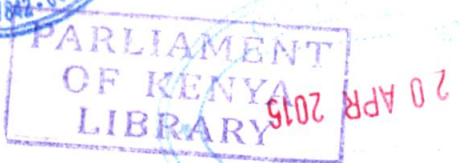




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16<sup>th</sup> March 2016  
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EAST AFRICAN COMMUNITY  
EAST AFRICAN LEGISLATIVE ASSEMBLY



THE COMMITTEE ON LEGAL, RULES AND PRIVILEGES

REPORT OF THE OVERSIGHT ACTIVITY ON THE HARMONISATION OF  
NATIONAL LAWS IN THE EAC CONTEXT

22<sup>ND</sup> – 26<sup>TH</sup> FEBRUARY 2016

ARUSHA – TANZANIA



Clerk's Chambers  
EAC Headquarters  
EALA Wing, 3<sup>rd</sup> Floor  
Arusha – TANZANIA

16<sup>th</sup> March 2016

## **1.0 BACKGROUND**

### **1. BACKGROUND INFORMATION**

#### **1.1 Introduction**

The Committee on Legal, Rules and Privileges (LRP) is a Standing Committee of the East African Legislative Assembly (EALA), established under Article 48 (3) of the Treaty for the Establishment of the East African Community (the Treaty) and Rule 80 (2)(b) of the Rules of Procedure of the Assembly. One of the main functions of the Committee as provided for under Rule 81 and Annex 5 of the Rules of Procedure of the Assembly is to assess and evaluate the implementation of Chapter 24 of the Treaty.

#### **1.2 Harmonisation of National Laws Pertaining to the Community**

Chapter Twenty Four of the Treaty provides for cooperation in Legal and Judicial Affairs. Specifically, Article 126 (2) (b) of the Treaty provides that "Partner States shall through their appropriate national institutions take all necessary steps to harmonize all their national laws appertaining to the Community". In line with that provision of the Treaty, the EAC Partner States established a Sub-Committee on the Approximation of National Laws in the EAC context (The Sub-Committee). The genesis of the Sub-Committee is traced back to the re-establishment of the East African Community. It originates from the Meeting of Attorneys General held in Mombasa, Republic of Kenya, 3-5 September, 1997 which established a Tripartite Committee of National Experts on Harmonisation of Laws to spearhead the harmonisation of legislations in Partner States.

The Sub-Committee consisted of the heads of Legislative Drafting Departments from the Attorneys General's Chambers; The chairpersons of the Law Reform Commissions; Officers from the Ministries whose sectors require harmonisation

of laws; any additional members that the Tripartite Committee could co-opt. The name of the Sub-Committee was modified from time to time; it is now known as the Sub-Committee on Approximation of National Laws in the EAC Context.

Meetings of the Sub-Committee are always preceded by meetings of a Task Force made up of delegates from the Attorneys General Chambers, Law Reform Commissions, Ministries in Charge of EAC Affairs and officers from the relevant ministries whose laws are being reviewed. The reports of the Sub-Committee are considered by the Sectoral Council on Legal and Judicial Affairs and thereafter by the Council of Ministers. The Council of Ministers makes directives to Partner States to amend/enact national laws in accordance with the recommendations made by the Sub-Committee.

### **1.3 Justification**

Harmonization of national laws is one of the critical steps required to facilitate regional integration. It is a process that has to go hand in hand with other undertakings of Partner States, otherwise, all agreed programs and stages of integration will be hampered by national laws.

The Committee on LRP is mandated to oversee the implementation of Chapter Twenty- Four of the Treaty which provides for cooperation in legal and judicial affairs. Harmonisation of national laws appertaining to the Community is one of the areas within the scope of cooperation under Chapter twenty-Four. Premised on this background, the Committee on LRP undertook an oversight activity on harmonization of national laws from 22<sup>nd</sup> -26<sup>th</sup> February, 2016.

## **1.4 Objectives**

The main objective of this activity was to assess and evaluate the process of harmonisation of national laws appertaining to the Community. The specific objectives were:

- i. to assess and review the activities of the Sub-Committee;
- ii. to examine the process of harmonization of national laws; and
- iii. to make recommendations on how to improve the process of harmonizing national laws appertaining to the Community.

## **1.5 Methodology**

The Committee conducted a Meeting in Arusha, United Republic of Tanzania, from 22<sup>nd</sup> - 26<sup>th</sup> February, 2016, and carried out the following activities:

- (i) reviewed reports produced by the Sub-Committee;
- (ii) received presentation from the office of the Counsel to the Community (CTC) on the progress made in the harmonization of national laws appertaining to the Community;
- (iii) held discussions with the Office of CTC on the process of harmonization of national laws; and
- (iv) deliberated and prepared this report.

## **2. FINDINGS OF THE COMMITTEE**

### **2.1 Harmonization Approaches Used by the Sub-Committee**

The Committee was informed that the Sub-Committee adopted approximation of national laws and development of model laws as approaches to the harmonization of national laws pertaining to the Community.

### **2.1.1 Approximation Approach**

Approximation is a process of aligning national laws with commonly agreed principles of law without necessarily making them uniform. This is referred to as partial harmonization. The methodology used in the EAC context consists of studying and analysing various laws of the Partner States to establish the gaps, differences, weaknesses and similarities therein. The Sub-Committee compares the existing laws of the Partner States and identifies principles in line with the Treaty and international best practices to guide the approximation process. The Committee observed that the adoption of approximation approach is not in line with the requirement of the Treaty. Article 126 (2) (b) requires Partner States to harmonize their national laws and not to just approximate them.

### **2.1.2 Development of Model Laws Approach**

A model law is a model of legislative text on a specific area of law that is recommended to the Partner States for adoption and enactment as part of their national law. The major objective of model laws is to align the different national laws without necessarily coming up with a uniform piece of legislation. The Committee further observed that the phrase "model law" connotes a law enacted by the Assembly and not a legal framework that can be used by Partner States to develop their national law. In order to avoid this ambiguity, the Committee was of the view that the phrase model laws in this contexts should be referred to as 'model legal frameworks' since EALA is the only EAC Organ with the mandate to enact laws.

## **2.2 Harmonization of Laws outside the Sub-Committee Framework**

The Committee was informed that apart from the Sub-Committee, there are other initiatives of harmonisation of national laws coordinated by other departments of the Secretariat and Institutions of the Community through the relevant Sectoral Councils. For example, the harmonisation of health and pharmaceutical regulatory policies and laws is initiated by the Department of Health; and the harmonisation of statistics policies and laws is initiated by the Department of Statistics.

## **2.3 Progress and Achievements Registered by the Sub-Committee**

The Committee was informed that the Sub-Committee commenced its activities in 1997, but the actual work of harmonization of national laws pertaining to the Community started after the signing of the Treaty. To date, the Sub Committee has made the following achievements:

- i. The Sub-Committee has reviewed national laws indicated in **Annexes 1 and 2**. The laws reviewed are:
  - Company laws;
  - insolvency laws;
  - partnership laws;
  - business names registration laws;
  - immigration laws;
  - labour and employment laws; and
  - sale of goods laws.
- ii. Developed two cyber-law frameworks (phase one and phase two) which were approved by the Council of Ministers in 2010;

- iii. Development of the model law of contract (*Annex 3*); and
- iv. The Sub-Committee is currently developing the following nine model laws on intellectual property:
  - Model law on Genetic Resources;
  - Model law on Geographical Indications;
  - Model law on New Plant Varieties;
  - Model law on Traditional Cultural Expressions and Folklore;
  - Model law on Traditional Knowledge;
  - Model law on Industrial Designs;
  - Model law on Trade Secrets; and
  - Model law on Utility Models and Layout Designs of Integrated Circuits.

#### **2.4 Actions Taken by Partner States to Harmonize their National Laws**

The Committee was informed that Partner States are at different stages of implementation of the directives of the Council of Ministers on harmonization on national laws. (*Annex 4 contains the matrix indicating the status of Partner States' implementation of the decision of the Council on harmonization of national laws*). The Committee observed that Partner States are very slow in amending their laws to comply with the directive of the Council of Ministers pertaining to harmonization of national laws. Criteria used and timelines for harmonization of laws is also unclear.

#### **2.5 Challenges Facing the Sub-Committee**

The Committee was informed that the Sub-Committee faces a number of challenges in undertaking its activities including the following:

- i. There are many areas of laws that need to be harmonized. The harmonization process requires comprehensive research and review; however, Law Reform Commissions do not have adequate financial resources to support the activities of the Sub-Committee;
- ii. Frequent changes in the membership of the Task Force;
- iii. Conflicting commitments of members of the Task Force;
- iv. Partner States have different legal systems;
- v. National laws are written in different languages;
- vi. Slow pace in the implementation of the harmonisation agenda at national level;
- vii. Lack of monitoring mechanism to ensure that Partner States comply with the adopted approximation proposals.

### **3. OBSERVATIONS OF THE COMMITTEE**

The Committee observed the following:

- i. The harmonization of laws ought to go together with the implementation of the entire Article 126 of the Treaty especially the harmonization of legal training and certification and to encourage the standardization of judgements of courts within the Community;
- ii. The slow pace of Partner States in harmonizing their national laws appertaining to the Community hampers the attainment of the objectives of the Community;
- iii. The use of EAC laws in some areas of harmonization is more effective than other approaches to harmonization adopted by the Sub-Committee;



- iv. The postponement of the Meetings of the Sectoral Council on Legal and Judicial Affairs is a hindrance to the effectiveness of the Sub-Committee;
- v. The EAC Secretariat has not put enough efforts to push the harmonization agenda. This is evidenced by the fact that the activities of the Sub-Committee are financed only by the Partnership Fund;
- vi. The legal frameworks (*model laws*) are not binding but they are useful in helping Partner States to develop their laws. The legal frameworks can be transformed into EAC bills to be passed by EALA;
- vii. The Sub-Committee should liaise with EALA through the Committee on LRP to improve the process of harmonization of national laws pertaining to EAC; and
- viii. The implementation/administration of the East African Community Common Market can be better facilitated by having an EAC law enacted by EALA similar to the East African Community Customs Management Act, 2004.

#### **4. RECOMMENDATIONS OF THE COMMITTEE**

The Committee, after assessing, reviewing and examining the process of harmonization of national laws appertaining to the Community, recommends that:

- i. The East African Legislative Assembly expeditiously enacts an omnibus law that will harmonize national laws appertaining to the Community; and an EAC law for the administration of the Common Market;
- ii. The East African Legislative Assembly spearheads the process of harmonization of laws appertaining to the Community based on its mandate as inter alia, the legislative organ of the Community;

- iii. The Council of Ministers addresses challenges of the Sub-committee captured in this report and provides the Sub- Committee with adequate resources in order for it to continue producing model legal frameworks which EALA could utilize in the enactment of EAC laws;
- iv. The Council of Ministers directs that the Meetings of the Sectoral Council on Legal and Judicial Affairs be held regularly and prioritizes harmonization of laws appertaining to the community in order facilitate integration within the set time frames;
- v. The Sub-Committee liaises with EALA in order synchronize the process of harmonization of laws and to keep EALA informed on a bi-annual basis on the activities undertaken by the Sub- Committee;
- vi. In order to meaningfully facilitate cooperation in legal and judicial affairs as provided for under Article 126 of the Treaty, the Council of Ministers should expedite the implementation of this entire Article which obliges Partner States to:
  - a. take steps to harmonize legal training and certification;
  - b. encourage the standardization of judgments of courts within the Community;
  - c. establish a common syllabus for the training of lawyers and a common standard to be attained in examinations in order to qualify and to be licensed to practice as an advocate in their respective superior courts;
  - d. revive publication of East African law reports or publish similar law reports and such law journals that promote exchange of legal and judicial knowledge and the approximation and harmonization of legal learning and standardization of judgments of courts within the Community; and
  - e. harmonize all national laws appertaining to the Community.

- vii. In order to expedite harmonization of national laws, the Council of Ministers should fast track the drafting of the EAC Constitution so as to establish common legal principles to be applied in the entire Community.
- viii. That the Committee on Legal, Rules and Privileges be facilitated to interface with Partner State institutions responsible for harmonization of laws in order to ascertain progress made and assess whether mechanisms have been established to ensure that all national laws that are enacted conform to the Treaty and EAC laws.

## **5. ACKNOWLEDGEMENT**


The Committee appreciates the entire management of the Assembly for facilitating execution of this activity.

The Committee also appreciates AWEPA's continued financial support; and the office of the Counsel to the Community for providing vital information on progress made by Partner States in exercise of harmonization of EAC Partner State laws appertaining to the Community.

REPORT OF THE OVERSIGHT ACTIVITY ON THE APPROXIMATION AND HARMONISATION OF NATIONAL LAWS IN THE EAC CONTEXT

22<sup>ND</sup> – 26<sup>TH</sup> FEBRUARY 2016, ARUSHA, TANZANIA

1. Hon. Peter M. Mathuki



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2. Hon. Judith Pareno



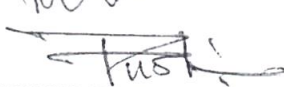
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3. Hon. Joseph Kiangoi Ombasa



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4. Hon. Twaha Issa Taslima




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5. Hon. Maryam Ussi Yahya



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6. Hon. Charles M. Nyerere



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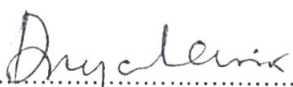
7. Hon. Mukasa Fred Mbidde

.....

8. Hon. Susan Nakawuki

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9. Hon. Dora C. K. Byamukama



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10. Hon. Isabella Ndahayo



.....

11. Hon. Frederic Ngenzebuhoro



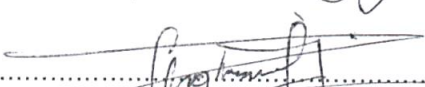
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12. Hon. Leonce Ndarubagiye



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13. Hon. Christophe Bazivamo



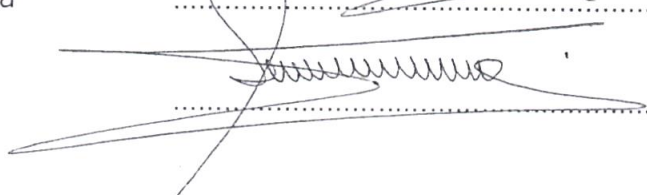
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14. Hon. Valerie Nyirahabineza



.....

