Southern African Development Community, African Regional Bodies

Protocol on Finance and Investment

Legislation as at 18 August 2006

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Southern African Development Community

Protocol on Finance and Investment

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Preamble

We, the Heads of State or Government of:

The Republic of Angola

The Republic of Botswana

The Democratic Republic of the Congo

The Kingdom of Lesotho

The Republic of Madagascar

The Republic of Malawi

The Republic of Mauritius

The Republic of Mozambique

The Republic of Namibia

The Republic of South Africa

The Kingdom of Swaziland

The United Republic of Tanzania

The Republic of Zambia

The Republic of Zimbabwe

HAVING regard to Article 21 of the Treaty which enjoins Member States to cooperate in all areas necessary to foster regional development and integration;

NOTING Article 22 of the Treaty which calls for the conclusion of protocols as may be necessary in each area of co-operation and which shall spell out the objectives and scope of, and the institutional mechanisms for, co-operation and integration;

FURTHER noting that the RISDP map and targets for enhancing socio-economic development and deeper regional integration;

CONSCIOUS of their collective duty to achieve economic growth and balanced intra regional development, compatibility among national and regional strategies and programmes, to develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the residents of the Member States, improve economic management and performance through regional cooperation, and to create appropriate institutions and mechanisms for the implementation of programmes and operations in the Region;

CONVINCED of the need to accelerate growth, investment and employment in the SADC Region through increased co-operation, coordination and management of macroeconomic, monetary and fiscal policies and to establish and sustain macroeconomic stability as a precondition to sustainable economic growth and for the creation of a monetary union in the Region;

RECOGNISING the increasing importance of the development and strengthening of financial and capital markets, and the role played by investment and the private sector in productive capacity and increased economic growth and sustainable development;

RECOGNISING the importance of the link between investment and trade, and the need for greater regional cooperation to enhance the attractiveness of the Region as an investment destination;

MINDFUL of the different levels of economic development of Member States and of the need to share equitably in the benefits of regional integration;

HEREBY AGREE as follows:

Chapter one
Definitions and objectives

Article 1 – Definitions

1. In this Protocol, terms and expressions defined in Article 1 of the Treaty shall bear the same meaning unless the context otherwise requires.
2. In this Protocol, unless the context otherwise requires:

   "**Annex**" means an Annex to this Protocol;

   "BIS" means the Bank for International Settlements;

   "**capital market**" means a market where capital funds, debt or equities and any other financial instrument are traded

   "**CCBG**" means the Committee of Central Bank Governors in SADC;

   "**Central Bank**" means, in relation to a State Party, the central bank of that State Party;

   "**Committee of Ministers responsible for Finance and Investment**" means the Committee of Ministers for policy development and policy making for finance and investment matters, or such similar body as the Council may establish;

   "**Committee of Senior Treasury Officials**" means the technical advisory body to the Committee of Ministers for Finance and Investment consisting of Heads of Treasuries;

   "**DFIs**" means, in relation to a State Party, those financial institutions which are designated, or classified, as "Development Finance Institutions" by that State Party;

   "**financial markets**" means markets for the exchange of capital and credit in the economy;

   "**Protocol**" means this SADC Protocol on Finance and Investment including its annexes;

   "**State Party**" means a Member State that has ratified or acceded to this Protocol; and

   "**RISDP**" means the Regional Indicative Strategic Development Plan.

Article 2 – Objectives

1. This Protocol seeks to foster harmonisation of the financial and investment policies of the State Parties in order to make them consistent with objectives of SADC and ensure that any changes to financial and investment policies in one State Party do not necessitate undesirable adjustments in other State Parties.
2. The objective referred to in paragraph 1 shall be achieved through facilitation of regional integration, co-operation and co-ordination within finance and investment sectors with the aim of diversifying

and expanding the productive sectors of the economy, and enhancing trade in the Region to achieve sustainable economic development and growth and eradication of poverty by:

(a) creating a favourable investment climate within SADC with the aim of promoting and attracting investment in the Region;

(b) achieving and maintaining macroeconomic stability and convergence within the Region;

(c) co-operating in respect of taxation and related matters within the Region;

(d) co-operating and co-ordinating amongst State Parties in collaboration with Central Banks on exchange control policies;

(e) establishing principles which will facilitate the creation of a coherent and convergent status in the legal and operational frameworks of Central Banks;

(f) establishing a framework for co-operation and co-ordination between (amongst) Central Banks on payment, clearing and settlement systems;

(g) co-operating in the area of information technology and communications technology amongst Central Banks;

(h) co-operating on bank supervision amongst Central Banks;

(i) co-operating in the activities of DFIs in the Region;

(j) co-operating in the area of non-banking financial institutions and services;

(k) facilitating the development of capital markets in the Region;

(l) co-operating in the area of SADC Stock Exchanges;

(m) co-operating with regard to anti-money laundering issues amongst State Parties; and

(n) cooperation in respect of a SADC Project Preparation and Development Fund.

2. The objectives set out in paragraph 1, the implementation thereof and the mechanism for such implementation are fully described in the Annexes to this Protocol.

[Please note: numbering as in original.]

Chapter two
Co-operation on investment

Article 3 – Co-operation on investment

State Parties shall co-ordinate their investment regimes and cooperate to create a favourable investment climate within the Region as set out in Annex 1.

Chapter three
Macroeconomic convergence

Article 4 – Macroeconomic convergence

State Parties shall converge on stability-orientated economic policies and shall co-operate as set out in Annex 2.

Chapter four
Co-operation in taxation and related matters

Article 5 – Co-operation in taxation and related matters

State Parties shall co-operate in taxation matters and co-ordinate their tax regimes within the Region as set out in Annex 3.

Chapter five
Co-operation among Central Banks

Article 6 – Co-operation and co-ordination on exchange controls

State Parties shall co-operate and co-ordinate their exchange control policies as set out in Annex 4.

Article 7 – The legal and operational frameworks

State Parties shall harmonize the legal and operational frameworks of their respective Central Banks as set out in Annex 5.

Article 8 – Payments, clearing and settlement systems

State Parties shall ensure co-operation amongst their respective Central Banks in relation to payments, clearing and settlement systems as set out in Annex 6.

Article 9 – Co-operation in the area of information and communication technology

State Parties shall ensure co-ordination and co-operation amongst their respective Central Banks in relation to operations in the area of information and communication technology as set out in Annex 7.

Article 10 – Co-operation between banking supervisors

State Parties shall facilitate co-operation between (amongst) regional banking supervisors and the harmonization of banking supervisory standards and practices as set out in Annex 8.

Chapter six
Network of DFIs

Article 11 – Facilitation of activities of DFIs

In order to increase effectively cross border flows of finance for projects, State Parties agree to establish a Development Finance Institutions Network and to facilitate the activities of their respective Development Finance Institutions and to ensure co-operation between these Development Finance Institutions as set out in Annex 9.

Chapter seven
Co-operation in regional capital and financial markets

Article 12 – Regulation and supervision of non-banking financial services

State Parties shall harmonize the regulation of non-banking financial institutions and shall facilitate co-operation between the respective regulators and supervisors of such institutions as set out in Annex 10.

Article 13 – Development of capital and financial markets

State Parties shall co-operate in developing and strengthening national capital and financial markets with the intention of creating a regional capital and financial market as set out in Annexes 10 and 11.

Article 14 – Co-operation among member stock exchanges

State Parties shall facilitate co-operation between their respective stock exchanges as set out in Annex 11.

Chapter eight
Anti-money laundering

Article 15 – Co-operation with regard to anti-money laundering

State Parties shall co-operate with regard to anti-money laundering.

Chapter nine
Project Preparation and Development Fund

Article 16 – Development of a SADC Project Preparation and Development Fund

State Parties agree to establish a Project Preparation and Development Fund to finance the preparation and development of projects by way of providing technical assistance towards project identification, project selection and feasibility studies and to participate in the financing of selected projects.

Chapter ten
Institutional and administrative arrangements

Article 17 – Establishment of institutions

The following institutions are to be established in accordance with Articles 9, 10 and 11 of the SADC Treaty:

(a) the Committee of Ministers for Finance and Investment;

(b) the Committee of Central Bank Governors in SADC; and

(c) the Peer Review Panel.

Article 18 – The Committee of Ministers for Finance and Investment

The Committee of Ministers for Finance and Investment shall consist of the Ministers responsible for finance and for investment of each State Party and it shall meet at least once a year.

Article 19 – The Committee of Central Bank Governors in SADC

1. The CCBG shall consist of the Governor of the Central Bank of each State Party.
2. The CCBG shall meet at least once a year and will report to the Committee of Ministers for Finance and Investment.

Article 20 – Peer Review Panel

1. The Peer Review Panel shall consist of:
   (a) the Committee of Ministers for Finance and Investment; and
   (b) Central Bank Governors from each of the State Parties.
2. The Peer Review Panel shall meet once a year to effect the provisions of macroeconomic monitoring and surveillance as provided for in Article 7 of Annex 2.

Article 21 – Institutional mechanisms

1. The institutional mechanisms for implementation of this Protocol shall comprise the Integrated Committee of Ministers, the Committee of Ministers for Finance and Investment, the CCBG, the Peer Review Panel and the Secretariat.
2. The Committee of Ministers for Finance and Investment shall create such committees, sub-committees or institutions as it deems necessary for purposes of the effective implementation of this Protocol.

Article 22 – Functions and responsibilities

1. The functions and responsibilities of the Integrated Committee of Ministers are as set out in Article 12 of the SADC Treaty.
2. The Committee of Ministers for Finance and Investment shall oversee the implementation of this Protocol.
3. The CCBG shall be responsible for the implementation of those aspects that are specifically allocated to it:
   (a) by the Committee of Ministers for Finance and Investment; and
   (b) in the various Annexes of this Protocol.
4. The Secretariat shall ensure close collaboration with;
   (a) State Parties; and
   (b) all relevant institutions on finance, investment and other related matter the Region.

Chapter eleven
Final provisions

Article 23 – Annexes

1. State parties may develop and adopt annexes for the implementation of this Protocol.
2. An Annex shall form an integral part of this Protocol.

3. The adoption of annexes under this Article shall be done in accordance with Article 26.

Article 24 – Settlement of disputes

1. State Parties shall use their best endeavours, through co-operation and consultation, to achieve consensus in the interpretation, application and implementation of this Protocol.
2. Where State Parties are unable to achieve consensus in the interpretation, application and implementation of any Article of this Protocol, as contemplated in paragraph 1, and:
   (a) the Annex relating to such Article contains provisions which deal with disputes or differences arising in relation to such Article, such provisions shall be applied in respect of the dispute or difference relating to such Article;
   (b) the Annex relating to such Article does not contain provisions which deal with disputes or differences arising in relation to such Article, the State Parties which are parties to the dispute or difference relating to such Article will use their best endeavours to settle such dispute or difference through negotiations in good faith.
3. State Parties agree that if, in relation to a dispute or difference contemplated in paragraph 2 (b) the State Parties which are parties to such dispute or difference are unable to settle such dispute or difference through negotiation within three months from the time the disputes or differences arose, such dispute or difference shall be referred to the Tribunal for adjudication.

Article 25 – General undertaking

1. State Parties shall take such appropriate measures as are necessary to ensure that their respective obligations arising from this Protocol are fulfilled.
2. State Parties shall co-operate with each other in addressing any impediments that may arise as a result of any action, or lack of action, by any State Party on issues having a material bearing on those finance and investment matters which are not covered in this Protocol.

Article 26 – Amendments

1. Any State Party may propose amendments to this Protocol.
2. Proposals for amendments to this Protocol shall be made to the Executive Secretary who shall duly notify all Member States of the proposed amendments at least thirty (30) days in advance of consideration of the amendments by the States Parties. Such notice may be waived by the Member States.
3. Amendments to this Protocol shall be adopted by a decision of three quarters of all the State Parties and shall become effective thirty (30) days after such adoption.

Article 27 – Signature

This Protocol shall be signed by the duly authorised representatives of the Member States.

Article 28 – Ratification

This Protocol shall be subject to ratification by the signatory States in accordance with their constitutional procedures.

Article 29 – Entry into force

This Protocol shall enter into force thirty (30) days after the deposit of instruments of ratification by at least two-thirds of all of the Member States.

Article 30 – Accession

This Protocol shall remain open for accession by any Member State.

Article 31 – Withdrawal

1. Any State Party may withdraw from this Protocol upon the expiration of twelve (12) months from the date of giving written notice to the Executive Secretary to that effect.
2. Any State Party that has withdrawn pursuant to paragraph 1 of this Article shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal becoming effective.
3. Any State Party that has withdrawn pursuant to paragraph 1 of this Article shall remain bound by the obligations under this Protocol for a period of twelve (12) months from the date of giving notice.

Article 32 – Depositary

1. This original text of this Protocol, all instruments of ratification and all instruments of accession shall be deposited with the Executive Secretary, who shall transmit certified copies thereof to all Member States.
2. The Executive Secretary shall notify the Member States of the dates on which instruments of ratification and instruments of accession have been deposited under paragraph 1.
3. The Executive Secretary shall register this Protocol with the Secretariat of the United Nations, the Commission of the African Union and such other organisations as the Council may determine.

IN WITNESS WHEREOF, WE, the Heads of State or Government or our duly authorized representatives, have signed this Protocol.

DONE at Maseru, Lesotho, on 18th day of August 2006 in three original texts in the English, French and Portuguese languages, all texts being equally authentic.

Annexes

Annex 1

Co-operation on investment

Preamble

The High Contracting Parties:

COMMITTED to achieving the broad objectives of the SADC as set out in the Treaty and specifically to achieving economic growth and sustainable development through regional integration and working through IPAs in the Region;

RECOGNISING the increasing importance of the role played by investment to advance productive capacity and increase economic growth and sustainable development and the importance of the link between investment and trade;

CONCERNED with the low levels of investment into the SADC, even though a number of measures have been taken to improve the investment environment;

AIMING to create new employment opportunities and improve living standards in our territories;

ACKNOWLEDGING that there is a need for greater regional cooperation among IPAs in the Region in order to enhance the attractiveness of the Region as An investment destination;

CONSCIOUS that without effective policies on investment protection and promotion, the Region will continue to be marginalised in terms of investment inflows and sustainable economic development; and

WISHING to be guided by the ideals, objectives and spirit of the Protocol in the facilitation and stimulation of investment flows and technology transfer and innovation into the Region

HEREBY AGREE as follows:

Article 1 – Definitions

1. In this Annex, terms and expressions defined in Article 1 of the Protocol shall bear the same meaning unless the context otherwise requires.
2. In this Annex, unless the context otherwise requires:

   "**bond**" means a debt instrument in terms of which the issuer thereof is obliged to re-pay, to the bondholder on a specified maturity date, the principal amount of a loan (and, ordinarily, interest thereon) made by the bondholder to the issuer;

   "**company**" means any entity constituted or organised under the applicable laws of any State, whether or not for profit, and whether privately or governmentally owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or other such organisation;

   "**Host Government**" means the government of the State Party in whose territory an investment is made or located;

   "**Host State**" means the State Party in whose territory an investment is made or located;

   "**ICSID Convention**" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

   "**investment**" means the purchase, acquisition or establishment of productive and portfolio investment assets, and in particular, though not exclusively, includes:

   (a) movable and immovable property and any other property rights such as mortgages, liens or pledges;

   (b) shares, stocks and debentures of companies or interest in the property of such companies;

   (c) claims to money or to any performance under contract having a financial value, and loans;

   (d) copyrights, know-how (goodwill) and industrial property rights such as patents for inventions, trade marks, industrial designs and trade names;

   (e) rights conferred by law or under contract, including licences to search for, cultivate, extract or exploit natural resources:

   Provided that nothing in this definition shall prevent a State Party from excluding short-term portfolio investments of a speculative nature or any sector sensitive to its development or which would have a negative effect on its economy. A State Party that has invoked this provision shall notify the Secretariat for information purposes within a period of three (3) months;

"**IPAs**" means the investment promotion agencies of State Parties that:

(a) actively promote and facilitate investments;

(b) proactively identify business opportunities for investments;

(c) encourage expansion of existing investments;

(d) develop a favourable investment image of their countries;

(e) make recommendations for improvements of their countries as investment destinations;

(f) keep track of all investors entering and leaving the country for the purpose of analysis in terms of investment performance; or

(g) play the role of advising investors upon request on the availability, choice or sustainability of partners in joint venture projects.

