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**EXPLANATORY MEMORANDUM**

**ON ANNEX III TO THE COMBINED BORDER CONTROL POST AGREEMENT BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)**

**AND**

**THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE (MOZ)**

**TITLE**

**CONCERNING ESTABLISHING, OWNING, MANAGING AND MAINTAINING OF  
INFRASTRUCTURE, FACILITIES, ASSETS AND AMENITIES FOR THE IMPLEMENTATION OF  
ONE-STOP BORDER POSTS**

**INTRODUCTION**

The Agreement between the Government of Republic of South Africa and the Government of the Republic of Mozambique on Combined Border Control Posts on the Mozambique- South African Border provide in Article 3: "Each Party shall appoint a Competent Authority tasked with the administration and implementation of this Agreement, and shall communicate the details of the Competent Authority to the other Party through the diplomatic channel."

Further, Article 17 of the Agreement requires that :"( 1) The Competent Authorities shall adopt such Annexes as are necessary to facilitate the implementation of this Agreement. Such Annexes shall enter into force after approval by the Parties in accordance with their constitutional requirements and shall form an integral part of this Agreement.(2) All administrative and operational procedures and/or functions related to combined border control actions shall be determined by Standard Operating Procedures to be negotiated between the Competent Authorities."

Teams from South Africa (which included officials from SARS, Department of Home Affairs and other organs of state and members of SAPS) and representatives from Mozambique have held discussions on the development of the Annexes, which are now completed.

## CLAUSE 1

### SCOPE OF APPLICATION

**TEXT:**

This Annex applies to the establishing, owning, managing and maintaining of infrastructure, facilities, assets and amenities for the implementation of one-stop border posts between the Governments of the Republic of South Africa and the Republic of Mozambique.

**This clause states the Annex applies to the establishment, ownership, management and maintenance of infrastructure, facilities, assets and amenities for the implementation of one-stop border posts.**

## CLAUSE 2

### OBJECTIVE

**TEXT:**

The objective of this Annex is to provide for –

- (a) the establishment and use of the infrastructure, facilities, assets and amenities that constitute one-stop border posts; and
- (b) the ownership, management and maintenance of the infrastructure, facilities, assets and amenities referred to in paragraph (a).

**According to this clause the objective of the Annex is to provide for:**

- (a) the establishment and use of the infrastructure, facilities, assets and amenities that constitute one-stop border posts; and
- (b) the ownership, management and maintenance of the infrastructure, facilities, assets and amenities so established.

## CLAUSE 3

### ESTABLISHMENT OF ONE-STOP BORDER POST INFRASTRUCTURE AND FACILITIES

**TEXT:**

(1) The Parties agree to establish –

- (a) Infrastructure and facilities located on their territory to enable the use of bulk services;
- (b) One-stop border post road and rail infrastructure in terms of commonly agreed standards and guidelines; and
- (c) Infrastructure for the use of information and communications technology.

(2) Infrastructure and facilities so established shall ensure the appropriate separation of outward movement from inward movement and shall further ensure effective access control to and from control zones.

Sub clause (1) provides for an in principle agreement between the Parties in terms of which they undertake to establish:

1. Infrastructure and facilities located in their territory to enable the use of bulk services;
2. One-stop border post and rail infrastructure that must comply with commonly agreed standards and guidelines;
3. Infrastructure for the use of information and communications technology.

Sub clause (2) states that the infrastructure and facilities so established must ensure:-

- proper division between the outward and inward movement ,and
- effective access control to and from control zones.

#### CLAUSE 4

#### OWNERSHIP, USE AND ACCESS

##### TEXT:

(1) Ownership shall vest in the Party on whose territory such infrastructure, facilities, assets and amenities in control zones have been erected or installed.

(2) The respective Parties shall establish and maintain a register of infrastructure, facilities, assets and amenities in their possession that form part of the one-stop border post.

(3) In the event that the infrastructure, facilities, assets and amenities established on the territory of the one Party are closed by common agreement for whatever reason, the Party having established such infrastructure, facilities, assets and amenities may not demolish these and shall be compensated on agreed terms.

(4) Each Party shall have full use of and access to all infrastructure, facilities assets and amenities located within the control zones except as provided for in Article 11 of the Agreement.

(5) The Competent Authorities shall agree on measures for the authorisation, identification and access control of all categories of visitors and officials to areas within the control zones.

Sub clause 1 sets the principle position that the Party on whose territory infrastructure, facilities, assets and amenities in control zones have been erected or installed is the owner thereof.

Sub clause 2 made it mandatory for the Parties to keep a register of the infrastructure, facilities, assets and amenities in their position that forms part of the one-stop border posts.

Sub clause 3 states that in the event that the infrastructure, facilities, assets and amenities established are closed the Party having established and erect such infrastructure, facilities, assets and amenities may not demolish these and shall be compensated on agreed terms.

Sub clause 4 provides that each Party shall have full use of and access to all infrastructure, facilities assets and amenities located within the control zones except as provided for in Article 11 of the Agreement.

Sub clause 5 states that the Competent Authorities shall agree on measures for the authorisation, identification and access control of all categories of visitors and officials to areas within the control zones.