15. Hon. Martin Ngoga



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**EAST AFRICAN COMMUNITY**

**MEETING OF THE SUB-COMMITTEE ON  
APPROXIMATION OF NATIONAL LAWS IN THE  
EAST AFRICAN COMMUNITY CONTEXT**

**Dar es Salaam, Tanzania  
8<sup>th</sup> -9<sup>th</sup> February, 2013**

**REPORT OF THE MEETING  
(EAC/SC/10/2013)**

**EAC Secretariat  
Arusha, Tanzania**

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## 1.0 INTRODUCTION

### 1.1. Convening of the Meeting

The Meeting of the Sub-Committee on Approximation of National Laws in the East African Community Context was held from 4<sup>th</sup>-9<sup>th</sup> February, 2013 in Dar es Salaam, United Republic of Tanzania, in accordance with the EAC Calendar of Activities for the period January-June, 2013.

### 1.2. Purpose of the Meeting

The main purpose of the Meeting was to-

- (a) consider the principles and other areas for harmonization of the Partner States' laws governing sale of goods;
- (b) finalise the identification and consideration of the conflicts and areas of divergences between Partner States' national laws governing contracts and EAC Common Market Protocol;
- (c) finalise the identification and consideration of the conflicts and areas of divergences between Partner States' national laws governing sale of goods and EAC Common Market Protocol; and
- (d) consider the future modes of operation of the Sub-Committee on Approximation of Laws.



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### 1.3. Bureau

The Bureau was constituted in accordance with the Rules of Procedure of the Co-ordination Committee. The Meeting was chaired by **Ms. Vastina Rukimirana Nsanze**, from the Republic of Uganda. The Rapporteur was **Ms. Clemence Kubwimbabazi**, from the Republic of Burundi.

### 1.4. Participation

The meeting was attended by members of the Sub-Committee, experts in commercial laws and Staff from the Secretariat whose names and other particulars are shown on the list attached hereto as **Annex II**.

### 1.5. Adoption of the Agenda

The Sub-Committee adopted the Agenda attached hereto as **Annex I**.

### 1.6. Welcoming statement by the Chairperson

In her opening remarks, the Chairperson welcomed the Heads of Delegation and Members of the Sub-Committee on Approximation of the National Laws in the EAC Context. She thanked the United Republic of Tanzania for the warm reception extended to members in the historical city of Dar es Salaam. She also thanked the outgoing Chairperson of the Law Reform Commission, Kenya for having ably steered the Sub-Committee meetings during their tenure of office.



The Chairperson also congratulated Justice Kathurima M'Inoti for being appointed Judge of the Court of Appeal of Kenya. She equally congratulated Justice Prof. Ibrahim Juma, the former Chair of the Law Reform Commission of Tanzania who was also appointed Judge of the Court of Appeal.

She brought to the attention of the Sub-Committee the urgent need by Partner States to harmonise their national laws to make them comply with the Common Market Protocol. She therefore called for more effort by the Sub-Committee to develop and consider principles that will guide Partner States to harmonise their laws so that east africans can benefit from the EAC Common Market.

### **1.7. Statement of the Leaders of Delegations**

The Head of delegation of the Republic of Kenya informed the meeting that for the last one decade, the country has been undergoing constitutional reform processes which culminated into the promulgation of the Constitution in 2010. The Law Reform Commission of Kenya has been very active in developing legislations to give effect to the Constitution. The meeting was further informed that the mandate of the Commission was expanded to give technical assistance to County governments in the formulation of the legislation.

The Head of delegation of the Republic of Uganda informed the Meeting that the Law Reform Commission established a Law Revision Task Force mandated to review the laws of Uganda and replace the edition of 2000 and to consider laws relating to EAC integration.

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The Commission has also put in place a mechanism of translating and simplifying laws for ease of understanding by different stakeholders.

The meeting was further informed that the Republic of Uganda passed a number of laws in 2012 which include; The Income Tax (Amendment) Bill, 2012; The Value Added Tax (Amendment) Bill, 2012; The Companies Bill, 2009; The Excise Tariff (Amendment) Bill, 2012. Other pending Bills include the Uganda National Bureau of Standards (Amendment) Bill, 2010; The Anti-Counterfeit Goods Bill, 2011; the Industrial Property Bill, 2009 and the Trade (Licensing)(Amendment) Bill, 2012.

In the United Republic of Tanzania, the Law Reform Commission is presently working on a number of laws relating to land disputes, pastoral, agricultural, consumer protection and Law Reform Commission Act. There is also an ongoing review exercise of the civil justice system, customary law, translation of laws into Kiswahili language and extraction of legal principles from the Court of Appeal Judgments.

The Republic of Rwanda considers the approximation of laws an important exercise of the Community as it facilitates integration, trade and investment. It also enables the sharing of best practices amongst Partner States and the rest of the world.

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The Head of delegation of the Republic of Burundi reported progress on the enactment of a number of laws among which are criminal law procedure, income tax, land law and traffic which came into force in 2012.

## 2.0 CONSIDERATION OF PRINCIPLES AND OTHER AREAS FOR HARMONISATION OF THE PARTNER STATES' LAWS GOVERNING SALE OF GOODS

### 2.1 Consideration of Principles

The Sub-Committee considered the principles for harmonisation of laws governing sale of goods. Considering that the Republic of Rwanda is yet to pass the law on sale of goods, the Sub-Committee proceeded to consider principles for harmonization of the laws governing sale of goods in the other Partner States.

The matrix containing the identified and considered principles for harmonization of laws governing sale of goods is attached hereto as **Annex III**.

#### 2.1.1 Contract of Sale of Goods

With the implementation of the Customs Union and the Common Market Protocol, there has been increased business and commerce in the Community. The increased trade in the region will necessitate improved business practices by the business community such as registering businesses, encouraging written agreements on sale of goods etc.

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The existing law governing the sale of goods enacted in the 1930s in the case of the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania provides that a contract of sale of goods with a value of Shs 200/= or more shall not be enforceable by action unless it is in writing. In the case of the Republic of Burundi, the law enacted in 1888 provides for the value exceeding 2000 Burundi Francs.

The Sub-Committee observed that, such amounts and values are so low in view of the changed economic conditions and should be adjusted upwards.

The Sub-Committee further noted that the principle of the duty to mitigate damages is practiced in the United Republic of Tanzania based on common law. It therefore noted the need to have the principle codified.

**The Sub-Committee recommends to the Sectoral Council on Legal and Judicial Affairs to adopt the matrix on sale of goods and the recommendations listed below:**

- (i) the Republic of Rwanda to expedite the finalization of the Draft Bill Governing Specific Contracts and to consider incorporating the harmonized principles in her Bill;
- (ii) all Partner States should constantly review the minimum value for which a contract for sale of goods must be in writing as provided in the matrix on sale of goods attached as Annex III; and
- (iii) The United Republic of Tanzania to consider codifying the principle on the duty to mitigate damages into her laws.

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## 2.1.2 Promissory estoppel

The Sub-Committee noted that promissory estoppel is a common law doctrine relevant to the sale of goods and law of contract which has gained the force of law but not part of any legislation within the East African Community. Promissory estoppel is applied by courts to enforce promises that have been made and subsequently relied upon by the parties to a contract.

In view of the above, the Sub-Committee noted the need for Partner States to consider including the principle of promissory estoppel in their national laws. The reason was that the majority of the businesses in the Community rely on informal dealings during their transactions where parties make several promises to supply goods or pay debts where such promises are considered authentic.

The Sub-Committee therefore, requested the Secretariat to undertake the extensive study on the historical development of the principle and establish how the principle is being applied in the different jurisdictions so as to inform the Partner States before they decide whether or not to have the principle codified in their national laws.

**The Sub-Committee recommends to the Sectoral Council on Legal and Judicial Affairs to direct the Secretariat to prepare a comprehensive paper on the principle of promissory estoppel for consideration in the next meeting of the Sub-Committee.**

## 2.1.3 Franchising Principle

At its meeting held on 9<sup>th</sup>-10<sup>th</sup>, November, 2012, the Sub-Committee considered the Principle of Franchise and observed

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that Rwanda had included the principle into her Sale of Goods Bill, 2012. The Sub-Committee further observed the need to study the principle with a view to taking the position on whether or not to incorporate it in the Partner States' laws. During this session, the Sub-Committee discussed the principle and noted that the principle of franchise was not codified in any legislation of the Partner States yet it is relevant in the promotion of business and commerce within the Community.

The Republic of Kenya informed the meeting that the principle is practised in their jurisdictions under the law of contract and common law. They were of the view therefore, that there was no need to incorporate the principle into their Sale of Goods Act.

**The Sub-Committee recommends to the Sectoral Council on Legal and Judicial Affairs to recommend to Partner States to consider codifying the principle of franchise.**

### **3.0 FINALISATION OF IDENTIFICATION AND CONSIDERATION OF THE CONFLICTS AND AREAS OF DIVERGENCES BETWEEN PARTNER STATES' NATIONAL LAWS GOVERNING CONTRACTS AND EAC COMMON MARKET PROTOCOL**

The Sub-Committee finalised the identification and consideration of the principles and other areas for harmonisation between Partner States' national laws governing contracts and the EAC Common Market Protocol. The identified and considered EAC Common Market principles are contained in a matrix attached hereto as **Annex IV**.

Having reviewed the principles in the EAC Common Market Protocol *vis-a-vis* the Partner States' laws governing contracts, the

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Sub-Committee did not find any areas of contradictions or divergences between the Protocol and the laws.

**The Sub-Committee took note of this progress.**

#### **4.0 IDENTIFICATION AND CONSIDERATION OF THE CONFLICTS AND AREAS OF DIVERGENCES BETWEEN PARTNER STATES' NATIONAL LAWS GOVERNING SALE OF GOODS AND EAC COMMON MARKET PROTOCOL**

The Sub-Committee finalised the identification and consideration of the principles and other areas for harmonisation between Partner States' national laws governing sale of goods and the EAC Common Market Protocol. The identified and considered EAC Common Market principles are contained in a matrix attached hereto as **Annex V**.

Having reviewed the principles in the EAC Common Market Protocol *vis-a-vis* the Partner States' laws governing sale of goods, the Sub-Committee did not find any areas of contradictions or divergences between the Protocol and the laws.

**The Sub-Committee took note of this progress.**

#### **5.0 FUTURE MODES OF OPERATION OF THE SUB-COMMITTEE ON APPROXIMATION OF LAWS**

At its meeting held on 9<sup>th</sup>-10<sup>th</sup> November, 2012, the Sub-Committee observed that its current method of work involves identifying and reviewing the principles to guide approximation of national laws in EAC Context, developing consensus on the







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identified principles and incorporation of the principles, observations and recommendations into a tabular format (a matrix). This approach of performance poses a challenge in a sense that information captured into the matrix by stating Partner States' positions on particular provisions in the national legislations creates bulky matrices. At the same time, whenever Partner States positions are minimized in content, scanty information is reflected without adequate clarifications for the readers who may not have got an opportunity to participate in the previous meetings.

In view of the above, the Sub-Committee noted the need to design a format that would better guide the harmonization exercise.

During this Session, the Sub-Committee deliberated on the matter and recommended that Partner States present reports on the on-going law reforms on a quarterly basis and that prior to any meeting, Partner States should:

- (a) prepare country reports containing summarized information indicating:-
  - (i) governing/ applicable law(s), if any, salient provisions of the laws to be approximated or the absence of such laws;
  - (ii) their compliance with the EAC Treaty; and
  - (iii) their compliance with international declarations and conventions to which a Partner State is a party.
- (b) attach the copies of the law being considered so as to enable the Sub-Committee study and compare the respective national Partner States laws and EAC Common Market Protocol;









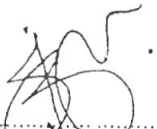


- (c) while developing matrices and the legal positions are the same in some Partner States, there should be no reproduction of the legal position in each Partner State's column, but rather provide an appropriate term to indicate the position is the same; and
- (d) the Secretariat to prepare a comprehensive report indicating the previous recommendations and the status of implementation; and
- (e) make country statements on the status of implementation of the previous recommendations of the Sub-Committee in order to enable fast track progress of its work.

**The Sub-Committee approved the above as its future mode of operation.**

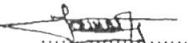
SIGNED by the Leaders of Delegation this 9<sup>th</sup> day of February, 2013.

For the Republic of  
**Uganda.**



.....  
Mr. Stephen  
Nkomo,  
Vice-Chairman,  
Ministry of EAC  
Affairs.

For the Republic of  
**Burundi.**



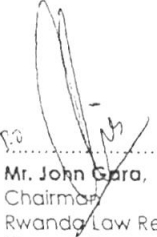
.....  
Mr. Ilbolre Nkurunziza  
Deputy Attorney  
General  
Ministry of Justice

For the Republic of  
**Kenya.**



.....  
Mr. Muge Nganga  
Ag. Chairman,  
Kenya Law Reform  
Commission.

For the Republic of  
**Rwanda.**



.....  
Mr. John Gara,  
Chairman,  
Rwanda Law Reform  
Commission.

