

**BRIEFING NOTE TO THE STANDING COMMITTEE ON FINANCE (SCOF) CONCERNING THE ESTABLISHMENT OF A BILATERAL LEGAL FRAMEWORK TO SUPPORT THE IMPLEMENTATION OF A COMBINED BORDER CONTROL POST (ONE STOP BORDER POST) BETWEEN SOUTH AFRICA AND MOZAMBIQUE, (Date to be determined)**

**1. SUBJECT**

Establishment of a Bilateral Legal Framework to support the implementation of a Combined Border Control Post (One Stop Border Post) between the Republic of South Africa and the Republic of Mozambique at the Lebombo-Ressano Garcia border crossing.

**2. PURPOSE**

To follow-up on the preliminary briefing concerning the Bilateral Legal Framework (BLF) provided to the Standing Committee on Finance (SCOF) on 11 October 2011 with a view to:

- a) Informing the SCOF regarding the status of the Bilateral Legal Framework, required to support the establishment of a One Stop Border Post (OSBP);
- b) Providing a foundation for the ratification process to follow once all instruments have been signed; and
- c) Obtain the SCOF's "in principle" approval for the process to move forward with regard to the bilateral signature of the Annexes with Mozambique

**3. BACKGROUND**

- 3.1 The establishment of a "One Stop" Border Post between South Africa and Mozambique at the present Lebombo and Ressano-Garcia border crossing has long been on the bilateral cooperation agenda. Establishing such "One Stop" Border Posts is also a prominent matter on the regional agenda of both the Southern African Customs Union (SACU) and the Southern African Development Community (SADC).
- 3.2 Bilateral deliberations between the RSA and Mozambique on establishing a combined border post at the Lebombo-Ressano Garcia border crossing, along the Maputo Corridor, resulted in the signature of the Bilateral Agreement on 18 September 2007. The Agreement provides for Annexes to be developed in order to collectively establish a Bilateral Legal Framework to support combined border crossing environments (also referred to as "One Stop Border Posts").
- 3.3 To ensure effective and coordinated border controls, the Bilateral Legal Framework provides for the extra-territorial application of border controls, in designated areas within the control zone of a "One Stop Border Post", by officers deployed in each other's territory. Combining border control operations will reduce border processing times along the Maputo Corridor (the

N4), reducing logistics costs, while eliminating operational and enforcement gaps associated with conventional border crossings.

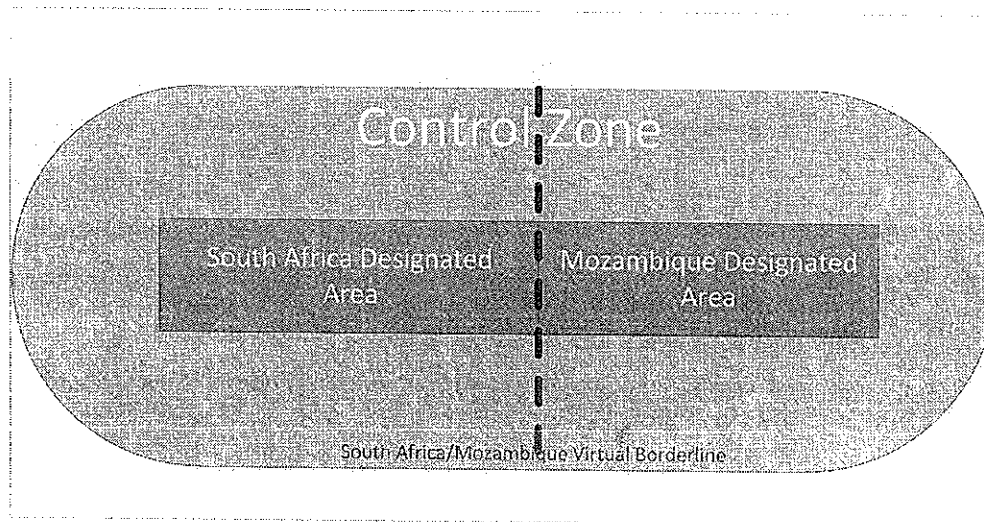


Figure 1: OSBP Defined Areas

3.4 Relevant Annexes have been developed and are ready for signature by the two Parties. Once signed, the Bilateral Legal Framework will then return to Parliament for formal approval and ratification, as provided for in Section 231(2) of the Constitution, and incorporated into the domestic legislation of the Republic.

#### 4. DISCUSSION

##### 4.1 The Role of SARS

4.1.1 The Customs mandate of SARS is derived from the SARS Act, the Customs and Excise Act and other legislation relating to the movement of goods into, from and through the Republic.

4.1.2 Establishing a One Stop Border Post (OSBP) is a multi-disciplinary matter that involves all departments and agencies mandated to give effect to some form of border control at ports of entry in terms of national legislation. It is, therefore, much wider and far reaching than just SARS and Customs.

4.1.3 SARS is currently mandated as Chair of the Border Control Operational Coordinating Committee (BCOCC), constituted of all Departments and agencies with a port of entry border control mandate, to coordinate and facilitate work aimed at ensuring more efficient and effective coordination of border control operations.

4.1.4 The Inter Agency Clearing Forum (IACF), chaired by the Department of Home Affairs and consisting of the Heads of the various Departments and Agencies with some form of border control mandate, has identified the issue of OSBP as a priority project and requested SARS to coordinate and facilitate on this on behalf of the IACF.

4.1.5 The nature of SARS' role in these forums is to coordinate and facilitate the achievement of a common approach and understanding.

#### **4.2 Why establish a One Stop Border Post?**

4.2.1 A key goal of Government with regard to controlling international travel and trade is to find the most effective and efficient manner in which to not only facilitate legitimate movement of people, goods and conveyances, but to also ensure the safety and security of society and the economy from illicit, dangerous and harmful movement of goods and people and assure the sovereignty of the Republic. Bottlenecks at Border Posts not only impede the facilitation of movement, but also serve to undermine safety and security.

4.2.2 In addition to the normal benefits that flow from a One Stop Border Post, the topography of the Lebombo Border Post provides certain physical constraints for expansion due to the gradient of the site. The Lebombo Border Post is situated approximately 170m above sea level in the Lebombo Mountain Range. The mountainous terrain is dissected by rivers providing natural gateways. The Crocodile River in the north and the Komati River in the south, converge in the gorge adjacent to the border post.

4.2.3 As one solution, an OSBP arrangement does not seek to eliminate formalities or controls, but to provide for a single, shared environment to support more effective coordination thereof.

4.2.4 The essential feature of a "One Stop Border Post" arrangement is that the cross-border movement of international travel and trade stops only once in a particular, dedicated environment in order that all border formalities and controls of both countries may be applied, as opposed to the conventional practise of stopping each time at separate facilities on either side of a common border crossing.

