NON-PHYSICAL BARRIERS TO FOREIGN DIRECT INVESTMENT AND TRADE FOR SADC DEVELOPMENT CORRIDORS

Final Report

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1 INTRODUCTION

The Terms of Reference of this assignment are as follows:

- To identify non-physical barriers to foreign direct investment and trade between countries forming part of the ***Maputo***, Nacala, Walvis-Beira Development Corridors and the Limpopo and Zambezi Valleys SDIs with a main focus on Malawi, **Mozambique**, Namibia and South Africa;

- To describe the prevalence, nature and extent of barriers; and

- To propose practical solutions and formulated an action plan for implementation of solutions.

During the past ten years or more, the barriers to foreign direct investment and trade have been reported through numerous study, media and stakeholder reports. These reports often included statistical data and impact calculations supporting conclusions on the existence of barriers. Whilst the precision of such data may be questioned, the inescapable reality of past and current research is that the same barriers are reported with regularity. The discrepancies in supporting data is often not a result of lack effort to pinpoint the exact magnitude and/or impact of a barrier but it is rather a function of fragmented and delayed statistical compilation by a multiplicity of sources and ad hoc or seasonal changes. Supporting data in this report emanates from various sources, including most recent reports and stakeholders interviews and input. Undoubtedly, the precision of data in this report and others precedent may be the subject of long-winding debate, however, the existence and prevalence of the identified barriers should, after extensive reporting, not attract further debate but action towards resolution. Cumulatively, these studies have presented evidence beyond reasonable doubt that the barriers exist and have a constraining impact on trade efficiency and overall economic growth.

For the purpose of the first two objectives of the Terms of Reference the consultant studied past reports (with an emphasis on the most recent available information), relevant legislation, policy and strategy documents, and also conducted stakeholder interviews for the purpose of verification and reality check. The report includes a number of text boxes quoting particular case study experiences illustrating the key constraints experienced. Based on an initial desk top assessment to determine which countries, on paper at least present the highest level of constraint, and in view of the fact that most of the corridors studied traverse **Mozambique** and Malawi, the case studies relate largely to these two countries.

The report aims to add value through a consolidation and verification of reported barriers, presentation of the disconnect that individual country regimes present to corridor efficiency and economic growth, highlights of progressive changes and good practices that may be emulated, illustration of the impact of barriers on logistical decisions and recommendations on corrective action.

The issue focus of the study, points to a measurement of current:

- Institutional arrangements in relation to roles, powers and status of investment agencies, simplicity, timeliness and cost of procedures, immunity to corruption and competitive environment;

- **Attractiveness of the business environment as measured in respect of the bureaucratic requirements and procedures relating to investment, transportation of exports and imports, customs & immigration clearance and external tariffs; and**

- **Efficiency of Transit Traffic**.

Accordingly, the report is presented in four main sections, namely:

- Institutional Arrangements;

- Business Environment;

- Logistical Flow; and

- Recommend Interventions.

2 INSTITUTIONAL ARRANGEMENTS

2.1 INTRODUCTION

2.1.1 Multiple public-, private- and joint public-private sector institutions (PPPs) share the objective to facilitate investment and trade in the countries and corridors assessed. These include the SDI Regional Programme Initiative, national investment agencies or offices, not-for-gain companies championed by the private sector but involving both private and public sector stakeholders and corridor consultative committees for different transport modes as envisaged in the SADC Transport, Communications and Meteorology Protocol.

2.1.2 Whilst these institutions have a common objective, they have been set up under different legal regimes and founding documents and accordingly function in terms of different terms and procedures. Despite these differences, it is notable that all these institutions are not end-result or final decision-making agencies but facilitators of process and change. Thus, their efficacy is largely dependent on co-operation received from other mostly Government departments and ministries who hold the key to sector reforms and authorizations.

2.1.3 This section highlights problems in role definition and fragmentation, status and mandate, procedures and mind-shift detected in respect of current institutional arrangements. In addition, good practice examples are noted for future strategy.

2.2 SDI REGIONAL PROGRAMME

2.2.1 The SDI Regional Programme comprises 8 projects involving 7 SADC countries with 2 others to join soon. The initiative has demonstrated success in, amongst others:

- Ability to tie the national objectives of individual countries together in a mutual interest band along corridors;
- Development of business cases for sustainable projects in for example, mining, tourism, agriculture and infrastructure;
- Engaging all relevant stakeholders;
- Sponsoring project “champions” to drive corridor initiatives; and
- Advocating the benefits of integrated economic development and logistics planning amongst members of bi-lateral and multi-lateral country commissions, Ministers of Cabinet, Departments, Ministries and the private sector at large.

2.2.2 Its flagship project to date is the ***Maputo*** Development Corridor. The SDI has attributed its success on the ***Maputo*** Corridor to commitment by all involved, a clear focus on what had to be achieved, keeping to time-scales and persistence. Notably, the project “champions” enjoyed the institutional authority to lever change; project “champions” had sufficient status and authority given to them by the respective Cabinets of **Mozambique** and South Africa to empower them for a limited period of time to coordinate and fast track implementation for the exclusive purposes of establishing the ***Maputo*** Corridor. Unfortunately, although an exit strategy for these champions was necessary the timing thereof may be questioned and may be the result of an underestimation of the magnitude of the project to ensure comprehensive and sustainable change. As will be noted elsewhere in this report, much remains to be done on the ***Maputo*** Corridor to reap the full benefit of what has been achieved thus far.

2.2.3 Overall, the SDI Programme has been successful in establishing the feasibility of markets, identifying opportunities and investors and project design. Unfortunately, not all business cases developed by the SDI Programme have come to fruition, as a result of constraining domestic investment environment; although, the programme facilitates identification of barriers to investment and encourages Governments to introduce required reforms its role and influence is restricted to that of a facilitator. The programme is largely dependent on national institutions to transform investment potential into reality.

2.3 NATIONAL INVESTMENT AGENCIES

2.3.1 Malawi, **Mozambique** and Namibia have dedicated investment agencies whilst in Botswana and South Africa the Ministries responsible for Trade and Industry provide investment facilitation services. None of the agencies, however, are mandated to lead investment processes, but they all have varying powers to facilitate and coordinate investment processes.

2.3.2 The Malawi Investment Promotion Agency has been set up as a "one-stop" facilitator statutorily empowered to influence and coordinate investment decisions of other public authorities and is empowered to set deadlines. Although in the past, MIPA reported to the President's office, current arrangements are that it reports to the Minister responsible for trade and industry. The perception of MIPA officials is that the change in reporting lines has detrimentally affected MIPA's ability to expedite processes although, reportedly, there is good co-ordination amongst the various state agencies through the Investment Approval Committee chaired by the Ministry of Trade and Private Sector. Other members are the Ministries of Finance, Labour, Lands, Home Affairs and Environment if and when necessary. In addition, the Malawi Revenue Service and the Malawi Export Promotion Council also serve on the Committee. MIPA serves as secretariat.

> **Case Study Box 1**
> *MIPA:*
>
> *"Generally satisfied with efficiency of process but need to have finality on incentives. Weak process for investment and implementation of incentives – The procedure for investors has been improved through the MIPA one stop shop, but is not always within the target ten-day period especially when this involves allocation of land and is not sufficiently transparent. The approval of incentives and allocation of land is slow and uncertain for some sub-sectors, such as Tourism. Several major investors have been lost over the years simply due to delays in approval. There is no mechanism to ensure that all GoM bodies implement any agreed incentives."*

2.3.3 In addition to MIPA, the Malawi Privatization Commission is empowered to facilitate investment on a co-ordinated basis in state-owned entities. The Commission's current mandate is in relation to listed existing assets. Once the assets contemplated in the constituent legislation have been privatized, the Commission will be functus officio and should be disbanded. Government views this as a natural disestablishment of an entity created for a specific purpose. There is, however, a debate under way as to the future of the Privatization Commission. Officials of the Privatization Commission offer an alternative to disestablishment that would entail redefining the role of the Privatization Commission as a permanent entity facilitating Public-Private Partnerships irrespective of whether such partnerships relate to listed assets. The argument made by the Privatization Commission is that the skills and experience built up over the past years should be retained and utilized to support Government in establishing Public-private Partnerships.

2.3.4 Stakeholder interviews in Malawi highlighted that intra-governmental coordination and public-private sector cooperation is weak, especially in the manufacturing sector. It has been claimed that the public sector is going through the motions, whilst the private sector has become unwilling to invest enough time, energy and resources to fully engage. When there has been consultation, there has reportedly been a failure to really listen and appreciate the perspective of the other side resulting in misunderstandings, false perceptions and frustration. Due to failings on both sides, for example, the development of Malawi Poverty Reduction Strategy failed to properly engage the private sector as the main source of growth, resulting in a weak integration of private sector issues into the MPRS. In the recent past, the Chamber of Commerce has generally failed to win the trust and confidence of the private sector and to perform as an effective mouthpiece for the private sector perspective. There are signs that this is being reversed, but it has meant that the private sector has tended to work as a series of independent and relatively weak sub-sector lobbies with limited real influence on policy.

> **Case Study Box 2**
>
> *W Alli:*
>
> *"New investment model (including risk sharing grid) needed that encourages joint investment between Government and private sector. Private sector wants assurance that Government will put its money where its mouth is. There is no existing strategy for Government*

2.3.5 Some success has reportedly been achieved in the agricultural sector with intra-governmental and public-private sector cooperation. With 85% of the population engaged in mixed subsistence and cash crop agriculture, access to key inputs and technical support is important to improving yields, quality and returns in cash crops and subsistence crops. Organizing inputs and extension services has provided a major challenge to the agricultural authorities and is a very difficult task to deliver across the whole country on limited resources. Initiatives in tobacco, sugar, cotton and tea suggest that a more co-operative relationship between smallholders and larger processors/marketing firms can be symbiotic. Larger firms provide inputs and technical support, in return for access to the crop and the ability to offset the input costs against remittances to smallholders. Whilst smallholders have to pay for market prices for inputs, they are now getting consistent access to inputs on credit and technical support resulting in higher profits. Smallholders also have a guaranteed buyer that provides certainty and remits payment on time. Such schemes show the potential to have a big impact on rural incomes and productivity with benefits to the macro economy through increased exports, higher GDP and higher demand in the economy.

Case Study Box 3

Farmers World & Tobacco Exporters:

"The current human resource base is relatively weak characterized by low skill, low productivity and low wages. This partly reflects weaknesses in the education system inadequate specialized skills development but also the devastating impact of HIV/AIDS and poor management practices in the private sector more generally."

2.3.6 The most pressing priority voiced by all officials consulted is the preparation of Public-Private Partnership enabling legislation.

2.3.7 In addition, it should be reported that specialized human resource constraints is hampering Malawi's ability to catalyze favourable economic growth. In this regard the example of unfavourable Trade Agreements has been mentioned. Weak negotiation capacity and failure to fully involve private sector people has resulted in poor agreements and lost investment for Malawi.

2.3.8 The Mozambican CPI is also a statutory entity reporting to the Cabinet. It has the primary function to certify investors for financial incentives. This process however runs parallel with and is dependent on the business licensing process conducted by various Ministries. The CPI has powers to co-ordinate the process and the legislation spells out the time scales for the various processes. It is worth mentioning that assessment of recent legal reforms by **Mozambique** detected that most recent legislation stipulates time-lines for bureaucratic procedures; this is an extremely positive development to be considered by other corridor states. Unfortunately, it appears from interviews that the mind-set of officials have not yet shifted in-step with the requirements of the legislation. Where a party does not meet the deadline and fails to provide a valid reason, the CPI is empowered to deem consent on the part of the defaulting party. The inclusion of specific time-lines for bureaucratic processes in the recent legislation in **Mozambique**, and in particular, the tacit consent rule, is a notable good practice. However, it appears that the positive spirit of the legislation is not necessarily carried through to practice. It has been reported that ministries do not adhere to time-lines and that the CPI is not keen to use the tacit consent rule and will not easily proceed without actual approval. In fact, when asked what is the biggest constraint to investment in **Mozambique**, one commentator responded with one word "bureaucracy!"

Case Study Box 4

CPI:

Much new (reform-based) legislation has been passed – the problem is still the implementation. The challenge is still to change the mindset in the public sector - legislation governing government staff is very protective, it is therefore not easy to make changes (or enforce performance)."

In terms of official documentation investments in corridors are favoured. In reality however, little in the corridors have materialized. CPI would therefore accept investment in all sectors and in all locations. Dependence on SDI to bare fruit would place other investment opportunities at risk. CPI has a mandate to promote all investment and would in future look at investments not necessarily in relation to corridors.

Are procedures and mechanisms on the Mozambican side are in synch with those of neighbouring countries - much discussion has taken place but in reality little has changed. When a project proposal is submitted local legislation is still used. Even basic issues such as visa exceptions are still being discussed. Although much time has been spent agreement on such issues has not being reached.

> **Case Study Box 5**
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> *SASOL:*
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> *"The extent of bureaucracy in Mozambique is quite an involved and time consuming process. The legal framework is described as very procedural, where the chain of decision-making is excessively long – this as a result creates long time periods before any approval is given. Regular changing legal rules can be a disincentive and would make many investors uneasy if they cannot 'freeze' legal issues into a timeframe of relevance.*
>
> *The larger investor can often circumvent or streamline many procedures whereas the smaller investor is deemed to 'feed the system' as they go through the extended process where each step also requires financial inputs. It is often the smaller investor that is expected to feed practices of corruption.*
>
> *Experience has been that different government departments often do not communicate clearly with each other with regard to an investment project - SASOL created a* ***forum where***

2.3.9 It has been noted that the CPI is an active participant and contributor to public-private sector coordinating initiatives such as the **Maputo** Corridor Logistics Initiative (**MCLI**). See discussion on **MCLI** in section 2.3.3.

2.3.10 The Namibian Investment Centre (NIC) has not been set up as an independent statutory agency but as a division of the Ministry of Trade and Industry. The Foreign Investment Act of 1990, defines the role of NIC as assisting the Minister in administering the Act. The Act mainly addresses procedures and criteria for the granting of a Certificate of Status Investment that provides eligibility for certain benefits investment benefits, such as security of convertible foreign currency, assistance with expropriation procedures, etc. Thus, the NIC has a similar role to the CPI in **Mozambique** as far as the processing of investment certification is concerned. Although the NIC also facilitates approvals by other Ministries, the Act is clear that foreign investors are subject to the same procedures as nationals thus the NIC has no mandate to fast-tracking such approvals although it takes effort in facilitating approvals. However, it has been reported that due to its status as a division of the Ministry, it does not have sufficient leverage to effectively facilitate, coordinate or fast-track approvals by other ministries.

2.3.11 In Botswana the Ministry responsible for trade and industry and in South Africa the trade and investment division of the Department of Trade and Industry serve as fora to channel documentation to the other Ministries involved. This is probably as a result of the fact that investment licenses are not required in these countries. Where outside approvals are required, the Ministries submit the information to the other authorities, but leave it up to the investor to deal direct with those authorities, track progress and finalize transactions.

2.4 NOT-FOR-GAIN PRIVATE-PUBLIC SECTOR INITIATIVES

2.4.1 Not-for-gain public-private sector initiatives have been established in respect of the **Maputo** Development Corridor (**MCLI**), Beira Corridor (ACIS) and the Walvis Bay Corridor Group (WBCG). These initiatives are focused and have been proven to be very effective; the efficacy can be attributed to, amongst others, the:

- dedicated resources (eg. staff, marketing, etc.) that these institutions can mobilize through their broad-based and committed membership;
- proximity of these institutions to the reality on the ground on the respective corridors;
- direct benefit that reforms that they champion hold for the participants;
- public-private partnership approach adopted.

2.4.2 In contrast to the investment agencies and corridor committees, these initiatives are mostly championed and sponsored by the private sector. It is noteworthy that the websites of these initiatives are most information and guiding as to opportunities, what is required for investment and how investment and approvals may be facilitated. Information often includes downloadable copies of relevant legislation and official forms. In particular, the ACIS website provides English translations of relevant Mozambican legislation.

2.4.3 The **MCLI** is a successor initiative to the Government driven **Maputo** Development Corridor Company. It is most fortunate that this initiative stepped-in when the Government led initiative exited. It is worth noting that an assessment of the University of Cape Town in respect of the **Maputo** Corridor Company expressed a concern that the exit of the company was premature in relation to the magnitude of the task to be accomplished. Development of the corridor entails more than the establishment of a number of anchor projects although these have proven their substantial impact on improvements. Nevertheless, the operational environment (softer issues) lending sustainability to growth remain a big challenge and the business most affected by inadequacy in this respect are the importers, exporters, transporters and small, medium and micro enterprises using the corridor. It has been reported that the Governments have a greater interest in high profile projects and less commitment and interest in the "soft issues" and smaller projects. The inclusive approach followed by initiatives such as the ***MCLI*** serves to overcome, to some of these problems.

