

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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COMMUNICATION FROM KENYA

**Conditional Offer by Kenya of Initial Commitments in the
Uruguay Round Negotiations on Trade in Services**

The following communication is circulated at the request of Kenya to the members of the Group of Negotiations on Services.

Kenya presents below its preliminary offer concerning initial commitments on trade in services. This offer is conditional upon a satisfactory conclusion of negotiations aimed at establishing a General Agreement on Trade in Services and the achievement of balanced global results in the Uruguay Round.

For Kenya, a satisfactory conclusion in the negotiations on services implies the adoption of an Agreement on Trade in Services and Sectoral Annexes within the Context of a balanced Uruguay Round package which promotes the interests of all developing countries and which provides adequate opportunity for export of services from Kenya.

By submitting this offer, Kenya reaffirms its commitment to a progressive liberalization of trade in services, with due regard to the levels of development of each participating country, in order to promote the interests of all parties on a mutually advantageous basis.

This offer is subject to the applicable Kenyan laws, regulations and guidelines governing the sectors included in the offer.

It is understood that this offer is purely conditional and is subject to revision, modification, refinement and withdrawal.

The terms, limitations and conditions on market access as well as the conditions and qualifications on national treatment are specified according to the following interpretation of the four relevant modes of delivery:

Cross-border trade

Tradeable services in the strict sense, where neither capital nor labour mobility is involved.

Movement of consumers

Consumption of services abroad.

Commercial presence

Supply of a service by a service providing entity of a party from an establishment in the territory of another party (commitments do not by themselves include movement of personnel).

Movement of natural persons

Natural persons from one party providing services in the territory of another party, whether operating from a local establishment or not.

HORIZONTAL MEASURES

1. Cross-border trade

The regulations governing international trade in services are similar to those governing the goods concerned. For specific reasons, certain services may be subject to restrictions or control measures. Such reasons may include, inter alia, temporary quantitative restrictions or customs surcharges due to balance of payments difficulties, safeguard measures, protection of health and life of persons, plants and environment, national security, etc.

2. Movement of consumers

Kenyan consumers could freely travel abroad to buy services. The current deregulation of the foreign market has removed all restrictions regarding payments in foreign currency.

3. Commercial presence

Commercial presence requires that foreign service providers incorporate or establish the business locally in accordance with the relevant provisions of Kenyan laws.

Foreign investors can invest in all sectors if industry, exploration and production of natural resources, agriculture, infrastructure and communications civil and industrial works, scientific research and technology development, trade, transportation, tourism, banking and insurance services and other services, provided that they shall not infringe the regulation in force meant to protect the environment, Kenya's security and defence interests, the public order, health and morals.

Enterprises with foreign investment in Kenya have the same rights and responsibilities as domestic enterprises. Transfer abroad of profits after paying taxes due is subject to the existing foreign exchange regulations.

4. Movement of natural persons

In Kenya, the entry and residence of foreign natural persons (service providers) are subject to Kenya's immigration and labour laws, regulations, guidelines and procedures. In accordance with Kenyan legislations, the employment of foreign natural persons for the implementation of foreign investment shall be agreed upon by the contracting parties and approved by Government, and such personnel shall be employed in management and expert jobs only.

Definition of Terms

No restrictions

This means that Kenya does not impose limitations, conditions or qualifications with respect to market access or national treatment other than those mentioned under horizontal measures.

Not applicable

This mode of delivery of service is not feasible.

Bound

This means that Kenya undertakes a commitment not to become more restrictive or more inconsistent with market access and national treatment provisions of the General Agreement on Services than provided for in existing measures set out in the schedule.

Unbound

This means that Kenya has not undertaken any commitment to bind existing laws and regulations affecting the conditions of market access or national treatment.

SCHEQUE OF INITIAL COMMITMENTS IN THE URUGUAY ROUND
NEGOTIATIONS ON TRADE IN SERVICES

SECTOR AND SUB-SECTOR

Service type	Mode of delivery	Limitations and conditions on market access	Conditions and limitations on national treatment
A. COMMUNICATION SERVICES			
a. Vending, installations and maintenance of telecommunications terminal equipment			
	3	Subject to existing type approval and licensing procedures. Also subject to all existing laws of Kenya.	No restriction
b. Home country direct services	4	Restricted to countries operating direct voice communication routes.	No restriction
1. Motion picture and video tape production and distribution services			
	1 C.B.T.	1 C.B.T.	None
	2 M.P.	2. Script and synopsis of proposed film must be presented for approval.	None
Motion picture projection			
	1 C.B.T.	3. Prescribed license fee to be paid	None
	2 C.P.	2. Censorship for titles mandatory before exhibition	None
B. FINANCIAL SERVICES			
Insurance and related services			
Insurance (all classes)	1	Not applicable	Not applicable