2. Nothing in this definition prevents a State Party from excluding short-term portfolio investments of a speculative nature or any sector sensitive to its development or which would have a negative effect on its economy. State Parties who have invoked this clause shall notify the SADC Secretariat for information purposes within a period of three (3) months.

"**investor**" means a person that has been admitted to make or has made an investment;

"**least-developed countries**" means, for purposes of Article 19 of this Annex, those State Parties classified as such by the United Nations;

"**MIGA**" means the Multilateral Investment Guarantee Agency;

"**MIGA Convention**" means the Convention Establishing the Multilateral Investment Guarantee Agency

"**New York Convention**" means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

"**person**" means a natural person or a company;

"**PPP**" means Public Private Partnership;

"**returns**" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties and fees;

"**SMME**" means Small Micro and Medium Enterprises, as defined by each State Party in its relevant legislation as qualifying for such status;

"**State entity**" means, any agency, department or instrumentality of the Government of a State Party and any corporation, juristic person, institution, undertaking or entity which is directly or indirectly owned or controlled by that State Party, which are engaged in activities of a commercial nature;

"**territory**" means, in relation to a State Party, the total land area of that State Party and, in relation to a coastal State Party, includes, in addition, the territorial sea and any maritime area situated beyond the territorial sea of that coastal State Party which has been, or might in the future be, designated under the national law of that coastal State Party, in accordance with international law, as an area within which that coastal State Party may exercise rights with regard to the sea-bed, subsoil and natural resources;

"**third State**" means any state that is not a State Party; and

"**UNCITRAL Arbitration Rules**" means the arbitration rules of the United Nations Commission on International Trade Law.

[Please note: numbering as in original.]

Article 2 – Promotion and admission of investments

1. Each State Party shall promote investments in its territory, and admit such investments in accordance with its laws and regulations.
2. The Host State shall facilitate and create favourable conditions to attract investments in its territory through suitable administrative measures and in particular in the matter of expeditious clearance of authorisations in accordance with its laws and regulations.
3. For the purposes of creating a predictable investment climate, State Parties shall not arbitrarily, and without good reason, amend or otherwise modify to the detriment of investors, the terms, conditions and any benefits specified in the letter of authorisation.

Article 3 – Promotion of local and regional entrepreneurs

1. State Parties shall support the development of local and regional entrepreneurs and enhance regional productive capacity within the Region through, *inter alia*:
   (a) skills development and enhancement programmes;
   (b) SMME development;
   (c) appropriate investments into supporting infrastructure; and
   (d) other supply-side measures and policies necessary to enhance global competitiveness.
2. In providing support described in paragraph 1 of this Article, State Parties may place emphasis on industries that provide up-stream and down-stream linkages and have a favourable effect on attracting foreign direct investment and generating increased employment.

Article 4 – Public Private Partnerships

State Parties shall co-operate on policies and other related issues that will encourage and facilitate the use of PPPs to ensure development in the Region.

Article 5 – Investment protection

Investments shall not be nationalised or expropriated in the territory of any State Party except for a public purpose, under due process of law, on a non-discriminatory basis and subject to the payment of prompt, adequate and effective compensation.

Article 6 – Investors of the third State

1. Investments and investors shall enjoy fair and equitable treatment in the territory of any State Party.
2. Treatment referred to in paragraph 1 shall be no less favourable than that granted to investors of the third State.

Article 7 – General exceptions

1. Notwithstanding the provisions of Article 6, State Parties may in accordance with their respective domestic legislation grant preferential treatment to qualifying investments and investors in order to achieve national development objectives.

2. State Parties undertake to eventually harmonize their respective domestic policies and legislation within the spirit of non-discrimination as set out in Article 6.
3. The provisions of Article 3 shall not apply to advantages, concessions or exemptions which may result from a bilateral investment treaty, Free Trade Area, Customs Union, Economic Union, Monetary Union or other multilateral arrangement for economic integration in which a State Party is participating or may participate.

Article 8 – Transparency

State Parties shall promote and establish predictability, confidence, trust and integrity by adhering to and enforcing open and transparent policies, practices, regulations and procedures as they relate to investment.

Article 9 – Repatriation of investment and returns

Each State Party shall ensure that investors are allowed facilities in relation to repatriation of investments and returns in accordance with the rules and regulations stipulated by the Host State.

Article 10 – Corporate responsibility

Foreign investors shall abide by the laws, regulations, administrative guidelines and policies of the Host State.

Article 11 – Sourcing of requisite skills

State Parties shall, subject to their national laws and regulations, permit investors to engage key personnel and other necessary human resources of their choice, regardless of nationality under the following circumstances:

(a) where the skills do not exist in the Host State and the Region;

(b) where State Parties are satisfied that the sourcing of such skills will be in compliance with regional policies; and

where such sourcing would enhance the development of local capacity through skills transfer.

Article 12 – Optimal use of natural resources

State Parties shall promote the use of their natural resources in a sustainable and an environmentally friendly manner.

Article 13 – Environmental measures

State Parties recognise that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures and agree not to waive or otherwise derogate from, international treaties they have ratified, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in their territories, of an investment.

Article 14 – Right to regulate

Nothing in this Annex shall be construed as preventing a State Party from exercising its right to regulate in the public interest and to adopt, maintain or enforce any measure that it considers appropriate to ensure that investment activity is undertaken in a manner sensitive to health, safety or environmental concerns.

Article 15 – Capital movements

1. State Parties shall encourage the free movement of capital.
2. Notwithstanding the provisions of paragraph 1, State Parties may regulate capital movements subject to their domestic laws and regulations, when necessitated by economic constraints.
3. State Parties that introduce new regulations in the circumstances described in paragraph 2 shall notify the Secretariat for information purposes within a period of three (3) months of introducing such regulations.

Article 16 – Competition policy

State Parties undertake through co-operation to advance a competition policy in the Region.

Article 17 – Intra-regional and extra-regional agreements for the avoidance of double taxation

1. With a view to encouraging the movement of capital within the Region, particularly to the least-developed countries, State Parties undertake, in line with their undertakings as set out in Annex 3, to conclude between themselves agreements for the avoidance of double taxation.
2. State Parties agree, in line with their undertakings as set out in the Annex 3, to approach their negotiations for agreements for the avoidance of double taxation with countries outside the region on the basis of mutually agreed principles.

Article 18 – Trade, investment and industrial policy

In recognizing the importance of the link between trade and investment, State Parties agree to pursue trade openness and intra-regional industrial policies and to reduce barriers to intra-regional trade in pursuance of the principles of the SADC Protocol on Trade and any other relevant SADC instruments.

Article 19 – Harmonisation of policies and laws

State Parties shall pursue harmonisation with the objective of developing the region into a SADC investment zone, which shall, among others, include the harmonisation of investment regimes including policies, laws and practices in accordance with the best practices within the overall strategy towards regional integration.

Article 20 – Conditions favouring least developed countries

1. State Parties shall establish conditions favouring the participation of least-developed countries of SADC in the economic integration process, based on the principles of non-reciprocity and mutual benefit.
2. For the purpose of ensuring that least-developed countries of SADC receive effective preferential treatment, State Parties shall investigate the establishment of market openings as well as the setting up of programmes and other specific forms of cooperation including in relation to derogations in respect of investment incentives.

Article 21 – Adherence to international conventions and practices

State Parties may consider acceding to multilateral agreements on investment designed to promote or protect investments, such as:

(a) the ICSID Convention of 1965;

(b) the MIGA Convention, 1985; and

(c) the New York Convention, 1958.

Article 22 – Regional cooperation on investment

State Parties shall through their relevant institutions promote regional cooperation in the area of investment, including PPPs, to ensure development in the Region;

Article 23 – Investment promotion agencies

State Parties shall ensure that their IPAs:

(a) carry out their investment promotion activities, in line with their national and regional development priorities;

(b) advise the Government of that State Party, the private sector and other stakeholders in the formulation and review of policies and procedures that affect investment and trade; and

(c) increase awareness of their investment incentives, opportunities, legislation, practices, major events affecting investments and other relevant activities through regular exchange of information.

Article 24 – The role of the Secretariat

The Secretariat shall ensure close collaboration with State Parties and all relevant institutions on investment and other related matters in the Region.

Article 25 – Relationship with other organisations

State Parties shall pursue and promote policies that will increase cooperation with other regional and international organisations on issues relating to investment.

Article 26 – Bilateral investment treaties

State Parties may conclude bilateral investment treaties with third States.

Article 27 – Access to courts and tribunals

State Parties shall ensure that investors have the right of access to the courts, judicial and administrative tribunals, and other authorities competent under the laws of the Host State for redress of their grievances in relation to any matter concerning any investment including judicial review of measures relating to expropriation or nationalization and determination of compensation in the event of expropriation or nationalisation

Article 28 – Settlement of investment disputes

1. Disputes between an investor and a State Party concerning an obligation of the latter in relation to an admitted investment of the former, which have not been amicably settled, and after exhausting local remedies shall, after a period of six (6) months from written notification of a claim, be submitted to international arbitration if either party to the dispute so wishes.
2. Where the dispute is referred to international arbitration, the investor and the State Party concerned in the dispute may agree to refer the dispute either to:
    (a) The SADC Tribunal;

(b) The International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the ICSID Convention and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings); or

(c) An international arbitrator or ad hoc arbitral tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

3. If after a period of three (3) months from written notification of the claim there is no agreement to one of the above alternative procedures, the parties to the dispute shall be bound to submit the dispute to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules.

4. The provisions of this Article shall not apply to a dispute, which arose before entry into force of this Annex.

Annex 2

Macroeconomic convergence

Preamble

The High Contracting Parties:

RECALLING the provisions of Chapter Three of the Protocol which requires co-operation on macroeconomic convergence;

RECOGNISING the need to accelerate growth, investment and employment in the SADC Region through increased co-operation and co-ordination in respect of macroeconomic policies;

CONVINCED that regional economic integration and macroeconomic stability are preconditions to sustainable economic growth and for the creation of a monetary union in the Region;

DETERMINED to maximise co-operation and co-ordination in the implementation and management of sustainable macroeconomic policies and to reduce the divergence in macroeconomic aggregates among State Parties;

COMMITTED to the establishment of a dynamic, sustainable and credible regional economic entity;

DEDICATED to good governance, accountable and transparent public resource management,

HEREBY AGREE as follows:

Article 1 – Definitions

1. In this Annex, terms and expressions defined in Article 1 of the Protocol shall bear the same meaning unless the context otherwise requires.

2. In this Annex, unless the context otherwise requires:

"**budget deficit**" means the extent to which the government of that State Party's expenditure and net lending exceeds receipts from revenue and grants;

"**current account**" means the record of transactions in goods, services, income and current transfers between residents of that State Party and non-residents;

"**GDP**" means the Gross Domestic Product of a State Party;

"**inflation**" means the rate of change in the general price level using a headline index;

"**macroeconomic convergence** " means the convergence by State Parties to low and stable levels of inflation, sustainable budget deficits, public and publicly guaranteed debt, and current account balances;

"**market distortions**" means regulatory or structural obstructions of the market clearing process;

"**monetisation of deficits**" means, the financing of the budget deficit(s) of a State Party through the creation of money;

"**public and publicly guaranteed debt**" means, debt consisting of:

(a) loans made to a State Party (including loans to public entities and the government of the State Party); and

(b) guarantees granted by a State Party (including guarantees granted by public entities and the government of the State Party).

Article 2 – Principles of macroeconomic convergence

1. In order to achieve and maintain macroeconomic stability within the Region, State Parties shall converge on stability-orientated economic policies implemented through a sound institutional structure and framework and to this end, State Parties shall co-operate and be bound by this Annex.
2. Stability-orientated economic policies, in relation to a State Party, include, but are not limited to:
   (a) restricting inflation to low and stable levels;
   (b) maintaining a prudent fiscal stance based on the avoidance of large budget deficits, monetisation of deficits and high or rising ratios of public and publicly guaranteed debt to GDP;
   (c) avoiding large financial imbalances in the economy of the State Party; and
   (d) minimising market distortions.

Article 3 – Indicators of macroeconomic convergence

1. The macroeconomic convergence in the Region shall be measured and monitored by the following indicators:
   (a) the rate of inflation in a State Party;
   (b) the ratio of the budget deficit to GDP in a State Party;
   (c) the ratio of public and publicly guaranteed debt to GDP, taking account of the sustainability of such debt, in a State Party; and
   (d) the balance and structure of the current account in a State Party.
2. State Parties shall identify common guidelines for each of the indicators referred to in paragraph 1 and such other complementary indicators as may be agreed, including structural performance and financial conditions.

Article 4 – Fiscal and monetary policy cooperation

1. Each State Party shall formulate, implement and maintain its fiscal and monetary policies that are transparent, consistent and contribute towards the achievement of the principles referred to in Article 2.
2. Each State Party shall formulate and implement fiscal and monetary policies that are sustainable and minimise negative spill-over effects into any other State Party.

Article 5 – Information and data

1. State Parties shall, for purposes of Article 8, provide such data and reports as are required by the Committee of Ministers for Finance and Investment for the implementation and monitoring of macroeconomic convergence.
2. Data shall be provided by State Parties in accordance with internationally acceptable data standards as defined by the International Monetary Fund.

Article 6 – Institutional arrangements

1. Pursuant to Article 21(2) of the Protocol, the Committee of Ministers of Finance and Investment hereby establishes a Committee of Senior Treasury Officials which shall be responsible for the implementation of this Annex and shall report on such implementation to the Committee of Ministers.
2. The Committee of Senior Treasury Officials may make use of any structure or recommend to the Committee of Ministers for Finance and Investment, the establishment of any structure that may be necessary to facilitate the implementation of this Annex.
3. For the purposes of this Annex, the Committee of Ministers for Finance and Investment shall collaborate with the CCBG.

Article 7 – Monitoring and surveillance

1. The Peer Review Panel shall establish a collective surveillance procedure to monitor macroeconomic convergence, determine specific targets, assess progress relative to those targets and provide advice on corrective actions, as set out in this Article.
2. State Parties shall present to the Peer Review Panel an annual macroeconomic convergence programme which will include:
    (a) a review of recent economic developments in the State Parties;
    (b) progress relative to previous targets;
    (c) medium-term objectives for the agreed macroeconomic convergence indicators; and
    (d) specific targets for the indicators referred to in sub-paragraph (c) above over a three-year period.
3. The Peer Review Panel shall evaluate and monitor the annual macroeconomic convergence programmes submitted by State Parties, determine whether such macroeconomic convergence programmes satisfy the common guidelines, advise on possible changes, compare outcomes with previous programmes and make such recommendations as the Peer Review Panel may deem appropriate in accordance with the Treaty.
4. The Peer Review Panel shall issue a communique explaining its assessments referred to in paragraph 3.