2.4.4 The Walvis Bay Corridor Group (WBCG) has a high profile and has been extremely successful in marketing the corridor and, in particular, traffic through the port of Walvis Bay, despite the fact that use of the port is marginalized by the distances to be traveled by imports and exports. Notably this initiative was established prior to the establishment of the government led Trans-Kalahari Corridor Committee (TKCC); in fact, the WCBG was one of the champions for the TKCC. The WCBG has benefited from donor support at set-up and the continuation of marketing and other initiatives.

2.4.5 The ACIS has been preceded by a number of other private sector initiatives on the Beira Corridor and less known than the ***MCLI*** and WBCG but shares similar objectives. It appears that the ACIS maintains good relations with the provincial authority and is largely a local chamber of commerce initiative.

2.5 TRANSPORT CORRIDOR COMMITTEES

2.5.1 Different types of transport corridor committees have been established pursuant to the provisions of the SADC Protocol on Transport, Communications and Meteorology. The common denominator for all is that they all have the objective to improve the operating environment for cross-border transport services.

2.5.2 Rail corridor committees have been established under the auspices of the Southern African Railways Association (SARA) and are focused at harmonizing operational, technical and safety issues between the railways on the different corridors. SARA can claim prodigious output in terms of the development of harmonized standards and the promotion of operational efficiency and private sector involvement in the railway sector. Unfortunately, it has little influence in fast-tracking national reforms to facilitate private sector involvement in the railway sector or to influence routing or capacity decisions by the railways themselves. It is also noted that the association is not represented on any of the other corridor committees although its members may be.

2.5.3 Joint Route Management Groups (JRMGs) in respect of road transport have been established for routes between South Africa, Botswana, Namibia and **Mozambique**. The initial focus of these committees was to develop bi-lateral transport agreements providing for extra-territorial recognition of road transport permits issued by national authorities based on reciprocity; this objective has been achieved and the committees are now focusing on other road transport and road traffic issues such as the harmonization of permissible axle loads, border post procedures, etc. These committees were established as an inter-governmental initiative and their composition is mostly governments, road transport operators and freight forwarders.

2.5.4 A multi-modal Transport Corridor Committee has been established on the Trans-Kalahari Corridor (TKC). Such a committee has not, as yet been established for the other corridors, although the ***MCLI*** seems to fill-in some of the objectives of such a committee. Despite the fact that the establishment of the TKC was actively promoted by the private sector and they participate and contribute to the functioning thereof, it is most unfortunate that the founding document of the TKC was an international agreement between the governments and the private sector is not a signatory to the agreement. This leaves the private sector as a "guest" to the TKC and is an unfortunate interpretation of the public-private sector concept. Private sector participants in the TKC mostly include transport operators and freight forwarders, whilst the involvement of shippers and other users has not been ideal. Like the WCBG, the establishment of the TKC was to a substantial extent driven through donor support.

2.6 COUNTRY AND CORRIDOR COMPARISONS

2.6.1 Institutional support to investment, trade and transport facilitation on is not equal on all the corridors. Although, the SDI Programme addresses all the corridors and national investment agencies serve the whole territory of the corridor states, sustainable public-private sector initiatives appear to be absent on the Zambezi, Limpopo and Nacala SDIs.

2.6.2 **Mozambique**, South Africa and Namibia are leading the way regarding private sector involvement are concerned.

2.6.3 The investment agencies of **Mozambique** and Malawi are legally more empowered to intervene with a view to fast-tracking approvals by other Ministries, although the Mozambican agency appears reluctant to use its powers.

2.7 TRENDS IN CONSTRAINTS AND RECOMMENNDATIONS

2.7.1 Despite the benefit of the attention given to investment, transport and transit facilitation by multiple agencies at national and corridor level, these initiatives appear to be fragmented, sometimes overlapping and, generally, in need of coordination. Although the SDI Programme contributes to coordination of initiatives on a corridor basis, it does not have the authority to intervene at a national level to enforce such coordination. The ambit of the role, power, functions, duties and, especially status of investment agencies are not always sufficiently defined and as a result their efforts in facilitation and coordination of intra-governmental affairs are often marginalized – we need champions with sufficient authority to lever change. In this respect, the "one-stop shop" approach of MIPA (Malawi) serves as a good example; however, the discontinuation of reporting directly to the President is a step backwards.

2.7.2 The private sector initiatives appear to acknowledge the importance of a public-private sector partnership and show more commitment in this respect. These initiatives are, however, dependent of government commitment to reforms. Government participation in these initiatives should be approached as "we will come and listen" but rather "we have come to plan and commit collectively". Shippers and other users are often not sufficiently represented (there are exceptions) on corridor initiatives and more effort should be made to secure their involvement. Unfortunately, such initiatives have not yet been established on the Zambezi and Limpopo SDIs; this requires attention and ideally the investment agencies should take the lead in this with the support of the SDI Programme.

2.7.3 The transport corridor committees serve an important role, but sector-specific committees have limited impact and their succession to an integrated public-private sector initiative such as the *MCLI* and WBCG should be attended to.

2.7.4 The exit strategies of government led institutions responsible for investment and corridor coordination are not always sensitive to the magnitude of the task at hand, eg. the ***Maputo*** Corridor. It may be that the governments' intention is to only provide an incubator for private-public sector initiatives to provide sustainable facilitation, however, exist strategies should be in relation to appropriate timing (not just after a number of successful anchor projects have been secured) and include a succession plan for inclusive public-private sector.

2.7.5 Many a commentator reported that the establishment, and favourable investment and operating environment of big anchor projects with high profile enjoy much more attention of the governments, but little attention is given to small and medium sized projects and the overall national enabling and operating environment. It is noted that the mandate of some of the investment agencies is limited in terms of the size or value of investments; their mandate should be expanded to address smaller investments or these agencies should work closer with the national agencies responsible for SMME development.

2.7.6 National ministries responsible for sector or business approvals are not necessarily in-step with the investment, transport and trade facilitation objectives of the investment agencies and corridor initiatives – there is a glaring need to establish a "mind-shift". In this respect, it is recommended that the CPI in **Mozambique** exercise its "tacit approval" empowerment to instill discipline in the time-line that statutorily stipulated. Moreover, it is recommended that other corridor states follow **Mozambique**'s example in legislative reforms to stipulate time-lines for bureaucratic approvals and provide for a "tacit consent" rule. It should also be noted that all the legislation reviewed is sufficiently flexible to permit implementation of time saving procedures and mechanisms. National ministries are not obliged to take the maximum time prescribed to issue an approval and even where no time-lines are prescribed, they may within the parameters of existing law exercise the discretion to facilitate expeditious approvals. No legislative amendment is required all that is required is committed mind-shift. This can be introduced without delay but will it probably only be effective with clear instruction from Presidential or Ministerial level.

2.7.7 In the case of Malawi, particular attention should be given to strengthening intra-governmental and public – private sector coordination and co-operation, to securing specialized human resources and to process the enactment of public-private partnership legislation.

2.7.8 As an ancillary matter, it is worth noting that concern has been expressed that conditions by donors in respect of support to projects also introduce delays that are not necessarily ascribed to constraining national legislation or procedures. In this respect, requirements regarding comprehensive environmental impact assessment may delay projects substantially whilst national requirements provide for provisional licensing or less rigorous requirements. Moreover, it has been noted that while great benefit has been realized through donor support in the establishment of public-private initiatives, some of these have been driven to some extent by donor objectives and have not always been sensitive to broader national coordination. It is recommended that donor conditions and objectives be effectively coordinated with national realities.

2.7.9 It has also been reported that corruptive practices in fast-tracking approvals by national ministries occur. This study did not empirically determine the extent of such corruption but the following ranking (from lower to higher) by the Transparency International Corruption Perception Indices have been noted:

- Botswana (30th position globally);
- Namibia (41st position globally);
- South Africa (48th position globally);
- Malawi (83rd position globally); and
- **Mozambique** (86th position globally).

2.7.10 With regard to institutional immunity to corruption, consideration has to be given to adopting anti-corruption and whistler blowing legislation. Best practices suggest that Government agencies should prepare internal fraud and corruption strategies irrespective of whether they have enabling legislation.

2.7.11 In conclusion, most of the recommendation above, with only three exceptions, do not require protracted legal processes and can be implemented without delay and with reasonable expectation of focused positive impact.

3 BUSINESS ENVIRONMENT: INVESTMENT

The principal issues raised in the desktop review are:

- Business incorporation and registration;
- Financing;
- Tax Administration;
- Access to Land;
- Contract Enforcement / Dispute Resolution;
- Labour; and
- Fair Trading or Competition.

3.1 BUSINESS INCORPORATION AND REGISTRATION

Business incorporation and registration is addressed with reference to the ease with which an investor can start up a business and relates to:

- the number of approvals required;
- complexity of documentation eg is there single / multiple documentation, is it user-friendly;
- transparency of processes eg accountability of officials (corruption);
- clarity of processes eg are processes predictable and open; is compulsory notarial authorization required; and
- time and cost of processes.

3.1.1 Country Position: Botswana

3.1.1.1 Business registration in Botswana entails two principal transactions namely company incorporation and business licensing collectively entailing 11 procedures namely:

- Select company name;
- Sign the declaration of incorporation before a commissioner of oaths;
- Register the company with the Registrar of Companies;
- Register for tax;
- Register for VAT;
- Complete statutory return formalities;
- Collect application forms;
- Obtain an approval of the working condition;
- Advertise on the official gazette;
- Apply for an industrial licence; and
- Register employees for the work injury insurance.

3.1.1.2 On average it takes 108 days to complete the procedures at a cost of approximately US$ 450.00. There is no minimum deposit required. Multiple documents are used and currently there is no approved position regarding the use of a single registration document. Applications have to done in writing and submitted personally or via an agent. Electronic submissions are not permitted. The documents are easy to use and on-site client assistance is provided. Reportedly, there are no significant demands for the same information by different agencies.

3.1.1.3 Despite the relative ease of process and relative cost, it is submitted that the duration of the process in Botswana may be reduced dramatically. Otherwise no distinct problems in have been reported.

3.1.2 Country Position: Malawi

3.1.2.1 Business registration in Malawi entails two principal transactions namely company incorporation and business licensing collectively entailing 10 procedures namely:

- Initiate a names search;
- Register at the Ministry of Justice;
- Register for payment of income taxes;
- Obtain a seal;
- City assembly licence application;
- City inspection of premises;
- Pay city licence fee;
- Apply for registration of workplace;
- Inspection by the Occupational Safety, Health and the Welfare Department; and
- Register for PAYE.

3.1.2.2 On average it takes 35 days to complete the procedures at a cost of approximately US$ 300.00. There is no minimum deposit required. Although Malawi has approved a policy of introducing a Single Business Permit, this has reportedly not yet been implemented and multiple documents are still in use in terms of the Business Licensing Act. A single Business Permit will be required for all economic activities, including manufacturing. Businesses will be required to pay a predetermined and published scale of fees calculated on a formula that takes account of profitability, size of business premises and number of employees. Preliminary indications are that the permit fee will not add significantly to the cost of doing business.

3.1.2.3 Applications have to done in writing and submitted personally or via an agent. Electronic submissions are not permitted. The licensing process is well defined in legislation and permits appeals to the Minister against decisions of licensing bodies. The Minister, however, is not required to provide written reasons for decisions. The documents are easy to use and on-site client assistance is provided by MIPA. Reportedly, there are no significant demands for the same information by different agencies.

3.1.2.4 No significant problems were reported.

3.1.3 Country Position: Mozambique

3.1.3.1 Business registration in **Mozambique** entails two principal transactions namely company incorporation and business licensing collectively entailing 13 procedures each in turn comprising numerous steps, namely:

- Registration of name;
- Registration of company statutes, which requires submission of a copy of hand written statutes;
- Submission by foreign investors to CPI of proof of shareholder's ID plus complete project proposal;
- Publication of Statutes in ***Maputo***;
- Issuing of registration certificate, which requires submission of complete text of the certificate which is then re-typed by the Conservatoria;
- Preparation of notarised copies of all documents plus letter of authenticated signature;
- Submission and request for quotation;
- Payment which can only be made to specific individuals and, if they are absent, the process is automatically delayed;
- Pre-inspection of proposed premises by the three Ministries respectively responsible for Finance, Labour and Health. The investor / consultant must schedule appointments with the inspectors and provide transportation to and from the Ministry;
- After inspection, the company must obtain a work schedule, a Sanitary Control Book and a registered list of employees. A work schedule and a registered list of employees cannot be obtained until the business has been licensed. Some inspectors demand submission of these instruments before licensing, which is legally not possible. The requirement of the Sanitary Control Book lies within the inspector's discretion and differs from province to province;

Case Study Box 7

SASOL:

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To have documentation 'legalised' in Mozambique requires that a notary's office be visited. In addition, the documentation often needs to be translated into Portuguese. Some documentation needs to be provided in handwritten form. These requirements add to the time taken to complete the process than would be the case in other countries. It is clear that should this process be repeated several times for different applications it would

- Governor's Dispatch, the submission of which is controlled by the Commerce Department;
- Final inspection, which requires collecting all the necessary documents from each department involved, scheduling appointments with inspectors individually and transporting the inspectors to and from the business premises. All licensing fees are payable in advance and not refundable where the licence application is rejected; and
- Industrial and tourism licensing.

3.1.3.2 A minimum capital is required and a registration number can only be obtained on deposit of a predetermined amount in money in a Mozambican bank. The average time to register and obtain licences is about 138 days. The complex procedure requires the assistance of specialist consultants. Consultants charge in the range of US$ 1000.00- US$ 1500.00 for their services; these are additional to the fees required by the various government agencies. On average, registration charges are about US$ 11 500.00. The fees payable to government agencies are based on a complex system of tariffs and fees that is not available to the public. It is therefore not possible to verify calculations of percentages paid at each stage in the registration process. It should be noted that these fees do not include fees and percentages charged by CPI to foreign investors.

3.1.3.3 Principal constraints relating to company registration that have been reported are:

- Slow and costly process;
- Antiquated methods of processing and recording documents;
- Lack of coordination among the Notary Office, the Public Commercial Registry and the Government Printing Office;
- The requirement of minimum capital investment;
- Too many inspecting authorities with overlapping responsibilities;
- Lack of inspection guidelines and necessary information. Criteria change from inspector-to-inspector;
- Chronology of actions not respected. For example inspectors demand submission of documentation at pre-inspections that can only be provided at a later stage after completion of the licensing process;
- Lack of transparency leading to arbitration and discretion;
- Fine system being abused by lower-level inspectors looking for irregular payments.

Case Study Box 8

SASOL:

"Purchased two vehicles from a local motor dealer that was available and standing in their shop floor. Yet it still took two months before these vehicles were delivered. Here again the process of vehicle registration had taken a very long time. A company that would have required the use of such vehicles would normally have to take this lag time into account.

The larger the investment the higher the costs are. There are often much hidden costs that can discourage investors to invest if they have to

3.1.3.4 Some improvement has been recorded regarding the ease of obtaining licences. For example, hotel and restaurant investment licensing in ***Maputo*** is reportedly relatively easy. Other improvements include:

- Replacement of the industrial licensing requirement with automatic registration for "class 3" companies;
- Substantial reduction of documentation involved in industrial licensing for "classes 1-2" companies;
- Establishment of time limits and the principle of tacit approval if not response made during the time limit; and
- Efforts by MIC and DIC ***Maputo*** to implement the new procedures through coordination (Balcao Unico) and train the officials

3.1.3.5 Notwithstanding the recorded improvements, the following constraints remain:

- For "classes 1-2" companies, licensing is still required for every activity;
- Application process still requiring documentation that is more complicated than necessary;
- Multi-ministerial involvement in the process causing difficulties to MIC and other involved ministries and authorities;
- General weakness of implementation outside ***Maputo***; and

- The Tourism Act has not yet been implemented.

3.1.4 Country Position: Namibia

3.1.4.1 Business registration in Namibia entails two principal transactions namely company incorporation and business licensing collectively entailing 10 procedures namely:

- Deposit the initial capital in a bank account;
- Obtain the approval for a company name;
- Pay the registration fees and buy revenue stamps;
- Obtain the Certificate to commence business;
- Register for VAT;
- Register for PAYE;
- Apply for a Town Planning Certificate;
- Apply for a health certificate / trading licence;
- Register workers with the Social Security Commission; and
- Register workers with the Workmen's Compensation Commission.

3.1.4.2 The average time for the process in Namibia is ninety days and the average cost of the process is $480.00. Other than the potential for reduction in processing time, no other problems were reported.