4.2.5 Coordinated border control operations in a combined and shared environment will serve to reduce border crossing times for persons and goods by eliminating multiple stops and redundant and duplicate processes and procedures, whilst also enabling the simplification of common processes. It will also facilitate the advanced and integrated management of risk and information. This will result in reduced logistics costs to trade and the economy, whilst also assuring simplified border control and reduced administrative burden on both the state and the users of such a border crossing.

4.2.6 A shared and coordinated control environment will also enhance the oversight and monitoring of cross-border flows in order to reduce opportunities for illicit movement and minimise potential operational and enforcement gaps.

#### **4.3 One Stop Border Posts in Africa**

4.3.1 The Programme for Infrastructure Development in Africa (PIDA) of the African Union (AU) identified a need for 73 OSBP's across the continent. These are to be constructed over the

coming years along various transport corridors under development, in order to facilitate trade and reduce the impact of multiple border crossings on the cost of trade to the many land-locked, developing states on the continent.

4.3.2 The United Nations Economic Commission of Africa (UNECA) has identified four (4) OSBP's as pilot projects. These are between: Burkina Faso and Togo at the Cinkase border crossing; Benin and Nigeria at the Sèmè-Krake Plage border crossing; Kenya and Uganda at the Malaba border crossing; and Zambia and Zimbabwe at the Chirundu border crossing. The African Development Bank (AFDB) has identified a further 55 at various stages of planning and feasibility studies.

4.3.3 The regional integration agendas of both the Southern African Development Community (SADC) and the Southern African Customs Union (SACU) have highlighted the implementation of OSBP's as a critical feature for facilitating regional trade and economic development.

4.3.4 According to UNECA, a key constraint with regard to the establishment of OSBP's remains the lack of appropriate legal frameworks to support them

#### **4.4 Why a Bilateral Legal Framework?**

4.4.1 In accordance with internationally accepted principles, sovereign states generally only have jurisdiction over their own national territory and not over that of any other sovereign state. Sovereign states may, however, formally agree with each other as to any specific arrangement for the manner in which they will or will not allow the exercise of each other's jurisdiction on own national territory.

4.4.2 A combined border control environment will require that the domestic border control laws and regulations of each country can be applied at a defined location within the sovereign territory of the other country.

4.4.3 Furthermore, each country will need to be able to physically deploy their own officers, responsible for applying such border controls, at any such location within the sovereign territory of the other country.

4.4.4 Each country will also need to have appropriate jurisdiction over the application of their respective domestic border controls in the territory of the other country, including jurisdiction over own personnel and over the processes of enforcing such controls over the full range of available instruments, including litigation.

4.4.5 The Bilateral Legal Framework will establish the specific parameters within which each South Africa and Mozambique agree to allow each other to exercise relevant jurisdiction within their own territories, including extent and location.

#### **4.5 Consultation Process**

- 4.5.1 Since July 2010, SARS has been coordinating an inter-departmental process involving legal resources from various agencies and Departments that were mandated to finalise the Bilateral Legal Framework. Participants in this process collectively drafted revised Annexes, approved the draft text for bilateral consultation with Mozambique and approved the final text, on which bilateral consensus has been reached.
- 4.5.2 The National Departments that participated in the inter-departmental process to finalise the Bilateral Legal Framework included: Home Affairs, Health, Environmental Affairs, Transport, Public Works, Agriculture, Fisheries and Forestry, the South African Police Service, the State Security Agency and the South African Revenue Service.
- 4.5.3 Other parties consulted or briefed during this process included: the SA National Roads Agency Limited (SANRAL), the Cross-Border Road Transport Agency (CBRTA), Transnet, both Offices of the Chief State Law Adviser and the Director General Cluster Committees on Justice, Crime Prevention and Security (JCPS) and International Cooperation, Trade and Security (ICTS).
- 4.5.4 In terms of the bilateral consultations, a mandate was obtained from the inter-departmental process to work towards consensus text with Mozambique and to consult the inter-departmental process on significant changes.
- 4.5.5 From October 2010, the Department of Home Affairs, SAPS and SARS consulted extensively with Mozambique and the inter-departmental process, with final consensus text being obtained in June 2011.
- 4.5.6 Cabinet was briefed in August 2011 on progress towards finalising the Bilateral Legal Framework and approved that the relevant processes be undertaken to ensure that the Bilateral Legal Framework be finalised and tabled for approval and ratification to Parliament.
- 4.5.7 The Standing Committee on Finance (SCOF) was provided with a preliminary briefing on the Bilateral Legal Framework in October 2011, in preparation for bilateral signature and subsequent approval and ratification by Parliament.

#### **4.6 The bilateral Agreement as foundation of the Bilateral Legal Framework**

- 4.6.1 The main Bilateral Agreement was signed by both countries on 18 September 2007. It has been ratified by Mozambique, without the supplementary Annexes. The Agreement remains to be ratified by South Africa, which intends doing such, along with the Annexes, once signed.
- 4.6.2 The 2007 Agreement constitutes the basis of the Bilateral Legal Framework. The aim of the Agreement is "...to provide for the implementation of one-stop border posts between [Mozambique and South Africa] as agreed from time to time". The 2007 Agreement provides, inter alia, for:

- Adjacent border posts to be combined into a One Stop Border Post;
- Distinct areas (“Control Zones”) to be established within a combined environment in which all border control legislation of both countries may be applied to all cross-border movement (dual, extra-territorial border control jurisdiction);
- The deployment of and command over officials within such areas on foreign soil;
- The clear sequencing of border control jurisdiction according to formalities being applied, with exit formalities (and jurisdiction) preceding entry formalities (and jurisdiction);
- Revenues, fines and duties collected and goods detained and/or seized to be transferred to one’s own country; and
- Each country to have an area within a Control Zone designated as being for “exclusive” use.

4.6.3 The Agreement also provides for Annexes thereto, to facilitate its implementation.

#### 4.7 The Annexes as supplements to the Bilateral Legal Framework

4.7.1 The Annexes have been agreed to bilaterally at the level of officials. These are currently subject to a preliminary hearing process in Parliament. After the preliminary process has been concluded, bilateral signature will be obtained and the complete Bilateral Legal Framework, consisting of the Agreement signed in 2007 and the signed Annexes, will be presented to Parliament for approval as required by Section 231(2) of the Constitution.

4.7.2 The first Annex concerns “...the methodology of designating combined border posts, control zones and designated areas for exclusive use”. It empowers both Parties to duly designate, delimit and demarcate any combined border post and all relevant Control Zones, to ensure the dual border control necessary to support OSBP operations.

4.7.3 The second Annex concerns “...the joint control and management of border crossing activities in respect of persons, goods and means of transport”. It empowers both Parties to duly perform border control operations in such Control Zones, whether on own territory or the territory of the other Party, in a manner deemed most effective and efficient for the purposes of a “One Stop Border Post”.

4.7.4 The third Annex concerns “...establishing, owning, managing and maintaining of infrastructure, facilities, assets and amenities”. It empowers both Parties to establish, own, manage and maintain such infrastructure, facilities, assets and/or amenities that constitute a combined border post in a manner that supports effective and efficient border control operations on a “One Stop” basis.