## CLAUSE 5

### SHARED USE OF INFRASTRUCTURE, FACILITIES, ASSETS AND AMENITIES

**TEXT:**

The Competent Authorities shall agree on the infrastructure, facilities, assets and amenities to be used on a shared basis and on the procedures for such shared use, as well as on their respective rights and responsibilities.

This clause obliges the Competent Authorities to set out by agreement the use and sharing of the infrastructure, facilities, assets and amenities and the rights and responsibilities of each in relation to the sharing and use thereof.

## CLAUSE 6

### MOVABLE ASSETS

**TEXT:**

- (1) The Competent Authorities of both Parties shall agree on measures to monitor and manage the installation of movable assets to be used for the purposes of border control.
- (2) The Party responsible for such installation shall remain responsible for the maintenance, upkeep and replacement of such movable assets, including relevant costs and maintenance contracts.
- (3) The Parties shall ensure that sufficient infrastructure, resources and information and communications technology equipment, including electronic data capturing devices, are provided to enable the proper performance of their functions and duties for the purposes of border control.
- (4) The Parties shall operate and maintain their current information and communications technology systems in accordance with their applicable domestic laws and border control procedures.
- (5) The Parties may install a centralised information and communications technology system in support of the exchange of information for the purposes of border control. The information maintained on national systems may be submitted to such a system as per the provisions of Annex II to the Agreement.

Sub clause 1 imposes on the Competent Authorities the obligation to agree on and outline the measures to monitor and manage the installation of movable assets to be used for the purposes of border control.

Sub clause 2 places an obligation on the Party responsible for an installation of movable assets contemplated in sub clause 1 to remain responsible for the maintenance, upkeep and replacement of such movable assets, including relevant costs and maintenance contracts.

Sub clause 3 compel the Parties to ensure that sufficient infrastructure, resources and information and communications technology equipment, including electronic data capturing devices, are provided to enable the proper performance of their border control functions and duties at one-stop border posts.

Sub clause 4 obliges the Parties to operate and maintain their current information and communications technology systems in accordance with their applicable domestic laws and border control procedures.

Sub clause 5 provides for the exercise of discretion by the Parties in respect of the installation of a centralised information and communications technology system in support of the exchange of information for the purposes of border control. It further provides that the information maintained on national systems may at the discretion of the Parties be submitted to such a system.

## CLAUSE 7

### MANAGEMENT AND MAINTENANCE

**TEXT:**

(1) The Competent Authorities shall agree on –

(a) the appropriate mechanism for ensuring the joint management and maintenance of one-stop border post infrastructure, facilities, assets and amenities; and

(b) measures for controlling the access of service providers and the employees, vehicles, materials and equipment to relevant areas, regardless of the territory on which such areas are located, including the suspension of border formalities for the purposes of construction and maintenance.

(2) Costs of joint management and maintenance shall be apportioned by means of a mechanism to be agreed by the Parties, and in accordance with the domestic law in force in the territories of the Parties.

Sub clause 1 places an obligation on the Competent Authorities to consult each other and reach agreement on: (a) the appropriate mechanism for ensuring the joint management and maintenance of one-stop border post infrastructure, facilities, assets and amenities; and (b) a system for determining access control of service providers and the employees, vehicles, materials and equipment to relevant areas, regardless of the territory on which such areas are located, including the suspension of border formalities for the purposes of construction and maintenance.

Sub clause 2 makes the apportionment of costs associated with the joint management and maintenance of one-stop border post infrastructure, facilities, assets and amenities obligatory and the mechanism to calculate such apportionment to be agreed upon by the Parties, and in accordance with the domestic law in force in the territories of the Parties.

**CLAUSE 8**  
**SETTLEMENT OF DISPUTES**

**TEXT:**

Any disputes that may arise in the interpretation and implementation of this Annex shall be settled in accordance with the provisions of Article 20 of the Agreement

This clause provides for the Parties to settle disputes, arising from this Annex, in accordance with Article 20 of the Agreement i.e. "...settle amicably through consultation or negotiation between the Parties."

**CLAUSE 9**  
**AMENDMENT**

**TEXT:**

Any amendment to this Annex shall be in accordance with the provisions of Article 21 of the Agreement.

This Clause provides that any amendment to this Annex shall be in accordance with Article 21 of the Agreement i.e.:

- (a) This Annex may be amended at any time;
- (b) The amendment must be by mutual consent of the Parties ;
- (c) The amendment must be communicated through an Exchange of Notes between them (Parties) through the diplomatic channel;
- (d) The entry into force of the Amendments shall be specified in the Exchange of Notes; and
- (e) The amendment shall be subject to the constitutional requirements of the respective Parties.

**CLAUSE 10**  
**RESERVATIONS**

**TEXT:**

No reservation to this Annex is permitted.

This clause is self explanatory.

This clause provides that the acceptance of this Annex is unconditional and shall be binding unreservedly.

**CLAUSE 11**  
**ENTRY INTO FORCE**

**TEXT:**

This Annex shall enter into force in accordance with the provisions of Article 17(1) of the Agreement.

This Clause provides that this Annex shall enter into force in accordance with Article 17(1) of the Agreement i.e. "*...Annexes shall enter into force after approval by the Parties in accordance with their constitutional requirements...*"