3.1.5 Country Position: South Africa

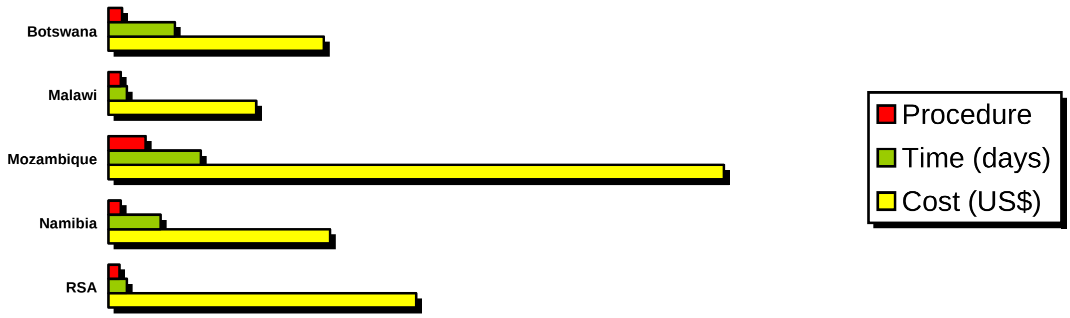
3.1.5.1 Business registration in South Africa entails two principal transactions namely company incorporation and business licensing collectively entailing 9 procedures namely:

- An agent notarises company deeds;
- Pay duties;
- Reserve a name;
- File with Companies registrar;
- Open a bank account;
- File with office of local receiver (taxes);
- File with Department of labour for unemployment insurance;
- File with relevant Municipal Metro Council (local levy); and
- File with compensation fund for accident insurance.

3.1.5.2 On average it takes 30-40 days to complete the procedures at a cost of approximately US$ 500.00. There is no minimum deposit required. Multiple documents are used and currently there is no approved position regarding the use of a single registration document. Applications have to done in writing and submitted personally or via an agent. Electronic submissions are not permitted. The documents are easy to use and on-site client assistance is provided. Reportedly, there are no significant demands for the same information by different agencies.

3.1.6 Country and Corridor comparisons

3.1.6.1 The difference in procedure, time and cost involved in company and business registration is illustrated in Diagram 1 below.



3.1.7 Country and Corridor Comparison

3.1.7.1 Preliminary indications are that **Mozambique** represents the highest level of disconnect in relation to number and simplicity of procedures, time and cost. Malawi currently provides the quickest and cheapest business registration service. South Africa provides the second fastest service at the second most expensive cost after **Mozambique**. Namibia provides a faster service than Botswana and **Mozambique**. None of the countries reviewed has moved to single documentation and electronic applications. The company incorporation and licensing regimes of Botswana, Malawi, Namibia and South Africa appear to be adequate and no major constraints are reported. Against this background, the highest potential for corridor disconnect is on the ***Maputo***, Limpopo, Zambezi, Beira and Nacala Corridors.

3.1.8 Trends and Recommendations

3.1.8.1 It is evident that Botswana, Malawi, Namibia and South Africa have been following world trends to ease the process of company registration through limiting the number of institutions involved, providing prescribed forms and pro forma documents that can be completed with relative ease. Although most businesses involve private firms to facilitate company registration it is generally not a cumbersome process and could also be undertaken by the shareholders themselves. Both Botswana and Namibia can improve on the average time for processing. One area where all four governments still fall behind in world trends is to allow for company registration through electronic processes. Such a step may even cut back more in processing time and administration costs. It is recommended that this step be considered in future by all corridor states.

3.1.8.2 The Mozambican process on the other hand appears to be very complex and includes archaic practices (such as hand written documents). The complexity of the system does however benefit those who provide consultancy services to the extent that it is difficult for someone not knowledgeable with the system to facilitate registration. It is recommended that **Mozambique** consider the following changes to reduce, process, time and cost:

- Integration or collapsing of the operations of the Notary Office and the Public Commercial Registry;
- Outsource the functions that can be more efficiently done by the private sector (e.g. printing);
- Eliminate the industrial licensing and adopt automatic registration for all companies that are not listed in Article 2, Decree 44/98;

- Designate competent authorities for inspection and define more clearly the roles, powers and responsibilities of the various inspectors to stop inspections by overlapping authorities and introduce the obligation that all inspection reports should be in writing and available to both the investors and the inspecting authorities; and
- Establish clear rules and regulations for fines;

3.1.8.3 It is also recommended that **Mozambique** procedures with the implementation of the Tourism Act that has been enacted, but not yet enforced and recommend implementation steps to be adopted possible by way of a Decreto.

3.2 ACCESS TO CREDIT

This refers to the ease with which investors can access credit and entails:

- the availability and quality of credit information through either public or private credit registries;
- accessibility to banks (eg. simplicity of application procedures, collateral requirements, credit periods, etc); and
- the strength of creditor rights at insolvency.

3.2.1 Country Position: Botswana

3.2.1.1 Currently, Botswana has no public credit registry. Credit information, however, can be accessed relatively easily through a well-established private credit bureau, thus allowing debtor profiles to be developed and reducing creditor risk. Bank access is sophisticated and procedures are in line with international best practices. Creditor rights are adequately protected under insolvency legislation. No significant problems were reported.

3.2.2 Country Position: Malawi

3.2.2.1 Accessing credit information is a problem in Malawi in that there is neither a public registry nor a private credit bureau. Information obtained is therefore often unreliable making case-by-case assessment of risks to creditors difficult to ascertain. The formal banking system in Malawi is not well developed and is not capable of supporting major investments. The Reserve Bank of Malawi imposes a 25% limit of share capital concentration as maximum exposure per bank. The share capital for most banks is relatively limited so that even effective loan syndication would struggle to put together a financing package of the equivalent of US$ 10 million.

3.2.2.2 With commercial Kwacha borrowing rates at over 45% and real interest rates in excess of 30%, there are few business opportunities that can yield sufficient returns to meet the cost of finance. There are, therefore, few businesses borrowing in Kwacha to invest. Only businesses that have to meet short term financing needs are borrowing in Kwacha. There are some export oriented and international businesses that borrow in hard currency, but this carries an additional cost especially as the risk premium for Malawi is relatively high and such loans are also vulnerable to devaluation effects. Effectively, the vast majority of Malawian businesses are not able to access finance for investment and those businesses that have borrowed for past investment or are forced to borrow for immediate working capital needs pay a high and unsustainable price. The underlying problem is that much of the available domestic capital is being diverted to fund GoM's budget deficit through Treasury Bills forcing up interest rates. The cost of servicing this debt accounts for 24.7% of GoM expenditure and 4.5% of GDP at December 2002. Whilst the budget deficit persists at high and unsustainable levels, access to finance by, and the cost of finance to businesses will be problematic. Cutting the budget deficit is the most critical issue that GoM must address.

3.2.2.3 A small fund on venture capital currently managed by INDE Fund exists; the fund has been in operation for two years and is currently under evaluation to assess its implementation success. The long established institutions of SEDOM and DEMAT have aimed to address capital and training requirements of small and medium scale enterprises. It is unclear what impact they have made on the market. The informal capital and financial markets, which includes moneylenders, traders and estate owners etc, provides a significant share of SMME enterprise capital. Overall, accessing credit is expensive and credit periods tend to be short (about 2 years).

3.2.2.4 High inflation rates have been a problem for businesses in the recent past making pricing decisions more difficult and uncertain, because costs are constantly moving and are unpredictable. The recent slowdown in inflation towards single figures is welcome, though this is a combination of greater availability of cheaper maize and weak economic activity. The volatility of inflation rates is a disincentive to investment as it makes returns more uncertain than they already are, especially for businesses that do not earn hard currency.

3.2.2.5 Fluctuations in exchange rates make costing and pricing decisions more difficult and add unexpected costs that cannot always be passed on. Malawi is highly import dependent and devaluations feed directly and quickly into business costs. This is offset to some extent for those businesses that are exporting, but not wholly and not at all for non-exporting businesses. The unexpected appreciation of the currency in 2001 was also very damaging to particular export oriented sub-sectors such as tea due to the different timing of inputs relative to sales.

3.2.2.6 With 85% of the population living in rural areas, mostly on subsistence incomes and limited growth in urban incomes, the domestic market is small and not contributing to growth for consumer related goods and services. The low and negative per capita growth of the last three years has shrunk average real incomes and further reduced opportunities for trade and investment.

3.2.2.7 Creditor rights are adequately protected under insolvency legislation. No significant problems were reported.

3.2.3 Country Position: Mozambique

3.2.3.1 **Mozambique** has an operating public credit registry established in 1997. Reportedly, access to the registry is fairly easy and the quality of credit information is reliable. There are no private credit bureaus.

3.2.3.2 Lack of affordable finance is generally regarded as one of the fundamental business problems in **Mozambique**. It is reported that the majority of businesses in **Mozambique** cite the cost of finance probably as the major problem. As a result, most businesses do not provide trade credit, because they themselves are cash constrained because of the difficulty in collecting payment as assessing risk. In limited cases, credit is provided to long-standing reputable customers, where the parties have a history of alternative dispute resolution or when they are desperate for sales. Bigger firms have greater negotiation power to avoid extending credit, but smaller firms are often forced to provide credit or lose sales.

3.2.3.3 Principal constraints to access credit are:

- High interest rates and short credit periods;
- Collateral requirements are too stringent.
- Collateral levels average 140% of credit amount; and
- Bank application procedures are very cumbersome.

Case Study Box 9

BANCO AUSTRAL:

"Banking sector – too many banks competing to provide banking to a relative small population. The population is also a largely low-income population that can hardly afford bank charges. Banking infrastructure - conditions make relying on land line infrastructure impractical. The solution is therefore to use satellite technology. This adds to the banking costs that have to be recovered. An additional problem is personal identification; many people have no form of identification and technologies have to be applied to check identification – yet more technology that is expensive.

Banks are not linked and normal transactions have to be done at a branch of the bank where individuals bank. Clearance between banks for items such as checks is also done manually and adds to slow check clearance and related processes.

For the banking sector it is not possible to have security during the development phase of a project. Registration can only occur once a project has been completed. It is therefore a risk every time a bank finances a project. This is also a major reason why getting projects of the ground takes such a long time.

Mozambique has three official currencies. This does create problems as the economy is highly dollarized. Should the dollar be placed under pressure and loose value then it could result a loss of capital. The dollar dominance also results in the local currency (Meticais) being accumulated and not circulated. Large scale project are dollar financed: these project is not necessarily a foreign currency earner. Dollar capital is spent in building etc but these might not generate the same level of value then what was created. Interest rates also favour lending in the form of Dollar, the return might, however, not be in the form of dollar and this

3.2.3.4 Current Mozambican legislation provides limited protection for creditors at insolvency.

3.2.4 Country Position: Namibia

3.2.4.1 Namibia has a private credit bureau, but no public credit registry. Reportedly, accessing finance is not a major concern for investors. The banking system is sophisticated and credit practices are in line with international best practices and creditor rights at insolvency are protected.

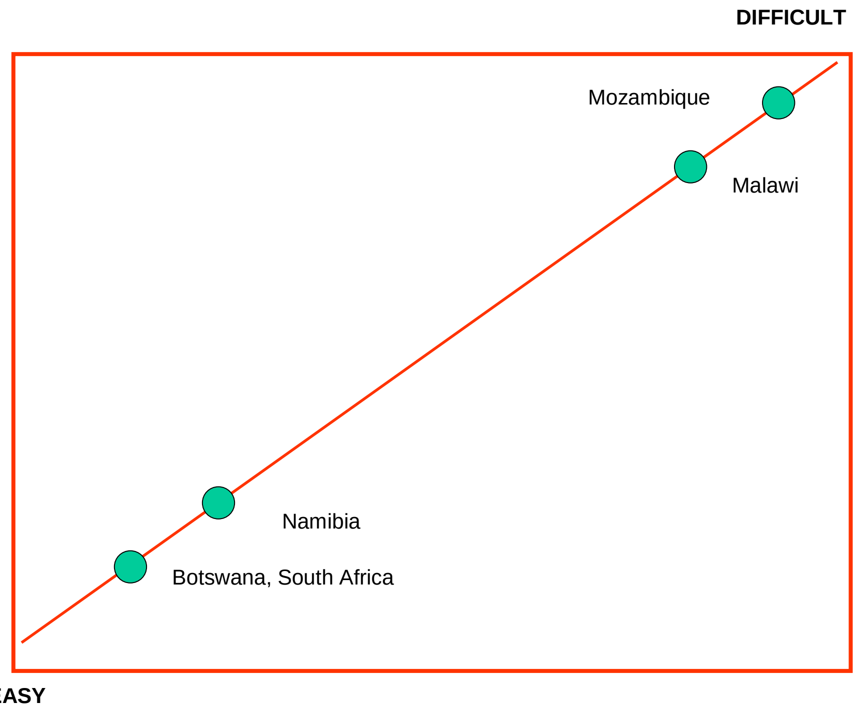
3.2.5 Country Position: South Africa

3.2.5.1 South Africa has a private credit bureau, but no public credit registry. Reportedly, access to and reliability of information is good. Reportedly, accessing finance is not a major concern for investors. The banking system is sophisticated and credit practices are in line with international best practices. Creditor rights are protected in line with international best practices.

3.2.6 Country and Corridor comparisons

3.2.6.1 Botswana, Namibia and South Africa and **Mozambique** fare well regarding availability and quality of credit information through either public or private credit registries; Malawi is the only country studied that does not offer readily accessible credit information. Botswana, Namibia and South Africa offer similar levels of and credit rights protection. Malawi and **Mozambique** offer the lowest levels of investor attractiveness in respect of access to credit. In addition **Mozambique** is the only one of the corridor states not providing sufficient credit rights protection in the event of insolvency. In comprison, the TKC Corridor is the most attractive from a credit facility perspective, whereas the Mozambican situation presents a disconnect on the ***Maputo*** Corridor disconnects and the combined **Mozambique** and Malawi position presents a very low attractiveness on the Beira, Limpopo, Zambezi and Nacala Corridors.

3.2.6.2 For a diagrammatic snapshot of comparative ease to access credit by the various countries, see Diagram 2 below:



3.2.7 Trends and Recommendations

3.2.7.1 It evident that both **Mozambique** and Malawi experience problems in respect of the access to credit. To a large extent this can be ascribed to domestic economic problems and risk factors that can only be corrected through a reduction in defaulting risk and protection of creditor rights. Thus, both in the case of Malawi and **Mozambique** sustainable economic growth in all domestic (especially small and medium) enterprises will play a significant role in easing access to credit. In the case of Malawi, the budget deficit of the GoM will have to be reduced in order for credit access to improve whereas in **Mozambique** amendment of the insolvency legislation to better protect the rights of creditors in the event of insolvency should enhance credit availability.

3.3 TAX ADMINISTRATION

Although investors in all countries, generally, complain about the levels of taxation, the principal concern, particularly in **Mozambique**, revolves around the ease with which tax reimbursements are made to investors, particularly VAT repayments and exemptions on imported capital equipment.

3.3.1 Country Position: Botswana

3.3.1.1 No major problems were reported in this respect.

3.3.2 Country Position: Malawi

3.3.2.1 The overall burden of tax, the administration of the tax system and the implementation and scope of surtax have increased the pressure on the private sector and made it more difficult to do business in Malawi. The main pressure is coming from GoM's need to increase collection of revenues, to meet its budget deficit. The private sector is paying the price for GoM's budget deficit, through high interest rates and more aggressive revenue collection, which is falling increasingly heavily on the "taxpaying" formal sector rather than on those businesses that are deliberately evading tax or operating in the informal sector.

3.3.2.2 Corporate tax rates are broadly competitive in the region, however, increases in personal tax rates and the failure to index threshold rates to inflation has raised the costs of employment significantly, as employees seek to maintain real disposable incomes. The starting threshold rate of K.3,000 per month is far too low as this is barely a subsistence wage in urban areas bringing too many people into the tax system for minimal revenue.

3.3.2.3 Withholding tax is unclear in scope and application, which makes it hard to comply and avoid penalties. It has made it more difficult for service businesses to operate and grow. Minimum turnover tax hits start-up businesses and new investments at the time when their cash flows are weakest. There are many other charges and levies that adversely affect all businesses.

3.3.2.4 Stakeholder interviews reported a burden of compliance on legitimate businesses; it was said that the formal sector taxpaying businesses understand the need for GoM to raise revenue but, the pressure on the Malawi Revenue Authority (MRA) to raise more revenue is being felt by the dwindling number of formal sector businesses that are complying with the rules. Simple and genuine errors are being increasingly punished as if they were deliberate evasion. This pressure has tended to be on legitimate businesses that are paying taxes, but are increasingly being targeted to pay more, sometimes through arbitrary rule making. Scrutiny and investigation by MRA officers in itself is sometimes used as a means to extract revenues as it is less costly in resources to pay the alleged underpayments and penalties than to challenge it through the courts. Formal business indicates that the greater the pressure on legitimate businesses the greater the temptation to evade collection or to bribe officials to waive the tax. It is commonly believed that there are a large number of businesses that evade tax though lack of scrutiny or, when they are scrutinized, by paying off officials. The taxation of businesses is now burdensome, overly complex and costly for legitimate businesses and MRA to manage.

