



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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No. 3927

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### Government Notice

#### MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION

No. 193

2007

#### NOTIFICATION OF RATIFICATION OF MEMORANDUM OF UNDERSTANDING ON THE DEVELOPMENT AND MANAGEMENT OF THE TRANS KALAHARI CORRIDOR

The Minister of Works, Transport and Communication gives notice that the Memorandum of Understanding on the Development and the Management of the Trans Kalahari Corridor-

- (a) was signed by the Republics of Botswana, Namibia and South Africa on 3 November 2003 at Walvis Bay, Namibia;
- (b) was ratified, in terms of Article 63(2)(e) of the Constitution, by the National Assembly by the First Order read on 21 February 2007;
- (c) is set out in the Schedule.

**J. KAAPANDA**  
**MINISTER OF WORKS, TRANSPORT**  
**AND COMMUNICATION**

Windhoek, 12 July 2007

**SCHEDULE****REPUBLIC OF BOTSWANA  
MEMORANDUM OF UNDERSTANDING****BETWEEN****THE GOVERNMENTS OF THE REPUBLICS OF BOTSWANA, NAMIBIA  
AND SOUTH AFRICA****ON THE****DEVELOPMENT AND MANAGEMENT OF THE TRANS-KALAHARI  
CORRIDOR****PREAMBLE**

The Governments of the Republics of Botswana, Namibia and South Africa (hereinafter referred to jointly as "the Contracting Parties" and in the singular as "a Contracting Party") -

COMMITTED to the common vision of the New Partnership for Africa's Development (NEPAD) to eradicate poverty and place their countries both individually and collectively on a path of sustainable growth and development;

COMMITTED to achieve the transport objectives of NEPAD that include implementing the integrated and seamless movement of goods and persons on the Trans-Kalahari Corridor (hereinafter referred to as "the TKC") with a view to reducing transportation costs and transit times in order to increase the competitiveness of goods produced in the Southern African Development Community for distribution in regional and international markets;

RECOGNIZING that the development and management of the TKC and the achievement of the integrated and seamless movement of goods and persons on the TKC is a collective effort that should be pursued for the common benefit of the Contracting Parties and the other Member States of the Southern African Development Community;

CONSCIOUS that control measures applied by them affect the movement of goods and persons on the TKC and committing themselves to review and apply such control measures on the basis of the following principles:

- **Equal treatment:** The Contracting Parties shall implement the TKC Memorandum of Understanding and apply laws, regulations, procedures and administrative measures pertaining to the movement of goods and persons on the TKC so as to ensure the equal treatment of all stakeholders on the TKC;
- **Transparency:** The Contracting Parties shall make all laws, regulations, procedures and administrative measures pertaining to the movement of goods and persons on the TKC publicly available in a prompt, transparent and readily accessible manner;
- **Harmonization:** The Contracting Parties shall endeavour, as far as practically possible, to harmonize all laws, regulations, procedures and administrative measures pertaining to the movement of goods and persons on the TKC;

- Efficiency: The Contracting Parties shall ensure the efficient and effective administration of transit traffic to facilitate the movement of goods and persons on the TKC;
- Simplicity: The Contracting Parties shall endeavour to ensure the simplification of all laws, regulations, procedures and administrative measures pertaining to the movement of goods and persons on the TKC;
- Consistency: The Contracting Parties shall ensure the consistent application of all laws, regulations, procedures and administrative measures pertaining to the movement of goods and persons on the TKC; and
- Mutual assistance: The Contracting Parties shall endeavour to ensure cooperation and mutual assistance between their respective authorities that are involved in the facilitation of the movement of goods and persons on the TKC;

RECOGNIZING that broad-based public and private capital investment, in particular, transport and logistics-related infrastructure and service provision is required to support the development of the TKC;

WISHING to promote the effective and integrated management of the TKC through the establishment of a strategic partnership between public and private sector stakeholders;

RECOGNISING that a Contracting Party may wish to establish national representative entities to support the management, development and marketing of the TKC;

MINDFUL of their obligations and commitments under other agreements to which they are party and, in particular -