4.7.5 The Annexes provide for flexibility in terms of mutual assistance, joint operations, shared facilities and shared management structures on the basis of mutual consent, as well as dealing with relevant jurisdiction over activities and offences that are related to border controls on the one hand and those that are not on the other.

4.7.6 The Bilateral Legal Framework establishes the basis for a combined border control environment, with further work still required to give effect to this, such as the appointment of Competent Authorities; designation of relevant areas; establishment of joint teams; development of joint infrastructure; and the development of relevant Standard Operating Procedures.

#### **4.8 External legal opinion regarding the Bilateral Legal Framework**

4.8.1 The Bilateral Legal Framework as a whole will therefore allow Mozambican border control jurisdiction, legislation and formalities to be applied in very specific and clearly demarcated areas within the RSA, while the same will be allowed for South Africa in Mozambique.

4.8.2 Legal advice from external Senior Counsel is that the proposed legal framework is expected to pass constitutional muster. All cross-border movement is already currently required to subject itself to both South African and Mozambican jurisdiction and the proposed OSBP legal arrangement simply moves that point of submission into a designated and agreed space on each other's territory for the greater purpose of facilitated movement.

#### **4.9 Views Of State Law Advisers**

4.9.1 The State Law Advisers at the Departments of Justice and Constitutional Development and International Relations and Cooperation have found that the Annexes are not in conflict with the domestic law of the RSA, that they are in accordance with international law and that the Bilateral Legal Framework will need to be incorporated into domestic law.

#### **4.10 Next Steps**

4.10.1 Once the preliminary hearing process has been finalised, steps will be taken to ensure the bilateral signature of the Annexes, including obtaining Presidential approval.

4.10.2 The signed Agreement and Annexes will then be presented to Parliament for formal approval and ratification in terms of Section 231(2) of the Constitution.

4.10.3 Once the Bilateral Legal Framework has been approved by Parliament, it will be incorporated into domestic law.

### **5. CONCLUSION**

Following on the initial preliminary hearing of 11 October 2011, the SCOF is kindly requested to note the progress and status with regard to the establishment of a Bilateral Legal Framework to support the implementation of combined border control posts between South Africa and Mozambique. The SCOF is further kindly requested to provide guidance on the way forward and approve that the process of obtaining bilateral signature of the Annexes continues, with a view to ensuring the subsequent formal Parliamentary approvals and ratification process, as required by the Constitution of the Republic.



**AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF  
THE REPUBLIC OF SOUTH AFRICA**

**AND**

**THE GOVERNMENT OF  
THE REPUBLIC OF MOZAMBIQUE**

**ON COMBINED BORDER CONTROL POSTS ON**

**THE MOZAMBIQUE-SOUTH AFRICA BORDER.**



## PREAMBLE

The Government of the Republic of South Africa and the Government of the Republic of Mozambique (hereinafter jointly referred to as the "Parties" and in the singular a "Party");

RECOGNISING the special importance of economic, social, security and cultural co-operation and good relations between the two countries;

DESIRING to expedite transit by rail and road across their common border;

ACKNOWLEDGING that combined national border control posts would expedite such transit by rail and road;

HEREBY AGREE as follows:

### Article 1

#### *Definitions*

In this Agreement, unless the context otherwise indicates:

- (a) "border control" means the implementation of any statutory or administrative provision, of either of the countries of the Parties, which may be applied to persons crossing the border or to the importation, exportation or transit of goods or other property;
- (b) "combined railway station" means a designated geographical area where personnel of both countries may perform some or all of the tasks that are necessary in connection with persons or goods crossing the border;
- (c) "control zone" means an area designated for the execution of all border control matters as contemplated in Article 5(2);
- (d) "officer" means any person undertaking border control functions on behalf of the Parties;
- (e) "one stop border post" means the joint control and management of border crossing activities by officers of the Parties, using shared facilities.

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## Article 2

### *Aim of the Agreement*

The aim of this Agreement is to provide for the implementation of one-stop border posts between the Republic of Mozambique and the Republic of South Africa as agreed by the Parties from time to time.

## Article 3

### *Competent Authorities*

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.

## Article 4

### *Traffic Facilitation*

- (1) Within the framework of this Agreement and subject to the domestic law in force in their respective countries, the Parties shall expedite rail and road traffic across their common border.
- (2) For the purposes of sub-Article (1):
  - (a) the national border posts of both countries may be combined;
  - (b) the countries of the Parties may conduct border controls on trains and vehicles travelling across the joint border control posts on their common border; and
  - (c) combined railway stations may be established.
- (3) The Parties shall, in consultation with each other, designate, relocate, change or close, as and when required:
  - (a) the combined border posts;
  - (b) the routes on which officers from either country may conduct border controls on trains or vehicles during a journey;
  - (c) the combined railway station.
- (4) Any measures pursuant to sub-Article (3) shall be confirmed and effected by an exchange of Diplomatic Notes.

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## Article 5

### *Border Controls*

- (1) Under the provisions of this Agreement, officers of the Parties shall be competent to conduct border controls within the control zones, as referred to in sub-Article (2), under the same conditions as in their own countries.
- (2) Certain areas of the one-stop border posts shall be designated as control zones. A control zone may comprise the following:
  - (a) in the case of railway traffic:
    - (i) part of a station and its appurtenances;
    - (ii) the stretch of railway between the border and the border post; and
    - (iii) if border controls are conducted during a journey, the train travelling on a stretch of railway as referred to above, and, if necessary, those parts of the station where the stretch of railway commences or terminates;
  - (b) in the case of road traffic:
    - (i) part of the service buildings;
    - (ii) stretches of carriageway and the shoulders along these stretches, including any ramps appurtenant to the service buildings;
    - (iii) storage areas; and
    - (iv) the road between the border and the border post;
  - (c) in pedestrian traffic:
    - (i) part of the service buildings; and
    - (ii) the corridor used for pedestrian traffic on both sides of the pedestrian control building.
- (3) Officers of the Parties shall be competent to exclusively conduct border control and law enforcement activities within their designated areas of the control zone, under the domestic law in force in their respective countries.

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## Article 6

### *Applicable Law*

- (1) The domestic law of the countries of the Parties, which may apply with regard to conducting border controls, shall apply within the control zone.
- (2) Within the meaning of the provisions of sub-Article (1), a border crossing in a control zone shall be deemed to have taken place upon completion of the border control formalities of the country of exit.
- (3) The judicial bodies and law enforcement authorities of the Parties shall be competent to prosecute and bring to trial any person suspected of committing an offence:
  - (a) within a control zone; or
  - (b) in respect of whom the Parties have jurisdiction in terms of their domestic law, in the same manner as if the offence had taken place in the respective countries or as if the person had been present in the respective countries.
- (4) The control zone shall for all border control related matters be deemed to fall within the jurisdiction of both countries.