3.3.2.5 The use of value added taxes is a common method for raising revenues by Governments around the world and there is no objection in principle to VAT in Malawi. However, there are several major problems with the design and the way it is being implemented. First of all the rate at 20% is high in absolute and relative terms compared to competing nations. At this level it positively encourages evasion, which is happening on a wide scale, as the benefit of evasion is high. Second, legitimate businesses have not been given enough time and support to implement a major change like this. The impact for smaller locally owned businesses is particularly harsh as they have limited technical capacity to deal with the change and the complexity of Surtax whilst undertaking their normal business activities. Third, the rules are not clear enough with much confusion on what products and services are covered and not covered. More areas of exemption are also required for basic household purchases. Fourth, the extent of non-reclaimable inputs is too wide and damaging to suppliers of such items and those that buy them. The original list was meant to be reduced but has not been. Fifth, the cashflow burden falls entirely on businesses especially the asymmetric rules on reclaims. VAT on supplies to companies in export processing zones has been introduced, which seems to be counter to the purpose of EPZs. It also makes Malawian suppliers of goods to EPZ companies more expensive relative to duty free imported goods. Over 95% of tea and all tobacco is exported yet there is no block exemption or negotiated status for those growing, processing and selling these products. The penalties are very harsh, especially for smaller businesses - late submission of a return by one day, even if the return were for a reclaim would apparently result in a fixed penalty of K20,000.

3.3.2.6 As far as incentives are concerned, incentives for any investment in Malawi are relatively weak compared to incentives available in other regional countries and result in limited new domestic and inward investment and re-investment in Malawi. The current investment incentives tend to favour certain sectors like manufacturing and agriculture and are not designed with other important sectors and sub-sector in mind. Domestic investors who are looking to reinvest are not generally aware of the incentives available to them, which to some extent favour new, international and Greenfield investments. This puts existing businesses, especially smaller ones, at a disadvantage if they want to re-invest to modernize. Whilst EPZ rules are generally competitive, there is scope for more flexible operation to provide investors with more reasons to choose Malawi or for existing investors to grow. The lack of clear and fixed incentives in a comprehensive package is also a problem as enquiring investors may not be willing to engage in protracted negotiations or to contact several organisations to get a better offer when determining which countries to shortlist for detailed investigation. Other countries offer more attractive fixed incentives at the outset and a more comprehensive investor package. Improved investment incentives and a clearer package would result in some future revenues foregone but many new revenue streams gained.There is no mechanism to ensure that all GoM bodies implement any agreed incentives. The level of support for the smooth operation of EPZs is inadequate and prevents EPZ companies accessing the full benefits to which they are entitled. Ultimately this will deter more investors and limit the growth of existing investors.

Case Study Box 10

MIPA:

"Once granted, incentives are not guaranteed – even when incentives are given, other arms of government, including MRA and Ministry of Finance, can override them. This has been happening on a regular basis, particularly in Tourism. In addition, the recent suspension of duty waivers has caused confusion amongst potential and actual investors without generating significant incremental revenue as it has deterred potential investors or simply delays investment. The former results in lost revenue altogether and the latter just delays the point at which GoM starts to receive revenues from corporate, payroll and surtax payments."

3.3.2.7 Inadequately pro-business policies and weak implementation of policies – Malawi needs to become known as a country that is very pro-business if it is to reverse the decline of the private sector and stimulate significant investment. At present, the legal and regulatory environment appears designed to maximize short-term revenues from business, irrespective of the medium or long-term damage. Attitudes is some parts of the Public Sector are negative or at best ambivalent to business rather than supportive. Consistency of policy is also important as policy reversals are very damaging for investment prospects as is the efficient implementation of pro-business policies that do exist. There are insufficient industry and sub-sector specialists in line Ministries that know and understand key industries/sub-sectors and can advise colleagues on the business friendly actions and policies.

3.3.3 Country Position: Mozambique

3.3.3.1 A prolific complaint from the business sector is the discriminatory impact of the tax system. Large firms like Mozal are able to negotiate industrial-free zone status and other tax incentives. Informal businesses are reportedly also able to avoid tariffs ad taxes such as VAT due to the weak customs enforcement regime despite recent reforms. It is reported that formal sector domestic producers who are not big enough to obtain special tax concessions are targeted by authorities- putting them at an unfair competitive disadvantage.

Case Study Box 11

SASOL:

"IVA (VAT) - the process and duration of IVA repayment takes a very long time. The amount that is being repaid is also then only paid in Meticais, which make it difficult for companies, especially those with foreign investors to return those amounts to countries abroad. It does appear that a reason for the long time period could also be that the government does not have the

3.3.3.2 There is a reported perception amongst investors that **Mozambique** cannot deliver on fiscal incentive promises irrespective of whether it allows easy access to exemptions and work permits.

3.3.3.3 Principal constraints relating to tax are:

- High tax rates;
- Weak tax administration system:
  - o Delays in VAT repayment are reportedly widespread. Some companies report having to wait an average of 99 days to receive their funds. Often VAT repayments require having to pay large bribes up to 10% in unofficial fees to the official involved;
  - o Delays in obtaining exemptions on imported capital equipment. On average, exemptions can take up to 100 days. Some companies report that though they are eligible for such incentives, it is faster and easier to import capital equipment and pay the duty;

Case Study Box 12

CPI:

"Constantly experience problems with the payment/repayment of IVA. There are constant complaints. Although officially the time taken to repay IVA has been reduced from 60 days to 30 days – in reality it can take up to 6 months or more to repay. This is money that could have been used as capital etc.

Tax holidays are not applied.

- Limitations on access to fiscal incentives: Minimum levels of investment are required to obtain CPI certification to qualify for fiscal incentives (Article 6, Decree 14/93):
  - o Direct national investment- US$ 5000.00; and
  - o Direct foreign investment- US$ 50 000.00

3.3.4 Country Position: Namibia

3.3.4.1 No major problems were reported.

3.3.5 Country Position: South Africa

3.3.5.1 No major problems were reported.

3.3.6 Country and Corridor comparisons

3.3.6.1 It is evident Malawi and **Mozambique** overall present problems in respect of tax administration and, in particular, VAT administration in **Mozambique** and Malawi delivers substantial problems to the business community in comparison to Botswana, Namibia and South Africa. Malawi appears to be a significant disconnect as investor incentives are erratic and not reliable. In Malawi and **Mozambique**, the incentives for existing and small and medium enterprises is generally lacking.

3.3.7 Trends and Recommendations

3.3.7.1 It is evident that the business communities in **Mozambique** and Malawi do not question the imposition of value added tax but express serious concerns regarding the administration thereof. Problems particularly relate to delays (that can be avoided), the level of taxes and the repayment in local currency. This causes serious cash flow problems for businesses. The majority of the problems related to VAT administration do not require legislative amendment (at least of laws passed by legislatures) and may be corrected without delay and significant impact; in this respect delay in pay-backs is of particular relevance.

3.3.7.2 It is recommended that in both Malawi and **Mozambique** tax authorities be disciplined to administer VAT within a shorter (30-day or less) period whilst Malawi will have to address the levels of and exemptions to VAT and application of VAT to EPZs through amendment of relevant regulations and/or directives – this shouldn't take long.

3.3.7.3 In addition, attention should be given to the tax systems of the two countries to support existing and small and medium enterprises.

3.3.7.4 Access to finance is still a problem and the cost is high.

3.4 ACCESS TO LAND

This refers to the ease with which an investor can obtain access to land in order to set-up a business. In particular, it relates to:

- Foreigners' rights to access land (may they buy, rent, concession with or without local partners);
- How readily available is land (is it easy to locate? Are there commercial agents to identify and provide choice);
- Simplicity, transparency and cost of approval procedures; and
- To what extent are land rights protected.

3.4.1 Country Position: Botswana

3.4.1.1 Foreigners are permitted to acquire any interest in land. Access to and reliability of information pertaining to land is reportedly good. Land rights are protected.

3.4.2 Country Position: Malawi

3.4.2.1 Current legislation permits foreigners to acquire any interest in land subject to Presidential licence. No such licence is required by a company incorporated in Malawi, a company registered under the Companies (Consolidation) Act, 1908 of the United Kingdom or statutory corporate bodies empowered to hold land.

3.4.2.2 The Government of Malawi adopted a new land policy early in 2002, which deviates from the current statutory position. The policy has not yet been enabled in new legislation.

3.4.2.3 The main features of the policy are:

- The amount of freehold land in Malawi owned by non-citizens will be frozen and limited to freehold land already registered to non-citizens as of 17th January 2002. Non-citizens will no longer be allowed to acquire title to any new freehold estate;
- Non-citizens and foreign companies will be permitted to lease land from the Government or directly from private landowners for investment purposes in accordance with their residential and investment objectives; and
- From the coming into force of this policy, freehold ownership will be a privilege reserved for citizens of Malawi. Foreign investors interested in freehold land for investment purposes will be encouraged to form partnerships and / or joint ventures with Malawians.

3.4.2.4 In accordance with current Malawi immigration laws, non-citizens currently in possession of freehold estates in Malawi will be encouraged to obtain Malawian citizenship in order to retain their free ownership. The citizenship right of eligible non-citizens will be protected by law and will not be politicised or left to individual discretion. Subject to existing transfer laws, non-citizens already in possession of registered freehold assets of publicly traded corporations shall be permitted to transfer such assets to other non-citizens only when deemed necessary to preserve the investment value of these companies.

3.4.2.5 With the exception of a few very special types of investment, such as mining, forestry and some perennial tree corps such as tea (a comprehensive list of eligible investments shall be prepared), most leasehold terms for industrial and commercial investment purposes throughout the world generally are for less than 50 years, with renewal clauses allowed. For that purpose, the standard leasehold term for land leased for investment purposes in Malawi will also be for a renewable term of 50 years or less.

3.4.2.6 The procedure for investors has been improved through the MIPA one stop shop, but is not always within the target ten-day period especially when this involves allocation of land and is not sufficiently transparent. The approval of incentives and allocation of land is slow and uncertain for some sub-sectors, such as Tourism. Several major investors have been lost over the years simply due to delays in approval.

3.4.3 Country Position: Mozambique

3.4.3.1 Constitutionally, all land in **Mozambique** is officially owned by the State and cannot be sold or in any way transacted. However, the law allows the State to grant land use concessions to individuals for up to 50 years and renewable for another 15 years. Licensing fees must be paid when the concessions are granted and thereafter a small annual tax is payable. Land users are not allowed to transfer their right to a third party without government approval, although the law allows the transfer of any property build on the land to be freely transferred to third parties.

3.4.3.2 Since 1996, there have been some important land reforms, namely:

- Law 6 of 79 was replaced by Law 19 of 97 that confirms that foreign investors do not need Mozambican partners in order to obtain land concessions in **Mozambique**;
- Institutional strengthening and capacity building of DINAGECA has been pursued to improve the land registration system and introduce modern mapping techniques; and
- Land surveying formally reserved to DINAGECA is now open to registered private land surveyors.

3.4.3.3 Notwithstanding those reforms, there are still outstanding concerns especially for “greenfield” investors. In fact, it is reported that the problem has worsened because the demand for land has increased substantially whilst the land attribution process has not improved.

3.4.3.4 Principal constraints relating to land access are:

- Difficulties in identifying an available site. Often land identified by investors is not available. Records either do not exist or are not readily available. Investors therefore have to look for available land and this usually entails finding someone outside the formal process to do so;
- Complex, discretionary and time-consuming approval process (up to 2-3 years). Approvals are required from local communities, district administrators, the local DINAGECA representatives, Ministries and the Governor of the province. Approval procedures are not clear or consistent. Reportedly, an applicant may have to supply the same information repeatedly to different authorities whilst other applicants in similar situations have to supply different information. It is not uncommon for an applicant to be given different instructions by different people in the same Government department;
- High risk and insecurity. Concessions are awarded on a provisional basis. Foreigners have two years to comply with the approved land use plan;
- The development of a black market with inflated prices of land;
- Delays in obtaining approvals at the construction stage; and

Case Study Box 13

CPI:

“It is still practice that government check to see who is using the land. Local law recognizes the right of local inhabitants to use land. As a result no registration of land occurs. Should local users of land be affected by a project alternatives must be negotiated with them and should they be required to move then appropriate compensation must also be negotiated.”

- Land cannot be used as a collateral.

3.4.4 Country Position: Namibia

3.4.4.1 Foreigners are permitted to acquire any interest in land other than agricultural land. Access to and reliability of information pertaining to land is reportedly good. Land rights are protected.

3.4.5 Country Position: South Africa

3.4.5.1 Foreigners are permitted to acquire any interest in land. Access to and reliability of information pertaining to land is reportedly good. Land rights are protected.

3.4.6 Country and Corridor comparisons

3.4.6.1 Indications are that principal constraints lie in Malawi and **Mozambique**. The potential for corridor disconnects is very high on the Limpopo, Zambezi, Beira, Nacala and ***Maputo*** Corridors. The following table provides a comparative overview of the position in the Corridor States.

	Botswana	Malawi	Mozambique	Namibia	RSA
Foreigner's right to acquire land	Yes	No	No	Yes, but not agricultural land	Yes
Registry of land rights	Yes	Yes	No	Yes	Yes
Availability of records	Yes		No	Yes	Yes
Approval process	Not relevant		• Complex process up to 3 years • Multiple consultations required • Conditional approvals for 2 years	Not relevant	Not relevant

3.4.7 Trends and Recommendations

3.4.7.1 It appears that the process to secure land by foreign investors in Malawi, especially the tourism sector, is lengthy and often uncertain with many an allocation having been reversed. This is matter of exercise of discretion and does not require amendment of legislation. It is recommended that Presidential directive to the relevant authorities on the exercise of this discretion be issued to provide clarity and specified time-lines. In addition, the short duration of land concession require legislative amendment to bring it in line with regional standards (eg. 99 year lease-hold);

3.4.7.2 In **Mozambique** it is evident that the consultative processes to secure land is potentially lengthy, without a realistic cut-off; it remains discretionary whether sufficient consultation has taken place. Although the rights of existing traditional land users should be protected, the Government of **Mozambique** will have to balance these rights with the loss of investment due to uncertain process and criteria. It is recommended that a directive be issued to provide clear criteria for and cut-off achievement and time-lines for such consultative processes. Despite the time-lines in the legislation for central government administration, these consultative process may hi-jack all other time-lines.

3.5 CONTRACT ENFORCEMENT / DISPUTE RESOLUTION

This refers to the ease with which commercial contracts can be enforced and, particularly, relates to the following:

- Accessibility to and simplicity of court procedures (number, duration and cost of procedures counted from the moment of law suit to actual payment); and
- Accessibility to and simplicity of alternative dispute resolution mechanisms (number, duration and cost from the moment the complaints is lodged to actual resolution).

3.5.1 Country Position: Botswana

3.5.1.1 Reportedly, the court procedure to enforce contracts is relatively simple. Currently, it entails approximately 22 procedures conducted over an average of 56 days. Cost information has to be verified.

3.5.2 Country Position: Malawi

3.5.2.1 Malawi is rated as having one of the simplest judicial contract enforcement procedures in the region. It entails 16 procedures conducted over an average of 108 days at a cost of approximately US$840.00.

3.5.2.2 Despite, the benefit of short time and low cost when commercial cases are finally heard, it has been reported that the courts give priority to political cases and that commercial cases are delayed in terms of court dates. Lawyers fees are mostly fixed by statute/regulation and result in limited competition and relatively poor service. There are no dedicated commercial courts or procedures or small claims court where court dates for commercial cases can be expedited.

3.5.3 Country Position: Mozambique

3.5.3.1 **Mozambique** has a highly complicated judicial process requiring 18 procedures conducted over an average of 540 days. Reportedly, legal costs are very high.

3.5.3.2 **Mozambique** has adopted legislation entrenching alternative dispute resolution mechanisms. There is no recorded example of alternative dispute resolution being conducted under the new legislation and the system remains largely unimplemented. A principal region afforded for this is the lack of trained arbitrators and the private sector's diffidence in the system.

3.5.4 Country Position: Namibia

3.5.4.1 Namibia has a sophisticated court system that is relatively simple to process contract enforcement – information on time and cost could, however, not be obtained.

3.5.5 Country Position: South Africa

3.5.5.1 South Africa has a sophisticated court system that is relatively simple to deal with contract enforcement. Currently, this entails about 26 procedures conducted over an average of 207 days. Costs average around US$ 40 000.00.