- the Protocol on Transport, Communications and Meteorology of the Southern African Development Community (hereinafter referred to as "the SADC Protocol on Transport, Communications and Meteorology");
- Part 3 and Annexes II and IV of the Protocol on Trade of the Southern African Development Community (hereinafter referred to as "the SADC Protocol on Trade"); and
- the Memorandum of Understanding on Road Transportation in the Common Customs Area Pursuant to the Customs Union Agreement between the Governments of Botswana, Lesotho, Namibia, South Africa and Swaziland (hereinafter referred to as "the SACU Memorandum of Understanding on Road Transportation");

MINDFUL that the implementation of this Memorandum of Understanding furthers the implementation of the SADC Protocol on Transport, Communications and Meteorology, the SADC protocol on Trade and the SACU Memorandum of Understanding on Road Transportation and will be an ongoing process that will require amplification and extension as consensus develops and as it is extended to other inter-modal areas of cooperation;

AND MINDFUL of the need to ensure a balance between the facilitation of the movement of people and goods and adequate levels of crime prevention and maintenance of security;

HAVE AGREED as follows:

## CHAPTER 1

### DEFINITIONS, SCOPE, OBJECTIVES AND STRATEGIC PARTNERSHIPS

#### ARTICLE 1.1

#### DEFINITIONS

"Border post" means designated places of entry or exit between the territories of the Republics of Botswana, Namibia and South Africa;

"Customs authorities" means the government authorities or agencies of the respective Contracting Parties that are responsible for the administration of the customs laws of such Contracting Parties and that also have the responsibility for the application of other laws relating to the importation, transit or exportation of goods;

"Customs procedures" means the procedures and mechanisms applied to ensure compliance with the laws and regulations relating to the collection of import and export duties and taxes and the importation, transit and exportation of goods;

"Dangerous goods" means the commodities, substances and goods in respect of which the carriage by road is prohibited or authorized only on certain conditions by the respective road traffic laws of the Contracting Parties;

"Joint customs controls" means -

- (a) the carrying out of the formalities of the exporting customs authority together with the formalities of the importing customs authority in a juxtaposed customs office; or
- (b) the simultaneous examination of goods, persons or means of transport for either import or export controls by officers of both the importing and exporting customs authorities;

"Unified customs offices" means the establishment of joint customs offices at common borders, either in one building or in separate buildings located in the same area within the territory of either customs authority;

"Memorandum of Understanding" means this Memorandum of Understanding and includes any annex, amendment or addition thereof that forms an integral part of this Memorandum of Understanding;

"Pre-clearance" means the carrying out of formalities of an importing customs authority at a location removed from the immediate vicinity of a border post prior to the departure of goods, or means of transport from the territory of the exporting customs authority;

"TKC" means the Trans-Kalahari Corridor that stretches from:

- (a) Pretoria in the Gauteng Province of South Africa through Rustenburg and Zeerust in the Northwest Province of South Africa;
- (b) through Lobatse, Kanye and Mamuno in Botswana; and
- (c) through Gobabis and Windhoek to Walvis Bay including the Port of Walvis Bay in Namibia.



"TKCMC" means the Trans-Kalahari Corridor Management Committee established by Article 6.1 of this Memorandum of Understanding;

"Transit procedures" means the procedures and mechanisms applied to ensure the transit of goods across the territory of one or more Contracting Parties, when the passage across such territory or territories, with or without transshipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of one or more Contracting Parties across whose territory the traffic passes; and

"Vehicle" means any mechanically propelled road vehicle, including an articulated vehicle, a trailer or a semi-trailer, that is constructed or adapted for the carriage of goods or the conveyance of persons.

## **ARTICLE 1.2**

### **SCOPE**

1. This Memorandum of Understanding shall apply to the movement of goods and persons on the TKC.
2. The Contracting Parties shall review the scope and provisions of this Memorandum of Understanding to encourage the development of integrated transportation services and facilities on the TKC.

## **ARTICLE 1.3**

### **OBJECTIVES**

The objectives of this Memorandum of Understanding are -

- (a) to facilitate the movement of goods and persons on the TKC by simplifying and harmonizing the requirements and controls that govern the movement of goods and persons with a view to reducing transportation costs and transit times;
- (b) to establish effective consensus-building mechanisms -
  - (ii) to secure and monitor the implementation of this Memorandum of Understanding; and
  - ii) to expand and extend the content and implementation requirements of this Memorandum of Understanding through the development of annexes; and
- c) to establish, in accordance with Chapter 6 of this Memorandum of Understanding, an appropriate financially self-sustaining institutional structure to oversee, guide, coordinate and facilitate the implementation of this Memorandum of Understanding.

