

ANNEX 3
MOVEMENT OF NATURAL PERSONS (MODE 4)

Preamble

The State Parties:

PURSUANT to Article 26 of the SADC Protocol on Trade in Services allowing State Parties to develop Annexes for the implementation of the Protocol;

HAVING REGARD to the provisions of the Protocol and Paragraph 29 of the Negotiating and Scheduling Guidelines for the 1st Round of the SADC Trade in Services Negotiations, requiring State Parties to refer to the categories of natural persons typically included in the World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) schedules of commitments in inscribing their commitments with respect to temporary movement of natural persons;

CONSIDERING the need to have a shared and common understanding of the meaning, definition and type of persons who fall under different categories of natural persons and the permissible conditions regulating their temporary movement;

AWARE of the provisions of Article 17 of the SADC Protocol on Trade in Services indicating that this Annex shall not apply to measures affecting natural persons seeking access to the employment market of a State Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis; and

TAKING NOTE that the provisions of this Annex shall not be construed to imply automatic commitments by State Parties, in whole or part, to guarantee market access and or national treatment of the categories defined, unless explicitly inscribed in individual State Parties' schedules of commitments.

HEREBY AGREE as follows:

Article 1

Objective

The objective of this Annex is to provide definitions and conditions for temporary movement of natural persons of a State Party seeking entry into the territory of another State Party for the purpose of supplying services within the scope of the Protocol on Trade in Services.

Article 2

Scope and Coverage

This Annex applies to measures affecting natural persons who are service suppliers of a State Party or natural persons of a State Party who are employed by a service supplier of a State Party, in respect of the supply of a service.

Article 3

General Principles

1. Where a State Party inscribes in its Mode 4 commitments, whether horizontal or sector specific, any of the categories defined in this Annex, such categories shall be interpreted within the meaning of this Annex, unless otherwise defined in that State Party's list of commitments.
2. A State Party undertaking commitments in any of the defined categories shall define the maximum period of temporary stay for each category and any other applicable conditions.

Article 4

Definitions

1. The definitions of categories of natural persons as they relate to trade in services shall be as follows:
 - a) **Intra-corporate Transferee** means a natural person employed by a SADC juridical person that provide services into the territory of a State Party through a branch, subsidiary or affiliate established in the territory of a State Party where the service is to be supplied;
 - b) **Business Visitor** means an individual service supplier or a representative of a SADC based service supplier who enters the territory of another State Party temporarily to supply a service;
 - c) **Contractual Service Supplier** means a natural person employed by a juridical person of a State Party which has no establishment in the territory of the other State Party and has concluded a *bona fide* contract to supply services with a final consumer in the other State Party requiring the presence on a temporary basis of its employees in that other Party in order to fulfil a contract to provide services; and
 - d) **Independent Professional** means a natural person engaged in the supply of a service and established as self-employed in the territory of a State Party who has no commercial presence in the territory of the other State Party and who has concluded a *bona fide* contract to supply services with a final consumer in the State Party concerned, requiring his or her presence on a temporary basis in that State Party in order to fulfil the contract to provide services.
2. **Qualification** means documentary evidence issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of academic or professional training.

Article 5

Intra-corporate Transferees

1. The categories of intra-corporate transferee as they relate to trade in services shall be as follows:
 - a) **Executive** means a natural person working within a SADC juridical person who primarily directs the management and policies of a service supplier, exercises wide decision-making and who receives only general supervision from the board of directors or shareholders;
 - b) **Manager** means a natural person working within a juridical person who supervises or controls the work of other employees; and
 - c) **Specialist** means a natural person working within a juridical person who possesses specialized or technical knowledge essential to the commercial presence's production, research equipment, techniques, processes, procedures or management.
2. A State Party may require a natural person referred to in paragraph 1 to have been in prior employment of the juridical person for a specified period of time, immediately preceding the date of application for admission or transfer.

Article 6

Business Visitors

1. The categories of business visitors as they relate to trade in services shall be as follows:
 - a) A service seller or sales person who:
 - (i) enters to market services or negotiate or conclude agreements on the sale of a service; or
 - (ii) carries out other activities, including attending business meetings, holding and presenting at sales fairs, exhibitions and conferences; and
 - b) a natural person representing a service supplier who enters a State Party for the purpose of establishing a commercial presence.
2. The entry of a business visitor referred to in paragraph 1 shall be permitted on the following conditions that such a person shall not:
 - a) be engaged in making direct sales to the general public or in supplying services; or
 - b) receive any remuneration from a source located within the territory of the other State Party.

Article 7

Contractual Service Suppliers

1. A natural person who is a contractual service supplier shall have the following broad characteristics:
 - a) be employed or contracted by a SADC juridical person with no commercial presence in the territory of the State Party where the service is to be supplied;
 - b) be employed or contracted by a SADC juridical person that has obtained a service contract to supply a service in the territory of another State Party;
 - c) not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during their stay in the other State Party; and
 - d) have the appropriate expertise, academic or professional qualifications and demonstrated experience relevant to the service to be supplied.
2. Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the State Party where the service is provided.

Article 8

Independent Professionals

A natural person who is an independent professional shall have the following broad characteristics:

- a) supplies a service as a self-employed person;
- b) has obtained a service contract in the territory of the State Party where the service is to be provided;
- c) possesses the necessary academic or professional qualifications relevant in the provision of the service to be supplied; and
- d) receives remuneration for the contract that is paid solely to that natural person.

Article 9

Visas, Passes and Permits

1. This Annex shall not be construed to prevent a State Party from applying measures to regulate the entry and temporary stay of natural persons in its territory, including those measures necessary to protect the integrity of its borders and to ensure the orderly movement of natural persons.
2. A requirement for visas, passes or permits, as may be applicable for natural persons of certain State Parties and not for those of others, shall not be regarded as a limitation on trade in services except in situations where it is applied in a manner to nullify or impair the benefits accruing to any State Party under the terms of a specific commitment.