

**SADC Protocol on Trade in Services**

Guidelines for the Development of SADC Mutual Recognition Agreements (MRAs) for Professional Services

-------------------------------------------------------------------------------------------------

These Guidelines provide the necessary steps and guidance to State Parties to the SADC Protocol on Trade in Services in developing and negotiating Mutual Recognition Agreements (MRAs) for professional services in line with the provisions of Article 7(1) of the Protocol, which reads:

*“No later than two (2) years following the entry into force of this Protocol, the TNF-Services shall establish the necessary steps for the negotiation of an agreement providing for the mutual recognition of requirements, qualifications, licences and other regulations, for the purpose of the fulfilment, in whole or in part, by service suppliers of the criteria applied by State Parties for the authorisation, licensing, operation and certification of service suppliers and, in particular, professional services.”*

Date: May 2023

# Introduction

* 1. The SADC Protocol on Trade in Services (“the Protocol”), which entered into force on 13 January 2022, requires State Parties to provide for “the mutual recognition of requirements, qualifications, licenses and other regulations, met, issued or obtained in another State Party for the purpose of the fulfilment, in whole or in part, by service suppliers of the criteria applied by State Parties for the authorisation, licensing, operation and certification of service suppliers and, in particular, professional services.” Mutual Recognition Agreements (MRAs) are commonly used in trade agreements to ensure transparency and effective recognition processes by the host or receiving jurisdiction in authorising, certifying, or licensing professional services supplied by foreign qualified professionals.
  2. Regulators of professional services tend to set high service standards including safety and quality of services in order to protect consumers and the suppliers of services. They require services suppliers to meet a certain level of educational and/or professional qualifications and other requirements to be able to provide services in their jurisdiction. The differences in education systems (course content, examination standards and learning outcomes) as well as experience requirements or regulatory systems, complicates recognition of foreign vis-à-vis national qualifications. In this regard, MRAs become necessary to ensure transparency and rationalised criteria, in the procedures, and vetting processes for recognising foreign qualifications, licences, and requirements while accommodating any differences in the education and regulatory systems of the State Parties. MRAs are therefore considered an important trade facilitation tool, especially for trade in professional services.
  3. The 31st meeting of the SADC Committee of Ministers of Trade (CMT), held in July 2019, directed SADC Member States to prioritise negotiations on liberalisation of business services and development of MRAs to ensure effective market access for professional services and skills across the region, in line with the SADC Industrialisation Strategy and Roadmap 2015-2063. These Guidelines have been prepared in line with Article 7(1) of the Protocol to set out the necessary negotiation steps and guide the State Parties in the development of MRAs for professional services.

# Objective

* 1. The objective of these Guidelines is to provide for a common approach to be followed by State Parties in developing and negotiating MRAs, and to provide minimum elements for the structure of MRAs for the different professional services with the view to ensuring that such MRAs are consistent with the provisions the Protocol and other/sectoral SADC Protocols and to comply with the objectives of the Treaty establishing SADC.

# Negotiating approach

* 1. State Parties shall develop sectoral/profession-specific MRAs for each of the professional fields covered by the Protocol[[1]](#footnote-2) to ensure that the specificities or peculiarities of each professional field are considered.
  2. The negotiations shall be transparent and open to all State Parties to the Protocol and the relevant sectoral Protocol(s), as appropriate.
  3. The State Parties shall provide technical assistance and capacity building in facilitating the least developing countries (LDCs) in accessing MRAs in line with Article 7(3) of the Protocol and mechanisms provided for under other SADC Protocols.

# Priority professional fields for MRAs

* 1. The Trade Negotiating Forum for Services (TNF-Services) shall prioritise development of MRAs for sectors/professional fields by considering:

1. Liberalisation commitments by State Parties under Part IV of the Protocol.
2. input received from national and regional professional stakeholders, including the SADC Business Council.

# Starting point

* 1. The negotiations shall start with a textual proposal developed by the Secretariat in collaboration with sector/professional experts, including national and regional professional associations and regulatory bodies. Such text shall be prepared for consideration by TNF-Services, which shall be convened as is provided for in section 6 [stakeholder engagement] and section 7 (Negotiating structure) of these Guidelines.
  2. To the extent that MRAs developed under these Guidelines deal with matters relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures, falling within the scope of Article 6 [domestic regulation] of the Protocol, State Parties shall ensure that such provisions in MRAs for professional services are consistent with [a] each State Party’s commitments under the World Trade Organisation (WTO), including the Joint Initiative on Services Domestic Regulation where applicable.