Article 8 – Review of the SADC programme on macroeconomic convergence

The Committee of Ministers for Finance and Investment may review the macroeconomic convergence programme for SADC as necessary.

Annex 3

Co-operation in taxation and related matters

Preamble

The High Contracting Parties:

RECALLING the provisions of Chapter Four of the Protocol which require co-operation on taxation and related matters;

RECOGNISING the need to take such steps as are necessary to maximise the co-operation of State Parties in taxation matters and to co-ordinate the tax regimes of the State Parties; and

DETERMINED to take such steps as are necessary to maximise the cooperation of the State Parties in taxation matters;

HEREBY AGREE as follows:

Article 1 – Definitions

1. In this Annex, terms and expressions defined in Article 1 of the Protocol shall bear the same meaning unless the context otherwise requires.
2. In this Annex, unless the context otherwise requires:

   "**customs duty**" means a tax normally applied to imported goods;

   "**direct tax**" means a tax levied under its domestic laws, by a country on persons (including juristic persons), in respect of income, capital gains, net worth, property, donations and gifts and includes estate duties;

   "**double taxation**" means an imposition of similar taxes by two or more tax jurisdictions on the same taxpayer in respect of the same income or capital;

   "**e-commerce, e-billing, or e-Customs Clearance**" means the conduct of financial transactions, or customs clearance, by electronic means,

   "**exceptional cases**" means, in relation to tax incentives, those exceptions to the guidelines envisaged in Article 4 agreed to by State Parties, on the use of tax incentives within the Region especially following natural disasters or wars;

   "**excise duty**" means a duty imposed by a country under its domestic law on certain goods manufactured or produced in the country or imported into that country, being a tax levied on a specific basis, either on the basis of the weight or volume of the goods, or on an *ad valorem* basis, or on a profit basis.

   "**harmful tax competition**" means a situation where the tax systems of a jurisdiction are designed in such a way that they erode the tax bases of other jurisdictions and attract investments or savings which originate elsewhere, facilitating the avoidance of taxes in such other jurisdictions;

   "**indirect tax**" means any tax (other than a direct tax) that a country imposes on consumption or transactions under domestic law, and includes VAT, sales taxes, excise duties, stamp duties, services taxes, registration duties and financial transaction taxes;

   "**levy**" means a tax in respect of specific items, transactions, or events, and which tax is levied at a fixed or flat rate;

   "**luxury goods and services**" means goods and services with an income elasticity of greater than one;

"**Mutual Agreement**" means the procedure envisaged in Article 25 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Cooperation and Development;

"**mutual assistance**" means such arrangements as are made between two countries or jurisdictions in order to improve the efficiency of their respective taxation systems;

"**SADC Tax Database**" means the tax database into which State Parties shall deposit information on tax on a continuous basis, as contemplated in Article 2;

"**SADC Model Tax Agreement**" means templates, as adopted by the Committee of Ministers for Finance and Investment, for bilateral agreements for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, or agreements for mutual assistance with regard to indirect taxes, to be used by State Parties between or amongst themselves or with countries outside the Community as contemplated in Article 5 (4);

"**sales tax**" means a tax imposed as a percentage of the price of goods or services and which is ordinarily borne by the buyer but the liability for rendering payment of the tax to the authorities is placed on the supplier of the goods or services;

"**tax**" means a compulsory unrequited financial contribution imposed by a government or jurisdiction;

"**tax incentives**" means, in relation to a State Party, fiscal measures that are used to attract local or foreign investment capital to certain economic activities or particular areas in a country and, without limiting the generality of the foregoing, includes those measures contemplated in Article 5(2);

"**Tax Sparing Arrangement** " means an arrangement in terms of which the government of residence of an international investor recognises tax incentives granted by a host country for purposes of attracting investments and providing relief from income tax under the domestic laws of that government, as if normal tax had been imposed in respect of that investor in the host country;

"**Tax Agreement**" means any bilateral agreement concluded by State Parties between or amongst themselves or with countries outside the Community, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital or for mutual assistance with regard to indirect taxes;

"**VAT**" means a value added tax imposed on goods or services, which is levied at each stage in the production and distribution process and is borne by the final consumer of such goods or services, but, where the liability for rendering payment of such tax to the authorities is placed upon the supplier of the goods or services.

Article 2 – SADC Tax Database

1. In the interests of SADC, State Parties shall put in place a comprehensive SADC Tax Database which is publicly accessible within the Region.
2. State Parties shall, collectively, take such steps as are necessary to further develop the SADC Tax Database and to provide the Secretariat with such information as is required to maintain the SADC Tax Database.
3. The developed SADC Tax Database shall, in relation to each State Party, include details in respect of that State Party of:
    (a) all direct taxes, indirect taxes and levies, including applicable rates, implementation dates, exemptions and allowances;
    (b) all tax incentives offered, including implementation dates and conditions imposed;
    (c) all Tax Agreements and their respective implementation dates; and

(d) appropriate statistics on revenue collection and the revenue importance of various instruments including:

(i) the sales volumes or value of products and services that are subject to Indirect Taxes, and the revenue collected from such products and services; and

(ii) the revenue collected from direct taxes.

4. Each State Party shall provide at least on an annual basis and when significant changes occur, information in regard to that State Party as is required by the Secretariat to update the SADC Tax Database.

Article 3 – Capacity building

1. State Parties shall, in the interests of SADC, develop the professionalism and expertise of tax officials throughout the Region, and develop an effective enabling environment that:

(a) is supportive of life-long training, development of skills and learning for the State Parties' personnel in respect of tax design, policy development and revenue administration;

(b) will effectively equip such personnel to utilise their expertise to protect the respective individual tax bases of State Parties against the practices of tax avoidance or evasion by domestic and international taxpayers operating within their respective jurisdictions; and

(c) will enable such personnel to introduce, develop, maintain and engender taxation best practices in their respective State Parties.

2. In order to fully implement the wide-ranging steps envisaged in this Annex, each State Party shall:

(a) actively support initiatives aimed at developing skills and taxation best practices across the Region, including the exchange of personnel and information, and the provision of mutual assistance, training workshops, seminars, and training events; and

(b) make provision (from the internal budget of that State Party and/or appropriate co-operating partner support) for resources to defray the costs of ongoing training development and the interaction of the tax officials of that State Party across all capacities or disciplines.

3. State Parties shall meet the information technology and digital challenges faced by State Parties, and work together in responding to such challenges, including the review of issues relating to e-commerce, e-billing, or e-customs clearance, and the impact that e-commerce, e-billing, or e-customs clearance may have on tax revenue collection and on the flow of goods and services.

Article 4 – Application and treatment of tax incentives

1. State Parties shall endeavour to achieve a common approach to the treatment and application of tax incentives and shall, amongst other things, ensure that tax incentives are provided for only in tax legislation.

2. Tax incentives may include any one or more of the following:

(a) investment allowances in addition to full depreciation allowances;

(b) an investment tax credit where a certain percentage of the acquisition cost is deducted, in addition to normal depreciation deductions, from the tax liability;

(c) the full cost of acquisition of the asset is allowed as a deduction from the taxable profits of the year in which the relevant investment was made;

(d) accelerated depreciation allowances;

(e) declining balance depreciation allowances;

(f) tax privileged export processing or enterprise zones; and

(g) tax holidays.

3. State Parties shall, in the treatment and application of tax incentives, endeavour to avoid:

(a) harmful tax competition as may be evidenced by:

(i) zero or low effective rates of tax;

(ii) lack of transparency;

(iii) lack of effective exchange of information;

(iv) restricting tax incentives to particular tax payers, usually non-residents of that State Party;

(v) promotion of tax incentives as a vehicle for tax minimisation; or

(vi) the absence of substantial activity in the jurisdiction of that State Party to qualify for a tax incentive; and

(b) introducing tax legislation that prejudices another State Party's economic policies or activities of, or the regional mobility of goods, services, capital or labour.

4. State Parties shall, collectively, through the (Committee of) Ministers responsible for Finance and Investment, develop and adopt guidelines for tax incentives in the Region, including provision for exceptional cases.

5. In order to advance a competition policy within the Region, State Parties shall collectively develop a fiscal framework for tax incentives that will, among other things, focus on:

(a) the effectiveness of proposed tax incentives in achieving their stated policy goals;

(b) the revenue costs likely to be suffered by the fiscus of each of the State Parties as a result of the application of proposed tax incentives;

(c) the extent to which the absence of Tax Sparing Arrangements in Tax Agreements between State Parties reduce the effectiveness of tax incentives, particularly those aimed at attracting foreign direct investments;

(d) the impact that proposed tax incentives will have on the collective costs of, or collective burden on, tax administration in the Region; and

(e) the effects that tax incentives have on the overall distribution of the tax burden within each State Party.

Article 5 – Tax Agreements

1. State Parties shall, collectively, develop a common policy for the negotiation of Tax Agreements between or amongst themselves or with countries outside the Region.

2. Each State Party shall, in accordance with its constitutional procedures, strive to ensure the speedy negotiation, conclusion, ratification and effective implementation of Tax Agreements.

3. State Parties shall, collectively, take such steps as are necessary to establish amongst themselves a comprehensive network of agreements for the avoidance of double taxation that will assist in expediting the effective exchange of information, mutual agreement procedures and co-operation amongst themselves.

4. State Parties shall, in pursuit of a common policy for dealing with Tax Agreements, develop a Model Tax Agreement for SADC that, among other things, takes account of the particular socio-economic development needs of each State Party.

5. State Parties shall, on completion of the Model Tax Agreement referred to in paragraph 4, draw up guidelines for the effective exchange of information, the implementation of Mutual Agreement procedures.

Article 6 – Indirect taxes

1. State Parties shall effectively co-operate in the harmonisation of the administration of indirect taxes.
2. Each State Party shall, in line with the World Trade Organisation agreements, gradually substitute taxes on internationally traded goods and services with broad-based indirect taxes on consumption.
3. State Parties shall, collectively, explore areas of possible co-ordination for policy formulation and administration in respect of excise duties on:
   (a) tobacco products;
   (b) alcoholic beverages;
   (c) non-alcoholic beverages;
   (d) fuel products;
   (e) luxury goods and services; and
   (f) any other excisable goods and services.
4. Each State Party shall, as far as is possible, promote the use of excise duty on an *ad valorem* basis on luxury goods and services as an alternative to the application of multiple VAT rates or sales tax rates; provided that it is accepted that the classification of goods and services as being luxury goods and services may, due to shifts in economic and social conditions, change from time to time.
5. State Parties shall, in an effort to minimise incidents of smuggling, take such steps as are necessary to harmonise the application of excise duty rates, with particular regard to tobacco products, alcoholic beverages and fuel products.
6. State Parties shall take such steps as are necessary to exchange information among themselves, and to engage in such programmes of mutual assistance and co-operation as may be appropriate, in order to prevent unlawful activities and, in particular, the smuggling of goods and the importation of counterfeit items.
7. State Parties shall in an effort to combat cross-border smuggling activities, identify areas of co-operation and agreement for: (i) the protection of their respective tax bases; and (ii) addressing the problem of tax leakage and gaps in tax compliance.
8. State Parties shall give consideration to entering into bilateral agreements with each other, based on a SADC model tax agreement in order to deal with, among other things, the exchange of information on VAT and sales tax and to make provision for mutual assistance on matters such as effective revenue collection.
9. State Parties shall identify and explore areas of possible co-ordination and co-operation in the formulation of policy on, and the administration of, VAT and sales tax.
10. State Parties shall take such steps as are necessary to harmonise their VAT regimes and shall:
    (a) set minimum standard VAT rates; and
    (b) harmonise, over time, the application of zero-rating and VAT exemption of goods and services.

Article 7 – Settlement of disputes

1. State Parties shall develop mechanisms and procedures for the settlement of tax disputes between State Parties, including the establishment of a SADC body for the settlement of such tax disputes.

2. Until such time as the mechanisms and procedures for the settlement of tax disputes between State Parties are developed, and the SADC body for the settlement of such tax disputes is established, as envisaged in paragraph 1, State Parties shall settle any dispute or difference arising from the interpretation, application or implementation of this Annex 3 in accordance with Article 24 of the Protocol.

Annex 4

Co-operation and coordination of exchange control policies

Preamble

The High Contracting Parties:

RECALLING the provisions of Chapter Five of the Protocol, which require State Parties to co-operate and coordinate their exchange control policies;

RECOGNISING the fact that SADC economies are characterised by significant exchange control divergences in terms of currency convertibility and exchange control liberalisation;

DETERMINED to achieve co-operation and coordination of exchange control policies,

HEREBY AGREE as follows:

Article 1 – Definitions

1. In this Annex, terms and expressions defined in Article 1 of the Protocol shall bear the same meaning unless the context otherwise requires.

2. In this Annex, unless the context otherwise requires:

   "**capital and financial account transactions**" means, all transactions that involve the receipt or payment of capital transfers and the acquisition or disposal of non-produced, non-financial assets, as well as all transactions associated with changes of ownership in the foreign financial assets and liabilities of the economy of that State Party and such changes include the creation and liquidation of claims on, or by, the rest of the world in relation to that State Party;

   "**currency convertibility**" means, the ability of residents of that State Party and non-residents to exchange the currency of that State Party for foreign currency and to utilise the foreign currency in transactions. A measure of currency convertibility of a State Party is the absence of restrictions on:

   (a) the making or receipt of payments for international transactions; and

   (b) the exchange of the currency of that State Party for foreign currency for such purposes;

   "**current account transactions**" means, all transactions (other than those in financial items) that involve economic values and occur between residents of a State Party and non-residents, and includes offsets to current economic values provided or acquired without a *quid pro quo*;

   "**SADC Exchange Control Committee**" means the SADC Exchange Control Committee contemplated in Article 4(1).

Article 2 – Objectives

State Parties shall:

(a) establish a framework for co-operation and co-ordination with regard to the promotion of exchange control in respect of:

(i) current account transactions; and

(ii) capital and financial account transactions;

(b) review exchange control policies to ensure exchange control convergence as State Parties move towards full exchange control liberalisation;

(c) implement exchange control policies aimed at achieving full currency convertibility amongst State Parties;

(d) improve the availability of information regarding cross-border foreign exchange flows amongst State Parties, with the aim of facilitating performance monitoring and assessment, as well as of maintaining transparency and accountability.

Article 3 – Co-operation and coordination

1. State Parties shall co-operate and co-ordinate exchange control policies in order to:

(a) liberalise current account transactions amongst State Parties;

(b) liberalise capital and financial account transactions between State Parties;

(c) achieve convergence and full currency convertibility between State Parties; and

(d) improve the availability of information regarding cross-border foreign exchange flows between State Parties.

2. State Parties shall conclude multilateral agreements between themselves to provide for the conversion and repatriation of State Parties' banknotes through the forum of their respective Central Banks.

Article 4 – Institutional arrangements

1. To achieve the objectives stated in Article 2 of this Annex, the State Parties shall establish a SADC Exchange Control Committee.