	2	Unbound	None
	3	Restricted to suppliers with commercial presence in Kenya, provided they are incorporated under the Companies Act and at least one-third of the controlling interest whether in terms of shares, paid-up share capital or voting rights are held by citizens of Kenya. In the case of a body corporate which does not have shares, at least one-third of the board must be citizens of Kenya.	
	4	Subject to immigration laws and regulations.	Unbound
2. Reinsurance and retrocession (all classes)	1	Not applicable	Not applicable
	2	Unbound	None
	3	Restricted to suppliers with commercial presence in Kenya, provided they are incorporated under the Companies Act and at least one-third of the controlling interest whether in terms of shares, paid-up share capital or voting rights are held by citizens of Kenya. In the case of a body corporate which does not have shares, at least one-third of the board of directors or managing board must be citizens of Kenya.	None
	4	Subject to immigration laws and regulations.	Unbound
	b. <u>Banking and other related financial services</u>		
1. Acceptance of deposits and other repayable funds from the public	1	Not applicable	Not applicable

2	It is illegal to bank abroad, either Kenya Shillings or foreign currency under the Exchange Control Act, with the exemption of enterprises operating in the Export Processing Zones (EPZ).	None		
3	Unbound	None		
4	In accordance with immigration laws and regulations.	Unbound		
2. Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions	Not applicable	Not applicable		
3				
4				
2	Exchange control approval required for borrowing abroad.	None		
3	None	None		
4	In accordance with immigration laws.	Unbound		
1	Not applicable	Not applicable		
2	Prior approval of the commissioner of Insurance is required to place Kenya business with an insurer not registered under the Insurance Act and for remittance of premiums, claims and other sums of money arising out of insurance.	None		
3	Registered to suppliers with commercial presence in Kenya, provided they are incorporated under the Companies Act and at least sixty (60) per cent of their paid-up capital is owned by citizens of Kenya.	None		
4	Subject to immigration laws and regulations.	Unbound		
4. Agency services	Not applicable	Not applicable		

	2	Not bound	None
	3	Restricted to suppliers which are citizens of Kenya. In the case of a partnership, all the partners must be citizens of Kenya and if the supplier is a company, it must be wholly owned by citizens of Kenya.	
	4	Unbound	Unbound
C. TOURISM AND TRAVEL RELATED SERVICES			
Tourism and travel-related services	1 Cross-border trade	None	None
	2 Movement of consumers	None	None
	3 Commercial presence	Work permit, registration, licensing required	No restriction
	4 Movement of personnel	Subject to immigration and labour laws and regulations	No restriction
D. TRANSPORT SERVICES			
Air transportation			
Aircraft repair and maintenance services	Cross-border delivery	None	Only limited to existing customs and excise regulations and requirements (as of 1 October)

Movement of consumers	Unlimited for purpose of obtaining these services.	Unlimited unless as per existing immigration and customs requirements.
Commercial presence	No limitations for aircraft repair and maintenance services, which is here limited to refer to repair and maintenance of aircraft and or components at a maintenance base. This includes all other maintenance activity such as Apron maintenance, and engineering handling, which remains unbound.	Unbound
Movement of personnel	Limited existing only as per existing legislature (1 October 1992) regarding foreign workers.	Unbound
Air-line reservation	Cross-border delivery	Unbound
	Movement of consumers	Unbound
	Commercial presence	Unbound
	Movement of personnel	Subject to existing Kenyan legislation as of 1 October 1992 and regulations governing immigration and work permits.
Selling and marketing	Cross-border delivery	Unbound
	Movement of consumers	None for those activities unrestricted under commercial presence otherwise unbound.
	Commercial presence	Unbound except for advertising activity and the settling up of regional sales offices and in conformity with existing legislation.
		Unbound, except as per given market accessibility on commercial presence delivery mode.

	Movement of personnel	Limited only to the existing immigration regulations.	Unbound
Road transportation services			
a. Passenger transportation	(1) Subject to immigration rules and regulations while on inter-territorial routes; otherwise there are no limitations while operations are within the country in which the passengers' vehicles are registered. Vehicles for approved non-governmental organizations are exempted.	No conditions Unbound	No conditions Unbound
b. Freight transportation Transportation of goods in transit	(2) This is subject to customs rules and regulations on dutiable goods and the points of entry and exits.	No qualifications Unbound.	No qualifications by the National Country.
c. Rental of commercial	Dictated by the owners of the vehicles who have to arrange for hire contracts and stipulates the rates for hire charges. The hire must also comply with the immigration and customs requirements at the border posts, while crossing into a foreign country. The Government only licenses the vehicles in accordance with Transport Licensing Act.	No qualifications Unbound.	No qualifications by the National Country.
d. Maintenance and repairs Transport equipment	The Repairs and Maintenance of Road Transport Equipment is carried out by the Registered owners of the vehicles in order to ensure serviceability of the vehicle as per Transport Licensing Act.	No limitations.	No limitations.
e. Support services	They provide support Passengers Services within the country in the entire transport industry. They will also be subject to immigration and customs rules while operating on inter-territorial routes. The tour operators' vehicles are also subject to Transport Licensing Act for licensing purposes.	No limitations.	No limitations.
METEOROGICAL DATA			
Meteorological data information	1	None	None
	2	None	None
	3	None	None
	4	None	None