For the United Republic of  
**Tanzania.**



.....  
Mr. Albert Adiel Msangi,  
Commissioner,  
Tanzania Law Reform  
Commission



PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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		<p>future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.</p> <p>(5) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.</p>				
3. Formalities	<p>Sec.5 of SGA provides that a contract of sale can be in writing, orally, partly in either of the two or by implication</p> <p>As an exception to the general rule above, under Sec.6 of SGA and 78 of LCD A contract for the sale of any goods of the value of two hundred shillings or more shall not be enforceable by action unless the buyer accepts part of the goods so sold, and actually receives, the goods, or gives something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract is made and signed by the party to be charged or by</p>	<p>Sec 6, the rest same as URT, save for the amount on sale of goods on credit which is...</p>	<p>Section 5, rest same as URT save for the amount on sale of goods on credit which is...</p> <p>(Section 4 to 5)</p>	<p>Art 263 (2) of the Law Governing Contract: A contract of sale may be made in writing either with or without seal</p> <p>Art 258 of Trade Law: A Contract of sale can also be made orally;</p> <p>Art 217 of the Law Governing Contract: For the amount exceeding 2000 Burundi francs, the contract must be in writing.</p>	<p>No law in place yet</p>	<p>The legal position is proximate for the Republic of Burundi, the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania.</p> <p>Recommend to all Partner States to review the amount for enforceability purposes.</p>

PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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	his agent in that behalf.					
4. Capacity	<p>Section 4:of SGA, and 11 of LCD The Act makes reference to the provisions relating to capacity in the Law of Contract Act, Cap 345</p> <p>Section 11: of Law of Contract Act and LCD persons competent to contract are those:</p> <ul style="list-style-type: none"> <li>• Of age of majority as per applicable law-18</li> <li>• Of sound mind</li> <li>• Not disqualified by any law</li> </ul>	s. 4. Same as URT	<p>The Contracts Act, 2010. The Contracts Act No. 7 of 2010 provides for capacity to contract under section 11</p> <p>Rest same URT</p>	<p>Art 23 And 24 Of The Law Governing Contract provide for the General Conditions:</p> <p>Every person can contract if he is not declared incapable by the Law.</p> <p>Art 13 of the law n.1/07 of 26 April 2010 governing trade:</p> <p>The age of majority is 18</p>	No law in place yet	The legal position is proximate.
5. Price	<p>Section 10: The price in a contract of sale may be:</p> <ul style="list-style-type: none"> <li>• fixed by the contract;</li> <li>• left to be fixed in a manner thereby agreed; or</li> <li>• Determined by the course of dealing between the parties.</li> </ul> <p>Sec.11 of SGA</p> <ul style="list-style-type: none"> <li>• Price fixed by valuation of 3<sup>rd</sup> party upon agreement to such effect.</li> </ul>	<p>Same as URT.</p> <p>(S. 10.)</p>	<p>Same as URT.</p> <p>(Section 9) Agreement to sell at valuation.</p> <p>(Section 10)</p>	<p>Same as URT</p> <p>Art 272 of the Law governing contract;</p> <p>Art 284 of trade law:</p>		The legal position is proximate.

PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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	<p><b>Sec. 89 of LCD</b> Where no price is fixed reasonability principle will apply</p>					
<p><b>6. Goods</b> The goods which form the subject of a contract of sale</p>	<p><b>Sec.2.</b> defines goods to include all all chattels personal other than things in action and money, emblements, industrial growing crops, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.</p> <p><b>Under Section 7 of SGA and Sec. 76 of LCD</b> the goods may be existing goods; or future goods</p>	<p>Same as URT.  (s.7. (1) -(3))</p>	<p>Same as URT  (Section 6 to 8)</p>	<p>Same as URT.</p> <p><b>Art 275 of the Law governing contract:</b>  Everything in a contract of sale can be sold provide that it is not prohibited by a specific law.</p> <p><b>Art 276 of the Law governing contract:</b>  The sale of Goods belonging to a third party is nul and void.</p> <p><b>Art 278 of the Law governing contract:</b>  If the goods were totaly perished at the time when the contract was made the sale is nul and void.</p> <p><b>Art 29 of the Law governing contract:</b> future goods are subject to contract, except goods related to succession</p>		<p>The legal position is proximate for the Republic of Kenya, the Republic of Uganda, the United Republic of Tanzania and the Republic of Burundi.</p>

PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
<p><b>7. Terms</b></p> <p><b>(a) Conditions</b></p> <p><b>(b) Warranty</b></p>	<p><b>Section 12-16: of SGA</b></p> <p>stipulations as to time of payment are not deemed to be of the essence of the contract of sale</p> <p>The buyer may waive the condition or may elect to treat the breach of such condition as a breach of warranty</p> <p>There is an implication by law of condition as to title, quiet possession and encumbrances</p> <p>There is an implied condition that the goods shall correspond with the description;</p> <p>There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except when the seller is aware of the purpose of the goods, goods are bought by description and when there is a condition or warrant on the fitness of goods.</p>	<p>Same as URT. s.12. (1)-(3)</p> <p>s.13. Correspondence with description</p> <p>s.14(2) Satisfactory quality</p> <p>s.14(3) Fitness for purpose</p>	<p>Same as URT (Section 11 to 15)</p>	<p>(Inheritance) which is not yet done.</p> <p>Same as URT.</p> <p>a) Conditions: Art 271 of the Trade Law;</p> <p>Art 272 of the trade law;</p> <p>Art 273 of the Law governing contract;</p> <p>Art 274 of the Law governing contract;</p> <p>b) Warranty: Art 302 of the Law governing contract;</p> <p>Art 279 of the trade law;</p> <p>Art 281 of the trade law;</p>		<p>The legal position is proximate for the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania.</p>

Sec. 109-118 of LCD on

PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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	<p><b>Warrants</b></p> <p>Sellers is responsible for badness of title</p> <p>There is an implied warranty of goodness or quality</p> <p>There is an implied warranty of soundness on sale of provision</p> <p>Seller is not responsible for latent defects</p> <p>There is an implied warranty that the bulk is equal in quality to the sample</p>					
<b>B. Sale by Sample</b>	<p>Section 17:</p> <ul style="list-style-type: none"> <li>• There must be a term in the contract (express or implied) to that effect;</li> <li>• It is an implied condition that: <ul style="list-style-type: none"> <li>➤ Goods in bulk must correspond to the sample in quality;</li> <li>➤ buyer should have reasonable opportunity for comparing the goods in bulk and the sample;</li> </ul> </li> </ul>	<p>Same as URT</p> <p>17. (1) Sale by Sample</p> <p>Section 17</p>	<p>Same as URT</p> <p>(Section 16)</p>	<p>Same as URT.</p> <p>Art 273 of Trade Law:</p> <p>Art 273 (3) of trade law:</p>		<p>The legal position is proximate.</p>

PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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	<ul style="list-style-type: none"> <li>➤ goods should be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.</li> </ul>					
9. Transfer of Property	<p>Sec. 18-22 of SGA</p> <ul style="list-style-type: none"> <li>• Unascertained goods cannot be transferred</li> <li>• the property in the goods is transferred to the buyer at such time as the parties to the contract intend it to be transferred.</li> <li>• In ascertaining the intention of the parties regard shall be had to: <ul style="list-style-type: none"> <li>➤ the terms of the contract;</li> <li>➤ the conduct of the parties; and</li> <li>➤ circumstances of the case.</li> </ul> </li> </ul> <p>Sec. 77 of LCD</p>	<p>Same as URT.</p> <p>S. 18. 19. (1)-(2)</p>	<p>Same as URT.</p> <p>(Section 17 to 21)</p>	<p>Same as URT.</p> <p>Art 332 of the trade law :</p> <p>Art 333 of the trade law :</p> <p>Art 334 of the law governing contract:</p> <p>Art 336 of the Law governing contract:</p> <p>Art 335 of the law governing contract:</p> <p>Art 337 of the law governing contract:</p>		<p>The legal position is proximate.</p>
10. Transfer of Title	<p>23-28 of SGA and Sec.79 and 108 of LCD</p> <p>-Sale by person not owner</p> <p>The buyer acquires no better title to the goods than the seller had, unless</p>	<p>Same as URT.</p> <p>Transfer of Title by Non-Owner</p> <p>General rule – Nemo</p>	<p>Same as URT.</p> <p>Section 22 (Section 23)</p>	<p>Same as URT.</p> <p>Art 276 of the law governing contract:</p> <p>Art 277 of the law</p>		<p>The legal position is proximate.</p>

PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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	<p>the owner of the goods is by his conduct precluded from denying the seller's authority to sell:</p> <p><b>-Market overt</b> The buyer acquires a good title to the goods provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.</p> <p><b>-Sale under voidable title</b> The buyer acquires a good title to the goods provided he buys them in good faith and without notice of the seller's defect of title.</p> <p><b>-Stolen goods on conviction of offender</b> The property in the goods so stolen reverts in the person who was the owner of the goods, or his personal representative.</p> <p><b>-Resale by seller, buyer or agent</b> Any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly</p>	<p><i>Daf</i> S. 23 sections 21 to 25 of the SGA and sections 2, 8 and 9 of the English Factors Act 1889 (52 &amp; 53 Vic c 45).</p>	<p>(Section 24 to 26)</p>	<p>governing contract: Art 282, 284 and 352</p>		
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PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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	<p>authorised by the owner of the goods to make the same.</p> <p><b>-Effect of writ of execution</b> A writ of execution against goods shall bind the property in the goods of the judgment debtor as from the time when the writ is delivered to the proper officer to be executed.</p>					
<p><b>1.1. Performance of the Contract</b></p> <p>(a) Duties of the Seller</p> <p>(b) Duties of the Buyer</p> <p>(c) Payment and delivery</p> <p>(d) Rules of delivery</p> <p>(e) Delivery of wrong quantity or description</p> <p>(f) Delivery in instalments</p> <p>(g) Delivery to carrier</p> <p>(h) Risks where goods are delivered</p>	<p>Sec. 29-39 of SGA and Sec. 90-94 of LCD</p> <p><b>(a) Duties of the Seller</b> It is the duty of the seller to deliver the goods.</p> <p><b>(b) Duties of the Buyer</b> It is the duty of the buyer to accept and pay for them.</p> <p><b>(c) Payment and delivery</b> delivery of the goods and payment of the price are concurrent conditions.</p> <p><b>d) Rules of delivery</b> Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract</p> <p><b>(e) Delivery of wrong</b></p>	<p>Same as URT. S.28.</p> <p>{Section 30(2A)}, {Section 31}.</p> <p>section 11(3)</p> <p>31. (1) (2) (3) (4) 32. (1) (2) 33. (1)(2) 34. 35. (1) (2) 36. 37.38.</p>	<p>Same as URT</p> <p>Section 27 to 37</p>	<p>Same as URT</p> <p>Art. 279-280 of LGC</p> <p>Art. 269 of trade law</p> <p>Duties of the buyer:</p> <p>Art. 327 and 328 of LGC</p> <p>Art. 282 of trade law: Payment and delivery</p> <p>Art 281-301 of LGC</p> <p>Art 283 -293: of trade law.</p> <p>Rules of delivery</p> <p>Art. 270-272 of trade law</p> <p>Delivery of wrong quantity</p> <p>Art 291-297 of LGC</p> <p>Art 273-275 of trade law.</p> <p>The seller has to</p>		<p>The legal position is proximate.</p>



PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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<p>elsewhere than place of sale</p> <p>(i) Buyers rights of examining the goods</p> <p>(j) Acceptance</p> <p>(k) Buyer not bound to return rejected goods</p> <p>(l) Liability of buyers for neglecting or refusing to take the goods</p> <p><i>(Partner States to summarise)</i></p>	<p><b>quantity or description</b></p> <p>In case of less delivery, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.</p> <p>In case of over delivery, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole; and if the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate</p> <p>In case of mixed goods, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.</p> <p><b>(f) Delivery in Instalments</b> The general rule is that the buyer of goods is not bound to accept delivery by instalments unless otherwise agreed.</p> <p><b>(g) Delivery to carrier</b> Delivery of the goods to the carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is prima facie</p>			<p>deliver goods in accordance with the quantity, quality and condition as provided by the contract</p> <p>Delivery by installment Art. 266 of LGC and Art. 275 of trade law Delivery to carrier Art. 270, 287 al2, 3, art.335 and 336 al 1 all of trade law.</p> <p>Risk where goods are delivered elsewhere. Art. 234-337 of trade law. Art. 336 of the same law.</p> <p>Buyer's rights of examining the goods Art. 276 and 287 al 3 of trade law.</p> <p>Acceptance Art. 289-293 of trade law</p>		
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PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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	<p>deemed to be a delivery of goods to the buyer. On transit by sea, the seller must give notice of insurance to buyer.</p> <p><b>(h) Risks where goods are delivered elsewhere than place of sale</b> The buyer shall nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.</p> <p><b>(i) Buyers rights of examining the goods</b> On un examined goods, the buyer is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them</p> <p><b>(j) Acceptance</b> The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains</p>					
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PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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	<p>the goods without intimating to the seller that he has rejected them.</p> <p><b>(k) Buyer not bound to return rejected goods</b> Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.</p> <p><b>(l) Liability of buyers for neglecting or refusing to take the goods</b> The buyer is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care of custody of the goods:</p>					
<b>12. Unpaid Seller's rights</b>	<p><b>Sec.40-49 of SGA, Sec. 95-107 of LCD</b> The seller of goods is deemed to be an "unpaid seller" when the whole of the price has not been paid or tendered; or when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it</p>	<p>Same as URT.</p> <p><b>Unpaid Seller 39. (1)</b> <b>Rights of Unpaid Seller 40. (1)</b></p>	<p>Same as URT.</p> <p><b>S.38 and S.39 (Section 38)</b> <b>(Section 39)</b></p>	<p>Same as URT.</p> <p><b>Art 289 of the law governing contract :</b> <b>Art 290 of the law governing contract:</b> <b>Art 331 of the law governing contract:</b> If the buyer does not</p>		<p>The legal position is proximate.</p>

PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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	<p>was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.</p> <p>Rights of Unpaid Seller are:</p> <ul style="list-style-type: none"> <li>• Lien over the goods</li> <li>• stop the goods on transitu in case of insolvency of buyer</li> <li>• resale of the goods</li> </ul>			<p>pay the price, the seller has the right to rescind the contract.</p> <p>Art 332 of the law governing contract:</p> <p>Art 333 and 334 of the law governing contract:</p> <p>Art 308 1-2. of the trade law:</p>		
<b>13. Breach/ Remedies</b>	<p>Sec. 50-55 of SGA, Sec.73-75 of LCD</p> <p>-Remedies of the Seller: S.50-51</p> <ul style="list-style-type: none"> <li>. action for price</li> <li>.damages</li> </ul> <p>-Remedies for the Buyer: S. 52-55</p> <ul style="list-style-type: none"> <li>.damages.</li> <li>.specific performance</li> <li>.extinction/diminution of the price</li> <li>.Interest and special damages</li> </ul>	<p>Same as URT.</p> <p>Action for Breach S.49 to 53</p>	<p>Same as URT.</p> <p>PART VI—Actions for breach of contract. (Sections 48 to 53 of the Act as presented below.</p>	<p>Art 313 of the trade law:</p> <p>Art 40, 41 and 43 of the law governing contracts:</p>		The legal position is proximate.
<b>14. Remedies</b>	<p>Sec. <del>50-55 of SGA</del></p> <ul style="list-style-type: none"> <li>-remedies of the seller: 50-51</li> <li>-action for price</li> <li>-damages</li> <li>-remedies for the buyer: Sec. <del>52-55 of SGA</del></li> <li>-damages.</li> <li>.specific performance</li> <li>.extinction/diminution of the</li> </ul>	<p>Remedy of a seller</p> <p>Action for price</p> <p>49. (1) 51. (1) 52. (1) 53. (1) 54.</p>	(Section 48 to 53)	<p>Art 42 of the law governing contract:</p> <p>The Innocent party has a right to enforce a particular obligation which is due to him in case of breach of contract.</p>		

PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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	<p>price Interest and special damages Sec.73-75 of LCD</p>			<p>Art 82 of the Law governing contract:</p> <p>There is a necessary implication of breach of contract if one of the contracting parties fails to fulfill one of his obligations.</p> <p>Art 287 et 288 of the law governing contract:</p> <p>There is a breach of contract of sale if the seller fails to deliver goods within the agreed timeframe and the buyer has the right to rescind the contract and is entitled to compensation.</p> <p>Art 298 of the law governing contract:</p> <p>Whenever the buyer has the right to rescind the contract, the seller is liable to the restitution of the price already paid by the buyer and any other related fees.</p>		
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PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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15. Promissory estoppel (to be defined)	Case law/Common law principle	Case law/Common law principle	Common Law			Recommend to all Partner States to codify the principle in their laws.
16. Duty to Mitigate Damages	Under Law of Contract	Duty to mitigate damages. S.54. Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.	Same as Kenya S.53	Duty to mitigate damages Art; 291 of Trade Law  When the buyer has received the goods and intends to refuse them he has to keep them safely until the seller repays him any relating due cost.  <b>Art. 293 of Trade Law</b> The party that has to ensure preservation of goods can sell them by any appropriate means if the other party has delayed to take back the possession, to pay the price or to pay the cost of preservation provided that he notifies other party his intention to sell them. The party which sells the goods has a right to hold up the amount of money which is equivalent to the cost of		<i>The legal position is proximate for the Republic of Kenya, Uganda and Burundi.</i>  <i>Recommend to the The United Republic of Tanzania to codify the principle on the duty to mitigate damages into her laws.</i>

PRINCIPLES AND OTHER AREAS OF HARMONISATION	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
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				preservation and the surplus is given to the other party.		
<b>17. Auction Sale</b>	<p>Sec. 59 of SGA, Sec. 122-123 of LCD</p> <ul style="list-style-type: none"> <li>- In auction sale each lot is deemed a separate contract</li> <li>- Sale is complete on fall of the hammer, bidder may retract his bid before fall of the hammer</li> <li>- A sale by auction is unlawful if no notice is given</li> <li>- Right to bid may be expressly reserved by seller.</li> </ul>	<p>Same as URT.</p> <p><b>Auction Sales</b> S.58. (1)</p>	<p>Same as URT.</p> <p><b>Auction sales.</b> (Section 57)</p>	<p>Same as URT.</p> <p><b>Auction sales</b></p> <p>Art 259-263 of the Civil Procedure Law provide for the auction sales</p>		<p>The legal position is proximate for the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania. (Include time frame)</p>
<b>18. Variation of Implied Rights</b>	<p><b>Section.56 of SGA</b></p> <p>Rights/duties/liabilities of parties to an implied contract may be varied by:</p> <ul style="list-style-type: none"> <li>- Express agreement</li> <li>- Course of dealing</li> <li>- Binding usage</li> </ul>	<p>Same as URT.</p> <p><b>S.55.</b></p>	<p>Same as URT.</p> <p>(Section 54)</p>	<p>Same as URT.</p> <p><b>Art. 33 and 34 of the Law Governing Contract</b></p> <p>The rights, duties and liabilities to an implied contract may be varied by express agreements of the parties, by usage and by equity depending on the nature of the contract.</p>		<p>The legal position is proximate for the Republic of Kenya, the Republic of Burundi, the Republic of Uganda and the United Republic of Tanzania.</p>

**IDENTIFICATION AND CONSIDERATION OF THE CONFLICTS AND AREAS OF DIVERGENCES BETWEEN  
PARTNER STATES' NATIONAL LAWS GOVERNING CONTRACTS AND EAC COMMON MARKET**

PRINCIPLES AND OTHER AREAS OF HARMONISATION	PRINCIPLE	PROTOCOL PROVISION	ANNEX APPLICABLE	NATIONAL LEGISLATIONS					AREAS FOR HARMONISATION
				TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	
Governing Law				Law of Contract Act, Cap 345 RE 2002 Law of Contract Decree, Cap 149	Law of Contract Act, Cap 23	Contracts Act, No. 7 of 2010	Law Governing Contract of 30 <sup>th</sup> July 1888 Trade law No. 1/07 of 26 <sup>th</sup> April 2010	Law No. 45/2011 of 25/11/11 governing Contracts	
1. Non discrimination	Partner states undertake to observe the principle of non discrimination of nationals of other partner states on grounds of nationality.	Article 3(2) (a).		The law does not conflict with the principle of non discrimination as URT	Same as URT	Same as URT	Same as URT	Same as URT	N/A
2. Equal Treatment	Partner States undertake to accord treatment to nationals of other Partner States not less favourable than treatment accorded to third parties.	Article 3(2) (b)	-	The Law does not conflict with the principle on equal treatment.	Same as URT	Same as URT	Same as URT	Same as URT	N/A
3. Free Movement of Capital	Partner States undertake to remove all restrictions between Partner states on free movement of capital belonging to persons resident in the community. Remove	Article 24 1(a)-(d)	VI	The law does not conflict with the provision of freedom of movement of capital.	Same as URT	Same as URT	Same as URT	Same as URT	N/A



PRINCIPLES AND OTHER AREAS OF HARMONISATION	PRINCIPLE	PROTOCOL PROVISION	ANNEX APPLICABLE	NATIONAL LEGISLATIONS					AREAS FOR HARMONISATION	
				TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA		
	restrictions related to current payments connected with movement of goods...									
Transparency	Partner States undertake to ensure transparency on matters concerning the other partner states	Article 3 (2) (c)		The law does not conflict with the principle of transparency	Same as URT	Same as URT	Same as URT	Same as URT	Same as URT	N/A
Information Sharing	Partner States undertake to share information for the implementation of the Common Market Protocol.	Article 3 (2) (d)		The Law does not conflict with the principle of sharing information	Same as URT	Same as URT	Same as URT	Same as URT	Same as URT	N/A



**IDENTIFICATION AND CONSIDERATION OF THE CONFLICTS AND AREAS OF DIVERGENCES BETWEEN  
PARTNER STATES' NATIONAL LAWS GOVERNING SALE OF GOODS AND EAC COMMON MARKET**

PRINCIPLES AND OTHER AREAS OF HARMONISATION	PRINCIPLE	PROTOCOL PROVISION	ANNEX APPLICABLE	NATIONAL LEGISLATIONS					AREAS FOR HARMONISATION
				TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	
Governing Law				Sale of Goods Act, Cap 214 RE 2002 Contract Decree Cap 149	Sale of Goods Act, Cap 31	Sale of Goods Act, Cap 82	Law Governing Contract (30 <sup>th</sup> July 1888) Trade Law (Law No. 1/07 of 26 <sup>th</sup> April 2010)	Rwanda is in the process of preparing a Bill.	
Free Movement of Goods	Art. 5(2). Partner States agree to eliminate tariff, non tariff and technical barriers to trade.	Article 6(1) of CMP gives reference to SQMT, CU protocol, Customs law, sanitary and phy to sanitary protocol and any other EAC instrument.		The Law does not conflict with the provision of freedom of movement of goods.	Same as URT	Same as URT	Same as URT	-	N/A
2. National Treatment	Partner States undertake to observe non discrimination of nationals of other Partner States on grounds of nationality	Article 3(2)	-	The Law does not conflict with the principle on national treatment For example, the buyer or seller is not defined on territorial terms.	Same as URT	Same as URT	Same as URT	-	N/A

PRINCIPLES AND OTHER AREAS OF HARMONISATION	PRINCIPLE	PROTOCOL PROVISION	ANNEX APPLICABLE	NATIONAL LEGISLATIONS					AREAS FOR HARMONISATION
				TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	

3. Free Movement of Capital	Partner states undertake to remove all restrictions between Partner states on free movement of capital belonging to persons resident in the community. Remove restrictions related to current payments connected with movement of goods...	Article 24 1(a)-(d)	VI	The law does not conflict with the provision of freedom of movement of capital.	Same as URT	Same as URT	Same as URT	-	N/A
4. Equal Treatment	Accord treatment to nationals of other Partner States not less favorable than the treatment accorded to third parties.	Article 3 (2)(b)		The Law does not conflict with the principle of equal treatment	Same as URT	Same as URT	Same as URT	-	N/A
5. Transparency	Partner states undertake to ensure transparency on matters concerning the other partner states	Article 3 (2) (c)		The law does not conflict with the principle of transparency	Same as URT	Same as URT	Same as URT	-	N/A
6. Information Sharing	Partner states undertake to share information for the implementation of the Common Market Protocol.	Article 3 (2) (d)		The Law does not conflict with the principle of sharing information	Same as URT	Same as URT	Same as URT	-	N/A

PRINCIPLES AND OTHER AREAS OF HARMONISATION	PRINCIPLE	PROTOCOL PROVISION	ANNEX APPLICABLE	NATIONAL LEGISLATIONS					AREAS FOR HARMONISATION
				TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	

7. Non discrimination	Partner states undertake to observe the principle of non discrimination of nationals of other partner states on grounds of nationality.	Article 3(2) (a).		The law does not conflict with the principle of non discrimination as URT	Same as URT	Same as URT	Same as URT	-	N/A
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## ANNEX II

### A: PRINCIPLES CONSIDERED FOR HARMONISATION ON LAWS GOVERNING BUSINESS NAMES REGISTRATION 2010.

THE PRINCIPLE	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
Governing Law/Bill	Business Names(Registration) Act,CAP.213	Registration of Business Names Act,CAP.499	Business Names Registration Act, CAP. 109	Commercial Code / Bill.	The law relating to Companies, No. 7/2009 of 27/4/2009	<b>The legal position is proximate</b>
Business Name-definition	Business Name is defined in the law	Same as URT	Same as URT	Same as URT	The law does not define what a Business Name is.	<b>The legal position is not proximate but the difference does not impede the registration of Business Names across the borders.</b>
Registration of Business Names	Registration of business names is mandatory.	Same as URT	Same as URT	Same as URT	Same as URT	<b>The legal position is proximate</b>

THE PRINCIPLE	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
Registration by nominee, trustee or agent.	The law provides that if they are using a name of another person they have to be registered.	Same as URT	Same as URT	Not provided for in the law.	Not provided for in the law.	Recommend to the Republic of Rwanda and the Republic of Burundi to consider adopting the positions of other Partner States.
Manner and particulars of registration	It is provided for in the law.	Same as URT	Same as URT	Same as URT	Same as URT	The legal position is proximate
Signing of the statement by persons registering	In case of a natural person, each person has to sign and if it is a legal person, signing is done by the Director or Secretary.	Same as URT	Same as URT	Same as URT except that when it is a corporation the secretary cannot sign	Same as URT except that the decision of the shareholders has to be attached thereto.	The legal position is proximate.
Time for registration (grace period for which to register business name)	28 days from date of using the business name	Same as URT	14 days from the date of commencement of the business	Not specified	Not specified	Recommend to the Republic of Burundi and the Republic of Rwanda to specify the grace period.

THE PRINCIPLE	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
Restriction on registration of certain business names.	The Registrar has power to refuse a name on grounds specified in the law.	Same as URT	Same as URT	Same as URT	Same as URT	<b>The legal position is proximate</b>
Appeal against the rejection of registration of business name.	Appeal filed with the High Court. The decision of the High Court is final.	Same as URT	Appeal has to be referred to the relevant Minister. The decision of the Minister is final.	Appeal goes to the Court of Appeal.	Not provided for in the law but in practice appeal goes to a committee chaired by the Minister of Trade and Industry.	<b>Recommend to the Republic of Rwanda to provide for the right of appeal against the rejection of registration of a business name.</b>
Changes in the particulars of the name and other particulars	Changes in the particulars have to be notified to the Registrar within 28 days.	Same as URT	Same as URT except that the Registrar has to be notified within 14 days or such other time to be allowed by the Minister on application.	Same as URT but no time frame.	Same as URT but time within which particulars have to be notified is not provided for.	<b>The legal position is proximate</b>
Rectification of the register.	The law requires the Registrar to effect changes in the register.	Same as URT	Rectification in the register can be effected by Registrar by Court order.	Same as URT	Same as URT	<b>The disparity in the laws does not hinder cross border business.</b>

THE PRINCIPLE	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
2. Default in registration.	The law provides for Penalty on default.	Same as URT	Same as URT	Same as URT	Same as URT	The legal position is proximate
3. Carrying on business under unauthorized names	It is an offence to carry on business under unauthorized names	Same as URT	Not provided for	Same as URT	Same as URT	Recommend to the Republic of Uganda to make it an offence to carry on business under unauthorized name.
4. Disability of persons in Default.	A person cannot enforce any rights arising from the changes in particular that were supposed to be filed with the Registrar but were not, unless the Court is satisfied that the default was accidental or inadvertent or it was just and equitable to grant a relief.	Same as URT	Same as URT	Not provided for	Same as Burundi	Recommend to the Republic of Burundi and the Republic of Rwanda to expressly provide for disability of persons in default in their laws.
5. False statements	It is an offence.	Same as URT	Same as URT	Same as URT	Same as URT	The legal position is proximate



THE PRINCIPLE	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
6. Duty to furnish additional particulars to the registrar	The Registrar has power to require additional information. A person so required has the duty to furnish the particulars	Same as URT	Same as URT	Same as URT	Same as URT	The legal position is proximate
7. Certificate of registration.	The Registrar is obliged to issue certificate after registration	Same as URT	Same as URT	Same as URT	Same as URT	The legal position is proximate
8. Keeping of index.	The Registrar is required to keep an index of all registered business names.	Same as URT	Same as URT	Same as URT	Same as URT	The legal position is proximate
9. Cancellation of Business names in the register.	Any firm or individual is allowed to cease using the business name but has to notify the Registrar. The registrar has the power to remove a business name from the register.	Same as URT	Any firm or individual is allowed to cease carrying on business and has to notify the Registrar.	Same as URT except that it has to be confirmed by the Commercial Court.	It is implied.	Recommend to the Republic of Rwanda to expressly provide for the cancellation of business names.
10. Inspection of	The law allows	Same as URT	Same as URT	Same as URT	Same as URT	The legal position is