3.5.6 Country and Corridor comparisons

3.5.6.1 Preliminary indications are that Malawi has the simplest court procedure followed by Botswana and South Africa respectively, although administration of justice in Botswana seems overall to be quicker than in Malawi and South Africa. At this stage, **Mozambique** represents the highest level of constraint contributing to potentially high corridor disconnect on the Limpopo, Zambezi, Beira, ***Maputo*** and Nacala Corridors.

3.5.7 Trends and Recommendations

3.5.7.1 In relation to both Malawi it is evident that delays experienced and cost increases are not as a result of the existing legal provisions in respect of process but rather the discretionary decision by the judiciary to give priority to political cases. It is recommended that directive be issued to correct this and/or legislation be prepared to provide for dedicated commercial and small claims courts.

3.5.7.2 In **Mozambique** the legislation does not require immediate amendment. In fact, what is required is to implement the new Arbitration Law. It is recommended that **Mozambique** proceed with implementation without delay.

3.5.7.3 It is apparent that in both Malawi and **Mozambique** capacity building in the handling of commercial arbitration is required. In this respect it is recommended that technical assistance programmes be procured.

3.6 LABOUR

This refers to the degree of flexibility enjoyed by an employer with particular reference to:

- Flexibility of hiring expatriates and local employees;
- Flexibility of part-time and full-time labour arrangements;
- Working time requirements;
- Minimum wage laws; and
- Minimum conditions of employment.

3.6.1 Country Position: Botswana

3.6.1.1 The right to job security is entrenched in the Constitution. Botswana has a fairly flexible system of hiring. Part-time employment is permitted and part-time workers are not exempt from mandatory benefits of full time workers and, consequently, it is not easier or cheaper to terminate part time workers than full time workers.

3.6.1.2 Fixed term contracts may be concluded for the provision of any services and there is no prescribed maximum duration.

3.6.1.3 As far as hours of work are concerned, the legislation prescribes a 48-hour week with 12 hours mandatory minimum daily rest. There are no restrictions on night work. The legislation prescribes 15 days of annual leave with pay in manufacturing and paid time off for holidays is mandatory. There is a mandatory minimum wage.

3.6.1.4 The legislation is very flexible in relation to the firing of workers and reportedly Botswana has the highest level of flexibility to fire workers.

3.6.2 Country Position: Malawi

3.6.2.1 The right to job security and conditions of employment are entrenched in the Constitution.

3.6.2.2 Malawi has a fairly flexible system of hiring. Part-time employment is permitted and part-time workers are not exempt from mandatory benefits of full time workers and, consequently, it is not easier or cheaper to terminate part time workers than full time workers.

3.6.2.3 Fixed term contracts may only be concluded for the provision of fixed term services and there is no prescribed maximum duration.

3.6.2.4 As far as hours of work are concerned, the legislation prescribes a 48-hour week with 12 hours mandatory minimum daily rest. There are no restrictions on night work. The legislation prescribes 15 days of annual leave with pay in manufacturing and paid time off for holidays is mandatory. There is a mandatory minimum wage.

3.6.2.5 The legislation is relatively flexible in relation to the firing of workers, but not as flexible as the Botswana legislation. There is compliance with minimum ILO standards.

3.6.3 Country Position: Mozambique

3.6.3.1 The right to job security and conditions of employment are entrenched in the Constitution.

3.6.3.2 **Mozambique** has a fairly inflexible system of hiring. Part-time employment is permitted and part-time workers are not exempt from mandatory benefits of full time workers and, consequently, it is not easier or cheaper to terminate part time workers than full time workers.

3.6.3.3 Since 1996, there have been various improvements in the flexibility to hire expatriates. For example, Line Ministry approvals have been cut back and the issuing of work visas has been simplified. Notwithstanding these improvements, several problems are still being recorded regarding the hiring of expatriates, namely:

- High restrictions on expatriate hiring at all levels (managers, technicians and workers) and from all source countries;
- Complicated, time-consuming and overly centralised authorisation procedures involving consent of line ministries and unions;
- Duration of work permits limited to two years; renewals are extremely difficult; and
- Lack of coordination between MOL and Immigration authority.

3.6.3.4 Fixed term contracts may only be concluded for the provision of fixed term services and for a maximum of 48 months. As far as hours of work are concerned, the legislation prescribes a 48-hour week with no mandatory minimum daily rest. There are restrictions on night work. The legislation prescribes 22 days of annual leave with pay in manufacturing and paid time off for holidays is mandatory. There is a mandatory minimum wage.

3.6.3.5 The legislation is also relatively inflexible in relation to the firing of workers. Various improvements have been made with regard to the firing of domestic workers, for example, procedures for dismissals / retrenchments have been simplified and fixed salaries abolished and a minimum wage introduced. Despite these improvements, there are still several constraints, namely:

- Imposed high costs on dismissals leading to redundant workers and less opportunities for new entrants;
- Remaining reporting requirements still more complicated than needed;
- Labour inspections based on no clear rules and requirements, leading to arbitration and corruption; and
- Lack of fair and effective legal mechanisms for dispute settlement.

3.6.4 Country Position: Namibia

3.6.4.1 The right to job security and conditions of employment are entrenched under the provisions of the Constitution.

3.6.4.2 Namibia reportedly has the most flexible system of hiring in the region. Part-time employment is permitted, but part-time workers are exempt from mandatory benefits of full time workers. Consequently, it is easier and cheaper to terminate part time workers than full time workers.

3.6.4.3 Fixed term contracts may be concluded for the provision of non-fixed term services and there is no prescribed maximum duration.

3.6.4.4 As far as hours of work are concerned, the legislation prescribes a 45-hour week with 15 hours mandatory minimum daily rest. There are restrictions on night work. The legislation prescribes 24 days of annual leave with pay in manufacturing and paid time off for holidays is mandatory. There is no mandatory minimum wage.

3.6.4.5 The legislation is relatively flexible in relation to the firing of workers on the par with that of Malawi, but not as flexible as the Botswana legislation. There is compliance with minimum ILO standards.

> **Case Study Box 14**
>
> *SASOL:*
>
> *"Could negotiate work permissions with the government. It was made possible for SASOL staff to get work permits for a year. Work permits are required when working in Mozambique for more than 1 month. Under normal situations, this process is difficult and time-consuming. Usually this requires that companies apply for each employee individually. In the case of SASOL an arrangement was made possible where applications was done for all staff based on a single list. The list is therefore processed – whereas other companies would require that each individual be processed with the required documentation separately. The process of renewal of work permits for non-resident staff also has to occur once a year. Such approvals are only possible in Maputo. This therefore requires that staff documentation need to be sent from their respective work areas in other provinces to Maputo for processing. The solution would be to capacitate provincial governments to have certain activities handled by provincial offices. This implies a level of decentralization of relevant functions to the provinces. At present the systems are very much* ***centralised*** *and all approvals need to occur in Maputo.*
>
> *The current practice in Mozambique is to only utilize technical schooled individuals for a short time in a practical work environment. Due to shortages many are then placed in management positions. There are therefore many technical managers without substantial practical experience. Operators and artisans are also not registered at any agency to ensure compliance with requirements for professional status. Employing skilled labour is therefore risky as there is little assurance of the skills of individuals in the absence of such a process. The extent of technical schooling is a problem. Sasol staff had to resort to training programmes to ensure that staff employed was qualified to undertake the required tasks."*

3.6.5 Country Position: South Africa

3.6.5.1 The right to job security is not entrenched in the Constitution.

3.6.5.2 South Africa has a fairly flexible system of hiring, but not as flexible as that of Botswana, Malawi and Namibia. Part-time employment is permitted and part-time workers are not exempt from mandatory benefits of full time workers and, consequently, it is not easier or cheaper to terminate part time workers than full time workers.

3.6.5.3 Fixed term contracts may only be concluded for the provision of fixed term services and there is no prescribed maximum duration.

3.6.5.4 As far as hours of work are concerned, the legislation prescribes a 45-hour week with 12 hours mandatory minimum daily rest. There are restrictions on night work. The legislation prescribes 15 days of annual leave with pay in manufacturing and paid time off for holidays is mandatory. There is a mandatory minimum wage.

3.6.5.5 The legislation is flexible in relation to the firing of workers, but not as flexible as the Botswana legislation. There is compliance with minimum ILO standards.

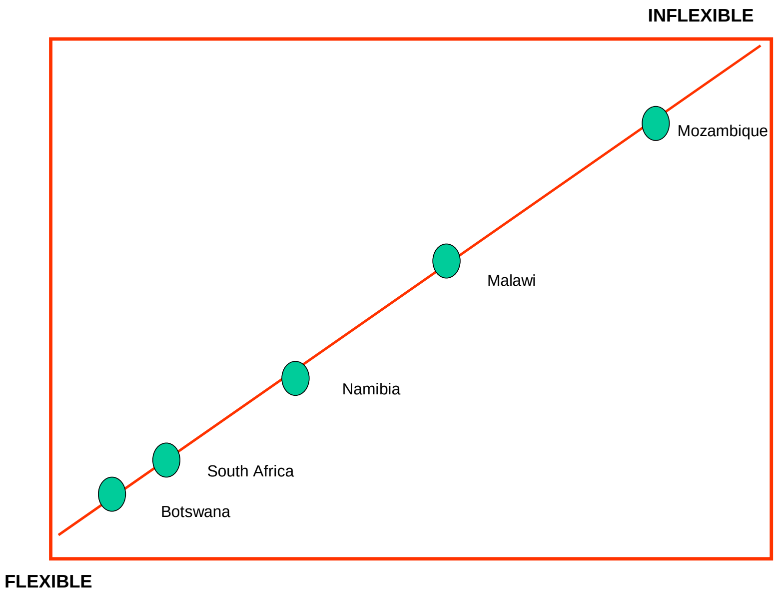
3.6.6 Country and Corridor comparisons

3.6.6.1 Namibia shows the highest level of regulatory flexibility regarding the hiring of employees followed by Malawi and Botswana on par, South Africa and **Mozambique**.

3.6.6.2 South Africa shows the highest level of flexibility regarding conditions of employment followed by Botswana, Namibia, Malawi and **Mozambique** respectively.

3.6.6.3 Botswana shows the highest level of flexibility regarding the firing of employees followed by South Africa, Namibia, Malawi and **Mozambique**.

3.6.6.4 The following diagram provides an overview of the country rankings according to flexibility of their labour regimes.



3.6.7 Trends and Recommendations

3.6.7.1 Whilst the labour dispensations of all the countries studied may be improved over time, It is evident that despite some reforms, Mozambican legislation requires substantial amendment in respect of the cumbersome procedures and restrictive arrangements in respect of conditions of employment which are biased in favour of employees. Moreover, it appears that the process of foreign hire permissions is more favourable to bigger business that to smaller enterprises; the discretion in fast-tracking approvals should be available to all businesses. In addition, the excessive reporting requirements imposed on foreign employers should be revisited.

4 LOGISTICAL ENVIRONMENT

Principal focuses under this discussion will include addressing:

- gaps in the transportation enabling environments; and
- gaps in operational impacts.

Incomplete national reforms are constraining corridor implementation and this is evident in the levels of operational impact. There are various macro-level issues that impact on corridor implementation such as border post reform, vehicle overloading control reform and road user charging reform that need to be addressed at the national level. For as long as these reforms are not introduced, corridor implementation remains constrained. Some corridor committees have in the past tried to champion policy, legal and regulatory reforms from the corridor level. This approach, for example, was evident in the initial phases of the Trans-Kalahari corridor development where corridor-specific border-post, road user charging, vehicle overloading control and road traffic reforms were mooted. Governments are generally not receptive to corridor-specific reforms. In particular, South Africa has voiced its concern in this regard. It supports the position of countrywide legislative / regulatory reform with the possibility of testing the implementation of reforms through corridor-specific pilot projects.

3.7 ENABLING POLICY AND LEGAL FRAMEWORKS

4.1.1 Road Transport

4.1.1.1 Road Transport between the corridor states is largely regulated through bi-lateral agreements. Botswana, South Africa and Namibia have concluded a multilateral agreement under the Southern African Customs Union (SACU) auspices that provides for the permits or licenses issued by national authorities to be recognized extra-territorially on a reciprocal basis. South Africa and **Mozambique** have concluded a similar agreement and so did Malawi and **Mozambique**. Reports received indicate that implementation of these agreements is proceeding successfully. Remaining challenges in road transport legislation and regulation relate to the harmonization of permissible axle mass loads and cross-border road user charges.

Case Study Box 15

Columbus Steel:

"The product is not suited for road transport. Road has been used as an alternative choice due to the incremental growth strategy of Columbus Stainless. Excess capacity has resulted in the Maputo Corridor being used for export and only road was flexible to respond quickly to the challenge. Using road transport to Maputo is experiencing some challenges as cargo (freight) is available only on a single leg and the return leg is therefore empty. This increases operational costs as ton per kilometre increases.

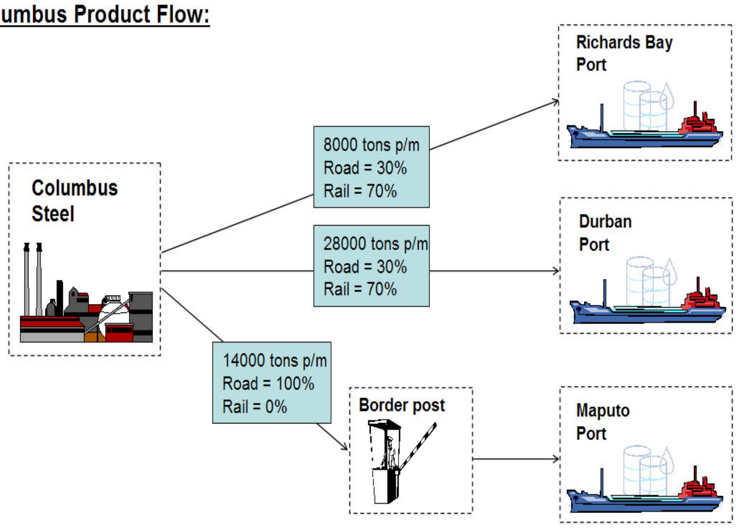
Processes at the border also create bottlenecks in distribution and turnaround times as trucks are dispatched in a convoy due to documentation requirements. Other constraints in using road transport as a mode are:

- *Capacity constrain - Availability of road transport for peaks arising from the movement of shipping expected time off arrival (ETA)*
- *Axle load limitations - Road loads are limited to 35 tons per truck which results in increased cost per load as more freight cannot be accommodated per vehicle.*
- *Toll fees – Vehicles pay 4 toll gates per trip and this adds to the transport costs per load.*
- *Bribery and corruption of customs and traffic officials on route to the port.*

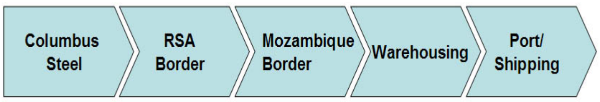
A Single set of documentation for single client irrespective of the

4.1.1.2 Road Transport appears to be the dominant land transport mode on the ***Maputo***, Limpopo and TKC Corridors. Having to undertake clearing of freight mostly at border posts, road transport services are most affected by inefficiencies in border post operation and customs administration. Some exporters using road transport on the ***Maputo*** Corridor have indicated that, due to problems with customs and corruption at the border, difficulty to secure return loads, difference axle load regimes, toll fees and the characteristics of their freight, road transport is not their preferred mode. Due to capacity constraints in Durban port and rail services, they, however, have no choice than to use road transport.

Columbus Product Flow:



Columbus –Maputo Corridor flow elements and issues:



4.1.2 Rail Transport

4.1.2.1 **Mozambique** and Malawi have both recently procured private sector concessions in railway services. Of the three concessions procured by **Mozambique**, the Beira/ Sena line has progressed the most - work on the line is almost complete.

4.1.2.2 Although the Malawi railway concession (Nacala) has been in effect for some time, the Mozambican concession has been delayed and reports indicate that handover to the concessionaire was planned for November/December 2004; the delay was reported by government and the private sector in Malawi as a principal constraint to the development of the Nacala corridor. In addition, users raised concern over the collapsed bridge in Lilongwe avoiding the use of Nacala for the export of tobacco – in stead Beira and Durban are being used as export routes at much higher cost.

> **Case Study Box 16**
> GoM officials:
>
> “Lack of regulatory framework for railways is affecting the success of the concession”

4.1.2.3 ***Maputo*** Corridor 15 year railway concession has been signed for some time. However, implementation issues have not been resolved, Ressano Garcia Rail (RGR) still has an issue regarding the amount to be used to upgrade rail line. Due to long time span of administration and due to adjustments in currency the cost anticipated has since changed. More financial costs will be involved – negotiating the added costs has kept the process from progressing.