## **ARTICLE 1.4**

### **COMPETENT AUTHORITY**

For the purpose of implementation of this Memorandum of Understanding, the competent authorities of the Contracting Parties shall be their respective Ministries and Departments responsible for transport, traffic, customs and immigration and safety and security.

## **ARTICLE 1.5**

### **STRATEGIC PARTNERSHIPS**

1. The Contracting Parties shall develop strategic partnerships between themselves and with the private sector to secure the implementation of this Memorandum of Understanding and, to this end, they shall establish effective and efficient coordination mechanisms between -
  - (a) themselves and their respective Ministries and Departments; and
  - (b) themselves and other relevant stakeholders of the TKCMC.
2. The Contracting Parties shall make all requirements that govern the movement of goods and persons on the TKC publicly available through an accessible medium, and inform each other and the other stakeholders of changes to such requirements.
3. For purposes of this Article, other stakeholders include representatives of -
  - (a) private sector
  - (b) civil society
  - (c) non-governmental organisations

## **CHAPTER 2**

### **CUSTOMS PROCEDURES, JOINT CUSTOMS CONTROLS AND BORDER POST MANAGEMENT, BORDER POST BUSINESS HOURS AND BORDER POST FACILITIES**

#### **ARTICLE 2.1**

#### **CUSTOMS PROCEDURES**

1. The Contracting Parties shall -
  - (a) pursuant to Article 14 of the SADC Protocol on Trade, take such measures as are necessary to simplify and harmonize their respective customs procedures; and
  - (b) pursuant to Annex IV of the SADC Protocol on Trade, adopt a common transit procedure to govern the movement of goods on the TKC.
2. In order to give effect to paragraph 1, the Contracting Parties shall -
  - (a) accede to the International Convention on the Simplification and Harmonization of Customs Procedures, 1999, and be guided by the provisions of that Convention in preparing an annex on the simplification and harmonization of their customs procedures that specifically addresses the use of electronic data interchange between their respective customs authorities and the promotion of pre-clearance mechanisms; and
  - (b) prepare an annex on a common transit procedure based on international best practices.

3. The Contracting Parties shall implement the annexes referred to in paragraph 2 within twenty-four (24) months after the entry into force of this Memorandum of Understanding.

## ARTICLE 2.2

### JOINT CUSTOMS CONTROLS AND BORDER POST MANAGEMENT

1. Pursuant to Article 3.3 of the SADC Protocol on Transport, Communications and Meteorology, the Contracting Parties shall introduce joint customs controls on the TKC with due acknowledgement:
  - (a) that the Defence, Police, Security and other State Agencies responsible for national border integrity are entitled to perform statutory functions relating to crime detection and prevention within border posts and border line protection and control as may be permitted by domestic law;
  - (b) that the activities of all State Agencies responsible for national border integrity shall be coordinated where necessary and executed with sensitivity to the objectives of this Memorandum of Understanding;
  - (c) that all facilities, equipment and personnel necessary for the control of the movement of goods and people will be located so as to ensure full compliance with national information, security and physical security requirements and establish *locus standi* for criminal prosecution purposes;
  - (d) that all ports of entry must have a clear boundary / perimeter and be adequately fenced in with adequate control on both sides of the border for reasons of security and the ability to control the port of entry;
2. In order to give effect to paragraph 1, the Contracting Parties shall endeavour to conclude border post management agreements between themselves within twelve (12) months after the entry into force of this Memorandum of Understanding and attach such agreements as annexes to this Memorandum of Understanding. In the case of the conclusion of a bilateral agreement, the two negotiating Contracting Parties shall consult with and afford the third Contracting Party the opportunity to make submissions during the negotiation process.
3. The agreements contemplated in paragraph 2 may, subject to the provisions of paragraph 1, provide, amongst others, for-
  - (a) the designation of areas by the Contracting Parties in which joint customs controls may be carried out;
  - (b) the identification of offices and premises situated in the territories of either of the Contracting Parties in which the designated areas referred to in subparagraph (a) must be situated;
  - (c) the compliance of the areas, offices and premises referred to in sub-paragraphs (a) and (b) with the standards prescribed by the Contracting Parties and the provision of adequate security around the facilities for the reception of goods, persons and vehicles;

