



**SADC FINANCE AND INVESTMENT PROTOCOL  
SUBMISSIONS BY BUSINESS UNITY SOUTH AFRICA (BUS A)**

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**BACKGROUND**

BUS A is a confederation of chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. It represents South African business (See Annexure B - list of members) on macro-economic and high-level issues that affect it at the national and international levels. BUS A's function is to ensure that business plays a constructive role in the country's economic growth, development and transformation and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive.

As the principal representative of business in South Africa, BUS A represents the views of its members in a number of national structures and bodies, both statutory and non-statutory. BUS A also represents businesses' interests in the National Economic Development and Labour Council (NEDLAC).

Internationally, BUS A is a member of the International Organisation of Employers (IOE), the Pan-African Employers' Confederation (PEC) and the Southern African Development Community (SADC) Employers' Group. BUS A is also the official

representative of business at the International Labour Organisation (ILO), African Union (AU) Social Affairs Commission and World Trade Organisation (WTO).

## **INTRODUCTION**

Economic integration is perceived as a stimulus to growth. This concept is related to neoclassical and neo-liberal economic thought, which assumes welfare maximising, gains from trade. Through integration, SADC economies expect to acquire gains, which will translate into national income growth; leading to economic and political prosperity of the region.

The SADC Trade Protocol, which aims to establish a free trade area by 2008, and by August 2003, further targets of deepening integration were established under the Regional Indicative Strategic Development Plan. SADC aspires to complete negotiations and become a customs union by 2010, a common market by 2015 and the launch of the regional currency in 2018.

The Protocol of Finance and Investment gives effect to Article 22 of the Southern African Development Community Treaty by seeking to foster harmonisation of the financial and investment policies of the state parties in order to make them consistent with objectives of the Southern African Development Community ("SADC") and to ensure that changes to financial and investment policies in one state party do not necessitate undesirable adjustments in other state parties.

BUSA understands the rationale behind regional integration in SADC. We support the analysis that regional integration, when applied appropriately can enhance the welfare of all the member states in the regional organisation. However, believes that for integration to be sustainable in the long run there must be appropriate sequencing of the integration process. It is important not to isolate the Protocol on Trade and Finance from the broader developments in SADC.

BUSA firmly believes it is important for SADC Secretariat to be adequately resourced. In our analysis, poor institutional capacity is the primary reason for poor implementation of SADC Protocols.

## **GENERAL COMMENTS**

BUSA welcomes the opportunity to make comments on the SADC Finance and Investment Protocol. Whilst the policymakers can be congratulated for having finalised the protocol, we would encourage a paradigm shift and a focus on the actual the implementation of SADC protocols. We note with concern the poor record on implementation of the existing protocols in SADC.

BUSA is also concerned that despite challenges with the implementation of the FTA protocol policymakers seek to introduce the Finance and Investment Protocol. In our view, harmonisation of financial and investment policies – so called deeper integration is difficult in absence of solid institutional arrangements and poor performance with FTA.

The voluntary nature of SADC membership, overlapping memberships of regional integration limits progress with integration in Southern Africa. Such overlaps mean that the objectives of SADC which “will 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” are difficult to attain.

BUSA also notes that not all the SADC members are signatories to the Protocol on Finance and Investment which is a possible signal to limited commitment to the protocol by some member states. We would like clarity in this regard.

## **SPECIFIC COMMENTS**

### **Broad Comments on objectives**

Below are BUSA broad comments on the comments on the stated objectives of the Protocol:

- (a) ***Creating a favourable investment climate within SADC with the aim of promoting and attracting investment in the SADC region.***

This objective is commendable - SADC should focus on developing the underlying infrastructure and the institutional on creating a globally competitive region and investment flows will be automatic.

- (b) ***Achieving and maintaining macroeconomic stability and convergence within the SADC region.***

Fiscal and Monetary policy convergence would appear to be premature given lack of progress on trade policy issues.