4.1.2.4 South Africa, Botswana and Namibia have not yet introduced policy or legal reforms that would accommodate private sector involvement in railways through concessioning or other means. No problems were reported regarding the state-owned railways of Botswana and Namibia. In fact, it was reported that the Namibian railway operator is progressively attempting to meet demand and contribute to the development of the TKC corridor and the use of the port of Walvis Bay. It should be said that Spoornet (South Africa) is similarly, serving the interest of using the South African port system; both rail and ports, off course are divisions of Transnet.

4.1.2.5 A significant amount of concern has been raised regarding the delay of the railway concession on the ***Maputo*** Corridor and the commercial policy of Spoornet not to provide sufficient services to exports from Mpumalanga to the port of ***Maputo***. According to CFM, Mpumalanga has the rail freight potential of 70 million tons and ***Maputo*** port is the closest port for export. Moreover, it is suggested that in the upper levels of the SA government there is an in principle commitment to use the harbours closest to them. This has not reflected in Spoornet's commercial decisions as some freight is often sent over a much longer distance to far away local ports for shipment. As a result exporters wanting to use the port of ***Maputo*** have to rely on road transport services. This shift from rail to road is, according to CFM expected to have a longer-term impact on modal split as customers are often not keen to revert back to rail. According to CFM Spoornet still has a conservative mindset. The following quote comes from a recent publication of Xitimele, a publication of CFM*: "Relations with the South African Railway administration, as in the past, are not ones of cooperation or complementarity. It is alleged that Spoornet maintains the discriminatory practices despite efforts to involve it in the leases in* ***Mozambique****, and despite the fact that the port of Durban is congested and operating at costs that are unsustainable for the users." (p25).* Rail freight tariffs used to be published by Spoornet and available to all potential users of rail services. This has changed and at present, freight tariffs are not public knowledge and are instead negotiated for each client. There seem to be an approach among regional rail freight operators to favour niche markets and exclude other freight.

Case Study Box 17

CFM:

Granite produced in SA is currently not being transported by rail as would normally be the case, instead producers has had to revert to putting granite on road transport.

Xstrata, a producer of ferrochrome mainly for the European market exports to Maputo by road.

Spoornet appears to prefer large quantities and do not provide

Case Study Box 18
Columbus:

The product is rail friendly. However, well-documented issues pertaining to inconsistency, reliability and other issues, limit the use of rail and on the Maputo Corridor, Columbus is forced to use only road transport. Rail moves a large volume on other routes (other than Maputo Corridor) within South Africa and road is mainly used to top up or 'smooth' the channel arising from the expected time of arrival of ships and other matters. Other reasons resulting in rail not being used to transport products on the Maputo Corridor include: security problems, the poor condition of the line - there is a high risk of shifting loads and this would result in damage to the product, reliability & capacity constraints, uncertainty on the operation of the service from South Africa to the Maputo port as the rail concession issues have not been resolved and the turnaround times for rail is still too long (20-40 days)

It is suggested that Spoornet be the choice operator for the whole line up to port of Maputo. The operation of the concession need to be finalised as this is slowing down the potential usage of the rail line to transport freight. It is essential that rail services can guarantee capacity and reliability of services to be provided by rail.

4.1.2.6 Despite the initiatives of the Southern African Railway Association to harmonize standards and improve seamless railway services, it has been reported that strategic commercial co-operation between the railways of different corridor states is not yet optimal. At high political level there are bilateral agreements and commitments to work together and to streamline current constraints, however at lower management levels a different (own) set of rules still apply and the political agreements has not been translated into action and implementation. The extent of harmonisation of rail in the region has not occurred due largely to the ***existing conservative mindsets of current management***. Often issues such as systems, security, environmental and costs are put forward as constrains.

4.1.2.7 It is evident that, unlike the co-operation and collaboration in the road transport sector, there is a critical need for a strategic regional approach to the deployment of railway assets towards overall regional benefit.

4.1.3 Ports

4.1.3.1 **Mozambique** is the most progressive of the corridor states in terms of involving private sector participation in port operations through a concession model. The ports of ***Maputo***, Nacala and Beira all provide for substantial private sector participation. The port of Durban, in contrast to the ports of Namibia and **Mozambique** is operating beyond current capacity. It is notable that the ports of the latter two countries are operating at 50% and below their capacity levels. In addition, available statistics for Walvis Bay suggest an imbalance between import (more) and export (less) traffic. Although similar statistics were not available for ***Maputo***, stakeholder interviews that the same situation exists for ***Maputo***. This under-utilization and imbalance in import and export traffic results in capacity wastage and marginalized cost-efficiency. These imbalances are illustrated in the Table below. Note that a comprehensive "real time" and uniform data base on regional port statistics is not available, thus, statistics may be questioned but the margin and existence of imbalances have been verified through numerous studies. It is fact that, most of the regional ports suffer as a result of excess capacity.

Comparison between current freight and total capacity in tonnes – 2001/2002

Port	Total freight per annum				Total annual capacity	Difference between current freight and capacity in tonnes
	Import	Export	Total	Differences		
Namibia:						
Walvis Bay	1,639,671	811,141	2,450,812	828,530 (Import)	1,200,000	-1,250,812
Tanzania						
Dar-es-Salaam	3,630,715	724,344	4,355,059	2,906,371 (Import)		
Mozambique						
*****Maputo* - 2004**	**--**	**--**	**5,540,000**		**16,000,000**	**+9,9476,000**
Beira	--	--	2,356,100	--	4,950,000	+2,593,900
Nacala	--	--	743,300	--	1,600,000	+856,700
Quelimane	--	--	60,400	--	650,000	+589,600
Pemba	--	--	78,000	--	633,960	+555,960
South Africa						
Richards Bays	4,837,066	76,451,709	81,288,775	71,614,643 (Export)	--	--
Durban	21,012,635	2,536,201	23,548,836	18,476,434 (Import)	--	--
East London	392,381	211,362	603,743	181,019 (Import)	--	--
PE	697,044	1,618,454	2,315,498	921,410 (Export)	--	--
Mossel Bay	351,509	177,401	528,910	174,108 (Import)	--	--
Cape Town	1,352,090	1,404,506	2,756,596	52,416 (Export)	--	--
Saldana	4,625,276	26,721,958	31,347,234	22,096,682 (Export)	--	--

Source: PMEASA, 2005 ** ***MCLI***/CEO MPDC

4.1.3.2 Whereas the under-utilization and import-export imbalances in Namibia can largely be ascribed to distance and available volumes on the TKS corridor, examples of potential freight movement offered by stakeholders seem to suggest that bottlenecks for road transport at the borders, constraints in rail transport availability and reliability and calls by shipping lines are contributors to the under-utilization of the port of ***Maputo***. Similarly, the ports of Beira and Nacala are influenced by the efficiency of land based transport systems and the ease of border post processes. In this respect, it has been noted that concern was expressed that shippers consider withdrawing from Nacala as a result of lower demand for container services and problems experienced with the Nacala to Malawi rail link. Whilst, some freight operators have indeed withdrawn, Mearsk feels that there is definite long term potential for business and would also consider expanding the current operation. This is, however, dependent on the operation and efficiency of the rail service. The opening of an office in Nampula is envisaged as this is a larger centre where administration and business could expand. Problems on the Nacala corridor have also resulted in a diversion of traffic to Beira, which due to volumes and greater efficiency, appears to be a more cost-efficient route despite longer distance. It is noteworthy that private port warehouse owners. eg. Columbus Steel have reported under-utilization of their facility in ***Maputo*** due to changes in the expected time of arrival of ships, varying demand patterns for steel etc.

> **Case Study Box 19**
> *Columbus Steel:*
>
> *"International trends suggest that bigger ships are currently operational and more are being designed. These post-panamax ships have been deployed in the busiest routes and thus eliminated other smaller ships. Bigger ships are now calling at ports and are not willing to call for lesser volume. Currently, ships are reluctant to dock at Maputo for freight less than 3000 tons. Therefore fewer calls by ships are also experienced due to their (increasing) sizes and a trend of ships only calling every second month is now being experienced.*
>
> *Shipping lines are reluctant to call at port due to lack of sufficient load or due to small loads. They are also hesitant to call due to poor throughput times at the port. Higher port duties also add to costs."*

4.1.3.3 Although shippers have complained about the extensive processing time at the common user customs warehouse in ***Maputo***, i.e. FRIGO which operated as a monopoly, competition has recently been introduced through the licensing of a second customs warehouse facility in Matola, on the outskirts of ***Maputo***. This is a welcoming development that may be expanded further in response to demand. In particular under-utilized single-user facilities may provide cost-efficient alternatives if licensed as common user facilities. No legislative amendments are require to achieve this.

4.1.3.4 It is apparent that, from a regional perspective, there is a dire need for pragmatic and strategic integrated transport planning to optimise the overall regional port capacity.

4.1.4 Customs Administration

4.1.4.1 Key issues in respect of customs administration include:

- a legal mandate to allow for officials of corridor states to undertake joint processing at a single most appropriate point on a corridor;
- reduction and harmonization of documentation and procedures;
- electronic transactions and interfaces between customs authorities of corridor countries and port operations;
- coordinated risk management systems, including accreditation of transporters, agents and shippers; and
- limited infrastructure and land border posts and public-private partnerships in the provision and management of land border post infrastructure.

4.1.4.2 In respect of joint processing by customs officials, legal amendments are required to allow the customs authorities of the different states to execute their functions extra-territorially. South Africa is the only country to have enacted legislation to enable implementation of joint border post controls by empowering the Commissioner to empower officials to perform customs control functions on foreign territory and conversely permit foreign officials to exercise custom control functions on South African territory.

4.1.4.3 Except for **Mozambique**/ RSA, no concrete steps have been taken to implement the one-stop concept at operational level. The initiative with **Mozambique** entailed a trial arrangement during 2000 whereby Mozambican and South African customs officers jointly cleared rail cargoes at Komatipoort. The trial demonstrated significant benefits in terms of improved enforcement and mutual co-operation. In the absence of a formal bilateral agreement with **Mozambique**, however, it could not be introduced as a permanent measure.

4.1.4.4 Work to rehabilitate and upgrade border post facilities between South Africa and neighbouring countries is ongoing. In some cases, plans to convert existing facilities into one-stop operations have been prepared. However, these have remained on the drawing board as long as arrangements with neighbouring states are not formalized. Customs union partners such as Botswana and Namibia have indicated a willingness to proceed, but are awaiting South Africa's lead on the issue. **In this respect, SADC Ministers of Transport agreed in 1999 that, where feasible, one-stop processing be introduced and that private sector provision and management of land border post facilities in terms of service level agreements be considered. To date, none of these proposals have been introduced.**

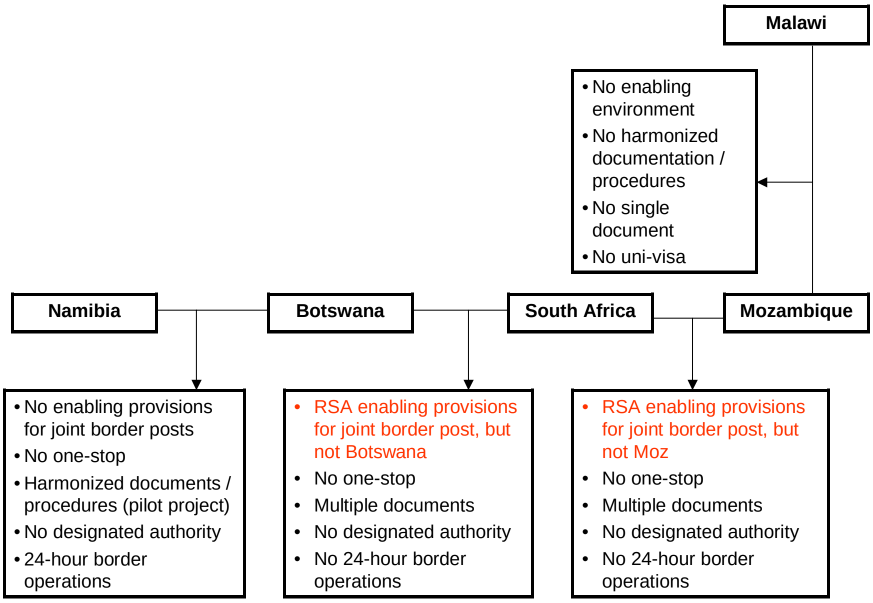
4.1.4.5 There is a need to capitalize on the operational experience gained through the trial exercise undertaken with **Mozambique** at Lebombo. The freight clearance facility erected on the disused airfield close to the Lebombo post can, with modest additional investment, adequately provide office accommodation for both SARS and Mozambican customs officers (existing facilities such as inspection bays, ramps, etc are already sufficient for this purpose). Provided matters are formalised at intergovernmental level, the arrangement could be placed on a permanent footing within a relatively short space of time (as illustrated by the fact that joint customs and immigration clearance of private travellers continue to be undertaken as the need arises when large numbers of Mozambicans employed in South Africa return home over the Easter and Christmas periods). The Mozambican customs administration has recently confirmed its interest in reviving the arrangement. Delay in amendment of the Mozambican legislation to allow for extra-jurisdictional execution of clearing and control functions at border posts are, however, delaying the reinstitution of the arrangement.

4.1.4.6 It should be noted that legal reforms by all the corridor states to allow for joint processing at border posts or at ports will not only benefit certain corridors but all corridors traversing those countries. Thus, it is recommended that this aspect enjoy urgent attention. **The legal reforms undertaken by South Africa will have no impact if other corridor states do not follow suit**.

4.1.4.7 In respect of the reduction and harmonization of documentation and procedures measures are currently being piloted on the Trans-Kalahari corridor (TKC) between South Africa, Botswana and Namibia using the harmonized SADC transit declaration. As part of expanded trade facilitation on the TKC, the opportunity to convert the Skilpadshek / Pioneer Gate border post into a one-stop operation should be investigated. During the SADC Heads of Customs Meeting held from, March 18-20, 2002 in **Mozambique**, the Heads of Customs approved the proposal that joint controls be included in the pilot. This initiative also provides for risk mitigation strategies whereby low-risk compliant road transport operators are registered with the South African Revenue Services and their counterparts and are only subjected to spot-checks and enjoy special benefits for reduced customs guarantees as long as they are compliant. This measure also encourages increased pre-clearance and results in a reduction of processing time at border posts. It may be noted that the South African customs authorities have published an informative manual for transporters on how to participate in the accreditation system that may serve as a model to other corridor states.

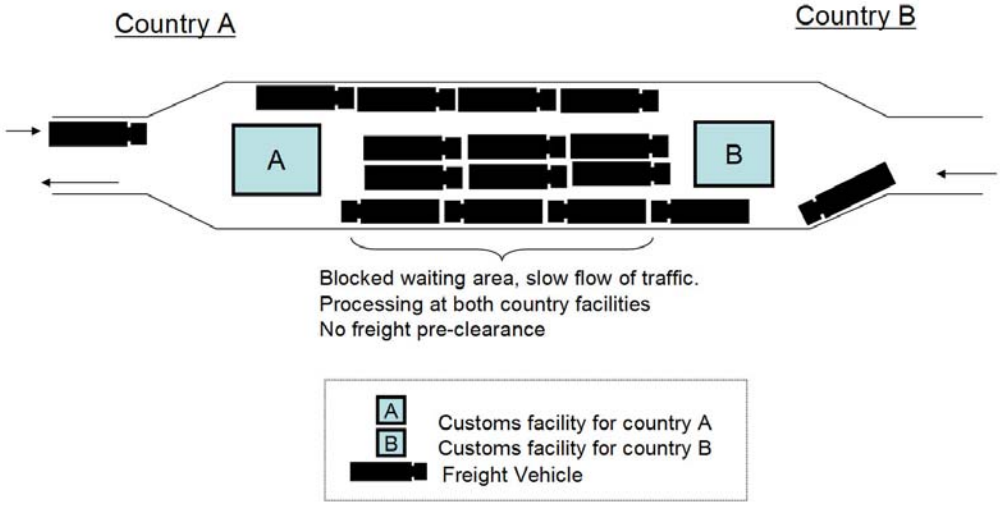
4.1.4.8 Although customs administrations are increasingly introducing computerized systems and electronic transaction, progress is most evident on the TKC and generally slow on the other corridors, with **Mozambique** being a particular case in point. In addition, interfaces between the electronic systems of the different corridor states are not generally lacking.