## Article 7

### *Border Control and Authority to Arrest*

- (1) In the case of border controls conducted within a control zone, the formalities of the country of exit shall be carried out before those of the country of entry.
- (2) The officers of the country of entry may not arrest any person or detain and/or seize any goods or other property or may not take any other steps in terms of the applicable domestic law as a result of a border control discrepancy or transgression within the control zone, prior to the completion of the border control formalities by the country of exit.
- (3) The officers of the country of exit may not arrest any person or detain and/or seize any goods or other property or may not take any other steps in terms of the applicable domestic law as a result of a border control discrepancy or transgression, after the commencement of border control formalities by the country of entry.

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## Article 8

### *Transfer of Money and Goods*

- (1) Officers of the Parties may freely transfer revenue derived from fines, duties or costs to their respective countries. The same shall apply to fares collected on behalf of each country's railway authority for the carriage of persons, luggage or goods.
- (2) Officers of the Parties may freely transfer any goods or other property they have detained and/or seized to their respective countries.

## Article 9

### *Readmission to Country of Exit*

No person who has been refused admission to the country of entry may be refused readmission to the country of exit.

## Article 10

### *Exemption from Duties and Taxes*

Any goods, including equipment and vehicles intended for official use at border posts or for the use by officers of either Party shall be allowed into and out of the control zone free of import duties and any other form of tax.

## Article 11

### *Designated Areas*

- (1) Localities assigned to the respective Parties for use as border post offices in the control zone shall display official signs identifying them as such.
- (2) Officers of the respective Parties shall have general jurisdiction in the designated areas allocated to them and may remove any unauthorised person from the designated areas of the control zone.

## Article 12

### *Officers deployed in the Control Zone*

- (1) The Competent Authority of one Party shall inform the Competent Authority of the other Party of the maximum number of officers it intends to deploy in the control zone. The respective Competent Authorities may review the number of officers deployed in the control zone in consultation with one another.

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- (2) The Competent Authority of a Party may through consultation request the Competent Authority of the other Party to recall officers from the control zone.

### Article 13

#### *Hours of Official Attendance*

The Competent Authorities shall ensure that the combined border posts have the same hours of official attendance.

### Article 14

#### *Communication*

- (1) In order to guarantee direct communications with its border post and to ensure effective operation in the control zone, a Party may, in consultation with the other Party, extend communication-supporting infrastructure into the country of the other Party.
- (2) The Parties undertake to assist one another as far as possible regarding the use of other means of communication.

### Article 15

#### *Infrastructure Development and Maintenance*

- (1) The Parties shall, in consultation with each other, be responsible for ensuring a common standard in respect of all infrastructures.
- (2) Each Party shall be responsible for costs incurred in respect of all infrastructure development and maintenance in the control zone, unless otherwise agreed.

### Article 16

#### *Customs Control*

- (1) Officers of the respective Parties may perform the same duties relating to customs control within the control zone as they perform in their own countries. With regard to such duties, they shall be subject solely to the relevant domestic law applicable in the country of the Party concerned.
- (2) For the purpose of turnover tax, such duties and services shall be deemed to have been performed or rendered exclusively in the country of the Party concerned.

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## Article 17

### *Annexes, Administrative and Operational Procedures and Functions*

- (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.

## Article 18

### *Implementation of the Agreement*

The Competent Authorities of the Parties shall introduce any agreed measures which may be necessary to implement this Agreement.

## Article 19

### *Entry into Force*

This Agreement shall enter into force on the date on which each Party has notified the other in writing through the diplomatic channel of its compliance with the constitutional and applicable domestic law requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.

## Article 20

### *Settlement of Disputes*

Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably through consultation or negotiation between the Parties.

## Article 21

### *Amendment*

- (1) This Agreement may be amended at any time by mutual consent of the Parties through an Exchange of Notes between them through the diplomatic channel.
- (2) The entry into force of the Amendments shall be specified in the Exchange of Notes and shall be subject to the constitutional requirements of the respective Parties.

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Article 22

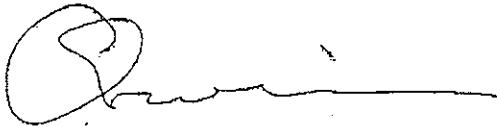
*Duration and Termination*

This Agreement shall remain in force indefinitely, but may be terminated by either Party at any time giving the other Party six months written notice in advance through the diplomatic channel of its intention to terminate it.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Agreement in two originals in the English and Portuguese languages, all texts being equally authentic.

DONE at ~~PRERORA~~..... on this .....<sup>18<sup>th</sup></sup>..... day of ~~SEPTEMBER~~.....2007

FOR THE GOVERNMENT OF  
THE REPUBLIC OF SOUTH AFRICA



FOR THE GOVERNMENT OF  
THE REPUBLIC OF MOZAMBIQUE





## ANNEX I

### CONCERNING THE DESIGNATION AND DELIMITATION OF COMBINED BORDER CONTROL POSTS, CONTROL ZONES AND AREAS DESIGNATED FOR EXCLUSIVE USE FOR THE IMPLEMENTATION OF ONE-STOP BORDER POSTS

In accordance with Article 17(1) of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Mozambique on Combined Border Control Posts signed on 18 September 2007, (hereinafter referred to as “the Agreement”), the Parties adopt this Annex concerning the designation and delimitation of combined border control posts, control zones and areas designated for exclusive use for the implementation of one-stop border posts.

#### Clause 1

##### Scope of Application

This Annex applies to the designation and delimitation of combined border control posts, control zones and areas designated for exclusive use for the implementation of one-stop border posts between the Republic of South Africa and the Republic of Mozambique.

#### Clause 2

##### Objective

The objective of this Annex is to provide for the designation and delimitation of—

- (a) combined border posts, railway stations and routes pursuant to Article 4(2) of the Agreement;
- (b) control zones pursuant to Article 5(2) of the Agreement; and
- (c) areas for exclusive use pursuant to Article 5(3) of the Agreement.

### Clause 3

#### Designation and Delimitation of Combined Border Posts

- (1) Pursuant to Article 4(2) of the Agreement and for the purposes of one-stop border posts, the boundaries and limits of the combined border posts, railway stations and routes shall be described and identified by means of—
  - (a) global positioning systems coordinates;
  - (b) geographic coordinates;
  - (c) alphanumeric grid references; or
  - (d) a combination of paragraphs (a) to (c).
- (2) The area described and identified in terms of sub-clause (1) shall be further illustrated by detailed maps, drawings, plans, photos and diagrams with comprehensive descriptions.

### Clause 4

#### Designation and Delimitation of Control Zones

- (1) Pursuant to Article 5(2) of the Agreement and for the purposes of one-stop border posts, the boundaries and limits of the control zones shall be described and identified by means of—
  - (a) global positioning systems coordinates;
  - (b) geographic coordinates;
  - (c) alphanumeric grid references; or
  - (d) a combination of paragraphs (a) to (c).
- (2) The area described and identified in terms of sub-clause (1) shall be further illustrated by detailed maps, drawings, plans, photos and diagrams with comprehensive descriptions.