- (d) the appointment of officers of the Contracting Parties and their accommodation for purposes of joint customs controls;
  - (e) the exercising of powers and the performance of duties by officers of the Contracting Parties in the designated areas referred to in sub-paragraph (a);
  - (f) the appointment of officers of a Contracting Party as agents for the other Contracting Parties;
  - (g) the establishment of offices in each other's territories and the accommodation therein of customs officers of the other Contracting Party for the purpose of pre-clearance of goods and vehicles;
  - (h) the establishment of intergovernmental joint committees at the areas referred to in sub-paragraph (a) consisting of representatives of every Ministry or Department of the Contracting Parties involved in border functions for the purpose of overseeing the carrying out of joint customs controls; and
  - (i) the establishment of consultative committees at the areas referred to in subparagraph (a) consisting of the relevant public and private sector stakeholders to serve as a forum for consultation and communication on issues related to border post operations.
4. The Contracting Parties shall, where practicable, consider extending their cooperation at border posts to other control services such as immigration, safety and security, and sanitary and phytosanitary inspections.

#### **ARTICLE 2.3**

##### **BORDER POST BUSINESS HOURS**

1. The Contracting Parties shall -
- (a) pursuant to Article 7 of Annex II of the SADC Protocol on Trade, harmonize the business hours of border posts; and
  - (b) extend the business hours of border posts to facilitate the movement of goods and persons where this is justified by the level of commercial traffic.
2. In order to give effect to paragraph 1, the Contracting Parties shall, as an interim measure, prepare an annex setting out the rationale and time-scales for the incremental extension of border post business hours with the objective of introducing 24 hour operations where this is justified by the level of commercial traffic within 12 months after the entry into force of this Memorandum of Understanding.

#### **ARTICLE 2.4**

##### **BORDER POST FACILITIES**

Pursuant to Article 3.3 of the SADC Protocol on Transport, Communications and Meteorology and with reference to Article 2.2 of this Memorandum of Understanding, the Contracting Parties shall provide adequate and well-maintained border post facilities that meet the requirements of border post users, supported by, amongst others -



- (a) promoting adequate domestic accommodation and supporting community services and amenities for border post officials;
- (b) outsourcing the management of border post facilities and the performance of noncore functions, where appropriate, to the private sector to enable officials to focus more intensively on core control functions; and
- (c) promoting appropriate private investment in the provision of border post facilities or the improvement of facilities.

### **CHAPTER 3**

#### **ROADS AND ROAD TRANSPORT**

#### **ARTICLE 3.1**

##### **ROAD FUNDING AND MAINTENANCE**

1. The Contracting Parties shall -
  - (a) pursuant to Article 4.6 of the SADC Protocol on Transport, Communications and Meteorology, develop and implement harmonized and non-discriminatory cross-border road user charging systems;
  - (b) pursuant to Article 4.5 of the SADC Protocol on Transport, Communications and Meteorology, ensure that revenues obtained from road users under cross-border road user charges are regarded as dedicated for the upgrading, maintenance and operation of roads provided such a dedicated road fund has been established and is in existence; and
  - (c) ensure that the road infrastructure on the TKC is maintained in an adequate condition that responds to the needs of road users and facilitates the movement of goods.
2. The Contracting Parties shall prepare annexes on -
  - (a) cross-border road user charging systems as well as measures to facilitate the payment, collection and disbursement of cross-border road user charges; and
  - (b) mechanisms to jointly measure and monitor the adequacy of the road infrastructure on the TKC.
3. The Contracting Parties shall implement the annexes referred to in paragraph 2 within twelve (12) months after the entry into force of this Memorandum of Understanding.

#### **ARTICLE 3.2**

##### **ROAD TRANSPORT POLICY**

The Contracting Parties agree to -

- (a) maintain the existing rights resulting from the SACU Memorandum of Understanding on Road Transportation that governs mutual access to each other's transport markets; and
- (b) implement the provisions of Chapter 5 of the SADC Protocol on Transport,

Communications and Meteorology insofar as the SACU Memorandum of Understanding on Road Transportation does not give effect to the provisions of Chapter 5.