# Stakeholder engagement

* 1. State Parties shall, through the ministries or departments responsible for trade, coordinate national stakeholder consultations in preparation of national negotiating positions for the MRAs. The process shall be comprehensive and ensure engagement of the private sector and public institutions responsible for policy and regulation of professional services including those dealing with business licensing, labour, and immigration matters.
  2. TNF-Services shall involve all key stakeholders such as practitioners [service providers] and regulatory bodies, where they exist at regional level, to ensure due consideration of technical and practical issues that are necessary in achieving mutual recognition for the respective sectors/professional fields, as required by Article 7(4) of the Protocol, and taking into account issues outlined in section 9 [structure of MRA] of these Guidelines.
  3. The Secretariat shall coordinate regional stakeholder consultations, and upon request, provide technical assistance for capacity building to enhance State Parties’ participation in the negotiations in line with Article 7(3) of the Protocol.

# Negotiating structure and steps

* 1. TNF-Services shall be responsible for negotiating the MRAs in line with provisions of Article 24(4) of the Protocol. In carrying out this function, TNF-Services:

1. shall invite competent authorities of the State Parties responsible for the regulation of professional services to provide input for development of an MRA in their professional fields.
2. may seek advice from a Sector Focus Group (SFG) on Business Services and, as may be appropriate, sub-committee(s) comprising of national and regional professional associations or regulatory bodies, which shall be responsible for providing technical input and advice through the SFG-Business Services to the TNF-Services on the development of MRAs in their respective professional services fields.
   1. TNF-Services shall consider recommendations and inputs from the SFG-Business Services referred to in paragraph 7.1 (b) in order to conclude the negotiations of an MRA, the final text of which shall be recommended to the CMT for adoption.
   2. [The MRAs for professional services adopted by the CMT shall be annexed to, and form an integral part of, the Protocol in line with provisions of Article 26 of the Protocol/ as may be recommended/decided by the TNF-services. or

The adoption of MRAs will be decided on by the TNF, through a recommendation to the CMT]

* 1. The final text of MRAs adopted by the CMT will be recommended for legal scrubbing/clearance by the committee of Ministers of Justices and Attorney Generals, who shall refer it back the CMT for final adoption]

# Parties to the MRAs

* 1. The MRAs for professional services shall be between State Parties as provided for in Article 7 of the Protocol.
  2. [Zambia to add a text clarifying intersection/link of the bilateral and the MRAs being developed under this Guidelines) – to be considered by TNF, possibly under section 5 (starting Point) of this Guidelines.

# Structure of an MRA

* 1. State Parties shall work towards achieving a standard approach to the MRAs in the different professional services. In doing so, State Parties agree to consider elements and features provided for in Appendix I of these Guidelines in developing and negotiating the MRA for professional services.
  2. The MRAs for professional services shall [serve as] constitute a trade facilitation tool to enable the professional regulatory bodies and associations of State Parties in setting the criteria, procedures, and mechanisms for recognising requirements, qualifications, licences, and other regulations, as provided for in Article 7 of the Protocol.
  3. [The MRAs shall be comprehensive and encompass different levels of professional qualifications taking into account the provisions of Articles 14 and 15 of the Protocol relating to market access and national treatment commitments in each of the four modes of supplying services. Nothing in a final MRA shall imply or be construed to grant market access or national treatment in professional services beyond a State Party’s commitments as reflected in its List of Commitments under Article 16 of the Protocol].

