in the EAC treaty and the EAC Common Market Protocol. The object of the EAC Cross Border Trade in Professional Services Bill is indeed desirable. The means</p>	

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		<p>seem to cut down on any potential goals and aims of this enactment.</p> <p>Allowing professions across borders to discuss and appreciate circumstances under which they operate would be a better approach to achievement of the Bill's intentions. This is premised on an understanding that no single legislation can bring together all the targeted professions.</p> <p>We thus propose for the EAC Cross Border Trade in Professional Services Bill to provide for an enabling environment for the various professions and let any procedural matters relating to certification, leadership, disciplinary measures to be provided in the respective professions' MRAs.</p> <p>We propose to include a clause that operationalises the respective professions' MRAs which could read as follows;</p> <p><u>Proposed Amendment</u></p> <p>.....</p> <p><u>Justification:</u></p> <p>To provide for clear mechanisms to enabling cross border trade in professional services</p>	