#### **CHAPTER 4 ROAD TRAFFIC**

##### **ARTICLE 4.1**

##### **GENERAL COMMITMENT TO HARMONIZE ROAD TRAFFIC LAWS**

1. Pursuant to Articles 6.3, 6.4, 6.5, 6.6 and 6.11 of the SADC Protocol on Transport, Communications and Meteorology, the Contracting Parties shall adopt and implement harmonized standards in respect of -
  - (a) vehicle fitness and equipment on or in respect of vehicles;
  - (b) vehicle dimensions, combinations and projections;
  - (c) loads on goods and passenger vehicles;
  - (d) traffic signs including traffic signals, road signs and markings;
  - (e) speed limits; and
  - (f) driving hours.
2. In order to give effect to paragraph 1, the Contracting Parties shall prepare an annex specifying the technical requirements that shall apply to drivers and vehicles used in undertaking the movement of goods.
3. The Contracting Parties shall implement the annex referred to in paragraph 2 in respect of the issues listed in paragraph 1(a) to (e) within 12 months after the entry into force of this Memorandum of Understanding.

##### **ARTICLE 4.2**

##### **ROAD TRAFFIC LAW ENFORCEMENT**

1. Pursuant to Article 6.13 of the SADC Protocol on Transport, Communications and Meteorology, the Contracting Parties shall -
  - (a) develop coordinated strategies for road traffic control and road traffic law enforcement;
  - (b) develop a common schedule of road traffic related offences and penalties as well as documents used by law enforcers;
  - (c) continue with and promote the joint training of road traffic law enforcement officials as far as practically possible; and
  - (d) develop harmonized standards in respect of road traffic law enforcement equipment and schedule regular inspections to monitor the accuracy and calibration of such equipment.

2. In order to give effect to paragraph 1, the Contracting Parties shall prepare an annex that contains a road traffic control and road traffic law enforcement plan that may include the scheduling of joint road traffic law enforcement actions.
3. The Contracting Parties shall implement the annex referred to in paragraph 2 within 12 months after the entry into force of this Memorandum of Understanding.

#### **ARTICLE 4.3**

##### **LOADS ON VEHICLES**

1. Pursuant to Articles 6.6 and 6.7 of the SADC Protocol on Transport, Communications and Meteorology, the Contracting Parties shall -
  - (a) encourage voluntary compliance with legal load limits and, to this end, agree to facilitate partnerships between the public and private sector;
  - (b) take all necessary steps to implement appropriate control measures to combat corrupt practices in road traffic and transport law enforcement and, specifically, in the management of vehicle loading;
  - (c) encourage broad-based private sector investment in the provision and operation of weighing stations: Provided that private investment may not be undertaken by road transport operators in an individual capacity;
  - (d) monitor the adequacy of overloading control and their network of weighing stations; and
  - (e) ensure coordination between themselves and their respective Ministries and Departments, including border post authorities, to combat overloading.
2. In order to give effect to paragraph 1, the Contracting Parties shall prepare an annex that contains an overloading control strategy that focuses, amongst others, on the location, hours of operation, staffing and calibration of weighing stations and the mutual recognition of weighbridge certificates.
3. The Contracting Parties shall implement the annex referred to in paragraph 2 within 12 months after the entry into force of this Memorandum of Understanding.

#### **ARTICLE 4.4**

##### **DRIVER TRAINING AND TESTING**

1. The Contracting Parties shall -
  - (a) pursuant to Article 6.9 of the SADC Protocol on Transport, Communications and Meteorology, develop and implement harmonized standards with regard to the training and testing of professional and public drivers; and
  - (b) develop strategies to combat the spread of Sexually Transmitted Infections (STIs) and the Human Immunodeficiency Virus (HIV) on the TKC.

2. In order to give effect to paragraph 1(a), the Contracting Parties shall prepare an annex specifying the training and testing standards applicable to professional and public drivers and shall implement such annex within 24 months after the entry into force of this Memorandum of Understanding.
3. The strategies contemplated in paragraph 1(b) shall be developed in consultation with the relevant health authorities and community organizations and may provide, amongst others, for the establishment of strategically located centres on the TKC to increase awareness of and provide basic medical services on the TKC.