## Clause 5

### Designation and Delimitation of Areas for Exclusive Use

- (1) Pursuant to Article 5(3) of the Agreement and for the purposes of one-stop border posts, the boundaries and limits of the area within the control zone where officers of a Party are competent to exclusively conduct border control and law enforcement activities shall be described and identified by means of—
  - (a) global positioning systems coordinates;
  - (b) geographic coordinates;
  - (c) alphanumeric grid references; or
  - (d) a combination of paragraphs (a) to (c).
- (2) The area described and identified in terms of sub-clause (1) shall be further illustrated by detailed maps, drawings, plans, photos and diagrams with comprehensive descriptions.

## Clause 6

### Identification and Signage

The Competent Authorities shall ensure that the areas designated in terms of Clauses 3, 4 and 5 of this Annex are appropriately identified with signage in both the English and Portuguese languages.

## Clause 7

### Settlement of Disputes

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.

**Clause 8**

**Amendment**

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

**Clause 9**

**Reservations**

No reservation to this Annex is permitted.

**Clause 10**

**Entry into Force**

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

**IN WITNESS WHEREOF** the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Annex in two originals in the English and Portuguese languages, all texts being equally authentic.

**DONE** at ..... on this ..... day of ..... 20:....

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF  
SOUTH AFRICA**

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF  
MOZAMBIQUE**

## **ANNEX II**

### **CONCERNING THE JOINT CONTROL AND MANAGEMENT OF BORDER CROSSING ACTIVITIES IN RESPECT OF PERSONS, GOODS AND MEANS OF TRANSPORT FOR THE IMPLEMENTATION OF ONE- STOP BORDER POSTS**

In accordance with Article 17(1) of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Mozambique on Combined Border Control Posts signed on 18 September 2007 (hereinafter referred to as "the Agreement"), the Parties adopt this Annex concerning the joint control and management of border crossing activities in relation to persons, goods and means of transport for the implementation of one-stop border posts.

#### **Clause 1**

##### **Scope of Application**

This Annex applies to the joint control and management of border crossing activities in relation to persons, goods and means of transport for the implementation of one-stop border posts between the Republic of South Africa and the Republic of Mozambique.

#### **Clause 2**

##### **Objective**

The objective of this Annex is to provide for the joint control and management of border crossing activities in relation to persons, goods and means of transport.

#### **Clause 3**

##### **Establishment of Joint Committees and Teams**

- (1) The Competent Authorities may establish such joint committees and teams that are necessary for the purpose of ensuring joint control and management of the one-stop border post.

- (2) The committees and teams contemplated in sub-clause (1) may include joint operational management and coordination committees, joint risk assessment teams and joint inspection teams.
- (3) The administrative and operational procedures and functions in respect of the committees and teams shall be determined in accordance with Article 17(2) of the Agreement.

#### **Clause 4**

##### **Infrastructure for One-Stop Border Control**

The Competent Authorities shall, in accordance with Article 15 of the Agreement, ensure that the required infrastructure is available for the efficient and effective performance of control at one-stop border posts.

#### **Clause 5**

##### **Border Control**

Border control shall be performed in accordance with Articles 5 and 7 of the Agreement, and any Standard Operating Procedures negotiated in terms of Article 17(2) of the Agreement: Provided that this is consistent with the aim and provisions of the Agreement and in accordance with the domestic law in force in the territories of the Parties.

#### **Clause 6**

##### **Legislation and Procedures Applicable to Border Control**

- (1) In accordance with the provisions of Articles 5(1) and 6(1) of the Agreement, the Competent Authorities shall ensure that the border control authorities comply with the domestic law in force in their respective territories and coordinate their border control procedures and practices in respect of persons, goods and means of transport.
- (2) To give effect to this clause, the Competent Authorities may enter into an arrangement whereby the border control authorities—

- (a) assist one another to facilitate the performance of their duties;
  - (b) specialise in a particular border control function; or
  - (c) mutually recognise the border control functions performed by each border control authority.
- (3) Joint one-stop border control may also be achieved through a combination of all or part of the one-stop border control options listed in sub-clause (2), whichever is most practicable and to the satisfaction of the Competent Authorities.

#### **Clause 7**

##### **Simplification and Harmonisation of Border Crossing Documentation and Formalities**

The Competent Authorities shall in consultation with each other—

- (a) endeavour to align the use of documents relevant for border crossing formalities to international standards and practices;
- (b) reduce the number and extent of the procedures and documents required for border crossing formalities as much as possible;
- (c) implement risk-based border control methods and techniques; and
- (d) implement non-intrusive inspection methods and techniques, using other methods and techniques when non-intrusive inspections are considered insufficient.

#### **Clause 8**

##### **Protection and Support of Officers in Control Zones**

The Competent Authorities shall in consultation with each other—

- (a) determine the nature and extent of protection and support that may be required by officers deployed in any control zone;

- (b) agree on appropriate measures for ensuring that such protection and support is afforded equally to all officers so deployed; and
- (c) develop Standard Operating Procedures in this regard in accordance with Article 17(2) of the Agreement.

#### **Clause 9**

##### **Operational and Disciplinary Command and Control**

- (1) Officers deployed by either Party in any control zone shall remain under the operational and disciplinary control of the authorities deploying them, regardless of whether such control zone is wholly or partly located within the territory of the other Party.
- (2) The Competent Authorities shall agree on appropriate measures for reporting any misconduct involving any officer.

#### **Clause 10**

##### **Offences in the Control Zone**

- (1) Jurisdiction in respect of border control offences shall be determined in accordance with the provisions of Articles 6 and 7 of the Agreement.
- (2) Jurisdiction in respect of offences that are not related to border controls shall reside with the Party within whose territory such offences are committed or detected.
- (3) Jurisdiction in respect of prosecution for offences committed by officers in the exercising of their functions while on duty in any control zone shall reside with the deploying Party, regardless of whether the control zone is located wholly or partly on the territory of the other Party.
- (4) The Competent Authorities shall agree on appropriate measures for informing each other of offences deemed to have been committed by any person, including the presentation of any available evidence.



- (5) The Competent Authorities shall further agree on appropriate measures for intervention when any person is discovered in the commission or attempted commission of any offence.

#### **Clause 11**

##### **Claims for Compensation Arising from Border Control**

Any claim for compensation for loss, injury or damage arising from the actions of officers deployed in any control zone in the exercising of their functions whilst on duty shall be instituted in accordance with the applicable domestic law in force in the territory of the deploying Party, without prejudice to an amicable resolution in accordance with the principles contained in Article 20 of the Agreement.

#### **Clause 12**

##### **Exchange of Information**

For effective and efficient border control, the Competent Authorities shall exchange the necessary information in a timely and continuous manner, whenever requested or on own initiative.

#### **Clause 13**

##### **Use, Confidentiality and Protection of Information**

- (1) Either Party may use information that it obtains from the other Party for border control purposes.
- (2) The Parties shall treat any information communicated in any format or frequency under this Annex as confidential and the information is subject to the same protection and confidentiality granted under the respective domestic law. If the above-mentioned laws do not provide the same level of protection and confidentiality, the laws that provide the highest degree of protection and confidentiality shall apply.

