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# International Trade in Services and Lesotho

**Legal Frameworks for  
Trade in Services**



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# Classification of Services

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## LIST OF SECTORS:

### ❑ Business services and professional services

- ❑ Accountancy services
- ❑ Advertising services
- ❑ Architectural and engineering services
- ❑ Computer and related services
- ❑ Legal services

### ❑ Communication services

- ❑ Audiovisual services
- ❑ Postal and courier, express mail services
- ❑ Telecommunications

### ❑ Construction and related services

### ❑ Distribution services

[back to top ▲](#)

### ❑ Education services

### ❑ Energy services

### ❑ Environmental services

### ❑ Financial services

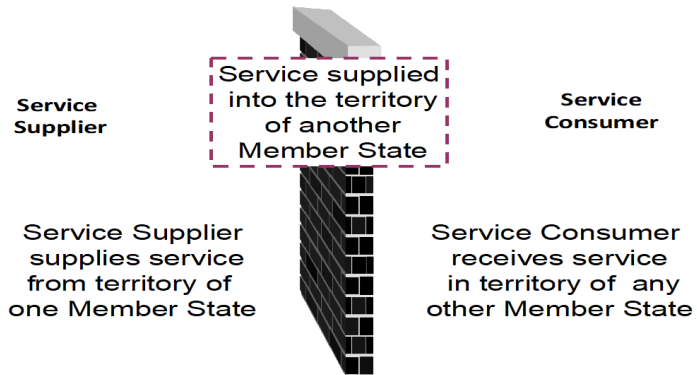
### ❑ Health and social services

### ❑ Tourism services

### ❑ Transport services

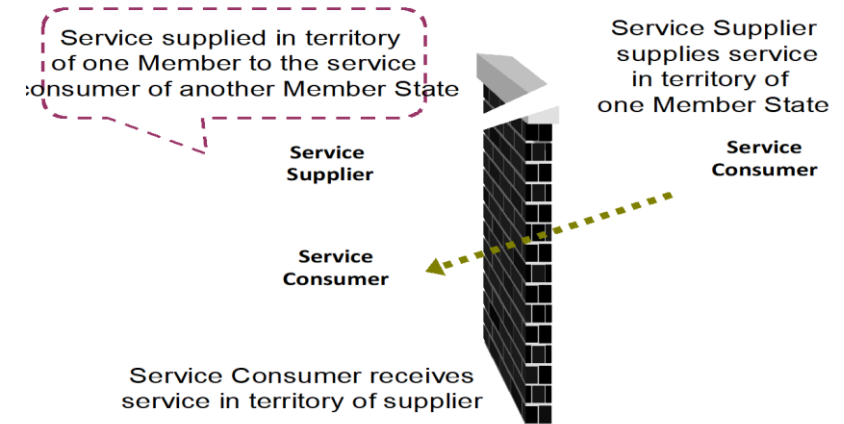
- ❑ Air transport services
- ❑ Land transport services
- ❑ Maritime transport services
- ❑ Services auxiliary to all modes of transport

## Cross border supply - Mode 1



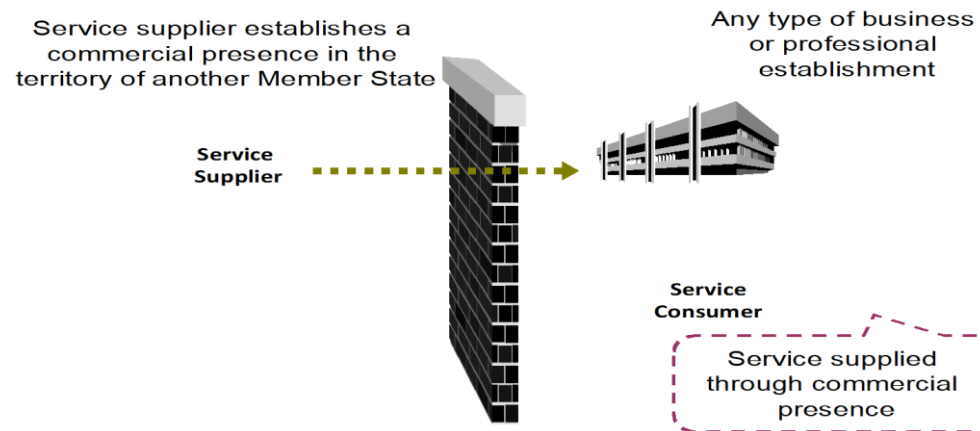
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## Consumption abroad - Mode 2