#### **ARTICLE 4.5**

#### **TRANSPORTATION OF HAZARDOUS SUBSTANCES AND DANGEROUS GOODS**

1. The Contracting Parties -
  - (a) pursuant to Article 6.7 of the SADC Protocol on Transport, Communications and Meteorology, agree that the provisions of the Basel Convention on the Transboundary Movements of Hazardous Substances and their Disposal, 1989, shall govern the transportation of hazardous substances on the TKC and, to this end, they shall incorporate the provisions of the Basel Convention on the Transboundary Movements of Hazardous Substances and their Disposal, 1989, in their respective national laws; and
  - (b) shall adopt harmonized standards for the transportation of dangerous goods on the TKC.
2. In order to give effect to paragraph 1, the Contracting Parties shall -
  - (a) be guided by the provisions of the Basel Convention on Transboundary Movements of Hazardous Substances and their Disposal, 1989, in preparing an annex that governs the transportation of hazardous substances on the TKC; and
  - (b) prepare an annex specifying the requirements that shall apply to the transportation of dangerous goods on the TKC.
3. The Contracting Parties shall implement the annexes referred to in paragraph 2 within 12 months after the entry into force of this Memorandum of Understanding.

#### **ARTICLE 4.6**

#### **ROAD TRAFFIC SAFETY**

1. Pursuant to Articles 6.12, 6.14 and 6.15 of the SADC Protocol on Transport, Communications and Meteorology, the Contracting Parties shall adopt and implement a road traffic safety and incident management plan -
  - (a) to improve road traffic safety by focussing, amongst others, on mechanisms to prevent animals from straying on to the road infrastructure, and on the introduction of appropriate emergency communications systems; and



- (b) to manage incidents, including environmental incidents.
- 2. The road traffic safety and incident management plan referred to in paragraph 1 shall be attached as an annex.
- 3. The Contracting Parties shall implement the annex referred to in paragraph 2 within at least 12 months after the entry into force of this Memorandum of Understanding.

## **CHAPTER 5**

### **COMMERCIAL OPPORTUNITIES AND BUSINESS DEVELOPMENT**

#### **ARTICLE 5.1**

##### **COMMERCIAL OPPORTUNITIES**

The Contracting Parties shall -

- (a) identify transport and logistics-related commercial opportunities and needs along the TKC; and
- (b) ascertain the technical, commercial and economic viability of the opportunities contemplated in sub-paragraph (a).

#### **ARTICLE 5.2**

##### **BUSINESS DEVELOPMENT**

The Contracting Parties shall jointly develop a strategy for marketing the TKC.

## **CHAPTER 6**

### **INSTITUTIONAL**

#### **ARTICLE 6.1**

##### **ESTABLISHMENT OF TKCMC**

- 1. The Contracting Parties, acting pursuant to Article 3.5 of the SADC Protocol on Transport, Communications and Meteorology, hereby establish the TKCMC.
- 2. The TKCMC shall, pursuant to Article 3.5 of the SADC Protocol on Transport, Communications and Meteorology include adequate representation by-
  - (a) all modal transport operators servicing the TKC including multimodal transport operators;
  - (b) transport and infrastructure authorities with responsibilities in respect of the provision and management of transport and related infrastructure along the TKC;
  - (c) port authorities;
  - (d) customs authorities;
  - (e) freight forwarding and clearing agents servicing the TKC;
  - (f) trade and industry authorities and bodies;

- (g) financial and insurance institutions, industrialists and developers;
  - (h) immigration authorities with responsibilities in respect of the TKC;
  - (i) law enforcement authorities including representatives of Police, Safety and Security, Defence and other State Agencies responsible for national border integrity with responsibilities in respect of the TKC;
  - (j) tourism groups;
  - (k) users of TKC systems and facilities; and
  - (l) any other stakeholders.
3. The TKCMC shall be chaired by an official mandated by the Ministry or Department responsible for transport of the same Contracting Party that is responsible for providing secretariat services to the TKCMC pursuant to Article 6.2 of this Memorandum of Understanding.
  4. The Contracting Parties shall ensure that they are represented on the TKCMC by officials at least at the rank of Director or equivalent.
  5. The Contracting Parties shall introduce mechanisms to ensure the financial sustainability required by the TKCMC and the Secretariat to execute the functions contemplated in Article 6.3.