**Appendix I: Standard structure and features of an MRA**

|  |  |  |
| --- | --- | --- |
| **SN** | **Sections and provisions** | **Key features or basic information** |
|  | Title | Clearly state the title of the MRA |
|  | Preamble | Link to the Protocol as well as other relevant sector agreements e.g., Protocol on Health [for health-related professions], and Protocol on Education and Training [for non-regulated sector/professions].   * Include statements relating to State Parties’ commitment to:   + Promote consumer confidence - in SADC professional services vis-à-vis non-SADC services.   + Promote regulatory cooperation among the State Parties’ professional services regulatory bodies and associations,   + Facilitate recognition as in [Article 7 of the Protocol] to promote market access and movement of professionals services s. * [Facilitate recognition to support skills development and movements across the SADC Region]. * Accelerate SADC regional integration and boost intra-SADC trade by enhancing effective market access for professional services. * ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures allow for effective market access as articulated in Article 6 [domestic regulation] of the Protocol |
|  | **Part I: definition, objective, and scope** | |
|  | Definition | Provide a glossary of all technical terms used in the agreement with assigned meaning or interpretation |
|  | Objective | State the objective of the MRA including:   * giving effect to market access and national treatment commitments in the State Parties’ Lists of Commitments as well as unilateral liberalisation efforts by State Parties. * facilitating professional skills [services suppliers] mobility across the region in line with State Parties’ market access and national treatment commitments under Article 16 of the Protocol and in line with the objectives of the SADC Industrialisation Agenda and Roadmap 2015-2063; * achieving standardised procedures and criteria for recognition of professional requirements, qualifications, licences, and other regulations, for the purpose of the fulfilment, in whole or in part, by service suppliers of the criteria applied by State Parties for the authorisation, licensing, operation and certification of service suppliers of professional services. |
|  | Scope | State whether:   * the recognition mechanism shall be based on qualifications, or on the licence obtained in the country of origin (a State Party), or some other requirements. * the agreement covers temporary and/or permanent access to the Register/Roll of the profession concerned.   Clearly indicate the applicable professional fields to which it applies.   * describe the occupational or professional titles/cadres/designations to be covered. * define the type of services/activities that a foreign qualified persons covered by the MRA is permitted to offer/practise in a particular profession under each title or cadre/designation.   The scope shall consider:   * the four modes of supply (i.e., cross-border supply, consumption abroad, commercial presence and temporary presence of natural persons) as provided for in Article 3 of the Protocol. |
|  | **Part II: Recognition of qualifications** | |
|  | **Recognition principles** | Clearly define key principles to be followed such as   * Transparency – process, procedure and criteria for recognition to be clearly stated and published in a form accessible by all applicants. * Most-favoured nation treatment – State Parties to accord eligible professionals of a State Party the best treatment accorded to professionals of another State Party or non-Parties unless such preference is granted through a formal agreement between the host country and the favoured State Party. * Non-discrimination: all eligible applicants to be treated and subjected to the same recognition conditions as a qualified profession of another State Party. |
|  | **Eligibility** | Define the beneficiaries of the MRA by stating whether it shall apply to:   * nationals of State Parties, and or qualification holders of a State Party. * professionals of State Parties who are practising outside the State Parties, but within the SADC region. * fresh graduates or young professionals seeking first time registration or practice licence in another State Party |
|  | Required qualifications | Indicate the mandatory basic or minimum qualifications that are required to authorise, licence or certify to practice for each of the specified titles, designation or cadres as described in the scope, including:   * minimum education level (length and content of studies) or learning achievement as linked to the SADC Qualification Framework developed under the Protocol on Education and Training); * minimum experience (number of years, type of activities or fields of work, location, length, and conditions of practical training or supervised professional practice prior to licensing, framework of ethical and disciplinary standards) * examinations passed (examinations/tests of professional competence); * any additional requirements, for example knowledge of local law, practice, standards and regulations and how to achieve it.   NB: *Article 6. 5. (a) of the Protocol - Given the importance that a well operating professional services sector has for economic development, special attention is to be given to the management of the respective qualification requirements and procedures and licensing arrangements, with a view to ensuring that the respective requirements and procedures are not adopted or applied in a manner which creates obstacles to trade in services*. |
|  | Type of recognition | Indicate the extent to which State Parties’ qualifications are recognised in the host or receiving State Party   * whether automatic or equivalent to the host or receiving State Party’s qualifications. * in case of shortcomings in relation to qualification requirements in the host or receiving State Party, indicate whether compensatory “make-up” measures are required and specify the procedure to achieve it, for example, supervised practice by a locally registered/licensed professional, undertake aptitude test or examination, etc. * Where an aptitude test, examination, or interview is required, indicate:  1. whether such test, examination or interview can be schedule at reasonably frequent intervals and provide a reasonable period to enable applicants to request to take the test or examination or attend the interview. 2. The extent to which an applicant can appear for such interview or undertake in whole or party, such a test or examination in person(physically) or virtually. |