2. Each State Party shall be represented on the SADC Exchange Control Committee by one representative from the Ministry of that State Party responsible for finance and investment and one representative from the Central Bank of that State Party.

3. Decisions of the SADC Exchange Control Committee shall be by consensus.

4. Each State Party shall respond promptly to any recommendation made to that State Party by the SADC Exchange Control Committee and if that State Party, after consultation (where consultation is required) with its Ministry responsible for finance and investment, decides to implement such recommendation, that State Party shall do so promptly.

5. The SADC Exchange Control Committee shall report to the Committee of Senior Treasury Officials and to the CCBG.

Article 5 – Functions of the SADC Exchange Control Committee

1. In order to facilitate and ensure continued compliance with this Annex, State Parties shall hold regular consultations among themselves with a view to reconciling their respective interests in the formulation, modification and implementation of exchange control policies for the Region and in regard to any other matter arising from, or relating to exchange control.
2. The SADC Exchange Control Committee shall:
   (a) for the fulfilment of its functions, convene in regular session at least twice in every year and, if so requested by any State Party, at such other time being as soon as possible after receipt of such request by that State Party;
   (b) expedite as far as possible any business referred to it;
   (c) use its best endeavours to find a solution satisfactory to all State Parties in regard to any matter referred to it, and make recommendations to State Parties accordingly;
   (d) determine its own procedures, including the establishment of such subcommittees as, in its opinion, are necessary.

Article 6 – Consultations

1. State Parties shall consult with one another and, where required, with their respective Ministries responsible for finance and investment, in order to improve the operation and implementation of exchange control and to resolve any matters that may arise in this regard.
2. Each State Party shall, in order to enable the other State Parties to take such action as may be necessary to fulfil their respective obligations and to protect their respective interests under this Annex 4, in circumstances where the urgency of the relevant matter precludes prior consultation with such other State Parties through the SADC Exchange Control Committee, notify such other State Parties and the SADC Exchange Control Committee of any change in that State Party's exchange control policies or in the administration thereof, including any amendments to the exchange control provisions of that State Party which may affect the interests of such other SADC State Parties. Such notification shall be made by that State Party, where practicable, before such change or, if such notification in advance is impossible or impracticable, such notification shall be made immediately after such change.
3. If any State Party wishes to consult with any other State Party on any exchange control issue which does not directly affect all of the State Parties, that State Party may consult with such other State Party but shall notify the remaining State Parties, in advance, of its intention to do so, and shall, as soon as possible after the conclusion of such consultation furnish the remaining State Parties with a report on the results of such consultations.
4. The State Party furnishing its report under paragraph 3 shall lay the report before the SADC Exchange Control Committee at its following meeting.

Annex 5

Harmonisation of legal and operational frameworks

Preamble

The High Contracting Parties:

RECOGNISING

- that the main objective of SADC is to achieve sustainable development in the Community;

- the determination of the general monetary policy framework vests in Government, the responsibility for monetary policy formulation and implementation rests with the respective Central Banks;
- an appropriate legal framework to facilitate sound operations of Central Banks is imperative;
- the present diverse legal and operational frameworks of Central Banks in the Region need to move towards a more coherent and convergent status to facilitate the harmonisation of monetary policy in the region;
- monetary policy credibility and effectiveness is enhanced by independence of Central Banks;
- the development of a sound legal and operational framework shall promote and foster the operational independence of Central Banks;
- the harmonisation of the legal and operational frameworks of Central Banks shall enhance operational efficiency, foster greater co-operation among State Parties and encourage Central Banks to work towards the articulation of one primary objective, which is to maintain price stability;
- consultation amongst Central Banks, with the Ministers responsible for Finance and Investment, individually and collectively, will improve the operation and implementation of this Annex and help to resolve any matters that may arise;

HEREBY AGREE as follows:

Article 1 – Definitions

1. In this Annex, terms and expressions defined in Article 1 of the Protocol shall bear the same meaning unless the context otherwise requires.
2. In this Annex, unless the context otherwise requires:

   "**Board**" means Board of Directors of the Central Bank;

   "**Legal Committee**" means a committee established in terms of Article 6;

   "**Model Central Bank Statute**" means a Model Act to serve as a guideline for State Parties when formulating Central Bank legislation.

Article 2 – Scope

Through the provisions of this Annex, the State Parties shall promote the mutual co-operation, co-ordination and harmonisation of the legal and operational frameworks of Central Banks which shall culminate in the creation of a Model Central Bank Statute for the Region as contemplated by the RISDP.

Article 3 – Objectives

The objectives of this Annex are to:

(a) establish principles that shall facilitate the creation of a coherent and convergent status in the legal and operational frameworks of Central Banks;

(b) promote the adoption of principles that shall facilitate the operational independence of Central Banks;

(c) create best practices in the legal and operational frameworks of Central Banks; and

(d) provide the framework for the creation of a Model Central Bank Statute which shall be considered and approved by the Ministers responsible for national financial matters.

Article 4 – Agreement on principles

1. In order to achieve the objectives set out in Article 2 and foster harmonisation in the legal and operational frameworks, the Central Banks shall, in their respective State Parties, work towards the realisation and attainment of the principles set out in this Article.
2. Principles for convergent status:
    (a) State Parties shall move towards the adoption of price stability as the primary objective of their central banks;
    (b) Central Banks shall contribute to the pursuit of financial stability;
    (c) the accounts of Central Banks shall be audited by independent auditors appointed by the Board/ shareholders of each Central Bank;
    (d) the objectives, legal form and capacity, duties, powers and functions of the Central Banks shall be set out in clear terms and as exhaustively as possible in the Central Bank legislation;
    (e) lending by Central Banks to government, its agencies and political subdivisions shall be discouraged;
    (f) unrealised exchange losses or gains in each financial year shall be made good, as agreed between the government and the Central Bank, within the following year in order to facilitate the orderly execution of monetary and exchange rate policies; and
    (g) overdue government securities and other indebtedness of government and its various agencies shall, at the end of each financial year, be first redeemed from any available surplus income before the transfer of the residue to government.
3. Principles for operational independence:
    (a) There should exist legislative provisions ensuring the operational independence of Central Banks and the ownership structures of Central Banks should not be permitted to compromise this independence;
    (b) the formulation and implementation of monetary policy by Central Banks shall be recognised and explicitly provided for in the Central Bank statute;
    (c) the budget of each Central Bank shall be approved by its own Board;
    (d) appointment of a Governor and Deputy Governors) shall vest in the Head of State or Government of each State Party and where applicable, shall be ratified by the Legislature;
    (e) Central banking legislation shall provide for fair and transparent procedure and grounds under which the Governors and Deputy Governors may be removed from office;
    (f) members of the Board of Directors of Central Banks should be appointed from among persons of proven experience in fields relevant to central banking:
        (i) by Ministers responsible for Finance and Investment; and
        (ii) by the shareholders as prescribed by relevant legislation, in the case of central banks with private shareholders;
    (g) whereas civil servants may, where individual country circumstances require, sit on the Board of central banks, such appointments which may compromise the independence of the central banks should be in the minority; and
    (h) Members of Parliament shall be disqualified from sitting on the Boards of central banks.

4. Principles for transparency and accountability:

   (a) There shall be established a monetary policy committee whose composition, structure and functions shall be publicly disclosed;

   (b) legislation should stipulate the extent and frequency of financial and operational disclosures by Central Banks to parliament or a committee of parliament, and also to the public at large;

   (c) the remuneration and benefits of Governors, Deputy Governors and members of the Board should be disclosed to parliament annually; and

   (d) every Central Bank shall publish an annual report detailing its operations and audited financial statements. The report shall be distributed to all stakeholders.

   (e) Notwithstanding the establishment of the Monetary Policy Committee in Article 4(4) (a) above, the Governor shall be ultimately accountable and responsible for monetary policy.

Article 5 – Areas and nature of co-operation

In order to achieve the objectives of this Annex, State Parties shall (through Central Banks) co-operate in the following areas

(a) promoting the enhancement of accountability and transparency;

(b) establishing guidelines consistent with the primary objective on Central Bank lending policies to government and commercial banks;

(c) safeguarding the economic viability of Central Banks through adequate capitalisation;

(d) adopting internationally accepted best practices for accounting and financial management, as well as, reporting requirements;

(e) allowing for the sharing of information amongst Central Banks without breach of secrecy and confidentiality laws;

(f) providing for proper procedures in the event of a dissolution of any Central Bank;

(g) pursuing international best practices through the ratification by the legislature, where the local circumstances permit, of the appointment of the Governor and Deputy Governor(s);

(h) ensuring that the powers to approve the budget of the Central Banks rest with the Boards; and

(i) in any other areas that will foster the harmonisation of the legal and operational frameworks of Central Banks.

Article 6 – Legal Committee

1. In order to facilitate and ensure continued compliance with this Annex, to reconcile the respective interests in the formulation, modification and implementation of concurrent legislation for the Region, the harmonisation of legal and operational frameworks of Central Banks as well as any other matter arising under this Annex, CCBG shall establish a Legal Committee.

2. Each Central Bank shall be represented on the Legal Committee by one legal expert and one economic expert. Should the need arise, other experts may be co-opted.

3. The resolutions of the Legal Committee and the Steering Committee contemplated in Article 7 shall be by the consensus of the appointed experts.

4. The Legal Committee shall be accountable to the CCBG.

Article 7 – Functions and procedures of the Legal Committee

1. The Legal Committee shall:
   (a) review and monitor the progress of the harmonisation of the legal and operational frameworks of Central Banks, including the decision making instruments to be developed to achieve harmonisation;
   (b) encourage the adoption of model acts and the use of advisory options, recommendations, regulations and draft agreements to achieve harmonisation;
   (c) consider and recommend amendments to relevant legislation;
   (d) provide technical assistance and advice to Central Banks as and when required;
   (e) make recommendations to Central Banks in relation to any matters arising from the implementation of this Annex;
   (f) carry out any other tasks that may be assigned to it by the CCBG; and
   (g) channel all requests from State Parties to the CCBG.
2. For the performance of its functions, the Legal Committee shall:
   (a) convene in regular session at least once every year;
   (b) determine its own procedures, including the establishment of such subcommittees as may be necessary; and
   (c) appoint a Steering Committee of not fewer than four and not more than seven members, which members shall be appointed on a rotational basis
3. The Steering Committee shall determine its own procedures including appointment of a chairperson.

Article 8 – Consultation

1. Central Banks shall consult with Ministers responsible for Finance and Investment in areas necessary to ensure proper co-ordination between fiscal and monetary policies.
2. Central Banks shall consult with one another and with their respective Ministers responsible for Finance and Investment, to improve the operation and implementation of this Annex and to resolve any matters that may arise.
3. Should a Central Bank wish to consult another Central Bank on any issue arising from this Annex but not directly affecting all other Central Banks, it may do so and should the matter be significant, notify the other Central Banks as soon as possible and thereafter, furnish them with a report on the results of the consultations.

Annex 6

Cooperation on payment, clearing and settlement systems

Preamble

The High Contracting Parties:

RECALLING the provisions of Chapter Five of the Protocol which requires co-operation on payment, clearing and settlement systems;

RECOGNISING that payment systems are critical to the financial infrastructure and the circulation of money, and are integral to economic activity;

RECOGNISING that Central Banks must co-operate through policy co-ordination, capacity building and system development which in turn will contribute towards payment system reform, facilitation of cross-border payments, and support for monetary policy objectives;

HEREBY AGREE as follows:

Article 1 – Definitions

1. In this Annex, terms and expressions defined in Article 1 of the Protocol shall bear the same meaning unless the context otherwise requires.
2. In this Annex, unless the context otherwise requires:

   "**clearing system**" means, a set of procedures whereby financial institutions present and exchange data and/or documents relating to the transfer of funds or securities to other financial institutions at a single location (clearing house), and such procedures may include a mechanism for the calculation of participants' bilateral and/or multilateral net positions with a view to facilitating the settlement of their respective obligations on a net or net-net basis (BIS Red Book);

   "**currency convertibility**" means, the ability of residents of that State Party and non-residents to exchange the currency of that State Party for foreign currency and to utilise the foreign currency in transactions. A measure of currency convertibility of a State Party is the absence of restrictions on:

   (a) the making or receipt of payments for international transactions; and

   (b) the exchange of the currency of that State Party for foreign currency for such purposes

   "**payment system**" means a set of instruments, banking procedures and typically, inter-bank funds transfer systems that ensure the circulation of money (BIS Red Book);

   "**SADC Payment System Steering Committee**" means the SADC Payment Steering Committee contemplated in Article 4(1);

   "**SADC Payment System Working Group**" means the SADC Payment System Working Group contemplated in Article 4(2);

   "**settlement**" means an act that discharges the respective obligations of two or more counter parties incurred in respect of the transfer of funds or securities between such counter parties;

   "**settlement system**" means, the system of a State Party used to facilitate settlement.

Article 2 – Scope

1. The scope of this Annex concerns issues relating to payment, clearing and settlement systems within each State Party, (as well as for the Region as a whole,) and State Parties agree that the application of this Annex 6 is intended to culminate in convergent national payment system features, policies, practices, rules and procedures within the Region.
2. Nothing contained in this Annex shall prevent or limit, in any way, any State Party from advancing further than any other State Party or all of the other State Parties together.

Article 3 – Objectives

The objective of this Annex is to establish a framework for co-operation and coordination between Central Banks on payment, clearing and settlement systems in order to:

(a) define and implement, in each State Party, a safe and efficient payment system based on internationally accepted principles;

(b) define and implement a cross-border payment strategy for the Region;

(c) identify, measure, minimise and manage payment system risk (in particular systemic risk relating to payment systems);

(d) achieve convergence across the Region of the features, policies, practices, rules and procedures relating to payment systems, clearing system and settlement system;

(e) conduct ongoing payment system oversight aimed at reducing and eliminating cross-border settlement risk and systemic financial risk.

Article 4 – Co-operation and co-ordination

1. In order to achieve the objectives set out in Article 3, the Central Bank in each State Party shall, in co-operation with the other Central Banks in the Region,:

    (a) sensitise the key stakeholders in that State Party to payment system issues;

    (b) build payment system capacity in that State Party;

    (c) identify and measure payment system risk in that State Party, and establish appropriate procedures for the management of such risk;

    (d) develop a legal framework in that State Party to support modern payment system mechanisms;

    (e) monitor, on an ongoing basis, international payment system best practices and align the payment system developments in that State Party in accordance therewith;

    (f) define and implement a payment system strategy in that State Party.

2. The Central Bank of each State Party shall, in co-operation with the other Central Banks:

    (a) define and implement a cross-border payment strategy for the Region, which strategy may be based on currency convertibility within the Region or, in the future, on a single currency for the Region;

    (b) identify and measure payment systems risk and establish appropriate procedures for the management of such risk;

    (c) establish and maintain mutually beneficial relationships with international bodies such as the World Bank, the BIS and the central banks of third States; and

    (d) keep abreast of modern trends in payment, clearing and settlement systems.

Article 5 – Institutional arrangements

1. Central Banks shall, through the forum of the CCBG, establish a SADC Payment System which shall be responsible for the implementation of this Annex. State Parties agree that

2. Each Central Bank shall appoint one person to serve on the SADC Payment System.

3. The SADC Payment System Steering Committee shall establish a SADC Payment System Working Group, and the SADC Payment System Steering Committee shall delegate the day-to-day administration relating to the implementation of this Annex to the SADC Payment System Working Group.
4. The SADC Payment System Working Group shall comprise project leader, a project manager and such number of payment system analysts as are appointed by the SADC Payment System Steering Committee.
5. The SADC Payment System Working Group shall be responsible for the implementation of this Annex on a daily basis.