- (c) ***Co-operating in respect of taxation and related matters within the SADC region.***

Cooperation with regarding to taxes is supported and can encourage intra-regional investment flows. This cooperation must be implemented by adequately resourced authorities.

- (d) ***Co-operating and co-ordinating amongst state parties in collaboration with Central Banks on exchange control policies.***

This objective is particularly difficult as countries have different and often conflicting exchange rate management policies. For instance, some countries might prefer to stimulate the economy via the exchange rate whilst others against those who prefer to float their currencies. In other instances, countries have different monetary policy preferences. For instance South Africa's inflation targeting regime is not widely practised in the region.

(e) ***Establishing a framework for co-operation and co-ordination between (amongst) Central Banks on payment, clearing and settlement systems***

This is particularly useful for intra-regional economic flows. The development of a solid framework is important for eliminating systemic risk within regional payment system and contagion in case of a bank run in smaller economies.

(h) **Co-operating on bank supervision amongst Central Banks**

The level of cooperation is necessary – however, it is important that smaller countries are assisted in developing internal systems prior to the convergence of bank supervision

## **CHAPTER TWO**

### **Coordination of investment regimes and creation of favourable investment climate.**

#### **Low levels of investment**

BUSA shares the concern with the low levels of investment in SADC. In our view investment flows are responsive to poor regional competitiveness. Thus attempts to facilitate investment flows should focus on building capacity within institutions; development of infrastructure; macroeconomic stability in the region – curbing inflationary pressures and fiscal discipline; investment in human capital (health and education); development of efficient markets; support for innovation.

#### **Articles 2 (3)**

The article reads “For the purpose of creating a predictable investment climate .....shall not arbitrarily ...amend or otherwise modify the ...terms, conditions and any benefits specified in the letter of authorisation”

It is suggested that the text be amended to include a provision for the state to engage with the Investor on potential amendments/modification within reasonable time.

#### **Article 4**

##### **Public Private Partnerships**

BUSA supports the commitment to development of PPPs in the region. PPP's are an effective instrument to fast-tracking infrastructure development in SADC. This commitment ought to include statements towards effective private sector involvement and participation during the cooperation.

BUSA would like to see more pronouncements towards training and capacity building of local and regional expertise as this is one of the major challenges with PPP implementation in the region.

## **Article 5**

### **Nationalisation and Expropriation**

BUSA welcomes the explicit referral to nationalisation and expropriation in this article as well as the requirement for prompt, adequate and effective compensation in case of any expropriation. However, a more pronounced remedial programme would have enhanced the effectiveness of this clause.

## **Article 6 & 7**

### **Most Favoured Nation**

BUSA supports the most favoured nation principle in dealing with investors and their rights. Additionally, it is important for the protocol to allow for differential treatment if it used to pursue domestic economic and social policy objectives. Articles 7 exemptions are supported provided that there is transparency and predictability in their application.

Article 7(3) states that the commitment to local and regional enterprises development as described in Article 3 shall not apply to advantages, concessions or exemptions resulting from bilateral investment treaties, FTA, CU and other monetary agreement for economic integration in which the state may participate. BUSA is concerned that the majority of economic activity in the region arises as a result of the stated exemptions – thus this clause makes Article 3(1) redundant. The primary purpose of the stated exemptions is to stimulate economic growth and the reality is that SMME's are central to the achievement of this objective in SADC.

## **Article 11**

### **Human Resources Movement**

BUSA supports article 11 – free movement of key human resources skills is central to creating a favourable investment climate in SADC. BUSA would welcome concrete about the obligations of the Nation State in processing the visa applications in a transparent and timeous manner.

## **Article 12& 13**

### **Natural Resources and Environmental Management**

Article 12 deals with the optimal use of natural resources and Article 13 deals with environmental measures. It is important to make more concrete pronouncements around the issues of environmental issues given the ever-increasing global negotiations on environmental issues. Furthermore, BUSA would welcome commitments to simplification and consolidation of environmental regulations in the region.