|  | Procedures for registration | Outline the procedure for the recognition of professional qualifications in the context of an MRA, including -:   * whether an application can be submitted:   + electronically and/or in-person;   + prior or after entry into the host or receiving State Party;   + where applicable, before or after obtaining a work permit/visa; * specify all documents or information required to accompany an application; * timeframe within which a decision on an application should be made and the applicant will be informed; * whether, and how, an appeal can be made in respect of an application decision   NB: *Article 6.* *4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures allow for effective market access, the CMT shall develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia:*  *(a) based on objective and transparent criteria, such as competence and the ability to supply the service, ensuring the quality of the service;*  *(b) those required to achieve national policy objectives; and*  *(c) not in themselves a restriction on the supply of the service.*  *The disciplines developed shall seek to buttress the liberalisation commitments undertaken by State Parties while preserving their right to regulate and ensuring their continued capacity to use regulations for development purposes. In order to ensure consistency between liberalisation in the Region and their WTO obligations, State Parties will decide to take into account the disciplines developed under the GATS.* |
|  | Fees | Indicate whether the professionals of state party shall pay the same or a different fee rate for professional registration [individual professionals and joint venture], annual subscription and/or licence fees   * Consider the possibilities of providing preferential fees, transparency, graduate fees for young professionals. * Fee shall be reasonable, transparent based on authority set out in a measure (policy, law, regulations) and do not in themselves restrict the supply of the relevant service. |
|  | Results of recognition | indicate whether the recognition shall be through single, reciprocal registration (incl. certificate, licence), temporary and/or permanent access to (host or receiving State Party’s register or roll) of the professionals in that field.   * Consider issuance of a regional professional card (electronic identification card or certificate) upon registration –   + specify benefits accruing to card holders.   + the issuer of such card to consider cyber security risks and need to maintain a publicly accessible database of cardholders |
|  | Continuous professional development (CPD) | indicate any mandatory CPD requirements including the type of activities, duration and whether CPD credits can be accumulated on a cross-border basis i.e., those earned from activities conducted by or in another State Party. |
|  | **Part III: Areas of cooperation** | |
|  | Regulatory cooperation | State Parties can agree to cooperate in the regulation of the profession for market and economic development of the SADC region. Such cooperation may include for example,   * Consumer protection, * development of model laws/regulations, * staff exchange program among regulator bodies, * cross-border internship and apprenticeship programmes * information sharing on regulatory concerns e.g., those relating new developments in the profession, * regulatory harmonisation [in line with other SADC (sector) Protocols] * professional indemnity, * development of technical standards * membership to international professional bodies, etc.   **NB**: Article 7(3) of the Protocol - *State Parties shall facilitate the access of Least Developed Country (LDC) State Parties to the Protocol. Recognizing the contribution technical assistance and capacity building can play in facilitating LDCs access to MRAs, Members shall strive to provide such assistance, inter alia in accordance with mechanisms and initiatives carried out under other SADC Protocols.* |
|  | Professional development | This could cover cooperation with regional and international professional bodies in the development of professional standards, CPD activities, codes of ethics etc.  **NB**: Article 7(4) of the Protocol - *In appropriate cases State Parties shall work in cooperation with relevant intergovernmental and professional bodies towards the establishment and adoption of common standards and criteria for mutual recognition for the practice of relevant services trades and professions.* |
|  | Disciplinary procedures | Define professional standards to be applied to recognised professionals when they are practising outside their home country, which jurisdiction [i.e., the host/receiving or the sending authority] presides over violations of professional standards.   * stipulate the disciplinary process including parties to be involved in the hearing and appeal procedures as well as the mechanism for information sharing on sanctioned or unethical professional conducts. * Provide transparency requirement including information exchange. * consider creating a database or publicly accessible list of professionals that are under disciplinary sanctions. |
|  | **Part IV: Final provisions** | |
|  | Entry into force | Each MRAs shall enter into force upon its adoption by CMT in line with Article 26 of the Protocol |
|  | Accession | Each MRA shall be open to State Parties to the Protocol in line with Articles 7 and 31 of the Protocol. |
|  | Amendment | Any amendment of an MRA shall follow the procedure outlined in Article 27 of the Protocol. |
|  | Implementation structure | The implementation structure of the MRAs shall be as provided for in Article 24 of the Protocol. |
|  | Dispute settlement | Disputes arising from the application and implementation of the MRAs shall be resolved following the provisions of Article 25 of the Protocol. |

1. a) Legal Services, b. Accounting, auditing and bookkeeping services, c. Taxation Services, d. Architectural services, e. Engineering services, f. Integrated engineering services, g. Urban planning and landscape, architectural services, h. Medical and dental services, i. Veterinary services, j. Services provided by midwives, nurses, physiotherapists and para-medical personnel and (k) others [↑](#footnote-ref-2)