Article 6 – Functions of the SADC Payment System Steering Committee and the SADC Payment System Working Group

1. The SADC Payment System Steering Committee shall:
   (a) review and monitor progress in respect of the objectives set out in Article 3;
   (b) initiate such tasks and projects as the SADC Payment System Steering Committee may deem necessary in order to support of the objectives set out in Article 3;
   (c) consider and recommend the enactment of, or amendments to, legislation of State Parties relating to payment system, clearing system and settlement system, including the making and amendment of rules and procedures, risk management policies and any other matters relevant to such legislation and such payment system, clearing system and settlement systems;
   (d) discuss and reach consensus on strategic issues relating to the objectives set out in Article 3;
   (e) meet at least once in every year or, if necessary and if so requested by any State Party, more frequently;
   (f) establish its own procedures, including the establishment of such sub-committees as the SADC Payment System Steering Committee may deem necessary;
   (g) establish a payment system oversight function for the Region; and
   (h) keep the CCBG informed of the development and progress in achieving the objectives set out in Article 3.
2. The SADC Payment System Working Group shall:
   (a) work towards achieving the objectives set out in Article 3;
   (b) accomplish the tasks delegated to it by the SADC Payment System Steering Committee;
   (c) report progress on all aspects of its work to the SADC Payment System Steering Committee on a regular basis;
   (d) take such initiatives as it may consider appropriate to build payment system skills within the Region;
   (e) monitor the progress of each State Party, and of the Region, in matters contemplated in this Annex 6 and report such progress to the SADC Payment System Steering Committee;
   (f) make such information relating to matters contemplated in this Annex 6 as it may consider appropriate available to the public and all interested parties within the Region; and
   (g) develop mutually beneficial liaison with international bodies such as the World Bank, the BIS and the central banks of Third States.

Article 7 – Consultations

Central Banks shall, through the forum of the CCBG, consult with one another in order to:

(a) improve their operations and to implement the programs and matters contemplated in this Annex, and to resolve any issues that may arise in relation thereto; and

(b) assist in the development of mutually agreeable approaches for strengthening the safety and efficiency of the respective Payment, Clearing and Settlement Systems of State Parties while avoiding, wherever possible, conflicts that may arise from the application of differing regulatory practices in respect of such Payment, Clearing and Settlement Systems.

Article 7 – Practical measures

State Parties agree that the CCBG may take such practical measures as may be considered necessary by the CCBG to facilitate the implementation of this Annex 6.

[Please note: numbering as in original.]

Annex 7

Cooperation in the area of information and communications technology amongst Central Banks

Preamble

The High Contracting Parties:

RECALLING the provisions of Chapter Five of the Protocol which requires co-operation in the area of information and communications technology amongst Central Banks;

RECOGNISING that the utilisation of modern information and communication technology solutions is critical in enabling and supporting modern and flexible central banking and financial systems operations within each State Party and within the Region;

RECOGNISING that the current level of utilisation of information and communications technology solutions within Central Banks is low compared to developed countries;

RECOGNISING that by utilising information and communications technology solutions Central Banks can attain and maintain high levels of effectiveness, efficiency, performance and sustainable global competitiveness;

RECOGNISING the need to co-operate through policy co-ordination, capacity building and the utilisation of information and communications technology in modern business functions and operations in order to support and enable current and future goals of Central Banks and financial systems within the Region; and

RECOGNISING the necessity of co-ordination in the utilisation of modern information and communications technology solutions to enable and support the modernisation of Central Bank and financial system operations;

HEREBY AGREE as follows:

Article 1 – Definitions

1. In this Annex, terms and expressions defined in Article 1 of the Protocol shall bear the same meaning unless the context otherwise requires.

2. In this Annex, unless the context otherwise requires:

"**ICT**" means Information and Communications Technology;

"**ICT Programme Office**" means the Central Banks Information and Communications Technology Programme Office contemplated in Article 5(3);

"**ICT Steering Committee**" means the Central Banks Information and Communications Technology Steering Committee contemplated in Article 5(1);

"**ICT Working Group**" means the Central Banks Information and Communications Technology Working Group contemplated in Article 5(5);

"**Financial System**" means, in relation to each State Party, the financial institutions, financial legislation, financial markets, and financial policies and infrastructure of that State Party;

"**ICT application**" means a set of software programs that are either purchased or developed, and that form an integral part of an ICT Solution,

"**ICT solution**" means an ICT based system that contributes to a business solution and supports a business activity;

"**payment system**" means a set of instruments, banking procedures and typically, inter-bank funds transfer systems that ensure the circulation of money (BIS Red Book);

"**third State**" means any state that is not a State Party.

Article 2 – Objective

The objective of this Annex is to establish a framework for co-operation and coordination between Central Banks in order to obtain the benefits of the utilization of modern ICT solutions in supporting and enabling modern business functions and operations within the Region.

Article 3 – Scope

1. The scope of this Annex 7 is issues relating to the utilisation of ICT Solutions within:
   (a) Central Banks;
   (b) Financial Systems in the Region;
   (c) Central Bank and Financial System initiatives in the Region.
2. The implementation of this Annex is intended to culminate in the support and enabling of modern business functions and operations within Central Banks, Financial Systems in the Region and financial operations in the Region, through the utilisation of modern ICT solutions.
3. The business functions and operations referred to in paragraph 2 include:
   (a) the payment systems (as defined in Annex 6) and cross-border payment systems;
   (b) balance-of-payments reporting systems;
   (c) economic research;
   (d) Central Bank supervision;
   (e) international banking and money market operations;
   (f) stock exchange operations in each State Party and the Region;

Article 4 – Co-operation and co-ordination

In order to achieve the objectives set out in Article 2 and the resulting benefits, Central Bank of each State Party shall:

(a) proactively support the initiatives and projects of the CCBG with suitable ICT solutions;

(b) create awareness of the significant benefits that ICT solutions can provide in supporting and enabling modern world-class business operations in that State Party and the Region;

(c) engage with and encourage, other Central Banks and Financial System operators to utilise ICT solutions to enhance their respective business operations in order that, over time, all Financial System operators in the Region receive the full benefit of utilising ICT solutions at world-class levels;

(d) embrace ICT solutions to enable that Central Bank to be more successful in achieving its goals, both domestically within the Region, and internationally, and such goals should include:

(i) aspiring to the primary domestic and international operations of a modern central bank;

(ii) obtaining international credibility for the Financial System within that State Party, individually and collectively with other Central Banks;

(iii) achieving global competitiveness of the Financial System within that State Party, individually and collectively with other Central Banks;

(e) assist the other Central Banks in the acquisition, utilisation and support of strategic ICT solutions where such ICT solutions make a significant contribution to enabling new and modern operations and improving existing functions;

(f) build a high level of ICT skills at strategic, managerial and technical levels in order to ensure that that Central Bank has the capacity, over the long term, to acquire, maintain and support appropriate and effective ICT Solutions;

(g) endeavour to adopt a technological framework that will enable—

(i) electronic collaboration between that Central Bank's officials and the officials of the other Central Banks;

(ii) effective and efficient transmission of data between that Central Bank and the other Central Banks;

(iii) sharing of the ICT Solutions of that Central Bank with the other Central Banks in order to reduce costs, and to accelerate the process of ICT Solution utilization within the Region;

(h) establish such ICT Solutions as are necessary to enable joint activities between that Central Bank and the other Central Banks and to attain such objectives as are mutually agreed between that Central Bank and the other Central Banks; and

(i) contribute to the development of a centre of excellence, within the Region, for information relating to the Financial System of that State Party.

Article 5 – Institutional arrangements

1. Central Banks, through the forum of the CCBG, shall establish a Central Banks Information and Communications Technology Steering Committee, and such ICT Steering Committee will be responsible for the implementation of this Annex.

2. Each Central Bank shall appoint one person to serve on the ICT Steering Committee.

3. The ICT Steering Committee shall establish a SADC Central Banks ICT Programme Office, and the ICT Steering Committee shall delegate the day-to-day administration relating to the implementation of this Annex to such ICT Programme Office.

4. The ICT Programme Office shall comprise the chairperson of the ICT Steering Committee, a programme manager and a projects co-ordinator appointed by the ICT Steering Committee and administrative staff appointed by the ICT Steering Committee.

5. The ICT Steering Committee shall establish a SADC Central Banks ICT Working Group, to which the ICT Steering Committee I may delegate such tactical and guidance functions as determined by the ICT Steering Committee.

Article 6 – Functions of ICT Steering Committee, ICT Programme Office and ICT Working Group

1. The ICT Steering Committee shall:

   (a) discuss and reach consensus on the strategic and tactical direction required to achieve the objectives set out in Article 2;

   (b) review and monitor progress in respect of the objectives set out in Article 2;

   (c) initiate such tasks and projects as the ICT Steering Committee may deem necessary in order to support the objectives set out in Article 2;

   (d) establish its own procedures, including the establishment of such additional working groups and project teams as the ICT Steering Committee may deem necessary;

   (e) keep the CCBG informed of the development and progress in achieving the objectives set out in Article 2;

   (f) attend to requests from the CCBG and other stakeholders where such requests fall within the scope of this Annex;

   (g) meet at least annually or, if necessary and if so requested by any State Party, more frequently.

2. The ICT Programme Office shall:

   (a) work towards achieving the objectives set out in Article 2;

   (b) accomplish the tasks delegated to it by the ICT Steering Committee;

   (c) report progress on all aspects of its work to the ICT Steering Committee on a regular basis;

   (d) take such initiatives as may be considered appropriate by it to build ICT skills within Central Banks and the Financial System operators within the Region;

   (e) develop mutually beneficial liaisons with international bodies, such as the World Bank, the BIS and the central banks of third States.

3. The ICT Working Group:

   (a) meet at least twice a year to review progress in achieving the objectives set out in Article 2;

   (b) provide such guidance functions to the ICT Programme Office as are delegated to the ICT Working Group by the ICT Steering Committee in terms of Article 5(5);

   (c) communicate and consult with the ICT Steering Committee, on a regular basis, on all aspects of the work of the ICT Working Group.

Article 7 – Consultations

1. Central Banks shall, through the forum of the CCBG, consult with one another in order to:

   (a) improve the operations and the implementation of the matters contemplated in this Annex and to resolve any issues that may arise in relation thereto; and

   (b) monitor and assess the achievement of the objectives set out in Article 2.

3. If any Central Bank wishes to consult with any other Central Bank on any major issue arising under, or relating to, this Annex which does not directly affect all of the Central Banks, that Central Bank may consult with such other Central Bank but shall notify the remaining Central Banks, in advance, of its intention to do so, and shall, as soon as possible after the conclusion of such consultation, furnish the remaining Central Banks with a report on the results of such consultation.

   [Please note: numbering as in original.]

4. The Report to be furnished under paragraph 3 shall be laid by the Central Bank issuing the Report before the ICT Steering Committee at its following meeting.

Annex 8

Cooperation and co-ordination in the area of banking regulatory and supervisory matters

Preamble

The High Contracting Parties:

RECOGNISING the importance of having sound banks since Banks:

(a) are the principal depository for the general public's liquid funds and the safety and ready availability of these funds for transactions are:

   (i) the responsibility of banks' management; and

   (ii) essential to the stability, efficiency and soundness of the financial system;

(b) employ the general public's funds to make loans and investments, thereby allocating scarce savings to productive uses within the economy and the intermediation process helps to channel funds to economic sectors that make the most efficient and productive use of funds;

(c) serve as the main conduit for monetary policy implementation between the central bank and the economy; and

(d) provide the backbone for the national payments mechanism and a reliable and efficient payments mechanism is an essential component in any economy.

FURTHER RECOGNISING that it is important for Central Banks in the Region to co-operate in the areas of policy formulation, capacity building, systems development with a view to:

(a) facilitating effective application of international regulatory and supervisory standards in order to promote and maintain the soundness of banks in the Region;

(b) harmonise banking regulatory and supervisory matters through the implementation of the objectives mentioned below;

HEREBY AGREE as follows:

Article 1 – Definitions

1. In this Annex, terms and expressions defined in Article 1 of the Annex shall bear the same meaning unless the context otherwise requires.
2. In this Annex, unless the context otherwise requires:

   "**Banks**" means deposit taking institutions that are licensed and/or regulated and supervised by the Central Bank and/or other supervisory authority;

   "**BIS**" means Bank for International Settlements;

   "**IMF**" means International Monetary Fund;

   "**FATF**" means Financial Action Task Force;

   "**SADC Central Banks**" means Central Banks of State Parties.

Article 2 – Objective

1. The objective of this Annex is to establish a framework for co-operation and co-ordination between SADC Central Banks on banking regulatory and supervisory matters in order to:
   (a) promote in each Member State, an efficient and effective banking regulatory and supervisory system based on internationally accepted principles;
   (b) establish a regional banking regulatory and supervisory strategy;
   (c) promote the identification, measurement and management of banking risks, including systemic risks; and
   (d) promote harmonization of banking regulatory and supervisory matters, policies, practices, rules and procedures across the Region.

Article 3 – Scope

1. This Annex deals with issues relating to banking regulation and supervision within each State Party, as well as to the region as a whole.
2. Nothing in this Annex prevents or restricts any State Party from advancing further than can be achieved by all State Parties together.

Article 4 – Areas and nature of co-operation and co-ordination

1. In order to achieve the objective of this Annex, SADC Central Banks shall:
   (a) sensitise key stakeholders to banking regulatory and supervisory issues;
   (b) build banking regulatory and supervisory capacity;
   (c) identify and measure banking risks and establish appropriate procedures for the management of such risks;
   (d) develop a legal framework that is supportive of modern banking regulatory and supervisory practices;
   (e) promote and maintain a domestic banking regulatory and supervisory strategy in line with international best practices; and

(f) monitor and evaluate, on an ongoing basis, international banking regulatory and supervisory best practices and align domestic banking regulatory and supervisory developments thereto.

2. On a regional basis, the SADC Central Banks, through the SADC Subcommittee of Banking Supervisors, shall:

(a) define and implement a regional banking regulatory and supervisory strategy, based on international standards;

(b) identify and measure regional banking regulatory and supervisory risks and establish appropriate procedures for the management of such risks;

(c) establish and maintain mutually beneficial relationships with international bodies such as the World Bank, the IMF, FATF, the BIS and non-SADC Central Banks;

(d) keep abreast with modern practices in banking regulatory and supervisory matters, including depositor protection, anti-money laundering compliance and combating the financing of terrorism; and

(e) share information regarding banking regulatory and supervisory matters, including information on other non-deposit taking institutions, as permitted by legislation of the member countries.

Article 5 – Institutional arrangements

1. The CCBG shall establish a SADC Subcommittee of Banking Supervisors that shall be responsible for the implementation of this Annex.