THE PRINCIPLE	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
statements registered.	inspection by any person of documents filed upon payment of prescribed fee.					proximate
1. Publication of true names and nationalities.	The law requires publication of true names and nationalities.	Same as URT	Same as URT	Same as URT	Same as URT	The legal position is proximate

**B: PRINCIPLES CONSIDERED FOR HARMONISATION OF LAWS GOVERNING INSOLVENCY IN THE EAC CONTEXT.**

THE PRINCIPLE	TANZANIA	KENYA (BILL)	UGANDA (BILL)	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
1.Governing Law/Bill	The Companies Act ,CAP 212 and Bankruptcy Act CAP 25	The Insolvency Bill 2010	The Insolvency Bill ,2009 and the Companies Bill,2009	The Insolvency Act,No.1/07 of 15/3/2006	The Law relating to commercial recovery and issues arising from Insolvency Act No/12/2009 of 26/05/2009	<b>The legal position is proximate</b>
2.Jurisdiction	High Court for Companies. In case of individuals it is the High Court and subordinate courts as provided under Bankruptcy Act	High Court for Companies but for individuals it depends on the value of the subject matter	Same as Kenya	The Commercial Court	Commercial Court with jurisdiction in which the debtor is domiciled.	<b>The Legal position is proximate</b>
3.Insolvency Arrangements and Reconstructions	The law provides for Insolvency arrangements and reconstructions for corporate and individual.	Same as URT	The Insolvency Bill provides for Insolvency arrangements for individuals and the Companies Bill provides for arrangements and reconstructions for Companies.	Same as URT provided for under the law relating to reconstruction.	Same as URT.	<b>Recommend to the Republic of Uganda to transfer the provisions on insolvency arrangements and reconstruction from the companies Bill to Insolvency Bill.</b>

<b>THE PRINCIPLE</b>	<b>TANZANIA</b>	<b>KENYA (BILL)</b>	<b>UGANDA (BILL)</b>	<b>BURUNDI</b>	<b>RWANDA</b>	<b>APPROXIMATION PROPOSAL</b>
4. Receivership and management.	The law provides for appointment of receivers and managers	Same as URT	Same as URT	The law provides for the appointment of a committee to handle the process of liquidation	Same as URT	<b>Recommends to the Republic of Burundi to provide for the appointment of receivers and managers.</b>
5. Compulsory winding-up.	The law provides for the grounds of winding up by the High Court.	Same as URT	Same as URT	Same as URT	Same as URT	<b>The legal position is proximate</b>
6. Voluntary winding-up	The law provides for the circumstances for voluntary winding up by special resolution for both members and creditors	Same as URT	Same as URT	Same as URT	Same as URT	<b>The legal position is proximate</b>
7. Powers of Directors against Receivers/Managers/Liquidators/Secured creditors	The law provides that when Liquidators/Receivers/Managers are appointed powers of Directors cease.	Same as URT	Same as URT	Same as URT	Same as URT	<b>The legal position is proximate</b>

THE PRINCIPLE	TANZANIA	KENYA (BILL)	UGANDA (BILL)	BURUNDI	RWANDA	APPROXIMATIO N PROPOSAL
8. Recovery of Assets	The law provides for procedures on recovery of Assets	Same as URT	Same as URT	Same as URT	Same as URT	The legal position is proximate
9. Priority of claims.	The law provides for preferential and non-preferential debts.	Same as URT	Same as URT	Same as URT	Same as URT	The legal position is proximate.
10. Insolvency Practitioners	The law provides for Practitioners to be certified accountants, advocates or anybody specified by the minister in the Gazette.	Same as URT but application is made through the committee.	The law provides for Insolvency Practitioners to be members of prescribed professional body or other qualification prescribed by law and in addition must have security or professional indemnity. Appointments are made by company, creditors or by court.	Same as Kenya except that the president of the committee must be a Judge Commissioner.	The law provides for Practitioners to be in the fields of law, management, accounting, economics or other related fields. Applications are made through the Registrar General of companies.	The legal position is proximate save for the appointments of insolvency Practitioners, which does not impede cross-border business.

THE PRINCIPLE	TANZANIA	KENYA (BILL)	UGANDA (BILL)	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
11. Remuneration of Insolvency Practitioners	Insolvency practitioners are remunerated	Same as URT save that Kenya is developing a standard remuneration order.	Same as URT except that remuneration ranks first under preferential debts.	The law provides remuneration for curators and silent on the remuneration of Judge Commissioner.	Same as URT except that the remuneration shall not exceed 5% of the sold assets.	<b>The legal position is proximate</b>
12. Cross-border Insolvency	The law provides for cross-border insolvency	Same as URT	Same as URT	Not provided for.	Not provided for.	<b>Recommend to the Republic of Burundi and the Republic of Rwanda to consider providing for Cross-border Insolvency</b>

**C: PRINCIPLES CONSIDERED FOR HARMONISATION OF LAWS GOVERNING PARTNERSHIPS  
IN THE EAC CONTEXT**

THE PRINCIPLE	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
1. Governing Law/Bill	The Law of Contract Act, CAP 345	Partnership Bill and Limited Liability Partnership Bill.	Partnership Act No.2/2010	No existing law on Partnerships	No existing law	<b>Recommend to the Republic of Burundi and the Republic of Rwanda to enact laws governing partnerships.</b>
2. Definition	The law defines partnerships and firm.	same as URT	same as URT	-	-	
3. Rules determining the existence of partnerships	Rules for determining the existence of partnerships are stipulated.	same as URT	same as URT	-	-	
4. Relations of partners	The law provides circumstances on the relations of partners	same as URT	same as URT	-	-	

THE PRINCIPLE	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
5.Liability	<p>Liability of partners is unlimited.</p> <p>A partner can be vicariously liable.</p> <p>A partner can be held secondary liable.</p>	Same as URT	There is both limited and unlimited liability.	-	-	
6.Liabilities of incoming and outgoing partners	The liability for an incoming partner begins upon joining the firm. An outgoing partner is liable for debts and obligations incurred before retirement.	Same as URT	Same as URT	-	-	
7.Partnership property	Partnership property and the goodwill of the business belongs to the partners	Same as URT	Same as URT	-	-	



THE PRINCIPLE	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
8.Expulsion	No expulsion unless expressly provided for in the agreement between partners.	Same as URT	Same as URT	-	-	
9.Retirement	Any partner may retire from the Partnership upon giving notice.	Same as URT but there is a requirement of consent from other partners.	Same as Kenya	-	-	
10.Dissolution	The law provides for grounds for dissolution by; notice, expiration of fixed term,death,bankruptcy, charge, illegality and dissolution by court	Same as URT	Same as URT	-	-	

THE PRINCIPLE	TANZANIA	KENYA	UGANDA	BURUNDI	RWANDA	APPROXIMATION PROPOSAL
1.Limited Liability partnerships	Not provided for	The law provides for limited liability partnerships	Same as Kenya	-	-	<b>Recommend to URT to include Limited Liability Partnerships in her laws.</b>
2. Capacity of limited Liability partnerships	Not provided for	A legal entity (Corporate body).	No specific provision that makes a partnership body corporate.	-	-	
3.Registration of limited Liability partnerships	Not provided for	Registration is mandatory.	Same as Kenya	-	-	

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# THE EAST AFRICAN COMMUNITY LAW OF CONTRACT BILL, 2013

## A Bill for

AN ACT of the Community to provide for the: promotion and facilitation of movement of goods and services; the facilitation, execution and enforcement of contracts in the Partner States; and connected purposes.

**ENACTED** by the East African Community and assented to by the president of the Republic of Kenya, the President of the United Republic of Tanzania, the President of the Republic of Uganda, the President of Rwanda and the President of Burundi.

## PART I

### PRELIMINARY PROVISIONS

- Short Title and Commencement      1. (1) This Act may be cited as the East African Community Model Law of Contract Act, 2013
- (2) This Act shall come into force on such a date as the Council may, by notice in the Gazette, appoint.
- Interpretation      2. In this Act, —
- “acceptance” occurs when the person to whom the offer is made signifies assent to the offer;
- “contract” means an agreement between parties with the capacity to contract, for a lawful consideration and with a lawful object, with the intention of being legally bound;
- “express authority” means authority given by words, spoken or written;
- “offer” means a proposal made with a view to entering into a contract with other parties. Such a proposal must comply with

the following —

(a) the contents must be detailed and definite; and

(b) shall indicate that the offeror is bound by the proposal in case of acceptance.

"implied authority" means authority inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted from the circumstances of the case;

"sub-agent" means a person employed by, and acting under the control of the original agent in the business of the agency.

Application

3. (1) This Act shall apply to all contracts between parties whose place of business is in the different Partner States.

(2) The provisions of this Act may apply when the parties to a contract agree to incorporate them into their contract or that their contract is to be governed by them.

(3) The provisions to this Act shall provide a solution to issues raised where the system of rules of law applicable do not do so.

## PART II

### Formation of a Contract

Freedom of  
Contract

4. (1) Parties to a contract are free to enter into a contract and to determine the contents of the contract.

(2) The freedom to enter into a contract under Paragraph (1) is subject to the requirements of good faith and fair dealing, and the mandatory obligations established by this Act.

Conditions

5. (1) Parties are legally bound by a contract if —

necessary.

(a) The parties intend to be legally bound;

(b) The parties reach a sufficient agreement without any further requirement.

(2) The contract—

(a) need not be evidenced or concluded in writing nor is it subject to any other requirement as to form; and

(b) may be proved by any means, including witnesses.

Capacity to contract

6. (1) A person is deemed to have capacity to contract if the person is —

(a) has attained the age of 18 years or has attained the age of majority as prescribed by the independent laws of the individual partner states;

(b) of sound mind.

(2) A party may at any time appoint an agent to enter into a contract on their behalf in accordance with this Act.

Manner of formation

7. A contract may be concluded either by the —

(a) acceptance of an offer; or

(b) conduct of the parties that is sufficient to show agreement.

Offer

8. (1) A proposal amounts to an offer if the —

(a) proposal is intended to result in a contract

(b) other party accepts the proposal, and

(c) proposal contains sufficiently definite terms to form a contract.

(2) An offer may be made to one or more specific persons or to the public.

(3) A proposal to supply goods or services at stated prices made by a professional supplier in a public advertisement or a catalogue or by a display of goods, is presumed to be an offer to sell c

supply at that price until the stock of goods, or the supplier's capacity to supply the service is exhausted.

(4) An offer becomes effective when it reaches the offeree.

(5) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Expiration of offer **9.** An offer is considered to have expired if the —

(a) duration of the offer has expired;

(b) offer is rejected;

(c) offeree gives a counter offer;

(d) offeror or offeree dies or becomes incapacitated;

(e) subject matter in which the offer relates is destroyed;

(f) contract proposed is contrary to this law or public order; and

(g) offer is withdrawn or rejected.

Revocation of offer **10.** (1) An offer may be revoked if—

(a) the revocation reaches the offeree before the offeree has dispatched the acceptance; or

(b) in cases of acceptance by conduct, before the contract has been concluded under section 14(2) or 14(3) of this Act.

(2) An offer made to the public can be revoked by the same means as were used to make the offer.

Ineffective revocation **11.** Revocation of an offer is ineffective if —

(a) the offer indicates that the offer is irrevocable;

(b) the offer states a fixed time for its acceptance; or

(c) it is reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Lapse of Offer

**12.** The offer lapses when the rejection of an offer reaches the offeror.

Acceptance

**13.** (1) Any form of statement or conduct by the offeree is an acceptance if it indicates assent to the offer.

(2) Silence or inactivity does not amount to acceptance.

Time of  
conclusion

**14.** (1) If an acceptance has been dispatched by the offeree, the contract is concluded when the acceptance reaches the offeror.

(2) In case of acceptance by conduct, the contract is concluded when notice of the conduct reaches the offeror.

(3) If by virtue of the offer, practices which the parties have established between themselves or of a usage, the offeree may accept the offer by performing an act without notice to the offeror the contract is concluded when the performance of that act begins.

Time of  
acceptance

**15.** (1) The period of acceptance fixed by the offeror begins to run from the time that the offer is dispatched.

(2) A time indicated in the offer is considered to be the time of dispatch unless the circumstance indicates otherwise.

(3) An offer must be accepted within the time the offeror has fixed or, if no time is fixed, within a reasonable time having regard to the circumstances, including the rapidity of the means of communication employed by the offeror.

(4) An oral offer must be accepted immediately unless the

circumstances indicate otherwise.

Late  
acceptance

**16.** (1) A late acceptance is nonetheless effective as an acceptance if without delay the offeror informs the offeree that he treats it as such.

(2) If communication containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror informs the offeree that the offeror considers the offer as having lapsed.

Modified  
Acceptance

**17.** (1) A reply by the offeree is considered as a rejection if the reply states or implies additional or different terms which would materially alter the terms of the contract.

(2) A reply which gives a definite assent to an offer shall operate as an acceptance even if it states or implies additional or different terms, provided these do not materially alter the terms of the offer.

(3) The additional or different terms under subsection (2) then become part of the contract after the acceptance.

(3) A reply is considered as a rejection of the offer if the —

(a) offer expressly limits acceptance to the terms of the offer;

(b) offeror objects to the additional or different terms without delay; or

(c) offeree makes the acceptance of the offer conditional upon the offeror's assent to the additional or different terms, and the assent does not reach the offeree within a reasonable time.

Withdrawal of  
acceptance

**18.** An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

Conflicting  
General  
conditions

**19.** (1) If the parties have reached agreement except that the offer and acceptance refer to conflicting general conditions of contract, a contract is nonetheless formed. The general conditions form part of the contract to the extent that they are common in substance.

(2) No contract is however formed if one party—

(a) has indicated in advance, explicitly, and not by way of general conditions, that it does not intend to be bound by such contract on the basis of subsection (1); or

(b) without delay, informs the other party that it does not intend to be bound by such contract.

(3) General conditions of contract are terms which have been formulated in advance for an indefinite number of contracts of a certain nature, and which have not been individually negotiated between the parties.

Parties written  
confirmation

**20.** If parties have concluded a contract but have not embodied it in a final document, and one without delay sends the other a writing which purports to be a confirmation of the contract but which contains additional or different terms, such terms will become part of the contract unless:

(a) the terms materially alter the terms of the contract, or

(b) the addressee objects to them without delay.

Conclusion of contract dependent on specific matters or form **21.** Where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a particular form, no contract is concluded before agreement is reached on those matters or in that form.