4.1.4.9 Customs reforms at border posts on the Nacala, Limpopo, Zambezi, Beira and Nacala Corridors are, in contrast to the ***Maputo*** and TKC Corridors falling behind. See the following diagram for a synoptic status overview of current incidence of border post co-operation:



4.1.4.10 At a practical level, it has been noted that customs processing at ports seem to be facilitated with greater ease than at land border posts. Stakeholders indicated, for example that customs clearance at the port of ***Maputo*** is not a major problem. In fact, it is said that the main constraint affecting the port is the way in which road freight traffic is currently handled at the border – bottlenecks occur and there is no even flow of traffic to the port. The main objective should be to avoid the periods of large peaks and to create a more even spread of freight flow during a day. The current practice is to park truck traffic in-between the two border facilities. Drivers then have to do both customs and immigration procedures at both country offices. Only then can a vehicle proceed. Vehicles are not pre-cleared and this process adds to the delay. The same process needs to be repeated when the vehicle returns through the border. The following diagram (figure 3) illustrates schematically the effect of freight traffic processing on the port. Under current conditions freight to the port is stacked at the border until paperwork and processing has been completed. The result: a substantial volume of vehicles arrive at the port where offloading vehicles requires all resources available. A more even flow of vehicles to the port would alleviate much of this problem. Figure 1 sketches this problem.

Figure 1: Freight vehicle 'stacking' at the Ressano Garcia Border.



4.1.4.11 Bottlenecks at the land border posts also have an effect on the personnel staffing the border. At the present the number of staff is provided to handle the peak flows. If a peak would be more spread out the occurrence during a day when staff is not being optimally used will be minimised. The border is only open for 10 hours. At present customs declaration is done twice. It is suggested that a solution is to handle freight as transit freight. This means that the freight is deemed to leave South Africa only if it leaves the ***Maputo*** port – for effective security purposes joint processing could be facilitated at the port of ***Maputo*** provided that **Mozambique** follows South Africa's example on legal reforms in respect of extra-territorial jurisdiction. Transit freight simply moves through the border without standing for long periods See figure 2). A single list of vehicles can be compiled and managed effectively at the border without the need for rigorous inspections. This could also reduce the amount of paper work currently being processed. This model is equally relevant to all corridors.

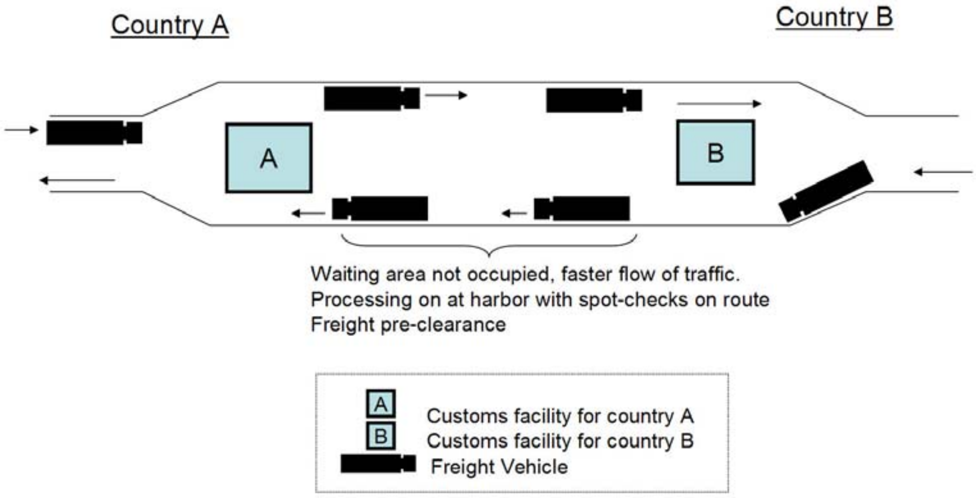


Figure 2: Free flow of vehicles (pre-cleared) through the border.

4.1.4.12 It appears that extension of border post hours at Komati Poort - Ressano Garcia to 24 hour operation is being considered. Whilst it appears that land border post procedures are in dire need of reform, it is recommended that expansion of pre-clearance practices, transit regimes and joint processing at the ultimate ports of entry or exit by all corridor states be considered synchronized with ship calls at regional ports be considered. Such an arrangement will only be successful if documentation, procedures, electronic capturing and risk mitigation systems are harmonized.

Case Study Box 20
Columbus:

"For exporting freight, South African Revenue Services (SARS) requires two types of documents to be issued for processing and dispatching of products to neighbouring countries. These are the F178-form and the invoice indicating the value of the product. Invoices are to be submitted per customer per truck, irrespective of the number of trucks per a particular client. This creates an enormous load of documentation as 200 documents are to be prepared for a shipment of 5000 tons (example). This has resulted in additional staffing requirements at Columbus: a person is currently being fully tasked with preparing these required documents for shipments.

All invoices as well as the F178-forms have to be bank-approved prior to dispatching goods to the port. Bank operating hours are a constraint as they are open from only 09h00 to 15h30, and are closed for document processing over weekends. This leaves a very limited time period to finalise documents for releasing products ready for transport.

The border is officially open from 06h00 till 22h00 on a daily basis. However, documents at the border have to be processed prior to 14h00 at the latest. This minimizes the flexibility and the scheduling of trucks and results in high operational costs. The processing time and procedures at the border also contributes to poor turnaround times of freight vehicles.

Multiple invoices, as per the number of trucks, are required at the border for the same client. The documentation procedure and inspections are duplicated by both borders and adds time to the overall turnaround time. This is in essence a duplication of paperwork that could have been simplified using a single set of forms per group of vehicles.

A specific problem encountered on the Ressano Garcia side is that of bribery and corruption, which appears to be rife in and around the border. This due mainly as service providers competes for speedily service from the officials.

Customs at the Komatipoort-Ressano Garcia border need to standardize their documentation. Processing of multiple vehicles could be based on one invoice per client per shipment sent to the port. Alignment and standardization based on SADC protocols should be applicable for cross-border freight transport (like cargo from Namibia and Swaziland currently). This will create more seamless flow of freight. Duplication of processes can be eliminated by working together (customs officials are already housed under one roof)."

4.3 CORRIDOR COMPARISONS AND RECOMMENDATIONS

4.3.1 The regulation of road transport between corridor states have more or less been resolves equally in terms of bi-lateral agreements based in reciprocal extra-territorial jurisdiction. Remaining problems on all corridors include the lack of harmony or uniformity in permissible axle mass loads and cross-border road user charges. In addition, the efficiency of road transport services on all corridors is severely affected by customs processes at land border posts. All these constraints cannot be resolved on an exclusive corridor basis and require legislative amendments. It is recommended that national governments proceed without delay to amend national legislation to give effect to regional commitments; this should be facilitated and encouraged by SADC Secretariat.

4.3.2 The availability and reliability of rail transport services appears to be a significant disconnect on all the corridors studied except the TKC. In particular, efficiency of imports and exports on the ***Maputo*** and Nacala corridors is affected. It is recommended that the Government of **Mozambique** expedite the conclusion of the ***Maputo*** and Nacala rail concessions. The Government of Malawi should attend to its weak regulatory framework and the rehabilitation of the railway bridge in Lilongwe. In addition, the Government of South Africa should facilitate consultations with Spoornet to improve the availability and reliability of railway services on the ***Maputo*** corridor.

4.3.3 With the exception of the port of Durban all the other ports servicing the corridors studied suffer as a result under-utilization and imbalances in import and export traffic thus affecting cost-efficiency and attractiveness. To some extent this may be corrected through improved land-side logistics (rail services and border post procedures) but to some extent distance to be travelled (Walvis Bay) and the health of national economies are contributors that will take time to resolve. It is recommended that SADC facilitate a pragmatic strategy of overall regional optimization of port resources.

4.1.4.13 The dire need for improved customs administration is a common denominator on all the corridors. Notable good practice reforms include the legal reforms by South Africa to enable extra-territorial execution of functions – this will allow for joint processing – and the harmonization and use of uniform documentation on the TKC corridor. In addition the registration of compliant road transport operators under a more attractive customs guarantee arrangement to reduce processing through effective risk mitigation measures should be noted. It is recommended that these reforms be emulated by Malawi and **Mozambique**. In addition, all corridor states should consider expansion of pre-clearance practices and the possibility of joint customs processing at end ports of entry and exit. Finally, harmonized computerized systems should be implemented on all the corridors. Not only will electronic transactions and inter-country interfaces reduce the volume of documentation and processes but it will also enable greater alignment with global trade facilitation practice. In this respect, it is worth noting that Mauritius, a SADC member state, has succesfully introduced an electronic "single window" concept as a public-private sector collaboration that facilitates electronic processing and payment of all taxes, duties and fees related to international trade. It is recommended that the results of this initiative be explored by the corridor states for implementation.

4.1.4.14 Infrastructure at land border posts is limited and requires urgent upgrading; this includes consolidation of areas of processing, housing for staff and amenities for the users of the facilities. In this respect, consideration should be given to mobilizing private sector funding and initiative to provide and manage the facilities in terms of service level agreements.

5. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

5.1 If one is to summarize the context of constraints to investment and transport and transit facilitation on the ***Maputo***, Beira, Nacala, Limpopo, Zambezi and Trans-Kalahari Corridors, in a nutshell, an apt description may be of a glass half empty or a glass half full. In other words, a number of areas of reform and progress have been reported but as this is not uniform between countries on a corridor or between sectors in a country or even within sectors in a country, the progress is scattered and fragmented and showing distorted impact. In fact, whilst one would want to think that, in view of notable progressions, that the glass is half full, it actually remains half empty. In this respect, the inter-dependency between overall economic health, the ease of business and investment and transport and transit facilitation has been illustrated through examples in this report. Tax administration and investor incentives are informed by budget deficits whereas general business processes affect investor appetite which again influences vibrancy of the economy and the balance of trade, which in turn influences the cost-efficiency of transport which affects trade competitiveness which completes the circle back to economic growth. Long-winded yes, but in the end a holistic process which is unavoidable. The sections that follow below is a “group together” of conclusions and recommendations presented under different headings in the report. These paragraphs are followed by a summary of actions to be taken with reference to short and long term timing.

Institutional

5.2 Despite the benefit of the attention given to investment, transport and transit facilitation by multiple agencies at national and corridor level, these initiatives appear to be fragmented, sometimes overlapping and, generally, in need of coordination. Although the SDI Programme contributes to coordination of initiatives on a corridor basis, it does not have the authority to intervene at a national level to enforce such coordination. The ambit of the role, power, functions, duties and, especially status of investment agencies are not always sufficiently defined and as a result their efforts in facilitation and coordination of intra-governmental affairs are often marginalized – we need champions with sufficient authority to lever change. In this respect, the “one-stop shop” approach of MIPA (Malawi) serves as a good example; however, the discontinuation of reporting directly to the President is a step backwards.

5.3 The private sector initiatives appear to acknowledge the importance of a public-private sector partnership and show more commitment in this respect. These initiatives are, however, dependent of government commitment to reforms. Government participation in these initiatives should be approached as “we will come and listen” but rather “we have come to plan and commit collectively”. **Shippers and other users are often not sufficiently represented (there are exceptions) on corridor initiatives and more effort should be made to secure their involvement. Unfortunately, such initiatives have not yet been established on the Zambezi and Limpopo SDIs; this requires attention and ideally the investment agencies should take the lead in this with the support of the SDI Programme.**

5.4 **The transport corridor committees serve an important role, but sector-specific committees have limited impact and their succession to an integrated public-private sector initiative such as the *MCLI* and WBCG should be attended to**.

5.5 The **exit strategies of government led institutions** responsible for investment and corridor coordination are not always sensitive to the magnitude of the task at hand, eg. the ***Maputo*** Corridor. It may be that the governments’ intention is to only provide an incubator for private-public sector initiatives to provide sustainable facilitation, however, **exit strategies should be in relation to appropriate timing (not just after a number of successful anchor projects have been secured) and include a succession plan for inclusive public-private sector**.

5.6 Many a commentator reported that the establishment, and favourable investment and operating environment of big anchor projects with high profile enjoy much more attention of the governments, but little attention is given to small and medium sized projects and the overall national enabling and operating environment. **It is noted that the mandate of some of the investment agencies is limited in terms of the size or value of investments; their mandate should be expanded to address smaller investments or these agencies should work closer with the national agencies responsible for SMME development.**

5.7 National ministries responsible for sector or business approvals are not necessarily in-step with the investment, transport and trade facilitation objectives of the investment agencies and corridor initiatives **– there is a glaring need to establish a "mind-shift**". **In this respect, it is recommended that the CPI in Mozambique exercise its "tacit approval" empowerment to instil discipline in the time-line that statutorily stipulated. Moreover, it is recommended that other corridor states follow Mozambique's example in legislative reforms to stipulate time-lines for bureaucratic approvals and provide for a "tacit consent" rule. It should also be noted that all the legislation reviewed is sufficiently flexible to permit implementation of time saving procedures and mechanisms.** National ministries are not obliged to take the maximum time prescribed to issue an approval and even where no time-lines are prescribed, they may within the parameters of existing law exercise the discretion to facilitate expeditious approvals. No legislative amendment is required all that is required is committed **mind-shift.** This can be introduced **without delay but will it probably only be effective with clear instruction from Presidential or Ministerial level.**

5.8 In the case of Malawi, particular attention should be given to strengthening intra-governmental and public – private sector coordination and co-operation, to securing specialized human resources and to process the enactment of public-private partnership legislation.

5.9 As an ancillary matter, it is worth noting that concern has been expressed that conditions by donors in respect of support to projects also introduce delays that are not necessarily ascribed to constraining national legislation or procedures. In this respect, requirements regarding comprehensive environmental impact assessment may delay projects substantially whilst national requirements provide for provisional licensing or less rigorous requirements. Moreover, it has been noted that while great benefit has been realized through donor support in the establishment of public-private initiatives, some of these have been driven to some extent by donor objectives and have not always been sensitive to broader national coordination. **It is recommended that donor conditions and objectives be effectively coordinated with national realities**.

5.10 It has also been reported that corruptive practices in fast-tracking approvals by national ministries occur. This study did not empirically determine the extent of such corruption but the following ranking (from lower to higher) by the Transparency International Corruption Perception Indices have been noted:

- Botswana (30th position globally);
- Namibia (41st position globally);
- South Africa (48th position globally);
- Malawi (83rd position globally); and
- **Mozambique** (86th position globally).

5.11 With regard to institutional immunity to corruption, **consideration has to be given to adopting anti-corruption and whistler blowing legislation. Best practices suggest that Government agencies should prepare internal fraud and corruption strategies** irrespective of whether they have enabling legislation.

5.12 Problems with bureaucratic efficiency, unwillingness of government officials to adopt a mind-shift and corruptive practices should be addressed through **appointment of at least senior management on a performance contract basis. This practice is being followed in South Africa whereas Mozambique has indicated that its government labour legislation is biased in favour of employees. Thus, Mozambique requires legislative amendment to accommodate performance based contracting.**

5.13 In conclusion, most of the institutional recommendations, with only three exceptions, do not require protracted legal processes and can be implemented without delay and with reasonable expectation of focused positive impact.

Company Registration

5.14 It is evident that Botswana, Malawi, Namibia and South Africa have been following world trends to ease the process of company registration through limiting the number of institutions involved, providing prescribed forms and pro forma documents that can be completed with relative ease. Although most businesses involve private firms to facilitate company registration it is generally not a cumbersome process and could also be undertaken by the shareholders themselves. **Both Botswana and Namibia can improve on the average time for processing. One area where all four governments still fall behind in world trends is to allow for company registration through electronic processes.** Such a step may even cut back more in processing time and administration costs. It is recommended that this step be considered in future by all corridor states.

5.15 The Mozambican process for company registration, on the other hand, appears to be very complex and includes archaic practices (such as hand written documents). The complexity of the system does however benefit those who provide consultancy services to the extent that it is difficult for someone not knowledgeable with the system to facilitate registration. It is recommended that **Mozambique** consider the following changes to reduce, process, time and cost:

- **Integration or collapsing of the operations of the Notary Office and the Public Commercial Registry;**
- **Outsource the functions that can be more efficiently done by the private sector (e.g. printing);**
- **Eliminate the industrial licensing and adopt automatic registration for all companies that are not listed in Article 2, Decree 44/98;**
- **Designate competent authorities for inspection and define more clearly the roles, powers and responsibilities of the various inspectors to stop inspections by overlapping authorities and introduce the obligation that all inspection reports should be in writing and available to both the investors and the inspecting authorities; and**
- **Establish clear rules and regulations for fines;**

5.16 **It is also recommended that Mozambique procedures with the implementation of the Tourism Act that has been enacted, but not yet enforced and recommend implementation steps to be adopted possible by way of a Decreto.**

Access to Credit

5.17 It evident that both **Mozambique** and Malawi experience problems in respect of the access to credit. To a large extent this can be ascribed to domestic economic problems and risk factors that can only be corrected through a reduction in defaulting risk and protection of creditor rights. Thus, both in the case of Malawi and **Mozambique** sustainable economic growth in all domestic (especially small and medium) enterprises will play a significant role in easing access to credit**. In the case of Malawi, the budget deficit of the GoM will have to be reduced in order for credit access to improve whereas in Mozambique amendment of the insolvency legislation to better protect the rights of creditors in the event of insolvency should enhance credit availability.**

Tax Administration

5.18 It is evident that the business communities in **Mozambique** and Malawi do not question the imposition of value added tax but express serious concerns regarding the administration thereof. Problems particularly relate to delays (that can be avoided), the level of taxes and the repayment in local currency. **This causes serious cash flow problems for businesses. The majority of the problems related to VAT administration do not require legislative amendment (at least of laws passed by legislatures) and may be corrected without delay and significant impact; in this respect delay in pay-backs is of particular relevance.**

5.19 It is recommended that in both Malawi and Mozambique tax authorities be disciplined to administer VAT within a shorter (30-day or less) period whilst Malawi will have to address the levels of and exemptions to VAT and application of VAT to EPZs through amendment of relevant regulations and/or directives – this shouldn't take long.