2. Each SADC Central Bank shall appoint a person(s) to serve on the SADC Subcommittee of Banking Supervisors.

Article 6 – Functions of the SADC Subcommittee of Banking Supervisors

1. The SADC Subcommittee of Banking Supervisors shall:

(a) establish its own procedures, including the election of a chairperson and establishment of working groups, if so required;

(b) meet at least once a year or more frequently if required;

(c) initiate such tasks and projects as are necessary in support of the objectives of this Annex;

(d) review and monitor progress in respect of the implementation of the objectives of this Annex;

(e) keep the CCBG informed of developments and progress in respect of the objectives of this Annex;

(f) consider and recommend amendments to the CCBG with respect to banking supervisory matters and regulatory legislation, rules and procedures, risk management, training programmes and other relevant matters;

(g) discuss and reach consensus on strategic issues relating to this Annex; and

(h) make recommendations to the CCBG on the strategic and tactical direction to be adopted regarding banking regulatory and supervisory issues.

Article 7 – Consultations

Through the SADC Subcommittee of Banking Supervisors, SADC Central Banks shall consult with one another (each other) to:

(a) improve the operations of this Annex in order to facilitate its implementation and to resolve any matters that may arise; and

(b) assist in the development of mutually agreeable approaches for strengthening the safety and soundness of the banking systems in SADC while avoiding, wherever possible, conflicts that may arise from the application of differing regulatory and supervisory practices in the banking system.

Annex 9

Co-operation in respect of development finance institutions

Preamble

The High Contracting Parties:

RECALLING the provisions of Chapter Six of the Protocol which requires co-operation on development finance;

RECOGNISING the increasing importance of the role played by development finance institutions in financing development in the Region and advancing productive capacity, thereby increasing economic growth and sustainable development,

HEREBY AGREE as follows:

Article 1 – Definitions

1. In this Annex, terms and expressions defined in Article 1 of the Protocol shall bear the same meaning unless the context otherwise requires.

2. In this Annex, unless the context otherwise requires:

   "**capital adequacy**" means, in relation to a financial institution, the minimum capital requirements prescribed by the Central Bank of the State Party in whose territory that financial institution is situated and, in relation to a DFI in respect of which no such minimum capital requirements are so prescribed, the policy relating to minimum capital requirements to be developed by the Network, with the assistance of the Development Finance Resource Centre, which policy will set out the minimum requirements of capital to risk-weighted assets for that DFI;

   "**CEO**" means, in relation to a DFI, the chief executive officer of the DFI;

   "**credit rating**" means, in relation to an entity or enterprise, as the case may be, the formal evaluation by a rating agency of the present and past financial performance, and credit history, of that entity or enterprise, as the case may be, including the ability of that entity or enterprise, as the case may be, to repay its debts, and is used to determine the investment grade of that entity or enterprise, as the case may be, for purposes of the raising of capital by that entity or enterprise, as the case may be, on the financial and capital markets;

   "**credit risk**" means, in relation to a borrower, the risk that the borrower may not be able to meet its contractual obligations to repay the debt of the borrower;

   "**debt**" means, in relation to a borrower, the obligation of the borrower to repay moneys lent to the borrower by a lender, with or without interest, to the lender, on a specified date or over a specified period of time;

"**DFI**" means Development Finance Institution

"**Development Finance Resource Centre**" means the Development Finance Resource Centre established in Article 8(1) of this Annex;

"**enterprise**" means any entity, corporation, trust, partnership, association of persons, foundation, sole proprietorship, branch, joint venture, association, or similar organization, entity or association of persons, which is engaged in activities of a commercial nature;

"**enterprise-wide risk management**" means, in relation to an enterprise, a comprehensive view of risk for that enterprise which incorporates identification, measurement, limit setting, monitoring and control of risk in respect of that enterprise, and takes into account credit risk, market risk and operational risk;

"**entity**" means any juristic person constituted or organised under the applicable laws of any State Party or third State, whether or not for profit, and whether privately or governmentally owned or controlled;

"**Establishment Agreement**" means, in relation to a DFI, the memorandum and articles of association of, or other founding or constitutive document establishing, the DFI;

"**equity**" means moneys invested in an entity or an enterprise, as the case may be, by an investor, and for which the entity or the enterprise, as the case may be, is ordinarily expected to pay a return to that Investor, usually in the form of dividends;

"**financial institution**" means, in relation to a State Party, any institution which is classified as a financial institution by the relevant legislation of that State Party: financial institutions ordinarily include depository institutions (such as banks) which collect funds from the public by way of deposits, and non-depositary institutions (such as insurance companies) which collect funds from the public by way of, among other things, selling insurance policies;

"**floating rate note**" means a bond in terms of which the principal amount of the loan bears interest at a floating (as opposed to a fixed) interest rate;

"**General Meeting**" means the General Meeting of the Network contemplated in Article 3(4);

"**junior debt**" means, in relation to a borrower, the debt of that borrower which is subordinated to the other Debt of that borrower (including the senior debt of that borrower and the mezzanine debt of that borrower), and which accordingly ranks lowest in priority of payment;

"**limited recourse**" means, in relation to a borrower, that, if that borrower defaults in the repayment of a debt of that borrower, the relevant lender(s) may only have recourse to certain assets of that borrower when claiming, or instituting proceedings, for the repayment of that debt and, where applicable, interest thereon;

"**loan loss provisioning**" means, in relation to a financial institution, those voluntary provisions made by that financial institution out of the current income of that financial institution to cover potential loss to that financial institution from loans made by that financial institution to borrowers which are considered by that financial institution to have adverse credit risks, it being recorded that such voluntary provisions may reduce the capital adequacy ration of that financial institution;

"**market risk**" means the risk of a reduction in the market value of an asset (which risk is common to all assets of the same class or type as that asset) as a result of movements in financial market variables such as interest rates, foreign exchange rates, equity prices and commodity prices;

"**medium term note**" means a bond with a medium-term maturity ranging between 3 and 5 years;

"**mezzanine debt**" means, in relation to a borrower, the debt of that borrower which is subordinated to the senior debt of that borrower, but which is not subordinated to the junior debt of that borrower, and which accordingly ranks higher than such junior debt, but lower than such senior debt, in priority of payment;

"**DFI Network**" means the collective of national development finance institutions of the SADC as recognised in Article 2;

"**non-recourse**" means, in relation to a borrower, that, if that borrower defaults in the repayment of a debt of that borrower, (i) the relevant lender(s) may not have recourse to any assets of that borrower when claiming, or instituting proceedings, for the repayment of that debt and, where applicable, interest thereon, and (ii) the relevant lender(s) may only have recourse to the assets of the project in respect of which that debt was incurred by that borrower when claiming, or instituting proceedings, for the repayment of that debt and, where applicable, interest thereon,;

"**operational risk**" means, in relation to an entity or enterprise, as the case may be, the risk of direct or indirect loss to, or damage to the reputation of, the entity or enterprise, as the case may be, which is due to deficiencies or errors in the internal operations of the entity or enterprise, as the case may be organization, which deficiencies or errors (i) may be attributable to the employees of that entity or enterprise, as the case may be, that entity or enterprise, as the case may be, the control routines, process or technology of that entity or enterprise, as the case may be, or the execution of legal, fiduciary and agency responsibilities in respect of that entity or enterprise, as the case may be, or (ii) which may be attributable to external events which are beyond the control of that entity or enterprise, as the case may be;

"***pari passu* ranking**" means, in relation to a borrower, the debt of that borrower which (i) ranks equally, in priority of payment to the relevant lender(s), with all of the other debt of that borrower which is of the same class or type as that debt (such class or type being determined, among other things, with reference to the status of the relevant debts as secured or not secured and/or Subordinated or not Subordinated), and (ii) which debt is accordingly not subordinated to any of the other debt of that borrower which is of the same class or type as that debt;

"**political risk**" means, in relation to a State Party, the risk of a change in the political situation of that State Party stemming from, among other things, a change in the control of the government of that State Party, a change in the social fabric of that member State, or the existence of other non-economic factors which affect that State Party. Political risk covers the potential for (i) internal and external conflicts within or involving that State Party, (ii) the expropriation of property in that State Party, and (iii) the inconvertibility of the currency of that State Party: The assessment of political risk requires an analysis of factors such as the relationships between various groups in that State Party, the decision-making process in the government of that State Party, and the history of that State Party.

"**preferred creditor status**" means, in relation to a borrower, that level of priority for repayment of debts conferred by International Law on multilateral financial institutions such as the World Bank, IMF and African Development Bank, the conferring by that borrower, in respect of a debt of that borrower, of that level of priority of payment of that debt to the relevant lenders which results in that debt being repaid by that borrower to the relevant lenders, notwithstanding that that borrower defaults in the repayment of any of the other debt of that borrower to any other lender(s).

"**project**" means the development or exploitation, within the Region, of a right, natural resource or other asset with economic or financial value located in any territory;

"**project cycle**" means the different phases of a project, including (i) project identification and preparation, (ii) financing the project and negotiations between the relevant borrower and lender, (iii) obtaining credit approval in respect of the relevant borrower in relation to the project, as well as such other approvals as are required by the board/governing body of the relevant lender, (iv) drafting and reviewing the relevant loan and related project documentation, (v) implementing, supervising and completing the project; and (vi) evaluating the project;

"**project finance**" means a mechanism for financing a project where, ordinarily, the bulk of such financing is by way of debt finance (which is repaid principally out of the revenues produced by the Project) and not by way of equity capital;

"**public entity**" means, in relation to a State Party:

(a) any agency, department or instrumentality of the government of the State Party;

(b) the Central Bank of the State Party or any entity holding all or a substantial part of the foreign reserves or investments of the State Party;

(c) any province, region, state or other political subdivision of that State Party including municipalities; and

(d) any corporation, juristic person, institution, undertaking or entity which is directly or indirectly owned or controlled by the State Party;

"**Secretariat**" means the Secretariat of the DFI Subcommittee;

"**security**" means, in relation to a borrower, any asset (whether corporeal or incorporeal) offered as security or collateral by the borrower to the relevant lender, to secure the repayment, by the borrower, of the debt of the borrower which is owed to such lender;

"**securitisation**" means a mechanism which provides a person (known as the "originator") with immediate cash, raised indirectly through the issue of bonds on the relevant financial exchange, by means of the sale by that originator of certain receivables, such as rights to be repaid any debt, to a special purpose vehicle, which special purpose vehicle pays the purchase price of such receivables out of the proceeds of the fore mentioned issue of bonds. The Bonds are secured by such receivables;

"**senior debt**" means, in relation to a borrower, the debt of that borrower which is not subordinated to any of the other debt of the borrower (including the junior debt of that borrower and the mezzanine debt of the borrower), and which accordingly ranks highest in priority of payment;

"**Special Purpose Vehicle**" means, in relation to a securitisation, an entity which is used in that securitisation to (among other things) purchase the relevant receivables sold by the relevant originator and such entity is not owned or controlled by the relevant originator, and the balance sheet of such entity does not need to be consolidated with that of the relevant originator for accounting purposes;

"**State loan**" means, in relation to a State Party and for purposes of this Annex, an agreement of loan concluded between the State Party as borrower and the relevant DFI as lender in respect of a project for purposes of financing of that project;

"**subordination**" means, in relation to a borrower, that a debt (or class of debt) of that borrower ranks, in priority of payment, lower than other debt (or classes of debt) of the borrower and, accordingly the borrower will not repay the debt (or class of debt) to the other relevant lenders) (the subordinated or junior lender(s)) until such other debt (or classes of debt) has/have been repaid to such other relevant lender(s) (the senior lender(s)), and "subordinated" shall have a corresponding meaning;

"**swap**" means a transaction concluded between two or more counter parties which is aimed at managing the risk of, among other things, interest rate or currency fluctuations. In a simple currency swap the counter parties agree sell to each a currency with a commitment to re-exchange the principal amount at the maturity of the transaction. In an interest rate swap the counter parties agree to exchange periodic interest payments. Swaps may permit a counter party to more effectively manage its debt;

"**syndication**" means an arrangement which, in respect of a debt of a borrower, provides for multiple (or a group of) lenders (syndicate lenders), and which ordinarily provides for each such syndicate lender to incur only such obligations as relate to that portion of that debt which is owed by that borrower to that syndicate lender;

Article 2 – Establishment of the Network

1. State Parties agree that consistent with the decision of Council of 2002, there is hereby recognised, a network of development finance institutions tasked with delivery on the SADC Common Agenda, to be known as the SADC DFI Network and which shall operate under the principle of subsidiary.
2. Membership to the Network shall be open to all DFIs operating at a national level within the territory of a State Party.

Article 3 – Objectives of the Network

State Parties agree that the objectives of the Network shall be to:

(a) collaborate on Projects;

(b) pool resources in order to mobilise funds, both within and outside the Region for purposes of financing development Projects in the Region;

(c) invest moneys in the form of equity capital in DFIs where this is considered desirable by the Network in General Meeting;

(d) invest jointly in new structures should these be considered necessary by the Network in General Meeting;

(e) collaborate on the establishment of appropriate institutional arrangements and mechanisms to facilitate the co-operation of DFIs and to meet the development finance needs in the Region;

(f) co-operate in:

(i) capacity building initiatives, including the exchange of personnel;

(ii) strengthening ICT (as defined in Annex 7), the exchange of information and the sharing of data, all of which are aimed at information sharing and communication among DFIs and with other relevant institutions;

(iii) such policy research and analysis, and technical co-operation, as is required to facilitate and support interactions between DFIs more effectively;

(iv) setting up joint functional units, joint working meetings, and consultations on matters of common interest.

Article 4 – Operation of the Network

1. State Parties agree that the Network shall hold General Meetings of all of the DFIs as often as it is deemed necessary by the Network, but in any event at least twice every year.

2. State Parties agree that each DFI shall be represented at General Meetings by its Chief Executive Officer and, in the absence of that Chief Executive Officer, by that Chief Executive Officer's representative.

3. State Parties agree that at the first General Meeting the Network shall—

(a) appoint, from the CEOs, a chairperson and vice-chairperson all of whom shall serve for one year;

(b) determine the rules and procedures of General Meetings;

(c) elect a Board of Trustees to carry out oversight of the activities of the DFRC and report there on to the general meeting of the DFI network. The board shall determine its rules and procedures and shall meet at least four times a year

4. State Parties agree that a quorum for the General Meetings shall be at least one-half of the total number of DFIs (which one-half shall represent DFIs from at least one-third of all of the State Parties), (i) present in person at the General Meeting in question, or (ii) represented at that General Meeting by written proxy sent to the Secretariat prior to that General Meeting.

5. State Parties agree that that twenty-one (21)-calendar days notice of a General Meeting will be given to all CEOs.

6. State Parties agree that, unless otherwise decided by the Network at a General Meeting the Network shall be supported in its work, administrative and related activities by the Development Finance Resource Centre.

Article 5 – Decisions

1. State Parties agree that decisions and resolutions of any General Meeting shall be by consensus. Where consensus cannot be reached, decisions and resolutions of any General Meeting shall be taken by a majority of the CEOs (i) present at the General Meeting in question or (ii) represented at that General Meeting by written proxy sent to the Development Finance Resource Centre prior to that General Meeting.
2. State Parties agree that each CEO shall have one vote in any General Meeting and the chairperson or the vice-chairperson will have a second or casting vote.

Article 6 – Financing of the Network's activities

State Parties agree that the Network shall decide in a General Meeting on the mobilisation of resources and the pooling of facilities in order to finance the activities and administration costs of the Network.

