

# SADC PROTOCOL ON FINANCE AND INVESTMENT

## PREAMBLE

WE, the Heads of State or Government of:

The Republic of Angola

The Republic of Botswana

The Democratic Republic of the Congo

The Kingdom of Lesotho

The Republic of Madagascar

The Republic of Malawi

The Republic of Mauritius

The Republic of Mozambique

The Republic of Namibia

The Republic of South Africa

The Kingdom of Swaziland

The United Republic of Tanzania

The Republic of Zambia

The Republic of Zimbabwe

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

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

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

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

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

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

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

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

HEREBY AGREE as follows:

## **Chapter ONE. Definitions and Objectives**

### **Article 1. Definitions**

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

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

"Annex" means an Annex to this Protocol;

"BIS" means the Bank for International Settlements;

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

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

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

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

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

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

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

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

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

"RISDP" means the Regional Indicative Strategic Development Plan.

### **Article 2. Objectives**

1. This Protocol seeks to foster harmonisation of the financial and investment policies of the State Parties in order to make them consistent with objectives of SADC and ensure that any changes to financial and investment policies in one State Party do not necessitate undesirable adjustments in other State Parties.

2. The objective referred to in paragraph 1 shall be achieved through facilitation of regional integration, co-operation and co-ordination within finance and investment sectors with the aim of diversifying and expanding the productive sectors of the economy, and enhancing trade in the Region to achieve sustainable economic development and growth and eradication of poverty by:

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

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

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

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

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

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

settlement systems;

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

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

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

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

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

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

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

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

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

## **Chapter TWO. Co-operation on Investment**

### **Article 3. Co-operation on Investment**

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

## **Chapter THREE. Macroeconomic Convergence**

### **Article 4. Macroeconomic Convergence**

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

## **Chapter FOUR. Co-operation In Taxation and Related Matters**

### **Article 5. Co-operation In Taxation and Related Matters**

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

## **Chapter FIVE. Co-operation Among Central Banks**

### **Article 6. Co-operation and Co-ordination on Exchange Controls**

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

### **Article 7. The Legal and Operational Frameworks**

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

### **Article 8. Payments, Clearing and Settlement Systems**

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

### **Article 9. Co-operation In the Area of Information and Communication Technology**

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

### **Article 10. Co-operation between Banking Supervisors**

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

## **Chapter SIX. Network of Dfis**

### **Article 11. Facilitation of Activities of Dfis**

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

## **Chapter SEVEN. Co-operation In Regional Capital and Financial Markets**

### **Article 12. Regulation and Supervision of Non-banking Financial Services**

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

### **Article 13. Development of Capital and Financial Markets**

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

### **Article 14. Co-operation Among Member Stock Exchanges**

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

## **Chapter EIGHT. Anti-money Laundering**

### **Article 15. Co-operation with Regard to Anti-money Laundering**

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

## **Chapter NINE. Project Preparation and Development Fund**

### **Article 16. Development of a Sadc Project Preparation and Development Fund**

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

## **Chapter TEN. Institutional and Administrative Arrangements**

### **Article 17. Establishment of Institutions**

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

- (a) the Committee of Ministers for Finance and Investment;
- (b) the Committee of Central Bank Governors in SADC; and
- (c) the Peer Review Panel.

### **Article 18. The Committee of Ministers for Finance and Investment**

The Committee of Ministers for Finance and Investment shall consist of the Ministers responsible for finance and for

investment of each State Party and it shall meet at least once a year.

## **Article 19. The Committee of Central Bank Governors In Sadc**

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

## **Article 20. Peer Review Panel**

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

## **Article 21. Institutional Mechanisms**

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

## **Article 22. Functions and Responsibilities**

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

## **Chapter ELEVEN. Final Provisions**

### **Article 23. Annexes**

1. State parties may develop and adopt annexes for the implementation of this Protocol.
2. An Annex shall form an integral part of this Protocol.
3. The adoption of annexes under this Article shall be done in accordance with Article 26.

### **Article 24. Settlement of Disputes**

1. State Parties shall use their best endeavours, through co-operation and consultation, to achieve consensus in the interpretation, application and implementation of this Protocol.
2. Where State Parties are unable to achieve consensus in the interpretation, application and implementation of any Article of this Protocol, as contemplated in paragraph 1, and:

(a) the Annex relating to such Article contains provisions which deal with disputes or differences arising in relation to such Article, such provisions shall be applied in respect of the dispute or difference relating to such Article;

(b) the Annex relating to such Article does not contain provisions which deal with disputes or differences arising in relation to such Article, the State Parties which are parties to the dispute or difference relating to such Article will use their best endeavours to settle such dispute or difference through negotiations in good faith.

3. State Parties agree that if, in relation to a dispute or difference contemplated in paragraph 2 (b) the State Parties which are parties to such dispute or difference are unable to settle such dispute or difference through negotiation within three months from the time the disputes or differences arose, such dispute or difference shall be referred to the Tribunal for adjudication.

## **Article 25. General Undertaking**

1. State Parties shall take such appropriate measures as are necessary to ensure that their respective obligations arising from this Protocol are fulfilled.

2. State Parties shall co-operate with each other in addressing any impediments that may arise as a result of any action, or lack of action, by any State Party on issues having a material bearing on those finance and investment matters which are not covered in this Protocol.

## **Article 26. Amendments**

1. Any State Party may propose amendments to this Protocol.

2. Proposals for amendments to this Protocol shall be made to the Executive Secretary who shall duly notify all Member States of the proposed amendments at least thirty (30) days in advance of

Consideration of the amendments by the States Parties. Such notice may be waived by the Member States.