- (3) The Parties shall develop Standard Operating Procedures to indicate the level of personal information protection that is required to satisfy their respective domestic information protection laws.
- (4) Information obtained by one Party may not be communicated to a third party without the approval of the Party supplying the information.
- (5) The Parties shall keep the information which it obtains for the time necessary for the purpose for which it was supplied and shall protect it from unauthorised access, amendment or dissemination.
- (6) The Party that supplies the information shall ensure, as far as possible, that it is collected fairly and lawfully.
- (7) The liability for any damage resulting from the unlawful use of personal information shall be in accordance with domestic law in force in the territories of the Parties with regard to information protection.
- (8) A Party shall be liable for any damage caused to a person through the unlawful use by that Party of personal information it received from the other Party, whether or not the personal information used was accurate when supplied by the other Party or supplied contrary to this Annex.

#### **Clause 14**

##### **Settlement of Disputes**

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.

#### **Clause 15**

##### **Amendment**

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

**Clause 16**

**Reservations**

No reservation to this Annex is permitted.

**Clause 17**

**Entry into force**

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

**IN WITNESS WHEREOF** the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Annex in two originals in the English and Portuguese languages, all texts being equally authentic.

**DONE** at ..... on this ..... day of ..... 20....

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF  
SOUTH AFRICA**

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF  
MOZAMBIQUE**

## **ANNEX III**

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

In accordance with Article 17(1) of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Mozambique on Combined Border Control Posts signed on 18 September 2007 (hereinafter referred to as (“the Agreement”), the Parties adopt this Annex concerning the establishing, owning, managing and maintaining of infrastructure, facilities, assets and amenities for the implementation of one-stop border posts.

#### **Clause 1**

##### **Scope of Application**

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 Republic of South Africa and the Republic of Mozambique.

#### **Clause 2**

##### **Objective**

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)*.

### **Clause 3**

#### **Establishment of One-Stop Border Post Infrastructure and Facilities**

- (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.

### **Clause 4**

#### **Ownership, Use and Access**

- (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.

## **Clause 5**

### **Shared Use of Infrastructure, Facilities, Assets and Amenities**

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.

## **Clause 6**

### **Movable Assets**

- (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 law 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.

## **Clause 7**

### **Management and Maintenance**

- (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.

## **Clause 8**

### **Settlement of Disputes**

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.

## **Clause 9**

### **Amendment**

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

**Clause 10**

**Reservations**

No reservation to this Annex is permitted.

**Clause 11**

**Entry into Force**

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

**IN WITNESS WHEREOF** the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Annex in two originals in the English and Portuguese languages, all texts being equally authentic.

**DONE** at ..... on this ..... day of ..... 20....

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF  
SOUTH AFRICA**

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF  
MOZAMBIQUE**



## **EXPLANATORY MEMORANDUM**

**ON ANNEX I 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 OF ANNEX**

**CONCERNING THE DESIGNATION AND DELIMITATION OF COMBINED BORDER CONTROL POSTS, CONTROL ZONES AND AREAS DESIGNATED FOR EXCLUSIVE USE 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 designation and delimitation of combined border control posts, control zones and areas designated for exclusive use for the implementation of one-stop border posts in accordance with the Agreement between the Governments of the Republic of South Africa and the Republic of Mozambique.

Clause 1 states that it applies to the designation and delimitation of:

- combined border control posts;
- control zones, and
- areas designated for exclusive use.

**CLAUSE 2**  
**OBJECTIVE**

**TEXT:**

The objective of this Annex is to provide for the designation and delimitation of:

- (a) Combined border posts, railway stations and routes pursuant to Article 4(2) of the Agreement;
- (b) Control zones pursuant to Article 5(2) of the Agreement; and
- (c) Areas for exclusive use pursuant to Article 5(3) of the Agreement.

This clause states that the objectives of the Annex pursuant to Articles 4(2), 5(2) and 5(3) of the Agreement are to provide for the designation and delimitation of the exact areas that will constitute the:

- (a) Combined border posts, railway stations and routes for the purpose of a one stop border post;
- (b) control zones for the purposes of railway traffic, road traffic and pedestrian traffic; and
- (c) areas where the officers of the Parties are exclusively competent to conduct border control and law enforcement activities under the domestic law in force in the respective countries.

**CLAUSE 3**  
**DESIGNATION AND DELIMITATION OF COMBINED BORDER POSTS**

**TEXT:**

(1) Pursuant to Article 4(2) of the Agreement and for the purposes of one-stop border posts, the boundaries and limits of the combined border posts, railway stations and routes shall be described and identified by means of:

- (a) Global positioning systems coordinates;
- (b) Geographic coordinates;
- (c) Alphanumeric grid references; or

(d) A combination of paragraphs (a) to (c).

(2) The area described and identified in terms of sub-clause (1) shall be further illustrated by detailed maps, drawings, plans, photos and diagrams with comprehensive descriptions.

Pursuant to Article 4(2) of the Agreement, sub clause( 1) specifies three methods by means of which the Parties shall identify, designate, delimit and describe the exact area/s that will constitute the combined border posts, railway stations and routes for the purpose of a one stop border post. Any one of the three methods may be used on its own or in combination with the others.

Sub clause (2) requires that the area described and identified in terms of sub clause (1) must be further illustrated by detailed maps, drawings, plans, photos and diagrams with comprehensive descriptions.

#### CLAUSE 4

##### DESIGNATION AND DELIMITATION OF CONTROL ZONES

###### TEXT:

(1) Pursuant to Article 5(2) of the Agreement and for the purposes of one-stop border posts, the boundaries and limits of the control zones shall be described and identified by means of:

- (a) Global positioning systems coordinates;
- (b) Geographic coordinates;
- (c) Alphanumeric grid references; or
- (d) A combination of paragraphs (a) to (c).

(2) The area described and identified in terms of sub-clause (1) shall be further illustrated by detailed maps, drawings, plans, photos and diagrams with comprehensive descriptions.

Pursuant to Article 5(2) of the Agreement, sub clause (1) specifies the same three methods or a combination of the three methods stated in clause 3 by means of which the Parties must identify, designate, delimit and describe the exact area/s that will constitute the control zones for the purpose of a one stop border post.

Sub clause (2) requires that the area described and identified in terms of sub clause (1) must be further illustrated by detailed maps, drawings, plans, photos and diagrams with comprehensive descriptions.

#### CLAUSE 5

##### DESIGNATION AND DELIMITATION OF AREAS FOR EXCLUSIVE USE

###### TEXT:

(1) Pursuant to Article 5(3) of the Agreement and for the purposes of one-stop border posts, the boundaries and limits of the area within the control zone where officers of a Party are competent to

exclusively conduct border control and law enforcement activities shall be described and identified by means of:

- (a) Global positioning systems coordinates;
- (b) Geographic coordinates;
- (c) Alphanumeric grid references; or
- (d) A combination of paragraphs (a) to (c).