Article 7 – Capacity building and strengthening of DFIs

1. State Parties agree that DFIs will, through the forum of the Network, co-operate in capacity building initiatives including the exchange of personnel and to this end that DFIs, through the forum of the Network, will:
    (a) co-operate in the development of appropriate training courses and programmes in order to further develop and enhance the skills of the management and staff of the Network;
    (b) facilitate the secondment of management and staff to provide for the practical transfer of knowledge and skills between and among DFIs;
    (c) encourage mentoring programmes for young professionals between and among DFIs;
2. State Parties agree that DFIs will, through the forum of the Network, collaborate in order to strengthen and enhance the creditworthiness of DFIs and, to this end that DFIs will, through the forum of the Network:
    (a) share experiences and practices in respect of development banking between and among DFIs;
    (b) share knowledge between and among DFIs in respect of credit-enhancement techniques, including the acquisition of international Credit Ratings;
    (c) with the assistance of the Development Finance Resource Centre, exchange experiences between and among DFIs in the development of credit and related policies, procedures and methodologies, including loan book management and Loan Loss Provisioning;
    (d) in co-operation with the Development Finance Resource Centre, develop a common approach between and among DFIs to Enterprise-wide Risk Management based upon best international practices, including a Capital Adequacy framework for the sound risk management of the respective DFIs;
    (e) foster exchange between and among DFIs of appropriate technologies.

Article 8 – The Development Finance Resource Centre

1. State Parties agree that consistent with Council decision of 2002 there is hereby recognised, under the principle of subsidiarity, the Development Finance Resource Centre as a SADC institution for purposes of supporting the capacity building and other initiatives of the Network.
2. State Parties agree that the mission of the Development Finance Resource Centre will be to act as a catalyst for sustainable development within the Network in order to improve investments into, and

enhance the prosperity of the Region. State Parties agree that in carrying out its functions the core responsibilities of the DFRC will be to:

(a) effect capacity building and training of managers and staff of DFIs;

(b) support the strengthening of DFIs in all sectors of their respective activities;

(c) offer a policy research and analysis capability for the Region;

(d) facilitate the mobilisation and sharing of information through a central hub for ICT (as defined in Annex 7);

(e) engage in confidence-building measures within the Region for purposes of supporting Investments;

(f) offer advisory services to the governments of State Parties and to DFIs in respect of development resources and financial services;

(g) identify and promote opportunities for co-operation and co-ordination in development finance in the Region;

3. State Parties agree that participation in the DFRC will be open to all DFIs in the Network. The members of the Board of the Development Finance Resource Centre will be drawn from the CEOs and senior management of DFIs and such other external partners (including private sector and international partners) as may be required.

4. State Parties agree that the major stakeholders of the Development Finance Resource Centre will be:

(a) beneficiaries of DFI programmes and Projects;

(b) funding agencies, including financial and investment institutions and international co-operating partners;

(c) the governments of State Parties.

5. State Parties agree that the main clientele of the Development Finance Resource Centre shall be the DFIs.

6. State Parties agree that the Network will in General Meeting determine suitable financing mechanisms, and suitable financing sources for recurrent expenditure, for funding the activities of the Development Finance Resource Centre, including the levying of membership contributions.

Article 9 – Co-operation on projects in the Region

1. State Parties agree that DFIs through the forum of the Network, will co-operate in mobilizing both financial and human resources for purposes of undertaking sustainable development, investment and trade finance projects in the Region.

2. State Parties agree that any DFI in the Network may participate in cross share holding in any other Network member.

3. For purposes of this Article 9, State Parties agree that co-operation on projects includes technical assistance in project identification, pre-feasibility and feasibility studies, project development, and technical assistance provided by any DFI during any project cycle.

4. State Parties agree that DFIs through the forum of the Network, will harmonize and apply international best practice credit risk management policies, procedures and methodologies to, the appraisal and approval of cross-border and other investment and development projects, and State Parties agree that DFIs will consider only sustainable, commercially viable Projects.

5. State Parties agree that if a State Party requests the involvement of a Network member in a non-financially viable but economically important project, such involvement will be carried out on a fee basis by the Network member provided such project is financed through public funds or grant funding derived from fiscal transfers or from multilateral financiers.

6. State Parties agree that when co-operating in the financing of investment Projects in any State Party, the DFIs, through the forum of the Network and any other co-financiers will undertake joint appraisals of such projects and use such opportunities, wherever possible, for the purposes of building capacity. State Parties agree that DFIs, through the forum of the Network will ensure that, in relation to a mezzanine debt structure involving both senior and junior debt, the parties holding the junior debt are satisfied that all relevant risks have been appropriately identified, priced and mitigated.

7. State Parties agree that DFIs may, through the forum of the Network, make financing available for sustainable development and investment projects by way of debt finance or by investing moneys in the form of equity capital or otherwise, in any Entity or Enterprise or Public Entity which is located in the Region, unless such financing activity is prohibited by the Establishment Agreements or the relevant enabling legislation of the DFIs.

8. State Parties agree that DFIs, through the forum of the Network, must, in co-operating in the financing of investment projects in the Region, and except as may be determined by the respective Establishment Agreements and the relevant enabling legislation of DFIs, explore, among other things, the use of co-financing, syndication, subordination, or other structured finance arrangements using, without limiting the generality of the foregoing, any one or more combinations of the following types of instruments or techniques:

   (a) long-term debt (of a maturity of 6 or more years);

   (b) medium-term debt (of a maturity of 3-5 years);

   (c) short-term debt (of a maturity of 1 -2 years);

   (d) lines of credit for on-lending purposes;

   (e) senior debt;

   (f) mezzanine debt;

   (g) junior debt;

   (h) project financing;

   (i) public-private investment partnerships;

   (j) variable, floating or fixed interest rates (including Floating Rate Notes);

   (k) equity;

   (l) swaps;

   (m) securitisation;

   (n) guarantees, whether partial or full;

   (o) any other tailored-credit enhancement instrument;

   (p) special purpose vehicles;

   (q) export/import finance;

   (r) short-term trade finance;

   (s) state loans.

9. State Parties agree that, for purposes of this Article 9, DFIs, through the forum of the Network, may finance Special Purpose Vehicles and pool such resources as may be required within such Special Purpose Vehicles.

10. State Parties agree that DFI's will, through the forum of the Network, for purposes of facilitating the use of the instruments contemplated in paragraph 7 above, co-operate in the creation of an enabling regulatory environment in order to develop vibrant financial and capital markets in the Region.

11. State Parties agree that, in accordance with paragraph 8 above, DFIs may, through the forum of the Network, engage in transactions amongst themselves aimed at financing different project cycles of a sustainable development or investment project, depending upon the nature of the project, the individual financing mandates of the respective DFIs and the financing requirements at each project cycle.

Article 10 – Preferred creditor status or *Pari Passu* ranking

1. State Parties agree that in order to enable DFIs, through the forum of the Network to operate effectively and with minimal risk in the financing of investment projects in the public sector, the State Party will grant Preferred Creditor Status to those DFIs which are or will be financing such investment projects.
2. State Parties agree that any State Party unable to grant Preferred Creditor Status, as contemplated in paragraph 1 above, will confer *Pari Passu* Ranking on the DFIs concerned.

Article 11 – Political risk insurance guarantee facility

State Parties agree that, in order to enable DFIs, through the forum of the Network to mitigate against and minimize Political Risk in the financing of public sector projects, they will support the Network in investigating the feasibility and provide resources towards the establishment of a regional insurance guarantee facility aimed specifically at insuring against Political Risk in such projects.

Article 12 – Waiver of State immunities and recognition and enforcement of foreign judgments and arbitral awards

1. Each State Party acknowledges that this Annex 9 contemplates co-operation in activities of a commercial nature. To this end, each State Party unconditionally and irrevocably agrees that:
    (a) if any proceedings, including any arbitration proceedings, are brought against that State Party or its assets in relation to any commercial transactions contemplated in this Annex 9 no immunity from such proceedings shall be claimed by or on behalf of that State Party or with respect to its assets;
    (b) that a State Party waives any right of immunity that it has, or may acquire in the future, in the jurisdiction of the Territory of any State Party in which any such proceedings are instituted;
    (c) that State Party consents, generally, to the recognition and enforcement, in the Territory of any other State Party, of any judgment or arbitral award against that State Party, in respect of the proceedings contemplated in sub-paragraph (a) above;
    (d) that State Party agrees that, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, shall govern the recognition and enforcement, against that State Party, of the judgment or arbitral award referred to in sub-paragraph (c) above.
2. Each State Party agrees that notwithstanding the provisions of paragraph 1 above, the waiver contemplated in paragraph 1 (b) above shall not extend to the assets of that State Party which are protected by diplomatic and consular privileges and immunities under the Vienna Convention on Diplomatic Relations 1961 and the Vienna Convention on Consular Relations 1963.

Article 13 – Activities undertaken on behalf of State Parties

State Parties agree that DFIs, through the forum of the Network, may carry out such activities as are requested by State Parties.

Article 14 – Settlement of disputes between DFIs

1. State Parties agree that the DFIs who are parties to any dispute or difference arising from the interpretation, application or implementation of this Annex 9 will use their best endeavours to settle such dispute or difference through good faith negotiations, conciliation or mediation.
2. State Parties agree that, if the dispute or difference referred to in paragraph 1 above cannot be settled through good faith negotiations, conciliation or mediation within three months after such dispute or difference has arisen, the parties to such dispute or difference will submit such dispute or difference to an arbitral tribunal in accordance with the provisions of this Article 14.
3. The arbitral tribunal contemplated in paragraph 2 above shall be composed of at least three arbitrators chosen from the roster of presiding arbitrators contemplated in paragraph 9 below.
4. Each DFI which is a party to the relevant dispute or difference shall nominate one of the arbitrators referred to in paragraph 3 to sit on the arbitral tribunal (which arbitrator shall not be a national of that State Party whose DFI is a party to the dispute or difference) within two months of receipt by that DFI of the request for arbitration.
5. The chairman of the arbitral tribunal shall be appointed, from among the arbitrators selected in terms of paragraph 4 above (or from the roster of presiding arbitrators contemplated in paragraph 9 below) by agreement of the parties to the relevant dispute or difference.
6. If (i) a party to the relevant dispute or difference fails to nominate its arbitrator, as contemplated in paragraph 4 above, or (ii) the parties to such dispute or difference fail to agree on the appointment of the chairman of the arbitral tribunal, as contemplated in paragraph 5 above, as the case may be, within three months of the request for arbitration referred to in paragraph 4 above, any party may approach the SADC Executive Secretary to make the appointment of such arbitrator or such chairman, as the case may be.
7. The chairman of the arbitral tribunal appointed in terms of paragraphs 4 or 5 above shall, in respect of the DFIs which are parties to the relevant dispute or difference, not be a national of any of those DFIs' State Parties.
8. State Parties agree that:
    (a) the arbitral tribunal contemplated in paragraph 3 above shall reach its decision by majority of votes, with each arbitrator having one vote and the chairman having a casting vote in the event of a deadlock;
    (b) the decision of the arbitral tribunal shall be final and binding on all the parties to the dispute or difference; and
    (c) the arbitral tribunal shall determine its own procedures and make its own determinations with regard to the costs of the relevant arbitration proceedings.
9. State Parties agree that:
    (a) DFIs, through the forum of the Network, will establish and maintain, a roster of at least 25 presiding arbitrators from a list of highly skilled professionals who are experienced in international finance and investment matters;
    (b) the presiding arbitrators referred to in sub-paragraph (a) will be appointed by consensus of the DFIs and without regard to the nationality of such presiding arbitrators, provided that the DFIs will, as far as possible, ensure that the roster of presiding arbitrators adequately represents all of the State Parties; and
    (c) Where there is no consensus of the DFIs' in appointing the presiding arbitrators referred to in sub-paragraph (a) such arbitrators will be appointed by the Chairman of the DFI Network.

Article 15 – Sanctions

1. State Parties recognise that sanctions may be imposed on any DFI Network member if that member engages in any or all of the following:

    (a) the member is in arrears with contributions to the Development Finance Resource Centre for a period exceeding one year, except on exceptional circumstances deemed acceptable by the Network;

    (b) the member fails to maintain an acceptable record of attendance, i.e. failure to attend 3 consecutive meetings of the Network in any one year, without good reason deemed acceptable by the Network;

    (c) the member engages in an act, or implements policies, that undermine the objectives of the Network and its DFRC, and results in reputational risk of the Network and its DFRC, as deemed by the Network as warranting such sanctions.

2. Sanctions as determined by the Network shall include among others, and on a case by case basis:

    a) Withdrawal of membership benefits, such as participation in research and training programmes, by the SADC-DFRC Executive;

    b) Withdrawal of funds committed to any project(s) benefiting the responsible DFI, except that projects already in commission may at the discretion of the Network be completed. But no further such resources shall thereafter be committed;

    c) Suspension from membership: may attend meetings, but may not speak nor vote;

    d) Expulsion from the DFI Network.

3. The member under sanction shall however continue to be liable for their portion of the contributions to the DFRC when due, unless it has otherwise terminated its membership, wherein such contributions as are due shall be set-off against any benefits enjoyed by the member from DFRC programmes. The DFRC shall then have the right to claim repayment of any such funds so expended on behalf of that member as a contractual obligation of the said member.

4. The sanctions referred to shall be applied by the respective organs of the DFI Network, except that the application shall be subject to the following procedure:

    a) After the third quarter of the Financial Year in which the Network member is in arrears, the DFRC will send a final reminder of the outstanding balance due;

    b) If there is still no payment made by the end of the Financial Year; or if the member has failed to attend 3 consecutive meetings of the Network in that year; or if the member has engaged in an act that is deemed to have damaged the reputation of the Network or its DFRC, the DFRC will notify the Network Member of its intention to impose the sanctions as per paragraphs 1 and 2 of this Policy;

    c) After the third Quarter of the Financial Year, a final notice will be issued to the Member, and a report tabled with the Board at their next meeting recommending expulsion. The member has a right to attend such meeting to present their case if any.

5. The decision to expel a member will be taken at a full meeting of the DFI Sub-committee on the recommendation of the Board, with a two-thirds majority decision of all members present.

6. An expelled member may be readmitted by a full meeting of the DFI Sub-committee, after careful consideration by and on recommendation of the Board, with a two-thirds majority decision of all members present.

Article 16 – Termination of membership in the Network

State Parties agree that except as provided for in Article 15 (3), the membership of a DFI in the Network may be terminated in the following instances:

a) On the winding up of the affairs of the DFI concerned by the State Party, and its ceasing to exist as an institution;

b) On expulsion of the DFI as set out in Article 15;

c) On the termination of the State Party's membership in SADC.

Annex 10

Co-operation on non-banking financial institutions and services

Preamble

The High Contracting Parties:

RECALLING that the Committee of Insurance, Securities and Non-Banking financial Authorities of SADC ("CISNA") was established in June 1998 by the Insurance, Securities and Non-Banking Financial Authorities in the SADC Region ("the Authorities");

NOTING that a strategy was developed to give direction to the activities Of CISNA and to contribute to the sound regulation, effective supervision and rapid development of the financial services industries;

REALISING that financial institutions supervised by the Authorities are critical for mobilising savings which are important for the expansion of productive capacity and that such institutions require a supporting regulatory framework:

(a) which will attract the investments required for creating economic development within the Region;

(b) for managing the financial risks faced by the financial institutions and users of financial products and services in the Region; and

(c) which must not only be efficient but also properly enforced;

AWARE that there should be close co-operation between the Authorities for the purpose of carrying out CISNA's objectives in the pursuit of complementary goals to achieve an integrated and credible SADC capital market;

NOTING the increasing need for internationalization, and harmonisation of financial institutions and the interdependence of the activities of financial institutions due to the use of modern technology and closer co-operation between financial institutions;

RECOGNISING the need to mobilise savings that can be used to expand SADC's productive capacity;

FURTHER NOTING that broad objectives have been set in the CISNA Strategic Plan to achieve the successful regulation and supervision of non-banking financial institutions and the need to share information.