## **Article 16**

### **Competition policy**

The statement on Competition Policy fails to set processes, guidelines and timetables for the co-ordination of competition policy. BUSA views competition policy as an important instrument of regional integration. However, it is important that the initial focus rests on developing solid domestic and regional institutions which can effectively deliver on their respective mandates.

## **Article 17**

### **Taxation Agreements**

Conclusion of taxation agreements is supported. Double taxation is a deterrent to intra-regional trade and investment. BUSA anticipates more clear details about mechanism in which these agreements can be finalised. It also appears that it might be sub-optimal to conclude bilateral tax treaties in a regional block. We would propose a more regional taxation arrangement.

## **Article 18 and Article 19**

### **Trade and industrial policies**

Commitment to trade, investment and industrial policies coordination is particularly important. It is important for SADC countries to develop protocol for harmonisation of industrial and trade policies and an effective resolution of conflicting policy objectives.

## **Article 21**

### **Adherence to international conventions and practices.**

BUSA supports the accession of SADC states to the international agreements on investment protection. Such accession would reduce the political risk premium associated with investment in SADC and increase investment flows.

## **Article 24**

### **The role of the secretariat**

The role of the secretariat needs to be more defined to include: responsibility for harmonisation of policies; dispute resolution; policy development and any other role which may be arise from time to time. Such a definition will enable channelling of appropriate resources and powers to the secretariat.

## **Article 25 and Article 26**

Articles 25 and Article 26 refer to relationship with other organisations and bilateral investment treaties. The general and enabling clauses can be counter-productive to economic integration. SADC is weakened by poor discipline amongst member states and proliferation of bilateral agreements between SADC countries and Third States. In our view, this provision would exacerbate the situation. In most cases it would have distortionary effects on trade and investment flows.

### **Articles 27 and 28**

#### **Dispute Resolution mechanism**

Article 27 is supported as it obliges the member states to protect the investor rights to access to the courts, judicial and administrative tribunals for redress. Article 28 strengthens the right to redress by providing for settlement of international disputes. BUSA strongly supports these provisions and believes that SADC Secretariat must oblige countries commit to upholding this clause at all cases. BUSA proposes a retrospective application of Article 28 to include already existing investments.

## **CHAPTER THREE**

### **MACROECONOMIC CONVERGENCE**

Whilst the principles of macroeconomic convergence are commendable, they are difficult to implement across the region. Some SADC members have shown limited commitment to the policy recommendations in Article 2 (2). BUSA supports the view that initially macroeconomic policy objectives should focus on stabilisation of the SADC economies rather than convergence. Convergence implies some loss of macroeconomic policy independence which in SADC can be difficult to achieve given the conflicting and divergent objectives on member

states. Countries also have different fiscal policies, revenue and expenditure priorities.

Chapter three prescribes the set indicators for macroeconomic convergence, guidelines for fiscal and monetary policy cooperation; the appropriate institutional mechanism and also suitable monitoring and surveillance. Our view is that Articles (3-6) whilst theoretically sound do not consider the political economy of policymaking in SADC – it is difficult to implement these provisions in absence of credible, solid domestic institutions.

## **CONCLUSION**

BUSA believes that the benefits of regional integration are not automatic but rather depend on the environment in which economic integration occurs. Thus it is recommended that the policymakers focus on developing the appropriate framework for advancing and fast tracking integration in the region. In this regard BUSA is advocating for the development of solid domestic institutions and creating macroeconomic stability within member states.

BUSA also believes that the SADC secretariat must be adequately capacitated, in terms of powers and resources to be effective in pursuing its mandate in the region.

Whilst BUSA welcomes the tabling of the Protocol on Finance and Investment, it is our view that policymakers should prioritise the implementation of existing Trade Protocols before seeking to deepen integration by introducing fiscal and monetary policy matters onto the SADC agenda.