(2) The area described and identified in terms of sub-clause (1) shall be further illustrated by detailed maps, drawings, plans, photos and diagrams with comprehensive descriptions.

Pursuant to Article 5(2) of the Agreement, sub clause (1) specifies the same three methods or a combination of the three methods stated in clause 3 by means of which the Parties must identify, designate, delimit and describe the exact area/s that will constitute within the control zone where officers of a Party are competent to exclusively conduct border control and law enforcement activities for the purpose of a one stop border post.

Subclause (2) requires that the area described and identified in terms of sub clause (1) must be further illustrated by detailed maps, drawings, plans, photos and diagrams with comprehensive descriptions.

#### CLAUSE 6

#### IDENTIFICATION AND SIGNAGE

**TEXT:**

The Competent Authorities shall ensure that the areas designated in terms of Clauses 3, 4 and 5 of this Annex are appropriately identified with signage in both the English and Portuguese languages.

This clause creates an obligation on the Competent Authorities to ensure that signage, in both English and Portuguese, appropriately identifies and clearly demarcates the areas designated in terms of clauses 3, 4 and 5.

#### CLAUSE 7

#### 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 8

#### 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 9

#### RESERVATIONS

**TEXT:**

No reservation to this Annex is permitted.

In terms of this clause the Parties may not enter any reservations when adopting the Annex.

#### CLAUSE 10

#### 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..."*

## **EXPLANATORY MEMORANDUM**

**ON ANNEX II 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 THE JOINT CONTROL AND MANAGEMENT OF BORDER CROSSING  
ACTIVITIES IN RESPECT OF PERSONS, GOODS AND MEANS OF TRANSPORT 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 joint control and management of border crossing activities in relation to persons, goods and means of transport 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 extent of application of this Annex i.e. the joint control and management of border crossing activities in relation to persons, goods and means of transport in the control zones at any designated combined border post between the Republic of South Africa and the Republic of Mozambique.

## CLAUSE 2

### OBJECTIVE

**TEXT:**

The objective of this Annex is to provide for the joint control and management of border crossing activities in relation to persons, goods and means of transport.

This clause states the intention of this Annex i.e. to provide the legal impetus for the joint control and management of border crossing activities in relation to persons, goods and means of transport, in the control zones, at any designated combined border post between the Republic of South Africa and the Republic of Mozambique.

## CLAUSE 3

### ESTABLISHMENT OF JOINT COMMITTEES AND TEAMS

**TEXT:**

- (1) The Competent Authorities may establish such joint committees and teams that are necessary for the purpose of ensuring joint control and management of the one-stop border post.
- (2) The committees and teams contemplated in sub-clause (1) may include joint operational management and coordination committees, joint risk assessment teams and joint inspection teams.
- (3) The administrative and operational procedures and functions in respect of the committees and teams shall be determined in accordance with Article 17(2) of the Agreement.

Sub clause 1 gives the Competent Authorities the legal impetus and discretion to set up such joint committees, that they deem necessary, for the joint control and management of border crossing activities by officers of the Parties, using shared facilities.

Sub clause 2 states the examples of the types of committees and teams that may be established, by the Competent Authorities, but are not limited to these examples.

Sub clause 3 further amplifies sub clause 1 and 2 by stating that the administrative and operational procedures and functions of these committees and teams must be determined and outlined in Standard Operating Procedures (SOP's), developed in accordance with the provisions of Article 17(2) of the Agreement.

#### **CLAUSE 4**

##### **INFRASTRUCTURE FOR ONE-STOP BORDER CONTROL**

**TEXT:**

The Competent Authorities shall in accordance with Article 15 of the Agreement ensure that the required infrastructure is available for the efficient and effective performance of control at one-stop border posts.

This clause places an obligation on the Competent Authorities to ensure that the required infrastructure is at the disposal of the officers of the Parties, for the efficient and effective performance of their one-stop border post mandated control.

#### **CLAUSE 5**

##### **BORDER CONTROL**

**TEXT:**

Border Control shall be performed in accordance with Articles 5 and 7 of the Agreement, and any Standard Operating Procedures negotiated in terms of Article 17(2) of the Agreement: Provided that this is consistent with the aim and provisions of the Agreement and in accordance with the domestic law in force in the territories of the Parties.

This clause places an obligation on the Competent Authorities to ensure that border control are performed and done in accordance with the legislation in force in the control zones at the combined border posts.



## CLAUSE 6

### LEGISLATION AND PROCEDURES APPLICABLE TO BORDER CONTROL

**TEXT:**

(1) In accordance with the provisions of Article 5(1) and Article 6(1) of the Agreement, the Competent Authorities shall ensure that the border control authorities comply with the legislation in force and coordinate their border control procedures and practices in respect of persons, goods and means of transport.

(2) To give effect to this clause, the Competent Authorities referred to above may enter into an arrangement whereby the border control authorities:

- (a) assist one another to facilitate the performance of their duties;
- (b) specialise in a particular border control function; or
- (c) mutually recognise the border control functions performed by each border control authority.

(3) Joint one-stop border control may also be achieved through a combination of all or part of the one-stop border control options listed in sub-clause (2) above, whichever is most practicable and to the satisfaction of the Competent Authorities.

Sub clause 1 places an obligation on the Competent Authorities to ensure that border control authorities on both sides:

- act in accordance with the legislation in force in the control zones at the combined border posts, and
- coordinate their border control procedures and practices in respect of persons, goods and means of transport.

Sub clause 2 provides the types of arrangements the Competent Authorities may enter into to give effect to sub clause 1.

Sub clause 3 provides that the types of arrangements may be implemented as a combination or standalone, whichever is most practicable and to the satisfaction of the Competent Authorities.

## CLAUSE 7

### SIMPLIFICATION AND HARMONISATION OF BORDER CROSSING DOCUMENTATION AND FORMALITIES

**TEXT:**

The Competent Authorities shall in consultation with each other –

(a) endeavor to further the use of documents relevant for border crossing formalities, aligned to international standards and practices;

(b) reduce the number and extent of the procedures and documents required for border crossing formalities as much as possible;

(c) implement risk-based border control methods and techniques; and

(d) implement non-intrusive inspection methods and techniques, using other methods and techniques when non-intrusive inspections are considered insufficient.

This clause provides that the Competent Authorities must by agreement:

(a) endeavor to further the use of documentation, relevant for border crossing formalities, aligned to international standards and practices;

(b) reduce the number and extent of the procedures and documents required for border crossing formalities as much as possible;

(c) implement risk-based border control methods and techniques; and

(d) implement non-intrusive inspection methods and techniques, using other methods and techniques when non-intrusive inspections are considered insufficient..