5.20 In addition, attention should be given to the tax systems of the two countries to support existing and small and medium enterprises.

Access to Land

5.21 It appears that the process to secure land by foreign investors in Malawi, especially the tourism sector, is lengthy and often uncertain with many an allocation having been reversed. **This is matter of exercise of discretion and does not require amendment of legislation. It is recommended that Presidential directive to the relevant authorities on the exercise of this discretion be issued to provide clarity and specified time-lines. In addition, the short duration of land concession require legislative amendment to bring it in line with regional standards (eg. 99 year lease-hold).**

5.22 In **Mozambique** it is evident that the consultative processes to secure land is potentially lengthy, without a realistic cut-off; it remains discretionary whether sufficient consultation has taken place. Although the rights of existing traditional land users should be protected, the Government of **Mozambique** will have to balance these rights with the loss of investment due to uncertain process and criteria. **It is recommended that a directive be issued to provide clear criteria for and cut-off achievement and time-lines for such consultative processes.** Despite the time-lines in the legislation for central government administration, these consultative process may hi-jack all other time-lines.

Dispute Resolution

5.23 In relation to both Malawi it is evident that delays experienced and cost increases are not as a result of the existing legal provisions in respect of process but rather the discretionary decision by the judiciary to give priority to political cases. **It is recommended that directive be issued to correct this and/or legislation be prepared to provide for dedicated commercial and small claims courts**.

5.24 In **Mozambique** the legislation does not require immediate amendment. **In fact, what is required is to implement the new Arbitration Law. It is recommended that Mozambique proceed with implementation without delay.**

5.25 It is apparent that in both **Malawi and Mozambique capacity building** in the handling of commercial arbitration is required. In this respect it is recommended that technical assistance programmes be procured.

Labour

5.26 Whilst the labour dispensations of all the countries studied may be improved over time, It is evident that despite some reforms, **Mozambican legislation requires substantial amendment in respect of the cumbersome procedures and restrictive arrangements in respect of conditions of employment which are biased in favour of employees. Moreover, it appears that the process of foreign hire permissions is more favourable to bigger business that to smaller enterprises; the discretion in fast-tracking approvals should be available to all**

businesses. In addition, the excessive reporting requirements imposed on foreign employers should be revisited.

Logistical: Road Transport

5.27 The regulation of road transport between corridor states have more or less been resolves equally in terms of bi-lateral agreements based in reciprocal extra-territorial jurisdiction. Remaining problems on all corridors include the lack of harmony or uniformity in **permissible axle mass loads and cross-border road user charges. In addition, the efficiency of road transport services on all corridors is severely affected by customs processes at land border posts. All these constraints cannot be resolved on an exclusive corridor basis and require legislative amendments. It is recommended that national governments proceed without delay to amend national legislation to give effect to regional commitments; this should be facilitated and encouraged by SADC Secretariat.**

Logistical: Rail Transport

5.28 The availability and reliability of rail transport services appears to be a significant disconnect on all the corridors studied except the TKC. In particular, efficiency of imports and exports on the *Maputo* and Nacala corridors is affected. **It is recommended that the Government of Mozambique expedite the conclusion of the *Maputo* and Nacala rail concessions. The Government of Malawi should attend to its weak regulatory framework and the rehabilitation of the railway bridge in Lilongwe. In addition, the Government of South Africa should facilitate consultations with Spoornet to improve the availability and reliability of railway services on the *Maputo* corridor**.

Logistical: Ports

5.29 With the exception of the port of Durban all the other ports servicing the corridors studied suffer as a result under-utilization and imbalances in import and export traffic thus affecting cost-efficiency and attractiveness. To some extent this may be corrected through improved land-side logistics (rail services and border post procedures) but to some extent distance to be travelled (Walvis Bay) and the health of national economies are contributors that will take time to resolve. It is recommended that **SADC facilitate a pragmatic strategy of overall regional optimization of port resources and that the South African Government give priority to private sector involvement in port operations to attract investment and alleviate congestion.**

Logistical: Customs Administration

5.30 The dire need for improved customs administration is a common denominator on all the corridors. Notable good practice reforms include the legal reforms by South Africa to enable extra-territorial execution of functions – **this will allow for joint processing – and the harmonization and use of uniform documentation on the TKC corridor. In addition the registration of compliant road transport operators under a more attractive customs guarantee arrangement to reduce processing through effective risk mitigation measures should be noted. It is recommended that these reforms be emulated by Malawi and Mozambique. In addition, all corridor states should consider expansion of pre-clearance practices and the possibility of joint customs processing at end ports of entry and exit. Finally harmonized computer systems should be introduced on all the corridors**

Overall Corridor Comparison

5.31 It is evident from the above that from an overall governance perspective, the Trans-Kalahari Corridor (Botswana, Namibia and South Africa) is the most progressive whereas the corridors traversing Malawi and **Mozambique** fare the lower in respect of governance measurement. In particular, it is apparent that Malawi is in need of drastic legal reforms and human resources capacity enhancement. Recent legislative amendments in **Mozambique** are trend-setting in terms of the imposition of time-lines for bureaucratic processes, however, change in mind-set to give effect to the spirit of the law does not seem as well established.

Issue	Country	Short Term Solutions	Long Term Solution
Institutional Arrangements	**Botswana**	• Implement time-lines to expedite bureaucratic approvals. • PPP commitment and coordination. • Shipper representation on committees should be enhanced. • Exit strategies should be in relation to appropriate timing and include a succession plan for inclusive public-private sector. • There is a glaring need to establish a "mind-shift". It is recommended that other corridor states follow **Mozambique**'s example in legislative reforms to stipulate time-lines for bureaucratic approvals and provide for a "tacit consent" rule. It should also be noted that all the legislation reviewed is sufficiently flexible to permit implementation of time saving procedures and mechanisms. • Donor conditions and objectives should be effectively coordinated with national realities.	• Internal fraud and corruption strategies. • The mandate of investment agencies should be expanded to address smaller investments in order to support SMME development. • Anti-corruption and whistler blowing legislation has to be adopted. Best practices suggest that Government agencies should prepare internal fraud and corruption strategies.

	Malawi	• Strengthen governmental and PPP coordination and co-operation to securing specialized human resources and to process the enactment of public-private partnership legislation**.** • Shipper representation on committees should be enhanced. • Exit strategies should be in relation to appropriate timing and include a succession plan for inclusive public-private sector. • There is a glaring need to establish a “mind-shift”. It is recommended that other corridor states follow **Mozambique**’s example in legislative reforms to stipulate time-lines for bureaucratic approvals and provide for a “tacit consent” rule. It should also be noted that all the legislation reviewed is sufficiently flexible to permit implementation of time saving procedures and mechanisms. • Donor conditions and objectives should be effectively coordinated with national realities.	• The mandate of investment agencies should be expanded to address smaller investments in order to support SMME development. • Anti-corruption and whistler blowing legislation has to be adopted. Best practices suggest that Government agencies should prepare internal fraud and corruption strategies.

	Mozambique	• Inspire discipline in the time-line that statutorily stipulated. • PPP commitment and coordination. • Public Private Sector Initiatives should be given more attention. • Shipper representation on committees should be enhanced.Unfortunately, such initiatives have not yet been established on the Zambezi and Limpopo SDIs; Investment agencies should take the lead in this with the support of the SDI Programme. • Exit strategies should be in relation to appropriate timing and include a succession plan for inclusive public-private sector. • There is a glaring need to establish a "mind-shift". In this respect, it is recommended that the CPI in **Mozambique** exercise its "tacit approval" empowerment to instil discipline in the time-line that statutorily stipulated. • Donor conditions and objectives should be effectively coordinated with national realities.	• The mandate of investment agencies should be expanded to address smaller investments in order to support SMME development. • Anti-corruption and whistler blowing legislation has to be adopted. Best practices suggest that Government agencies should prepare internal fraud and corruption strategies.

	Namibia	• Implement time-lines to expedite bureaucratic approvals. • PPP commitment and coordination. • Shipper representation on committees should be enhanced. • Public Private Sector Initiatives should be given more attention. • Exit strategies should be in relation to appropriate timing and include a succession plan for inclusive public-private sector. • There is a glaring need to establish a "mind-shift". It is recommended that other corridor states follow **Mozambique**'s example in legislative reforms to stipulate time-lines for bureaucratic approvals and provide for a "tacit consent" rule. It should also be noted that all the legislation reviewed is sufficiently flexible to permit implementation of time saving procedures and mechanisms. • Donor conditions and objectives should be effectively coordinated with national realities.	• The mandate of investment agencies should be expanded to address smaller investments in order to support SMME development. • Anti-corruption and whistler blowing legislation has to be adopted. Best practices suggest that Government agencies should prepare internal fraud and corruption strategies.

	South Africa	• Implement time-lines to expedite bureaucratic approvals. • PPP commitment and coordination. • Shipper representation on committees should be enhanced. • Exit strategies should be in relation to appropriate timing and include a succession plan for inclusive public-private sector. • There is a glaring need to establish a "mind-shift". It is recommended that other corridor states follow **Mozambique**'s example in legislative reforms to stipulate time-lines for bureaucratic approvals and provide for a "tacit consent" rule. It should also be noted that all the legislation reviewed is sufficiently flexible to permit implementation of time saving procedures and mechanisms. • Donor conditions and objectives should be effectively coordinated with national realities.	• The mandate of investment agencies should be expanded to address smaller investments in order to support SMME development. • Anti-corruption and whistler blowing legislation has to be adopted. Best practices suggest that Government agencies should prepare internal fraud and corruption strategies.
Business Incorporation and Registration	**Botswana**	• Improve on the average time for processing. Allow for company registration through electronic processes.	
	Malawi	• Allow for company registration through electronic processes.	

	Mozambique	• Proceeds with the implementation of the Tourism Act that has been enacted, but not yet enforced and recommend implementation steps to be adopted possible by way of a Decreto. • Allow for company registration through electronic processes.	• Integration or collapsing of the operations of the Notary Office and the Public Commercial Registry. • Redesign business registration process in order to reduce, process, time and cost. • Outsource more functions to private sector (e.g. printing). • Eliminate the industrial licensing and adopt automatic registration for all companies that are not listed in Article 2, Decree 44/98. • Designate competent authorities for inspection and define more clearly the roles, powers and responsibilities. • Establish clear rules and regulations for fines.
	Namibia	• Improve on the average time for processing. Allow for company registration through electronic processes.	
	South Africa	• Allow for company registration through electronic processes.	
Access to Credit	**Botswana**		
	Malawi		• Incentives to encourage sustainable economic growth. • Incentives specifically for local business. • Reduce budget deficit of the GoM in order to credit access to improve.
	Mozambique		• Incentives to encourage sustainable economic growth. • Incentives specifically for local business. • Amendment of the insolvency legislation to better protect the rights of creditors in the event of insolvency should enhance credit availability.
	Namibia		
	South Africa		
Tax	**Botswana**		

Administration	**Malawi**	• Administer VAT within a shorter (30-day or less) period. • The majority of the problems related to VAT administration do not require legislative amendment and may be corrected without delay and significant impact; in this respect delay in pay-backs is of particular relevance. • Attention should be given to the tax systems of the two countries to support existing and small and medium enterprises.	• Address the levels of and exemptions to VAT and application of VAT to EPZs through amendment of relevant regulations and/or directives.
	Mozambique	• Administer VAT within a shorter (30-day or less) period. • The majority of the problems related to VAT administration do not require legislative amendment and may be corrected without delay and significant impact; in this respect delay in pay-backs is of particular relevance. • Attention should be given to the tax systems of the two countries to support existing and small and medium enterprises.	
	Namibia		
	South Africa		
Access to Land	**Botswana**		
	Malawi	• Directive to be issued to provide clarity and specified time-lines. • Presidential directive to relevant authorities for exercising discretion on securing land for foreign investors.	• The short duration of land concession require legislative amendment to bring it in line with regional standards (eg. 99 year lease-hold).
	Mozambique	• Directive to be issued to provide clear criteria for and cut-off achievement and time-lines for consultative processes.	
	Namibia		
	South Africa		
Contract	**Botswana**		

enforcement and dispute resolution	**Malawi**	• More transparent process (less political).	• Legislation to provide for dedicated commercial and small claims courts. • Establishment of a technical assistance programme for the handling of commercial arbitration.
	Mozambique	• Implement the new Arbitration Law	• Establishment of a technical assistance programme for the handling of commercial arbitration.
	Namibia		
	South Africa		
Labour	**Botswana**		
	Malawi		
	Mozambique		• Mozambican legislation requires substantial amendment in respect of the cumbersome procedures and restrictive arrangements in respect of conditions of employment which are biased in favour of employees. • Process of foreign hire permissions is more favourable to bigger business that to smaller enterprises; the discretion in fast-tracking approvals should be available to all businesses. • The excessive reporting requirements imposed on foreign employers should be revisited.
	Namibia		
	South Africa		
Road Transport	**Botswana**	• Harmonize of permissible axle mass loads and cross-border road user charges.	• The efficiency of road transport services on all corridors is severely affected by customs processes at land border posts. • All these constraints cannot be resolved on an exclusive corridor basis and require legislative amendments. • It is recommended that national governments proceed without delay to amend national legislation to give effect to regional commitments; this should be facilitated and encouraged by SADC Secretariat.

	Malawi	• Harmonize of permissible axle mass loads and cross-border road user charges.	• The efficiency of road transport services on all corridors is severely affected by customs processes at land border posts. • All these constraints cannot be resolved on an exclusive corridor basis and require legislative amendments. • It is recommended that national governments proceed without delay to amend national legislation to give effect to regional commitments; this should be facilitated and encouraged by SADC Secretariat.
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	South Africa	• Harmonize of permissible axle mass loads and cross-border road user charges.	• The efficiency of road transport services on all corridors is severely affected by customs processes at land border posts. • All these constraints cannot be resolved on an exclusive corridor basis and require legislative amendments. • It is recommended that national governments proceed without delay to amend national legislation to give effect to regional commitments; this should be facilitated and encouraged by SADC Secretariat.
Rail Transport	**Botswana**	•	
	Malawi	• The Government of Malawi should attend to its weak regulatory framework and the rehabilitation of the railway bridge in Lilongwe.	
	Mozambique	• Government of **Mozambique** to expedite the conclusion of the ***Maputo*** and Nacala rail concessions.	
	Namibia		
	South Africa	• The Government of South Africa should facilitate consultations with Spoornet to improve the availability and reliability of railway services on the ***Maputo*** corridor.	
Ports	**Botswana**	• SADC needs to facilitate a pragmatic strategy of overall regional optimization of port resources.	
	Malawi	• SADC needs to facilitate a pragmatic strategy of overall regional optimization of port resources.	
	Mozambique	• SADC needs to facilitate a pragmatic strategy of overall regional optimization of port resources.	
	Namibia	• SADC needs to facilitate a pragmatic strategy of overall regional optimization of port resources.	

	South Africa	• SADC needs to facilitate a pragmatic strategy of overall regional optimization of port resources and that the South African Government give priority to private sector involvement in port operations to attract investment and alleviate congestion.	
Customs Administration	**Botswana**	• Acceleration of computerized customs administration systems as harmonizing systems of countries with each other.	• Legislation for joint border post controls.
	Malawi	• Acceleration of computerized customs administration systems as harmonizing systems of countries with each other.	• Legislation for joint border post controls.
	Mozambique	• Acceleration of computerized customs administration systems as harmonizing systems of countries with each other.	• Legislation for joint border post controls.
	Namibia	• Acceleration of computerized customs administration systems as harmonizing systems of countries with each other.	• Legislation for joint border post controls.
	South Africa	• Acceleration of computerized customs administration systems as harmonizing systems of countries with each other. • Rehabilitate and upgrade of border post facilities.	