Contract with terms deliberately left open **22.** (1) If the parties intend to conclude a contract, the fact that they intentionally leave a term to be agreed upon in further negotiations or to be determined by a third person does not prevent a contract from coming into existence.

(2) The existence of contract is not affected by the fact that subsequently—

(a) the parties reach no agreement on the term; or

(b) the third person does not determine the term;

Where there is an alternative means of rendering the term definite that is reasonable in circumstances, having regard to the intention of the parties.

Negotiations Contrary to Good Faith **23.** (1) A party is free to negotiate and is not liable for failure to reach an agreement.

(2) Subject to subsection (1), a party who has negotiated or broken off negotiations contrary to good faith and fair dealing is liable for the losses caused to the other party.

(3) It is contrary to good faith and fair dealing, for a party to enter into or continue negotiations with no real intention of reaching an agreement with the other party.

Breach of **24.** (1) Where confidential information is given by one party in the



confidentiality

course of negotiations, the other party is under a duty not to disclose that information or use it for its own purposes whether or not a contract is subsequently concluded.

(2) The remedy for breach of this duty may include compensation for loss suffered and restitution of the benefit received by the other party.

### PART III

#### AGENTS AND AUTHORITY OF AGENTS

Interpretation

**25.** In this Part, —

"agent" means a person employed by the principal to do any act for the principal or to represent the principal in dealing with a third person;

"principal" means a person who employs an agent to do any act for them or to represent them in dealings with a third party;

"sub-agent" means a person employed by and acting under the control of an agent in the business of agency.

Scope of this Part

**26.** (1) This part governs—

- (a) the authority of an agent or other intermediary to bind the principal in relation to a contract with a third party; and
- (b) only the relations between the principal or the agent on the one hand, and the third part on the other hand.

(2) This Part does not govern—

- (a) an agent's authority conferred by law;
- (b) the authority of an agent appointed by a public or judicial authority.

authority; or

(c) the internal relationship between the agent or intermediary and its principal.

- Capacity to employ agent
- 27.** A person has capacity to employ an agent if the person—
- (a) is eighteen (18) year and above;
  - (b) is of sound mind; and
  - (c) is not disqualified from appointing an agent by any law to which that person is subject.
- Capacity to act as agent
- 28.** A person has capacity to act as an agent if the person —
- (a) is eighteen (18) year and above;
  - (b) is of sound mind; and
  - (c) is not disqualified from appointing an agent by any law to which that person is subject.
- Express, implied and apparent authority
- 29.** (1) The principal's grant of authority to an agent to act in its name may be express or may be implied from the circumstances.
- (2) The agent has authority to perform all acts necessary in the circumstances to achieve the purposes for which the authority was granted.
- (3) A person is to be treated as having granted authority to an apparent agent if the person's statements or conduct induce the third party reasonably and in good faith to believe that the apparent agent has been granted authority for the act performed by the agent.
- Extent of
- 30.** (1) An agent has authority to do anything which is necessary for

authority of  
agent

the agent to do the act as required by the principal.

(2) An agent with authority to carry on business and to do anything which is necessary for the purpose of carrying on the business or which is usually done in the normal course of conducting business is deemed to have the authority to act.

Agent authority  
in an emergency

**31.** (1) In the case of an emergency, an agent has the authority to do any act, for the purpose of ensuring the protection of the principal from loss.

(2) The agent must act as a reasonable person would have in such circumstances.

Agent acting in  
exercise of his  
authority

**32.** (1) Where an agent is acting within its authority, its acts bind the principal and the third party directly to each other, but the agent is not bound to the third party.

(2) Subject to subsection (1), the agent is bound if the agent with the consent of the principal undertakes to become a party to the contract.

Unidentified  
Principal

**33.** If an agent enters into a contract in the name of a principal whose identity is to be revealed later, but the agent fails to reveal that identity within a reasonable time after a request by the third party, the agent is bound by the contract.

Agent acting  
without or  
outside his  
authority

**34.** (1) Where a person acting as an agent acts without authority or outside the scope of authority, the agent's acts are not binding upon the principal and the third party.

(2) If the principal does not ratify the agent's acts according to Section 39, the agent is liable to pay the third party such damages as will place the third party in the same position as if the agent had acted with authority.

(3) This section does not apply if the third party knew or ought to have known that the agent lacks authority.

Conflict  
Interests

of **35.** (1) If a contract concluded by an agent involves the agent in a conflict of interest of which the third party knew or could not have been unaware, the principal may avoid the contract according to the provisions of clause 53 to 57.

(2) There is presumed to be a conflict of interest where —

(a) the agent also acted as agent for the third party; or

(b) the contract was with the Agent in the Agent's personal capacity.

(3) The principal may not avoid the contract if—

(a) *the principal had consented to, or could not have been unaware of, the agent's so acting; or*

(b) the agent had disclosed the conflict of interest to the principal and the principal had not objected within a reasonable time.

Sub-agency and  
authority to  
delegate

**36.** (1) An agent has implied authority to appoint a sub-agent to carry out tasks which are not of a personal character and which it is not reasonable to expect the agent to carry out in person.

(2) Sub-section (1) applies to the sub-agent; acts of the sub-agent which are within the sub-agent's authority and the agent's authority bind the principal and the third party directly to each other.

Sub-agent  
represent  
principal

to **37.**(1) Where a sub-agent is properly appointed by the agent, the sub-agent shall represent the principal and the principal bound and responsible for the act of the sub-agent as if the sub-agent was the agent originally appointed by the principal.

(2) An agent is responsible to the principal for the acts or omission of a sub-agent.

(3) A sub-agent is responsible to an agent, but not to a principal, except in cases of fraud or willful wrongdoing.

Sub-agent  
appointed  
without authority

**38.** Where an agent without authority to do so, appoints a sub-agent, the principal is not bound and is not responsible for the actions of the sub-agent.

Ratification by  
Principal

**39.**(1) Where a person acting as an agent acts without authority or outside authority, the principal may ratify the agent's acts.

(2) Ratification may be express or implied from the conduct of the person on whose behalf the act is done.

(3) Upon ratification, the agent's acts are considered as having been authorized, without prejudice to the rights of other persons.

Third Party's right  
with respect to  
confirmation of  
authority

**40.**(1) Where the statements or conduct of the principal gave the third party reason to believe that an act performed by the agent was authorized, but the third party is in doubt about the authorization, it may send a written confirmation to the principal or request ratification from the principal.

(2) If the principal does not object or answer the request without delay, the agent's act is treated as having been authorized.

Termination of Authority

**41.**(1) An agent's authority continues until the third party knows or ought to know that—

(a) the agent's authority has been brought to an end by the principal, the agent, or both;

(b) the acts for which the authority had been granted have been completed, or the time for which it had been granted has expired;

(c) the agent has become insolvent or, where a natural person, has died or become incapacitated; or

(d) the principal has become insolvent.

(2) A third party is considered to know that the agent's authority has been brought to an end under paragraph (1) (a) above if this has been communicated or publicized in the same manner in which the authority was originally communicated or publicized.

(3) An agent remains authorised for a reasonable time to perform those acts which are necessary to protect the interests of the principal or its successors.

#### **PART IV**

#### **VALIDITY OF CONTRACTS**

Matters not Covered

**42.**This Part does not apply to invalidity arising from illegality, immorality, or lack of capacity.

Initial Impossibility

**43.**A contract is not invalid merely because at the time the contract was concluded, performance of the obligation assumed was impossible, or because a party was not entitled to dispose of the assets to which the contract relates.

Mistake as to  
fact or law

**44.**(1) A party may avoid a contract for mistake of fact or law existing when the contract was concluded if—

(a) (i) the mistake was caused by information given by the other party; or

(ii) the other party knew or ought to have known of the mistake and it was contrary to good faith and fair dealing to leave the mistaken party in error; or (iii) the other party made the same mistake, and

(b) the other party knew or ought to have known that the mistaken party, had it known the truth, would not have entered the contract or would have done so only or fundamentally different terms.

(2) A party may not avoid the contract if—

(a) in the circumstances its mistake was inexcusable, or

(b) the risk of the mistake was assumed, or in the circumstances should be borne, by it.

Inaccuracy in  
communication

**45.** An inaccuracy in the expression or transmission of a statement is to be treated as a mistake of the person who made or sent the statement and section 44 applies.

Adaptation of  
contract

**46.**(1) If a party is entitled to avoid the contract for mistake but the other party indicates that it is willing to perform, or actually performs the contract as it was understood by the party entitled to avoid it, the contract is treated as if it had been concluded as the party understood it.

(2) The other party must indicate its willingness to perform, or render such performance, promptly after being informed of the manner in which the party entitled to avoid it understood the contract and before that party acts in reliance on any notice of avoidance.

(3) After such indication or performance the right to avoid is lost and any earlier notice of avoidance is ineffective.

(4) Where both parties have made the same mistake, the court may at the request of either party bring the contract into accordance with what might reasonably have been agreed had the mistake not occurred.

Incorrect  
information

**47.** A party who has concluded a contract relying on incorrect information given to that party by the other party may recover damages in accordance with section 58 (2) and (3) even if the information does not give rise to a right to avoid the contract on the ground of mistake under section 44, unless the party who gave the information had reason to believe that the information was correct.

Fraud

**48.** (1) A party may avoid a contract if the party has been led to conclude the contract by the other party's fraudulent representation, whether by words or conduct, or fraudulent non-disclosure of any information which in accordance with good faith and fair dealing the other party should have disclosed.

(2) A party's representation or non-disclosure is fraudulent if it was intended to deceive.

(3) In determining whether good faith and fair dealing required that a party disclose particular information, regard should be had to all the circumstances, including—

(a) whether the party had special expertise;

(b) the cost of acquiring the relevant information;

(c) whether the other party could reasonably acquire the



information for; and

(d) the apparent importance of the information to the other party.

Threats and coercion

**49.** A party may avoid a contract if the party has been led to conclude the contract by the other party's imminent and serious threat of an act which is —

(a) wrongful; or

(b) wrongful to use as a means to obtain the conclusion of the contract, unless in the circumstances the first party had a reasonable alternative.

Excessive benefit or unfair advantage

**50.** (1) A party may avoid a contract if, at the time of the conclusion of the contract—

(a) the party was dependent on or had a relationship of trust with the other party, was in economic distress or had urgent needs, was improvident, ignorant, inexperienced or lacking in bargaining skill; and

(b) the other party knew or ought to have known of this and, given the circumstances and purpose of the contract, took advantage of the first party's situation in a way which was grossly unfair or took an excessive benefit.

(2) Upon the request of the party entitled to avoidance, a court may if it is appropriate, adapt the contract in order to bring the contract in accordance with what might have been agreed had the requirements of good faith and fair dealing been followed.

(3) A court may similarly adapt the contract upon the request of a party receiving notice of avoidance for excessive benefit or unfair advantage, provided that this party informs the party who gave the

notice promptly after receiving it and before that party has acted in reliance on the notice.

Unfair terms  
which have not  
been individually  
negotiated

**51.** (1) A party may avoid a term which has not been individually negotiated if, contrary to the requirements of good faith and fair dealing, the term causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of that party, taking into account the nature of the performance to be rendered under the contract, all the other terms of the contract and the circumstances at the time the contract was concluded.

(2) This section does not apply to:

(a) a term which defines the main subject matter of the contract, provided the term is in plain and intelligible language; or

(b) the adequacy in value of one party's obligations compared to the value of the obligations of the other party.

Third persons

**52.** (1) Where a third person for whose acts a party is responsible, or who with a party's assent is involved in the making of a contract

(a) causes a mistake by giving information, or knows of or ought to have known of a mistake;

(b) gives incorrect information;

(c) commits fraud;

(d) makes a threat; or

(e) takes excessive benefit or unfair advantage, remedies under this Part will be available under the same conditions as if the behavior or knowledge had been that of the party itself.

(2) Where any other third person—

(a) gives incorrect information;

(b) commits fraud;

(c) makes a threat; or

(d) takes excessive benefit or unfair advantage, remedies under this Chapter will be available if the party knew or ought to have known of the relevant facts, or at the time of avoidance it has not acted in reliance on the contract.

Notice of  
Avoidance

**53.** Avoidance must be by notice to the other party.

Time limits

**54.** (1) Notice of avoidance must be given within a reasonable time with due regard to the circumstances, after the avoiding party knew or ought to have known of the relevant facts or became capable of acting freely.

(2) However, a party may avoid an individual term under Section 51 if the party gives notice of avoidance within a reasonable time after the other party has invoked the term.

Confirmation

**55.** If the party who is entitled to avoid a contract confirms it, expressly or impliedly, after it knows of the ground for avoidance, or becomes capable of acting freely, avoidance of the contract is excluded.

Effect of  
avoidance

**56.** (1) On avoidance either party may claim restitution of whatever he has supplied under the contract or the part of it avoided, where he makes concurrent restitution of whatever he has received under the contract or the part of it avoided.

(2) If restitution cannot be made in kind for any reason, a reasonable sum must be paid for what has been received

Partial

**57.** If a ground of avoidance affects only particular terms of a

avoidance

contract, the effect of an avoidance is limited to those terms unless, giving due consideration to all the circumstances of the case, it is unreasonable to uphold the remaining contract.

Damages

**58.** (1) A party who avoids a contract under this Part may recover from the other party damages so as to put the avoiding party as nearly as possible into the same position as if it had not concluded the contract, where that the other party knew or ought to have known of the mistake, fraud, threat or taking of excessive benefit or unfair advantage.

(2) If a party has the right to avoid a contract under this Part, but does not exercise the right or has lost right under the sections 53 and 54, the party may recover subject to paragraph (1), damages limited to the loss caused to that party by the mistake, fraud, threat or taking of excessive benefit or unfair advantage.

(3) The same measure of damages shall apply when the party was misled by incorrect information in the sense of section 47.

(4) In other respects, the damages shall be in accordance with the relevant PART X of this Law, with appropriate adaptations.

Exclusion or restriction of remedies

**59.** (1) Remedies for fraud, threats and excessive benefit or unfair advantage-taking, and the right to avoid an unfair term which has not been individually negotiated, cannot be excluded or restricted.

(2) Remedies for mistake and incorrect information may be excluded or restricted unless the exclusion or restriction is contrary to good faith and fair dealing.

Remedies for non-performance

60. A party who is entitled to a remedy under this Part in circumstances which afford that party a remedy for non-performance may pursue either remedy.