## CLAUSE 8

### PROTECTION AND SUPPORT OF OFFICERS IN CONTROL ZONES

#### TEXT:

The Competent Authorities shall in consultation with each other –

(a) determine the nature and extent of protection and support that may be required by officers deployed in any control zone;

(b) agree on appropriate measures for ensuring that such protection and support is afforded equally to all officers so deployed; and

(c) develop Standard Operating Procedures in this regard in accordance with Article 17(2) of the Agreement.

This clause provides that the Competent Authorities must by agreement:

(a) determine the nature and extent of protection and support that may be required by officers deployed in any control zone;

(b) identify appropriate measures for ensuring that such protection and support is afforded equally to all officers so deployed; and

(c) develop Standard Operating Procedures in this regard in accordance with Article 17(2) of the Agreement.

**CLAUSE 9**

**OPERATIONAL AND DISCIPLINARY COMMAND AND CONTROL**

**TEXT:**

- (1) Officers deployed by either Party in any control zone shall remain under the operational and disciplinary control of the authorities deploying them, regardless of whether such control zone is wholly or partly located within the territory of the other Party.
- (2) The Competent Authorities shall agree on appropriate measures for reporting any misconduct involving any officer.

This clause provides that:

- (1) Officers of the Parties in any control zone shall remain under the operational and disciplinary control of the authorities deploying them, regardless of whether such control zone is wholly or partly located within the territory of the other Party.
- (2) The Competent Authorities shall agree on appropriate measures for reporting any misconduct involving any officer.

**CLAUSE 10**

**OFFENCES IN THE CONTROL ZONE**

**TEXT:**

- (1) Jurisdiction in respect of border control offences shall be determined in accordance with the provisions of Articles 6 and 7 of the Agreement.
- (2) Jurisdiction in respect of offences that are not related to border controls shall reside with the Party within whose territory such offences are committed or detected.
- (3) Jurisdiction in respect of prosecution for offences committed by officers in the exercising of their functions while on duty in any control zone shall reside with the deploying Party, regardless of whether the control zone is located wholly or partly on the territory of the other Party.
- (4) The Competent Authorities shall agree on appropriate measures for informing each other of offences deemed to have been committed by any person, including the presentation of any available evidence.
- (5) The Competent Authorities shall further agree on appropriate measures for intervention when any person is discovered in the commission or attempted commission of any offence.

This clause provides that:

- (1) Jurisdiction in respect of border control offences shall be determined in accordance with the provisions of Articles 6 and 7 of the Agreement.

- (2) Jurisdiction in respect of offences that are not related to border controls shall reside with the Party within whose territory such offences are committed or detected.
- (3) Jurisdiction in respect of prosecution for offences committed by officers in the exercising of their functions while on duty in any control zone shall reside with the deploying Party, regardless of whether the control zone is located wholly or partly on the territory of the other Party.
- (4) The Competent Authorities shall agree on appropriate measures for informing each other of offences deemed to have been committed by any person, including the presentation of any available evidence.
- (5) The Competent Authorities shall further agree on appropriate measures for intervention when any person is discovered in the commission or attempted commission of any offence.

## CLAUSE 11

### CLAIMS FOR COMPENSATION ARISING FROM BORDER CONTROL

**TEXT:**

Any claim for compensation for loss, injury or damage arising from the actions of officers deployed in any control zone in the exercising of their functions whilst on duty shall be instituted in accordance with the applicable domestic law in force in the territory of the deploying Party, without prejudice to an amicable resolution in accordance with the principles contained in Article 20 of the Agreement.

This clause provides that:

Any claim for compensation for loss, injury or damage arising from the actions of officers deployed in any control zone in the exercising of their functions whilst on duty shall be instituted in accordance with the applicable domestic law in force in the territory of the deploying Party, without prejudice to an amicable resolution in accordance with the principles contained in Article 20 of the Agreement.

## CLAUSE 12

### EXCHANGE OF INFORMATION

**TEXT**

The Competent Authorities of both Parties shall exchange advance and real-time information necessary for effective and efficient border control whenever requested or on own initiative, on a continuous basis.

This clause places an obligation on the Competent Authorities to exchange, on a continuous basis, advance and real-time information necessary for effective and efficient border control. Further it directs both parties to do so whenever requested by the other party or on own initiative,

**CLAUSE 13**

**USE, CONFIDENTIALITY AND PROTECTION OF INFORMATION**

**TEXT:**

- (1) Either Party may use information that it obtains from the other Party for border control purposes.
- (2) The Parties shall treat any information communicated in any format or frequency under this Annex as confidential and the information is subject to the same protection and confidentiality granted under the respective national laws. If the abovementioned laws do not provide the same level of protection and confidentiality, the laws that provide the highest degree of protection and confidentiality shall apply.
- (3) The Parties shall develop Standard Operating Procedures to indicate the level of personal information protection that is required to satisfy their respective domestic information protection laws.
- (4) Information obtained by one Party may not be communicated to a third party without the approval of the Party supplying the information.
- (5) The Parties shall keep the information which it obtains for the time necessary for the purpose for which it was supplied and shall protect it from unauthorised access, amendment or dissemination.
- (6) The Party that supplies the information shall ensure, as far as possible, that it is collected fairly and lawfully.
- (7) The liability for any damage resulting from the unlawful use of personal information shall be in accordance with domestic information protection laws and the respective Constitutions of the Parties.
- (8) A Party shall be liable for any damage caused to a person through the unlawful use, by that Party, of personal information it received from the other Party, whether or not the personal information used was accurate when supplied by the other Party or supplied contrary to this Annex.

Sub clause 1 states that both Parties, at the discretion of the recipient Party, may use information that it obtains from the other Party for border control purposes.

Sub clause 2 places a mandatory obligation on the recipient Party to treat any information communicated in any format or frequency under this Annex as confidential. Further to this it makes the information subject to the same protection and confidentiality granted under the national laws of the recipient Party. It goes further to state that if the national laws of the recipient Party do not provide the same level of protection and confidentiality as the providing Party, then the laws that provide the highest degree of protection and confidentiality shall apply.

Sub clause 3 provides that Standard Operating Procedures (SOP's) must be developed by both Parties to indicate the level of personal information protection that is required to satisfy their respective domestic information protection laws.

Sub clause 4 places a restriction on the recipient Party not to communicate information obtained under this Annex to a third party without the approval and consent of the Party supplying the information.

Sub clause 5 places an obligation on the recipient Party to keep the information, which it obtains, only for the time necessary, for the purpose for which it was supplied and to protect it from unauthorized access, amendment or dissemination.

Sub clause 6 places an obligation on the Party that supplies the information to ensure that such information is collected fairly and lawfully.

Sub clause 7 provides that the liability for any damage resulting from the unlawful use of personal information shall be in accordance with domestic information protection laws and the Constitution of the Party who caused the damage.

Sub clause 8 provides that the Party who caused any damage to a person through the unlawful use, by that Party, of personal information it received from the other Party, whether or not the personal information used was accurate when supplied by the other Party or supplied contrary to this Annex, is liable for such damage caused.

#### CLAUSE 14

#### 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 15

#### 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 16**  
**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 17**  
**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..."*

## **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...*"