3. Amendments to this Protocol shall be adopted by a decision of three quarters of all the State Parties and shall become effective thirty (30) days after such adoption.

## **Article 27. Signature**

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

## **Article 28. Ratification**

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

## **Article 29. Entry Into Force**

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

## **Article 30. Accession**

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

## **Article 31. Withdrawal**

1. Any State Party may withdraw from this Protocol upon the expiration of twelve (12) months from the date of giving written notice to the Executive Secretary to that effect.

2. Any State Party that has withdrawn pursuant to paragraph 1 of this Article shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal becoming effective.

3. Any State Party that has withdrawn pursuant to paragraph 1 of this Article shall remain bound by the obligations under this Protocol for a period of twelve (12) months from the date of giving notice.

## **Article 32. Depositary**

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

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

DONE at..... on 18 day of August 2006 in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.

Republic of Angola

Republic of Botswana

Democratic Republic of Congo

Kingdom of Lesotho

Republic of Madagascar

Republic of Malawi

Republic of Mauritius

Republic of Mozambique

Republic of Namibia

Republic of South Africa

Kingdom of Swaziland

United Republic of Tanzania

Republic of Zambia

Republic of Zimbabwe

## **Annex 1 . CO-OPERATION ON INVESTMENT**

### ***Preamble***

The High Contracting Parties:

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

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

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

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

ACKNOWLEDGING that there is a need for greater regional cooperation among IPAs in the Region in order to enhance the

attractiveness of the Region as an investment destination;

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

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

HEREBY AGREE as follows:

## **Article 1. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) actively promote and facilitate investments;

(b) proactively identify business opportunities for investments;

(c) encourage expansion of existing investments;

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

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

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

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



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

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

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

"MIGA" means the Multilateral Investment Guarantee Agency;

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

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

"person" means a natural person or a company;

"PPP" means Public Private Partnership;

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

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

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

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

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

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

## **Article 2. Promotion and Admission of Investments**

1. Each State Party shall promote investments in its territory, and admit such investments in accordance with its laws and regulations.

2. The Host State shall facilitate and create favourable conditions to attract investments in its territory through suitable administrative measures and

In particular in the matter of expeditious clearance of authorisations in accordance with its laws and regulations.

3. For the purposes of creating a predictable investment climate, State Parties shall not arbitrarily, and without good reason, amend or otherwise modify to the detriment of investors, the terms, conditions and any benefits specified in the letter of authorisation.

## **Article 3. Promotion of Local and Regional Entrepreneurs**

1. State Parties shall support the development of local and regional entrepreneurs and enhance regional productive capacity within the Region through, inter alia:

(a) skills development and enhancement programmes;

(b) SMME development;

(c) appropriate investments into supporting infrastructure; and

(d) other supply-side measures and policies necessary to enhance global competitiveness.

2. In providing support described in paragraph 1 of this Article, State Parties may place emphasis on industries that provide up-stream and down-stream linkages and have a favourable effect on attracting foreign direct investment and generating increased employment.

## **Article 4. Public Private Partnerships**

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

## **Article 5. Investment Protection**

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

## **Article 6. Investors of the Third State**

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

## **Article 7. General Exceptions**

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

## **Article 8. Transparency**

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

## **Article 9. Repatriation of Investment and Returns**

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

## **Article 10. Corporate Responsibility**

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

## **Article 11. Sourcing of Requisite Skills**

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

- (a) where the skills do not exist in the Host State and the Region;
- (b) where State Parties are satisfied that the sourcing of such skills will be in compliance with regional policies; and

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

## **Article 12. Optimal Use of Natural Resources**

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

## **Article 13. Environmental Measures**

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

## **Article 14. Right to Regulate**

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

## **Article 15. Capital Movements**

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

## **Article 16. Competition Policy**

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

## **Article 17. Intra-regional and Extra-regional Agreements for the Avoidance of Double Taxation**

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

## **Article 18. Trade, Investment and Industrial Policy**

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

## **Article 19. Harmonisation of Policies and Laws**

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

## **Article 20. Conditions Favouring Least Developed Countries**

1. State Parties shall establish conditions favouring the participation of least-developed countries of SADC in the economic integration process, based on the principles of non-reciprocity and mutual benefit.

2. For the purpose of ensuring that least-developed countries of SADC receive effective preferential treatment, State Parties shall investigate the establishment of market openings as well as the setting up of programmes and other specific forms of cooperation including in relation to derogations in respect of investment incentives.

## **Article 21. Adherence to International Conventions and Practices**

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

- (a) the ICSID Convention of 1965;
- (b) the MIGA Convention, 1985; and
- (c) the New York Convention, 1958.

## **Article 22. Regional Cooperation on Investment**

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

## **Article 23. Investment Promotion Agencies**

State Parties shall ensure that their IPAs:

- (a) carry out their investment promotion activities, in line with their national and regional development priorities;
- (b) advise the Government of that State Party, the private sector and other stakeholders in the formulation and review of policies and procedures that affect investment and trade; and
- (c) increase awareness of their investment incentives, opportunities, legislation, practices, major events affecting investments and other relevant activities through regular exchange of information.

## **Article 24. The Role of the Secretariat**

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

## **Article 25. Relationship with other Organisations**

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

## **Article 26. Bilateral Investment Treaties**

State Parties may conclude bilateral investment treaties with third States.

## **Article 27. Access to Courts and Tribunals**

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

## **Article 28. Settlement of Investment Disputes**

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

2. Where the dispute is referred to international arbitration, the investor and the State Party concerned in the dispute may agree to refer the dispute either to:

(a) The SADC Tribunal;

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

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

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

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