## PART V

### INTERPRETATION OF A CONTRACT

General Rules of Interpretation

61. (1) A contract must be interpreted according to the common intention of the parties even if this differs from the literal meaning of the words.

(2) If it is established that one party intended the contract to have a particular meaning, and at the time of the conclusion of the contract the other party could not have been unaware of the first party's intention, the contract must be interpreted in the way intended by the first party.

(3) If an intention cannot be established according to subsections (1) or (2), the contract must be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to the contract in the same circumstances.

Relevant Circumstances

62. In interpreting the contract, regard shall be had, in particular to —

- (a) the circumstances in which it was concluded, including the preliminary negotiations;
- (b) the conduct of the parties, even subsequent to the conclusion of the contract;
- (c) the nature and purpose of the contract;
- (d) the interpretation which has already been given to similar clauses by the parties and the practices they have established between themselves;

- (e) the meaning commonly given to terms and expressions in the branch of activity concerned and the interpretation similar clauses may already have received;
- (f) usages; and
- (g) good faith and fair dealing.

Contra Proferentem Rule	<b>63.</b> Where there is doubt about the meaning of a contract term not individually negotiated, an interpretation of the term against the party who supplied the term is to be preferred.
Preference to negotiated terms	<b>64.</b> Terms which have been individually negotiated take preference over those which are not.
Reference to contract as a whole	<b>65.</b> Terms are interpreted in the light of the whole contract in which they appear.
Terms to be given (Full) effect	<b>66.</b> An interpretation which renders the terms of the contract lawful, or effective, is to be preferred to one which would not.
Linguistic discrepancies	<b>67.</b> Where a contract is drawn up in two or more language versions none of which is stated to be authoritative, there is, in case of discrepancy between the versions, a preference for the interpretation according to the version in which the contract was originally drawn up.

## PART VI

### CONTENTS AND EFFECTS

Statements giving rise to contractual obligation	<b>68.</b> (1) A statement made by one party before or when the contract is concluded is to be treated as giving rise to a contractual obligation if that is how the other party reasonably understood it in the circumstances, taking
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into account—

- (a) the apparent importance of the statement to the other party;
- (b) whether the party was making the statement in the course of business; and
- (c) the relative expertise of the parties.

(2) If one of the parties is a professional supplier who gives information about the quality or use of services or goods or other property when marketing or advertising them or otherwise before the contract is concluded, the statement is to be treated as giving rise to a contractual obligation unless it is shown that the other party knew or ought to have known that the statement was incorrect.

(3) Information and other undertakings given by a person advertising or marketing services, goods or other property for the professional supplier, or by a person in earlier links of the business chain, are to be treated as giving rise to a contractual obligation on the part of the professional supplier unless the professional supplier did not know and had no reason to know of the information or undertaking.

Implied terms

- 69.** A contract may contain implied terms which stem from—
- (a) the intention of the parties;
  - (b) the nature and purpose of the contract; and
  - (c) good faith and fair dealing.

Simulation

**70.** When the parties have concluded an apparent contract which was not intended to reflect their true agreement as between the parties, the true agreement prevails.

Determination of price	<b>71.</b> Where the contract does not fix the price or the method of determining the price, the parties are to be treated as having agreed on a reasonable price.
Unilateral determination by a party	<b>72.</b> Where the price or any other contractual term is to be determined by one party whose determination is unreasonable, a reasonable price or other term must be substituted.
Determination by a Third Person	<p><b>73.</b>(1) Where the price or any other contractual term is to be determined by a third party, and the third party cannot or will not do so, the parties are presumed to have empowered the court to appoint another person to determine the price.</p> <p>(2) If a price or other term fixed by a third person is grossly unreasonable, a reasonable price or term must be substituted.</p>
Reference to a non-existent factor	<b>74.</b> Where the price or any other contractual term is to be determined by reference to a factor which does not exist or has ceased to exist or to be accessible, the nearest equivalent factors shall be substituted.
Quality of performance	<b>75.</b> If the contract does not specify the quality, a party must tender performance of at least average quality.
Contract for an indefinite period	<b>76.</b> A contract for an indefinite period may be ended by either party by giving notice of reasonable length.
Stipulation in favour of a	<b>77.</b> (1)A third party may require performance of a



third party

contractual obligation when;

(a) the third party's right to do so has been expressly agreed upon between the promisor and the promisee, or

(b) such agreement is to be inferred from the purpose of the contract or the circumstances of the case.

(2) Subject to subsection (1), the third party need not be identified at the time the agreement is concluded.

(3) If the third party renounces the right to performance, the right is treated as never having accrued to the third party.

(3) The promisee may by notice to the promisor deprive the third party of the right to performance unless —

(a) the third party has received notice from the promisee that the right has been made irrevocable; or

(b) the promisor or the promisee has received notice from the third party that the latter accepts the right.

Change of  
circumstances

78.(1) A party is bound to fulfill its obligations even if performance has become more onerous, whether because the cost of performance has increased or because the value of the performance it receives has diminished.

(2) If, performance of the contract becomes excessively onerous because of a change of circumstances, the parties are bound to enter into negotiations with a view to adapting the contract or terminating it, where —

(a) the change of circumstances occurred after the time of conclusion of the contract;

(b) the possibility of a change of circumstances was not one which could reasonably have been taken into account at the time of conclusion of the contract; and the risk of the change of circumstances is not one which, according to the contract, the party affected should be required to bear.

(3) If the parties fail to reach agreement within a reasonable period, the court may—

(a) terminate the contract at a date and on terms to be determined by the court; or

(b) adapt the contract in order to distribute between the parties in a just and equitable manner the losses and gains resulting from the change of circumstances.

(4) In either case, the court may award damages for the loss suffered through a party refusing to negotiate or breaking off negotiations contrary to good faith and fair dealing.

## PART VII

## PERFORMANCE OF THE CONTRACT

Place of performance

**79.** (1) If the place of performance of a contractual obligation is not fixed by or determinable from the contract it shall be—

(a) in the case of an obligation to pay money, the creditor's place of business at the time of the conclusion of the contract;

(b) in the case of an obligation other than to pay money, the obligor's place of business at the time of conclusion of the contract.

(2) If a party has more than one place of business, the place of business for the purpose of the preceding paragraph is that which has the closest relationship to the contract having regard to the circumstances known to or contemplated by the parties at the time of conclusion of the contract.

(3) If a party does not have a place of business its habitual residence is to be treated as its place of business.

Time of Performance

**80.** A party has to effect performance —

(1) if a time is fixed by or determinable from the contract, at that time;

(2) if a period of time is fixed by or determinable from the contract, at any time within that period unless the circumstances of the case indicate that the other party is to choose the time;

(3) in any other case, within a reasonable time after the conclusion of the contract.

Early performance

**81.** (1) A party may decline a tender of performance made

before performance is due, except where acceptance of the tender would not unreasonably prejudice the party's interests.

(2) A party's acceptance of early performance does not affect the time fixed for the performance of that party's obligation.

Order of performance      **82.** Parties to a contract are bound to render performance simultaneously unless the circumstances indicate otherwise.

Alternative performance      **83.** (1) Where an obligation may be discharged by one of alternative performances, the choice belongs to the party who is to perform, unless the circumstances indicate otherwise.

(2) If the party who is to make the choice fails to do so by the time required by the contract, then—

(a) if the delay in choosing is fundamental, the right to choose passes to the other party;

(b) if the delay is not fundamental, the other party may give notice fixing an additional period of reasonable length in which the party to choose must do so.

(c) If the party under subsection (2) fails to make a choice under subsection (2), the right to choose passes to the other party.

Performance by a third person      **84.** (1) Except where the contract requires personal performance the party under obligation to perform cannot refuse performance by a third person if:

(a) the third person acts with the assent of the obligor; or

(b) the third person has a legitimate interest in performance and the offeror has failed to perform or it is clear that the offeror will not perform at the time performance is due.

(2) Performance by the third person in accordance with paragraph (1) discharges the party expected to perform.

Form of payment **85.** (1) Payment of money due may be made in any form used in the ordinary course of business.

(2) A creditor who, pursuant to the contract or voluntarily, accepts a cheque or other order to pay or a promise to pay is presumed to do so only on condition that the cheque or order to pay will be honoured.

(3) The creditor may not enforce the original obligation to pay unless the order or promise is not honoured.

Currency of payment **86.** (1) Parties to a contract may agree that payment be made in a specified currency.

(2) In the absence of such agreement, a sum of money expressed in a currency other than that of the place where payment is due may be paid in the currency of that place according to the prevailing market rates of exchange prevailing at the time when payment is due.

(3) If, in a case falling within subsection (2), the debtor has not paid at the time when payment is due, the creditor may require payment in the currency of the place where payment is due according to the rate of exchange prevailing there either at the

time when payment is due or at the time of actual payment.

Appropriation of  
Performance

**87.** (1) Where a party has to perform several obligations of the same nature and the performance tendered does not suffice to discharge all of the obligations, then subject to subsection (4) the party may at the time of performance declare to which obligation the performance is appropriated.

(2) If the performing party does not make such a declaration, the other party may within a reasonable time appropriate the performance to such obligation as the party chooses and inform the performing party of the choice.

(3) An appropriation to an obligation which is —

- (a) not yet due;
- (b) illegal;
- (c) disputed; or
- (d) invalid.

(4) In the absence of an appropriation by either party, and subject to subsection (6), the performance is appropriated to that obligation which satisfies one of the following criteria in the sequence indicated:

- (a) the obligation which is due or is the first to fall due;
- (b) the obligation for which the offeree has the least security;
- (c) the obligation which is the most burdensome for the offeror; or
- (d) the obligation which has arisen first.

(5) If none of the preceding criteria under subsection (4) applies, the performance is appropriated proportionately to all obligations.

(6) In the case of a monetary obligation, a payment by the debtor

is to be appropriated, first, to expenses, secondly, to interest, and thirdly, to principal, unless the creditor makes a different appropriation.

Property not  
accepted

**88.** (1) A party who is left in possession of tangible property other than money because of the other party's failure to accept or retake the property must take reasonable steps to protect and preserve the property.

(2) The party left in possession may discharge its duty to deliver or return:

(a) by depositing the property on reasonable terms with a third person to be held to the order of the other party and notifying the other party of this; or

(b) by selling the property on reasonable terms after notice to the other party, and paying the net proceeds to that party.

(3) Where the property is liable to rapid deterioration or its preservation is unreasonably expensive, the party must take reasonable steps to dispose of it, and may discharge its duty to deliver or return by paying the net proceeds to the other party.

(4) The party left in possession is entitled to be reimbursed or to retain out of the proceeds of sale any expenses reasonably incurred.

Money not  
accepted

**89.** Where a party fails to accept money properly tendered by the other party, that party may after notice to the first party discharge its obligation to pay by depositing the money to the order of the first party in accordance with the law of the place where payment is due.

Costs of performance

90. Each party shall bear the costs of performance of the party's obligations.

## PART VIII

### NON-PERFORMANCE AND REMEDIES IN GENERAL

Remedies Available

91. Whenever a party does not perform an obligation under the contract and the nonperformance is not excused under section 99, the aggrieved party may resort to any of the remedies set out in Parts VIII and X.

(2) Where a party's non-performance is excused under section 98, the aggrieved party may resort to any of the remedies set out in Parts VIII and X except claiming performance and damages.

(3) A party may not resort to any of the remedies set out in Parts VIII and X to the extent that the party's act caused the other party's non-performance.

Cumulation of remedies

92. Remedies which are not incompatible may be cumulated. In particular, a party is not deprived of its right to damages by exercising its right to any other remedy.

Fundamental non-performance

93. A non-performance of an obligation is fundamental to the contract if—

(a) strict compliance with the obligation is of the essence of the contract;

(b) the non-performance substantially deprives the aggrieved party of what the party was entitled to expect under the contract, unless the other party did not foresee and could not reasonably have foreseen that result; or



(c) the non-performance is intentional and gives the aggrieved party reason to believe that the party cannot rely on the other party's future performance.

Cure by non-performing party

**94.** A party whose tender of performance is not accepted by the other party because it does not conform to the contract may make a new and conforming tender where the time for performance is not due or the delay would not be such as to constitute a fundamental non-performance.

Assurance of Performance

**95.** (1) A party who reasonably believes that there will be a fundamental non-performance by the other party may demand adequate assurance of due performance and meanwhile may withhold performance of its own obligations so long as such reasonable belief continues.

(2) Where this assurance is not provided within a reasonable time the party demanding it may terminate the contract if it still reasonably believes that there will be a fundamental non-performance by the other party and gives notice of termination without delay.

Notice fixing additional period for performance

**96.** (1) In any case of non-performance the aggrieved party may by notice to the other party allow an additional period of time for performance.

(2) During the additional period the aggrieved party may withhold performance of its own reciprocal obligations and may claim damages, but the party may not resort to any other remedy.

(3) If the party receives notice from the other party that the latter

will not perform within that period, or if upon expiry of that period due performance has not been made, the aggrieved party may resort to any of the remedies that may be available under Part VIII and Part X.

(4) If in a case of delay in performance which is not fundamental the aggrieved party has given a notice fixing an additional period of time of reasonable length, it may terminate the contract at the end of the period of notice.

(5) The aggrieved party may in its notice provide that if the other party does not perform within the period fixed by the notice the contract shall terminate automatically.

(6) If the period stated is too short, the aggrieved party may terminate, or, as the case may be, the contract shall terminate automatically, only after a reasonable period from the time of the notice.

Performance entrusted to another

**97.** A party who entrusts performance of the contract to another person remains responsible for performance.

Excuse due to an impediment

**98.** (1) A party's non-performance is excused if it proves that it is due to an impediment beyond its control and that it could not reasonably have been expected to take the impediment into account at the time of the conclusion of the contract, or to have avoided or overcome the impediment or its consequences.

(2) Where the impediment is only temporary the excuse provided by this section has effect for the period during which th

impediment exists

(3) The non-performing party must ensure that notice of the impediment and of its effect on its ability to perform is received by the other party within a reasonable time after the non-performing party knew or ought to have known of these circumstances.

(4) A party is entitled to damages for any loss resulting from the non-receipt of such notice.

Limitation or  
exclusion of  
remedies

**99.** Remedies for non-performance may be excluded or restricted unless it would be contrary to good faith and fair dealing to invoke the exclusion or restriction.