#### **ARTICLE 6.2 SECRETARIAT**

1. The Contracting Parties may review the location of the Secretariat annually and, after consultation with the TKCMC, may decide to rotate the Secretariat.
2. The provision of secretariat services to the TKCMC shall at least entail -
  - (a) supporting the Contracting Parties with the implementation of the provisions of this Memorandum of Understanding;
  - (b) monitoring compliance by the Contracting Parties with their obligations in terms of this Memorandum of Understanding;
  - (c) assisting the TKCMC with the execution of its functions listed in Article 6.3; and
  - (d) providing secretariat and administrative support to the TKCMC including maintaining an updated list of all TKCMC members.

#### **ARTICLE 6.3 FUNCTIONS**

The TKCMC -

- (a) shall monitor the performance of the TKC and, to this end, they shall develop an annex that, amongst others, deals with -

- (i) performance indicators to be applied to the TKC such as trade and traffic flows, container volumes, adequacy of facilities, processing times at border posts and average point-to-point transit times;
  - (ii) the frequency with which performance monitoring shall take place; and
  - (iii) the dissemination of performance monitoring results;
- (b) shall develop an implementation plan that -
  - (i) specifies the actions required to implement the provisions of this Memorandum of Understanding within the prescribed periods;
  - (ii) allocates responsibility for implementing the provisions of this Memorandum of Understanding; and
  - (iii) identifies the resources required for implementing the provisions of this Memorandum of Understanding;
- (c) shall, collectively and individually, on a quarterly basis -
  - (i) assess progress made with the implementation of this Memorandum of Understanding on the basis of the implementation plan referred to in sub-paragraph (b); and
  - (ii) develop measures to expedite the implementation of this Memorandum of Understanding;
- (d) shall assist and advise the Contracting Parties in implementing this Memorandum of Understanding;
- (e) shall, in the case of government policy and regulatory matters, make recommendations to the Contracting Parties for decision;
- (f) shall exchange information pertaining to the TKC, and for that purpose shall develop and implement a TKC information system that-
  - (i) records and provides data for the planning, development, implementation and monitoring of the TKC;
  - (ii) facilitates business contacts; and
  - (iii) provides information to consumers and the public-
    - (1) to enable them to monitor service provision;
    - (2) to inform infrastructure and services investment-related decisions; and
    - (3) for research purposes;
- (g) may make recommendations to the Contracting Parties to amend this Memorandum of Understanding;

- (h) may establish an Operations Committee and any other additional committees and working groups under its control and supervision, as the need arises, to assist it in the execution of its functions;
- (i) may appoint experts to assist it in the execution of its functions;
- (j) may address any issue pertaining to the TKC; and
- (k) may execute such other functions deemed necessary to ensure the proper implementation of this Memorandum of Understanding and as directed by the Contracting Parties.

#### **ARTICLE 6.4**

##### **OPERATIONS COMMITTEE**

1. The Operations Committee refer to in Article 6.3 (g) consists of:
  - (a) the Chairperson of the TKCMC;
  - (b) two officials each representing one of the Competent Authorities of different signatory states than the one represented by the Chairperson; and
  - (c) not more than three members nominated by the Contracting Parties representative of the private sector in the signatory states.
2. The TKCMC may, through a unanimous decision, delegate any of its functions to the Operations Committee.

#### **ARTICLE 6.5**

##### **RULES OF PROCEDURE**

1. The TKCMC shall meet at least twice per year.
2. A quorum for the meetings of-
  - (a) the TKCMC shall be-
    - (i) an official from each of the Contracting Parties or an alternate official designated as such by a Ministry or Department responsible for transport, as the case may be; and
    - (ii) one private sector stakeholder from each of the Contracting Parties.
  - (b) the Operations Committee shall be-
    - (i) an official from each of any two Contracting Parties or an alternate official designated as such by a Ministry or Department responsible for transport, as the case may be; and
    - (ii) one private sector stakeholder from each of any two of the Contracting Parties.



3. For the purposes of taking decisions in the TKCMC on corridor operations matters each country delegation shall be required to present a consolidated public-private sector country position and all decisions shall be taken by consensus amongst all country delegations.
4. Regional private sector associations will be encouraged to participate in meetings of the TKCMC and their recommendations shall be taken into account.
5. The TKCMC shall within one month after entry into force of this Memorandum of Understanding adopt additional rules of procedure required for its functioning.