CONSCIOUS that the achievement of the objectives referred to in the CISNA Strategic Plan will be accomplished at different times and in different phases;

NOTING the establishment of CISNA, the adoption of the CISNA MOU and the obligations imposed on the Authorities in the said MOU

HEREBY AGREE as follows:

Article 1 – Definitions

1. In this Annex, terms and expressions defined in Article 1 of the Treaty shall bear the same meaning unless the context otherwise requires.
2. In this Annex, unless the context otherwise requires:

   "**Authority**" means any organ or entity responsible for the regulation and supervision of non-banking financial institutions in their respective jurisdictions within SADC or any designated representative of such authority;

   "**CISNA**" means the Committee of Insurance, Securities and Non-banking Financial Authorities of SADC and the Authorities;

   "**CISNA Strategic Plan**" means the CISNA Strategic Plan set out in Addendum A to this Annex;

   "**non-banking financial institutions**" means any provider of financial advisory and intermediary services, collective investment schemes, insurance institutions and retirement funds regulated or supervised by their respective Authorities;

   "**financial products and services**" means long-term and short-term insurance contracts or policies, benefits provided by retirement funds, financial advisory and intermediary services, shares, debentures, bonds and other forms of securitised debt, futures and derivative products including commodity derivatives, participatory interests in collective investment schemes, and other securities traded in the respective jurisdictions of the Authorities;

   "**financial services industry**" means the supply of financial products and services by financial institutions throughout the Region;

   "**jurisdiction**" means the country, state or any other territory, as the case may be, in which an Authority can exercise its powers;

   "**IAIS**" means the International Association of Insurance Supervisors;

   "**IOPS**" means the International Organisation of Pension Regulators and Supervisors;

   "**IOSCO**" means the International Organisation of Securities Commissions;

   "**Requested Authority**" means the Authority to whom a request is made in terms of this Annex;

   "**Requesting Authority**" means the Authority making a request pursuant in terms of this Annex;

   "**securities**" means bonds, shares, stock, debentures, securitised debt instruments, equity instruments, debt instruments, futures and derivative instruments (including commodity derivatives), participatory interests in collective investment schemes, and any similar securities to, or combination of, the aforementioned.

Article 2 – Establishment of the Committee of Insurance Securities and Non-Banking Financial Authorities

There is hereby established a Committee of Insurance, Securities and Non-Banking Authorities of the Southern African Development Community.

Article 3 – Communication and exchange of information

1. There should be high-level contact between the Authorities in order to inform each other of any significant changes in their respective regulatory environments with a view to harmonizing each Authority's approach on the subject covered by the shared information.

2. The Authorities shall put one another on their mailing lists for the receipt of periodicals and other important communications.
3. The Authorities will encourage and enhance contact amongst the staff of the Authorities

Article 4 – Information sharing

1. The Requested Authority should use its best efforts to obtain information from its own records or from institutions within its jurisdiction in order to provide a Requesting Authority with information that will allow such authority to fulfil its regulatory and supervisory responsibilities.
2. If any Authority comes into possession of information that would be likely to assist another Authority in administering or enforcing the laws or regulations for which it is responsible, the first-mentioned Authority will endeavour to notify the other Authority of the existence of that information.

Article 5 – Request for information and assistance

1. The provisions of the Annex on the Exchange of Information and Surveillance of Securities, Insurance and Retirement Activities will, with the necessary changes, apply to:
    (a) requests for information and assistance;
    (b) the execution of such requests;
    (c) the permissible uses of information;
    (d) the rights of Requested Authorities;
    (e) confidentiality; and
    (f) the costs of investigations.

Article 6 – Compliance with international standards (diagnostic exercise)

1. In order to assist the legislature with the drafting or amending of legislation that is compliant with international standards, the Authorities shall:
    (a) undertake in their respective jurisdictions a diagnostic study, analysis or assessment that focuses primarily on assessing the regulatory framework and supervisory practices in terms of the objectives and principles of the IOSCO, the IAIS and the IOPS;
    (b) before submission of the assessments verify such assessments through Authority peer or third party review; and
    (c) adopt and develop the required structures in line with the objectives and principles recommended by IOSCO, IAIS and IOPS, if the assessment demonstrates that is what is required.

Article 7 – Relationship with international bodies

1. The Authorities should:
    (a) become members of and liaise with IOSCO, IAIS and IOPS; and
    (b) disseminate to other Authorities, who are not members of IOSCO, IAIS and IOPS, information derived from those institutions.

Article 8 – Development programme

1. State Parties agree that, the Authorities should, in order to develop focused programmes for their respective financial services industries, assess the level of development of their non-banking financial institutions with regard to, *inter alia*:

   (a) the supply and use of financial products and services;

   (b) level of competition; and

   (c) any barriers to development.

Article 9 – Harmonised financial regulatory regime

The Authorities shall work towards the harmonisation of their respective laws and regulations and regulatory and supervisory practices with the aim of preventing or reducing regulatory arbitrage.

Article 10 – Training and education of staff

The Authorities shall:

(a) ensure that both local and foreign training opportunities are developed, expanded and hosted throughout the Region, and made available to the staff of all Authorities;

(b) identify their training needs;

(c) explore the development programme(s) suitable for their needs;

(d) assist as much as possible with the presentation of such training programmes;

(e) organise and encourage attachments throughout the Region or abroad to provide on-the-job training;

(f) organise attachments and shall mutually agree on the duration thereof.

Article 11 – Cross-border co-operation among Authorities

1. The Authorities:

   (a) shall identify cross-border activities that could form the subject of cross-border co-operation amongst Authorities, and between Authorities and foreign counterparts (i.e. the prevention of unscrupulous operations, increased access to information, dual listings, the introduction of legislation to prevent money laundering, including the financing of terrorism); and

   (b) are committed to facilitate mutual exchange of information and assistance.

Article 12 – Consumer awareness campaigns

1. The Authorities shall:

   (a) assist each other with the introduction of suitable consumer awareness campaigns for their respective jurisdictions;

   (b) share with one another problems identified and methodologies used to promote their respective awareness campaigns;

   (c) identify the consumer awareness campaigns and initiatives already introduced in their respective jurisdictions to inform and educate consumers of financial products and services; and

(d) assess whether adequate programmes have been introduced and implement initiatives that will enhance consumer awareness.

Article 13 – Meetings and subcommittees

1. The Authorities shall meet as often as deemed necessary but at least twice each year; and shall by consensus, appoint a Chairperson and Vice-Chairperson for a period of not more than two years.
2. The Chairperson and the Vice-Chairperson so appointed will represent CISNA at meetings of the Senior Treasury Officials.
3. The Authorities shall determine the rules and procedures of all meetings.
4. The Authorities may, by consensus, set up such sub-committees as may be deemed necessary to carry out any specific assignment or duty of CISNA.

Article 14 – Referrals

If any Authority believes that a matter falls more appropriately within the jurisdiction of another Authority, or that some joint action is required in dealing with the matter, such matter should be referred to the other Authority as soon as is reasonably practicable.

Article 15 – Cession and assignment

An Authority or designated representative of such Authority may not cede, assign or transfer any right or obligation granted under this Annex without the prior written consent of all the Authorities, which consent shall not be unreasonably withheld.

Article 16 – Consultations

The Authorities shall assist one another to develop approaches for strengthening the regulation, supervision and the efficiency of the financial institutions in the Authorities' respective jurisdictions while avoiding, where possible, conflicts that may arise from the application of differing regulatory and supervisory practices.

Annex 11

Co-operation in SADC Stock Exchanges

Preamble

The High Contracting Parties:

RECALLING the provisions of Chapter Eight of the Protocol which requires co-operation in Regional Capital and Financial Markets,

CONSCIOUS of a collective duty to attain the objectives SADC, to promote and transform the whole Southern African Region into a dynamic and well integrated economic block; to achieve the vision of the Committee of SADC Stock Exchanges (COSSE) to establish by the year 2006, an integrated real time network of the national securities markets within SADC; to pave the way towards cross-border listings and, trading and investments among the different Member Exchanges of SADC in order to facilitate the process of financial integration within the Region;

DETERMINED to take the necessary steps to maximise the co-operation of Member Exchanges and to encourage the development of a harmonised securities market environment within the Region;

RECOGNISING the need to cooperate with national regulators as well as CISNA in the pursuit of complementary goals to achieve an integrated and credible SADC capital market;

CONVINCED of the need to improve the operational, regulatory and, technical underpinnings and capabilities of SADC Exchanges to make their securities markets more attractive to both regional and international investors; to increase market liquidity and enhance trading in various securities and financial instruments; to promote the development of efficient, fair and transparent securities markets within the Region; to encourage the transfer of the intellectual capital of the securities markets and the technical expertise among the Member Exchanges of COSSE; and to encourage interaction among market participants.

NOTING AND CONFIRMING the establishment of COSSE, the COSSE MOU recording the steps to be taken by Member Exchanges to build and enhance co-operation and to communicate and co-ordinate their efforts for their mutual benefit and that of the Region;

THE STATE PARTIES HEREBY AGREE as follows:

Article 1 – Definitions

1. In this Annex, terms and expressions defined in Article 1 of the Protocol shall bear the same meaning unless the context otherwise requires.

2. In this Annex, unless the context otherwise requires:

   "**COSSE**" means the Committee of SADC Stock Exchanges;

   "**market participant**" means any person authorised to deal in financial instruments and/or their intermediaries in the jurisdiction of any of the Member Exchanges;

   "**Member Exchange**" means a SADC Securities or Financial Exchange;

Article 2 – Co-operation

In committing to the further development and growth of SADC, Member Exchanges shall extend multilateral co-operation and assistance to one another in, but not limited to, the following areas:

1. **Communication and exchange of information**

   (i) Chief Executives of Member Exchanges must liaise with one another in order to inform all Member Exchanges of prospective major changes to their respective macro-infrastructures and regulatory environments with a view to seeking where practicable, harmonisation, of each Exchange's approach to the respective Authorities;

   (ii) The Member Exchange shall place all other Member Exchanges on their mailing lists for distribution of periodicals and other important communications;

   (iii) The Member Exchanges shall encourage and enhance contact and communications between market participants and Member Exchanges.

2. **Information sharing**

   (i) Where a Member Exchange in compliance with its regulatory responsibilities requires, information relating to members of another Member Exchange or to any transaction in financial instruments effected on either Member Exchange, the Member Exchange from which the information is requested, shall use its best efforts, to obtain such information for the requesting Member Exchange;

   (ii) The information referred to in paragraph 2(i) includes but is not limited to information and documents relating to market trading clearing and the identity, trading activity and positions of its members and customers;

(iii) Requests for information in terms of paragraph 2 shall be in writing and delivered to the registered address of the Member Exchange from which such information is requested;

(iv) Any change in the registered address of a Member Exchange shall be promptly notified to all Member Exchanges;

(v) A request for information must include the purpose of the request, and specify the information sought. Member Exchanges must co-operate and communicate with one another so that all requests for information and all information provided in response to such requests are clearly understood;

(vi) If a Member Exchange believes that a request falls outside the scope of this Annex 10, or has reason to query the information requested, it shall provide in writing reasons for its belief or query to the requesting Member Exchange. The Member Exchanges shall endeavour to resolve in good faith, any disagreement between them regarding any request for information or any response to such request;

(vii) A Member Exchange shall use its best efforts to procure the information requested and shall transmit such information to the requesting Member Exchange as expeditiously as possible;

3. **Training**

(i) Secondments of staff shall be encouraged among the Member Exchanges. The duration of the secondments, the programme and a clear identification of areas to be covered will be agreed by the Member Exchanges concerned;

(ii) Areas of training shall include, listing requirements, surveillance methodology, management and market information systems, data analysis and dissemination mechanisms;

(iii) Co-operation in areas of market research, development and organisational structure shall be enhanced and regularised.

4. **Development of securities exchange professionals**

Member Exchanges shall provide one another with information on the Stock Exchange Examinations Syllabus and assist one another in setting up standard courses for market professionals.

5. **Surveillance and self-regulation**

Member Exchanges shall, to the extent permitted by applicable legislation, co-operate and share experiences in matters pertaining to Market Surveillance and Self-Regulation.

6. **Cross-border listings**

With a view to offering entrepreneurs the opportunity of a listing on a securities exchange, Member Exchanges shall share individual experiences and initiatives including two-tier markets, and identify factors in the micro and macro environments that impede market growth. Member Exchanges shall also explore opportunities for the development of joint products and the cross listing of companies on the Member Exchanges. Cross-market harmonisation of listing requirements should be pursued on an on-going basis.

7. **New investors**

Recognising the need to develop the economies of the State Parties, improve market liquidity and to offer the benefits of securities exchange investments to the widest possible eligible sections of their respective populations, the Member Exchanges shall share and discuss with one another their initiatives to encourage investors. Member Exchanges must also identify problems that inhibit the broadening of share ownership and discuss solutions for solving those or any other problems.

Article 3 – Confidentiality

1. Information that is obtained by Member Exchanges in terms of this Annex, which is not otherwise publicly available, is confidential and subject to paragraph 2 no Member Exchange shall disclose such information
2. The information provided by the Member Exchanges may not be given to any third party without the prior written consent of the originating party, except that neither party shall be precluded from:
    (a) using the information in formal regulatory or legal proceedings or investigations initiated by the recipient for the purpose of carrying out its regulatory responsibilities;
    (b) furnishing such information to the relevant regulatory body, or to any other regulatory authority having responsibility for the supervision or regulation of investment business, trading in financial instruments listed in that country, or for any other financial services; or
    (c) releasing the information under compulsion of law.

Article 4 – Limitation of liability

1. No Member Exchange shall be liable for any loss sustained by or damage caused to the other Member Exchange or to any other person to whom information is disclosed in terms of this Annex, as a result of the disclosure of such information or of any act done or omitted to be done in terms of this Annex.
2. A party referred to in paragraph 1 above shall however be liable for any loss or damage caused by any intentional wrongful act in using such information provided in terms of this Annex, in a manner which does not accord with the provisions of this Annex.

Article 5 – Cession and assignment

No Member Exchange may cede, assign or in any other manner transfer any of its rights or obligations under this Annex without the prior written consent of the other Member Exchanges.

Article 6 – Implementation strategy

1. In order to implement this Annex, Member Exchanges shall:
    (a) actively support initiatives aimed at developing skills and best practices across SADC, including exchanges of personnel and information, mutual assistance and training events;
    (b) use their best efforts to make available to one another, as and when required, at mutually convenient times, Senior Officers, with the Member Exchange requesting the visit being responsible for its costs; and
    (c) second Member Exchange personnel to the various Member Exchanges as and when the need arises and on reasonable terms.
2. COSSE shall be responsible for the monitoring and follow-up of the undertakings of the Member Exchanges under this Annex.
3. Member Exchanges shall report to COSSE, at its meetings, on the steps taken in relation to the fulfilment of their obligations under this Annex 10.

Article 7 – Admission of new members

New members wishing to become a party to this Annex shall submit an application to COSSE, which after considering the application, shall inform the applicant, in writing of its decision to grant or decline any such applicant accession to the status of Member Exchange.