#### **PART VIII**

#### **PARTICULAR REMEDIES FOR NON-PERFORMANCE**

Monetary  
obligations

**100.** (1) The creditor is entitled to recover money which is due.

(2) Where the creditor has not yet performed its obligation and it is clear that the debtor will be unwilling to receive performance, the creditor may nonetheless proceed with performance and may recover any sum due under the contract unless —

(a) The creditor could have made a reasonable substitute transaction without significant effort or expense; or

(b) performance would be unreasonable in the circumstances.

Non-monetary  
obligations

**101.** (1) The aggrieved party is entitled to specific performance of an obligation other than one to pay money, including the remedying of a defective performance.

(2) Specific performance cannot, however, be obtained where —

(a) performance would be unlawful or impossible;

- (b) performance would cause the obligor unreasonable effort or expense;
- (c) the performance consists in the provision of services or work of a personal character or depends upon a personal relationship, or
- (d) the aggrieved party may reasonably obtain performance from another source.

(3) The aggrieved party loses the right to specific performance if the aggrieved party fails to seek the right within a reasonable time after knowing or ought to have become known of the non-performance.

Damages not precluded

**102.** The fact that a right to performance is excluded under this Section does not preclude a claim for damages.

Right to Withhold Performance

**103.** (1) A party who is to perform simultaneously with or after the other party may withhold performance until the other has tendered performance or has performed.

(2) The first party may withhold the whole of its performance or a part of it as may be reasonable in the circumstances.

(3) A party may similarly withhold performance for as long as it is clear that there will be a non-performance by the other party when the other party's performance becomes due.

Right to terminate the contract

**104.** (1) A party may terminate the contract if the other party's non-performance is fundamental.

(2) In the case of delay the aggrieved party may also terminate the contract under section 96(3).

Contract to be performed in Parts

**105.** (1) If a contract is to be performed in separate parts and in relation to a part to which a counter-performance can be apportioned, there is a fundamental non-performance.

(2) The aggrieved party may exercise the right to terminate under this Section in relation to the part concerned.

(3) A party may terminate the contract as a whole only if the non-performance is fundamental to the contract as a whole.

Notice of Termination

**106.** (1) A party's right to terminate the contract is to be exercised by notice to the other party.

(2) The aggrieved party loses the right to terminate the contract unless the aggrieved party gives notice within a reasonable time after the aggrieved party has or ought to have become aware of the nonperformance.

(3) (a) When performance has not been tendered by the time it was due, the aggrieved party need not give notice of termination before a tender has been made; except that if a tender is later made the party loses the right to terminate if the party does not give notice within a reasonable time after knowing or ought to have known of the tender.

(b) If the aggrieved party knows or has reason to know that the other party still intends to tender within a reasonable time, and the aggrieved party unreasonably fails to notify the other party that it will not accept performance, the aggrieved party loses the right to terminate if the other party in fact tenders within a reasonable time.

(4) If a party is excused under section 98 through an impediment

which is total and permanent, the contract is terminated automatically and without notice at the time the impediment arises.

Anticipatory non-performance **107.** Where prior to the time for performance by a party it is clear that there will be a fundamental non-performance by the party, the other party may terminate the contract.

Effects of termination in general **108.** (1) Termination of the contract releases both parties from their obligation to effect and to receive future performance, but, subject to sections 109 to 111, does not affect the rights and liabilities that have accrued up to the time of termination.

(2) Termination does not affect any provision of the contract for the settlement of disputes or any other provision which is to operate even after termination.

Property reduced in value **109.** A party who terminates the contract may reject property previously received from the other party if its value to the first party has been fundamentally reduced as a result of the other party's non-performance.

Recovery of money paid **110.** On termination of the contract a party may recover money paid for a performance which it did not receive or which it properly rejected.

Recovery of property **111.** On termination of the contract, a party who has supplied property which can be returned and for which it has not received payment or other counter-performance may recover the property.

Recovery for **112.** On termination of the contract, a party who has rendered a

performance  
that cannot be  
returned

performance which cannot be returned and for which the party has not received payment or other counter-performance, may recover a reasonable amount for the value of the performance to the other party.

#### PART IX

#### PRICE REDUCTION

Right to reduce  
price

**113.** (1) A party who accepts a tender of performance not conforming to the contract may reduce the price. This reduction shall be proportionate to the decrease in the value of the performance at the time this was tendered compared to the value which a conforming tender would have had at that time.

(2) A party who is entitled to reduce the price under the preceding paragraph and who has already paid a sum exceeding the reduced price may recover the excess from the other party.

(3) A party who reduces the price cannot also recover damages for reduction in the value of the performance but remains entitled to damages for any further loss it has suffered so far as these are recoverable under Section 5 of this Chapter.

#### PART X

#### Damages and Interest

Right to  
damages

**114.** (1) The aggrieved party is entitled to damages for loss caused by the other party's non-performance which is not excused under section 98.

(2) The loss for which damages are recoverable includes —  
(a) non-pecuniary loss; and  
(b) future loss which is reasonably likely to occur.

General  
measure of

**115.** (1) The general measure of damages is such sum as will put the aggrieved party as nearly as possible into the position in which

damages	the aggrieved party would have been if the contract had been duly performed.
	(2) Such damages cover the loss which the aggrieved party has suffered and the gain of which it has been deprived.
Foreseeability	<b>116.</b> The non-performing party is liable only for loss which the party foresaw or could reasonably have foreseen at the time of conclusion of the contract as a likely result of non-performance, unless the non-performance was intentional or grossly negligent.
Loss attributable to aggrieved party	<b>117.</b> The non-performing party is not liable for loss suffered by the aggrieved party to the extent that the aggrieved party contributed to the non-performance or its effects.
Reduction of loss	<b>118.</b> (1) The non-performing party is not liable for loss suffered by the aggrieved party to the extent that the aggrieved party could have reduced the loss by taking reasonable steps.  (2) The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the loss.
Substitute transaction	<b>119.</b> Where the aggrieved party has terminated the contract and has made a substitute transaction within a reasonable time and in a reasonable manner, the aggrieved party may recover the difference between the contract price and the price of the substitute transaction as well as damages for any further loss so far as these are recoverable under this Section.
Current price	<b>120.</b> Where the aggrieved party has terminated the contract and has not made a substitute transaction but there is a current price



for the performance contracted for, the aggrieved party may recover the difference between the contract price and the price current at the time the contract is terminated as well as damages for any further loss so far as these are recoverable under this Section.

Delay in  
payment of  
money



**121.** (1) If payment of a sum of money is delayed, the aggrieved party is entitled to interest on that sum from the time when payment is due to the time of payment at the average commercial bank short-term lending rate to prime borrowers prevailing for the contractual currency of payment at the place where payment is due.

(2) The aggrieved party may in addition recover damages for any further loss so far as these are recoverable under this Section.

Agreed  
payment for  
non-  
performance

**122.** (1) Where the contract provides that a party who fails to perform is to pay a specified sum to the aggrieved party for such non-performance, the aggrieved party shall be awarded that sum irrespective of its actual loss.

(2) Despite any agreement to the contrary the specified sum may be reduced to a reasonable amount where it is grossly excessive in relation to the loss resulting from the non-performance and the other circumstances.

Currency by  
which damages  
to be measured

**123.** Damages are to be measured by the currency which most appropriately reflects the aggrieved party's loss.

## PART XI CONDITIONS

Types of  
condition

**124.** A contractual obligation may be made conditional upon the occurrence of an uncertain future event, so that the obligation takes effect only if the event occurs (suspensive condition) or comes to an end if the event occurs (resolutive condition).

Interference with  
conditions

**125.** (1) If fulfillment of a condition is prevented by a party, contrary to duties of good faith and fair dealing or co-operation, and if fulfillment would have operated to that party's disadvantage, the condition is deemed to be fulfilled.

(2) If fulfillment of a condition is brought about by a party, contrary to duties of good faith and fair dealing or co-operation, and if fulfillment operates to that party's advantage, the condition is deemed not to be fulfilled.

Effect of  
conditions

**126.** (1) Upon fulfillment of a suspensive condition, the relevant obligation takes effect unless the parties otherwise agree.

(2) Upon fulfillment of a resolutive condition, the relevant obligation comes to an end

## 2.1.2. Consideration of the Draft Report on Achievements and Challenges of the Sub-Committee on Harmonization of National Laws

The Sub-Committee on Harmonisation of laws is a Committee of the Sectoral Council on Legal and Judicial Affairs mandated to undertake harmonisation of laws as per Article 126 (2) (b) of the Treaty on the Establishment of the East African Community.

At its 16<sup>th</sup> Meeting, the Sectoral Council directed the Secretariat to prepare a comprehensive report on the achievements and challenges of the Sub-Committee in the harmonization of laws of the Partner States in the EAC Context and submit it to the 17<sup>th</sup> Meeting of the Sectoral Council on Legal and Judicial Affairs for consideration.

Consequently, the Sub-Committee prepared the said report, the highlights of which are outlined below:

### (a) Achievements of the Sub-Committee

The Sub-Committee identified, considered and finalized principles and other areas of harmonization of Partner States' laws governing Companies, Insolvency, Partnerships, Business Names Registration, Immigration, Labour, Employment, Contracts and Sale of Goods.

The Sub-Committee, between 2008 and 2010, developed two cyber-law Frameworks (Phase one and Phase Two) which were approved by the EAC Council of Ministers in 2010. The Frameworks were prepared as Guidelines for Member States in amending or drafting cyber laws. The Frameworks contain recommendations that are designed to harmonize the law reform process between the EAC Partner States, as well as reflecting international best practice. Some Partner States have amended or enacted cyber laws in line with these frameworks.

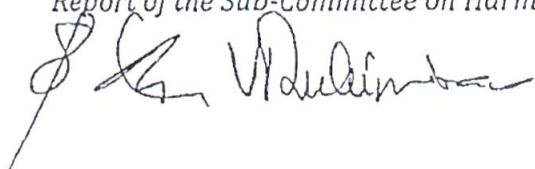
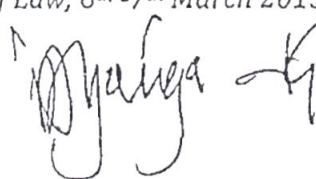
Partner States are at different stages of implementation of the decisions of the Council on harmonization of national laws. Below is the Matrix on the status of implementation:

Laws for Harmonisation	Burundi	Rwanda	Uganda	Kenya	Tanzania
Companies	Bill in Parliament	Law N°07/2009 of 27/04/2009 relating to companies.	The Companies Act 2012 is in place	Companies Bill is before Parliament for enactment.	Companies Act, Cap. 212 [R.E. 2002]
Insolvency	Bill in Parliament	Law N° 12/2009 of 26/05/2009 Relating to Commercial	The Insolvency Act, 2011 is in place	Insolvency Bill is before Parliament for enactment.	Draft Bill awaiting Cabinet Approval

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		Recovery and Settling of Issues Arising from Insolvency			
Partnerships	Draft bill in cabinet	A Draft Partnership is as well available for examination by the relevant authorities.	The Partnership Act, 2010 is in place	The Partnerships Act and the Limited Liability Partnerships Act are in place.	Covered under the Law of Contract Act, Cap. 345 [R.E. 2002]
Business Names Registration	Bill in Parliament	Pending the proposed review in this area to examine the possibilities of having standalone legislation, the current arrangement of this field is regulated under Companies.	The Business Name Registration Act, Cap 109 is outdated.	The preparation of the Business Registration Bill to replace the Business Names Act is in progress.	Business Names Registration Act, Cap. 213 [R.E. 2002] in place
Immigration	- Bill being developed - Ordinance n°215/185 of 30 <sup>th</sup> November, 2012 providing a 6 month pass for EAC citizens.	Law N° 04/2011 of 21/03/2011 on Immigration and Migration in Rwanda	Immigration (Amendment) Bill, 2014 is before Cabinet	The Kenya Citizens and Foreign Nationals Management Service Act and the Kenya Citizenship and Immigration Act are in place.	The review of the Immigration Act, Cap. 55 [R.E. 2002], Tanzania Passports and Travel Documents Act, 2002, Tanzania Citizenship Act, No. 5 of 1995 and The Anti-Trafficking in Persons Act, 2008 is in progress
Labour	Bill being developed	Law N° 13/2009 of 27/05/2009 Regulating Labour in Rwanda	Trade Unions Act No.7 of 2006 Labour Union Act, 2006 Labour Disputes (Arbitration and Settlement)	The Labour Institutions Act, the Labour Relations Act and the Work Injury Benefits Act are in place.	The Employment and Labour Relations Act, No. 6 of 2004 and Labour Institutions Act, No. 7 of 2004 are under review.

			Act, No.8 of 2006		
Employment	Bill being developed	Law N° 22/2002 09/07/2002 on General Statutes for Rwanda Public Service has been examined to establish its compliance with EAC obligations and found inconformity	The Employment Act, 2006 is in place  The Occupational Safety and Health Act, No. 9 of 2006	The Employment Act and the Occupational Safety and Health Act are in place.	The Employment and Labour Relations Act, No. 6 of 2004 and Labour Institutions Act, No. 7 of 2004 are under review.
Contracts	The process is yet to start	Law N° 45/2011 of 25/11/2011 Governing Contracts	The Contract Act, 2010 is in place.	The Law of Contract Act (Cap. 23) is in place but requires review.	Law of Contract Act, Cap. 345 [R.E. 2002] in place
Sale of Goods	The process is yet to start			The Sale of Goods Act (Cap. 31) is in place but requires review.	Sale of Goods Act, 214 [R.E. 2002] under review.

On recommendation of the Sub-Committee, the Secretariat engaged a Consultant to undertake a study to review existing commercial laws of the Partner States that have direct bearing and impact on the EAC Common Market. The Sub-Committee on Harmonisation of laws considered and reviewed the Report which was presented and adopted at the 15<sup>th</sup> Meeting of the Sectoral Council on Legal and Judicial Affairs. The recommendations of the report have been key to the process of harmonization of commercial laws in the Partner States.

In addition to the approach of approximation, the Sub-Committee adopted the development of model laws as another approach to harmonization of laws. The model law approach is an internationally accepted method of harmonization of laws, as it provides for common principles for harmonisation. With this new approach of the Model Law, the Sub-Committee began with the law of Contract because of the many gaps it had identified in all the Partner States' laws governing contracts. Given that the shortcomings arising in relation to the use, interpretation and application of contracts in cross-border transactions have the potential to affect the smooth functioning of the internal market of the East African Community, it was necessary to address the gaps by developing a guide in the form of a model law. The Model Contract Law was finalized in February 2014.