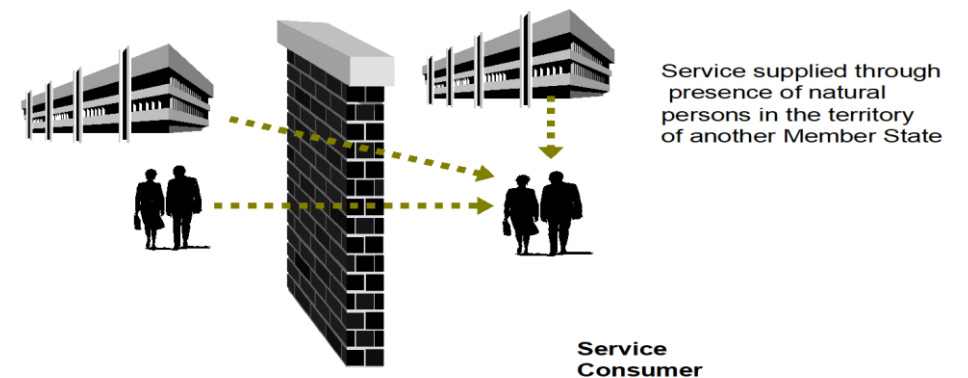


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## Commercial Presence - Mode 3



## Natural Persons - Mode 4



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# Obstacles to Trade in Services

- Market Access
- National Treatment
- Country Country-based Discrimination

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# Legal Frameworks - Lesotho

- International framework for trade in services
    - WTO General Agreement on Trade in Services (GATS)
  - Regional framework for trade in services
    - AfCFTA Protocol on Trade in Services
    - SADC Protocol on Trade in Services
  - Domestic frameworks for trade in services
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# Key Points – WTO's GATS

- Market Access Articles XVI
  - National Treatment Article XVII
  - Progressive liberalisation Article XIX
  - Transparency Article III
  - Most Favoured Nation obligation Article II
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# Regional Frameworks



MARKET ACCESS – ARTICLE 14

MARKET ACCESS – ARTICLE 20

NATIONAL TREATMENT – ARTICLE 15

NATIONAL TREATMENT – ARTICLE 19

PROGRESSIVE LIBERALISATION – ARTICLE 16

PROGRESSIVE LIBERALISATION – ARTICLE 18

TRANSPARENCY – ARTICLE 8

TRANSPARENCY – ARTICLE 5

MOST FAVOURED NATION – ARTICLE 4

MOST FAVOURED NATION – ARTICLE 4

FREE TRANSFER – ARTICLE 20

FREE TRANSFER – ARTICLE 13

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# Lesotho's Committed Sectors

- Health services (veterinary, nursing, midwifery)
  - Travel agencies
  - Tour guides
  - Photographic services
  - Real estate
  - Telecommunications services
  - Wholesale trade
  - Retailing services
  - Passenger and freight transport
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# The Domestic Perspective - 1

Business Licensing and Registration Regulations No.69 of 2020

Section 34: for the purposes of the promotion and development of local entrepreneurship and micro, small and medium enterprises, the business activities set out in Schedule 16 shall be exclusively for citizens of Lesotho, excluding a naturalized and registered citizen of Lesotho.

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| Commitments                     | Business Licensing Regulations        |
|---------------------------------|---------------------------------------|
| Photographic services           | Photographic activities - #21         |
| Real estate                     | Real estate agency - #3               |
| Wholesale trade                 | 3 instances of restrictions           |
| Retailing services              | 16 instances of restrictions          |
| Passenger and freight transport | Road transport and logistics - #1 & 2 |

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# The Domestic Perspective - 2

Free Transfer – Article 20 SADC Protocol & Article 13 AfCFTA Protocol

Section 11(1)(c) Exchange Control Regulations, 1989

No person shall, except with permission granted by the Minister and in accordance with such conditions as the Minister may impose, enter into any transaction whereby capital or any right to capital is directly or indirectly exported from the Common Monetary Area

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# Observations

- States are allowed to select the sectors and modes of supply to open, on the basis of progressive liberalisation
  - Flexibility for least developed countries to open fewer sectors in line with their development situation
  - Lesotho is too open
  - Lack of capacity of negotiators. Decisions should be based on understanding needs and priorities
  - International and regional commitments constrain the right to regulate in the public interest
  - Inflows of services when unestablished and uncompetitive; stifles domestic capacity
  - Negotiations proceed on the basis of requests and offers. Bargaining power diminished
  - Non-compliance with international and regional commitments opens us to litigation
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# What are the alternatives



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## ACTION

## BASIS

- |                                       |                                       |
|---------------------------------------|---------------------------------------|
| ▪ Ignore commitments                  | Dispute Settlement Systems            |
| ▪ Modification of schedules           | GATS Article XXI / AfCFTA Article 23  |
| ▪ Balance of Payment Exception        | GATS Article XIII / AfCFTA Article 14 |
| ▪ General Exceptions<br>Article 15    | GATS Article XIV / AfCFTA             |
| ▪ Technical co-operation              | Article XXV / AfCFTA Article 27       |
| ▪ Special and Differential Treatment  | GATS Article IV / AfCFTA Article 7    |
| ▪ Council for Trade in Services       | GATS Article XXIV                     |
| ▪ <del>Africa Group / LDC Group</del> |                                       |
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# Parting Words

Accra Accord, 2008

*“The services economy is the new frontier for the expansion of trade, productivity and competitiveness...”*

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