#### **ARTICLE 6.6 REPORTING**

1. The TKCMC shall submit a report on an annual basis to the Ministers responsible for transport, trade, customs, immigration, safety and security and maintenance of national border integrity of the Contracting Parties and the private sector associations represented on the TKCMC on-
  - (a) progress made with the implementation of this Memorandum of Understanding;
  - (b) progress made with the development of annexes;
  - (c) compliance with the implementation plan prepared in terms of Article 6.3;
  - (d) constraints encountered with the implementation of this Memorandum of Understanding; and
  - (e) the need to expand the scope of this Memorandum of Understanding in pursuit of promoting inter-modal cooperation on the TKC.
2. Copies of the report contemplated in paragraph 1 shall be transmitted to the Southern African Development Community Committee of Ministers, through the Southern Africa Transport and Communications Commission Technical Unit, and the Southern African Customs Union Transport Liaison Committee.

### **CHAPTER 7 FINAL PROVISIONS**

#### **ARTICLE 7.1 ENTRY INTO FORCE AND WITHDRAWAL**

1. This Memorandum of Understanding shall enter into force on the date on which each party has notified the others in writing, through diplomatic channel, of its compliance with the constitutional requirements necessary for the implementation of this agreement.
2. The date of entry into force shall be the date of the last notification.
3. If a Contracting Party wishes to withdraw from this Memorandum of Understanding, that Contracting Party shall give written notice thereof to all

other Contracting Parties. If, after consultations, the Contracting Parties fail to agree on the date and conditions of withdrawal, this Memorandum of Understanding shall remain in force until six months from the date of such notification and shall then cease to apply to the withdrawing Contracting Party.

#### **ARTICLE 7.2**

#### **AMENDMENT OF MEMORANDUM OF UNDERSTANDING AND INCLUSION AND AMENDMENT OF ANNEXES**

1. Any Contracting Party or the TKCMC may propose an amendment to this Memorandum of Understanding and, in that case, such proposal shall be transmitted to the Contracting Parties and they shall strive to reach consensus with regard to such proposal.
2. Any Contracting Party or the TKCMC may propose the inclusion of a new annex or an amendment of an existing annex to this Memorandum of Understanding and such new and amended annex shall form an integral part of this Memorandum of Understanding.
3. In the case of a proposal to include a new annex or amend an existing annex to this Memorandum of Understanding, the TKCMC shall agree on the proposal by a unanimous decision and recommend to the Contracting Parties for approval.

#### **ARTICLE 7.3**

#### **RELATIONSHIP WITH OTHER INTERNATIONAL AGREEMENTS**

This Memorandum of Understanding shall not alter in any way the rights and obligations of any Contracting Party under any bilateral or multilateral agreement to which such a Contracting Party is also party at the time of the signing of this Memorandum of Understanding.

#### **ARTICLE 7.4**

#### **APPLICATION OF OTHER MEASURES**

1. No provision of this Memorandum of Understanding shall preclude the application of prohibitions or restrictions relating to the importation, exportation or transit of goods, imposed for reasons of public order and, in particular, public safety, morality or health, or for the protection of the environment.
2. Emergency measures that a Contracting Party may introduce as a result of particular circumstances, shall be proportionate to the reasons that gave rise to their introduction and shall be suspended or abrogated when these reasons no longer exist.
3. A Contracting Party that intends to introduce emergency measures pursuant to paragraph 2 shall inform the other Contracting Parties and the TKCMC, in writing, of such intention or as soon as practically possible after the introduction of such measures.

**ARTICLE 7.5  
IMPLEMENTATION**

The Contracting Parties shall have the primary responsibility for implementing the provisions of this Memorandum of Understanding and shall take all necessary measures to give effect to such provisions, including their observance, by subsidiary levels of government.

**ARTICLE 7.6  
SETTLEMENT OF DISPUTES**

In the event of any dispute arising between the Contracting Parties as to the interpretation, application or performance of this understanding, such dispute shall be settled amicably through consultation and negotiation between the Contracting Parties through diplomatic channels.

**IN WITNESS WHEREOF, WE**, the undersigned, being duly authorized thereto, have signed this Memorandum of Understanding.

**DONE** in triplicate at **WALVIS BAY** on this **3rd day of NOVEMBER, 2003**.

**T. SERETZE**  
**FOR THE REPUBLIC OF BOTSWANA**

**M.M. AMWEELO**  
**FOR THE REPUBLIC OF NAMIBIA**

**A. OMAR**  
**FOR THE REPUBLIC OF SOUTH AFRICA**

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