HARMONISATION OF THIRD PARTY MOTOR VEHICLE INSURANCE SCHEME FOR THE COMESA/SADC/EAC REGION

CONSULTANCY PROJECT PRELIMINARY REPORT

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CONSULTANCY PROJECT PROPOSAL

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1. BACKGROUND INFORMATION
In pursuit of previous discussions, seminars and workshops to consider the best way to harmonize the different approaches to third party liability insurance by COMESA, EAC and SADC countries, the SADC Directorate of Infrastructure and Services, Transport Division convened a meeting of the SADC Task Force on Third Party Motor Vehicle Insurance Scheme in Gaborone, Botswana on 16-17 March 2010. The Task Force comprised of the COMESA Secretariat; SADC Secretariat; FESARTA; Chairman of the Yellow Card Council of Bureaux (The Insurance Association of Malawi); Chairman of the Roads SCOM Working Group on Regional Third Party Insurance (Zimbabwe); Insurance Council of Zimbabwe; and Botswana (Motor Vehicle Accident (MVA) Fund and the Ministry responsible for Transport) and representatives from the private (transport) sectors of Namibia, South Africa and Botswana.

According to SADC Secretariat, the objectives of the meeting and further consultations among the members countries continue as to:

(i) Reduce the non-tariff barrier effect of differences in insurance arrangements found across the region; and
(ii) Facilitate the implementation of harmonized and convenient motor vehicle third party liability insurance systems for cross-border road transport operations across the ESA Region.

The SADC Task Force then recommended a work plan, which was later endorsed, by the SADC Committee of Ministers responsible for Transport as follows:

(i) Prepare the framework on harmonization to spell out the implementation strategy outlining detailed legal, institutional and financial frameworks necessary for harmonization of the third party motor vehicle insurance systems;

(ii) Organize national stakeholders workshops in Botswana, Namibia, South Africa, Lesotho, Mozambique, Angola, Swaziland, Democratic Republic of Congo and one regional workshop to build consensus on the proposed harmonization implementation strategy; and

(iii) The report of the regional stakeholders' workshop to be submitted to SADC and COMESA policy structures meetings for decision.

The role of our consultancy at that Task Force Meeting was to facilitate the meeting and ensure that the meeting achieved the desired outcomes. We achieved our objective since we used the output of the workshop to draw up the Work plan for adoption. The Work plan arising from the workshop was endorsed by the SADC Committee of Ministers responsible for Transport. Therefore we believe that this assignment will enable continuity and the ability to achieve the harmonization goals.

2. PURPOSE OF CONTRACT & EXPECTED RESULTS

2.1 Objective of this Assignment
COMESA, SADC and EAC with the aid of TMSA PMU have assigned us to develop instruments and strategic guidelines for harmonising the third party insurance regimes in use across the SADC Member States based on the Work plan endorsed by the SADC Committee of Ministers responsible for Transport.

2.2 Expected Results from this Assignment
As part of our assignment, we expect to achieve the following results in line with the mandate from COMESA:

(i) Develop the framework for harmonization of third party insurance including the legal and institutional reforms that are necessary for the implementation of regionally harmonized arrangements for motor vehicle third party liability insurance;

(ii) Develop the system for interfacing the existing motor vehicle third party liability insurance system and the Yellow Card System; and

(iii) Develop an implementation plan for harmonized framework, clearly showing responsibilities and timeframes.

2.3 Activities
The suggested key activities that our consultancy will undertake to produce each result will include the following and as more outlined in the time table appended hereto;

2.3.1 Review of Harmonization Proposals
We shall review all previous and current proposals for harmonization of motor vehicle third party liability insurance. The review will include inter alia;

a) Studying and understanding the Protocol on Harmonization which was signed in line with the Workplan on Harmonization of the
third party insurance among the beneficiary countries;
b) the previous reports of the national and regional workshops that were held and the recommendations of the SADC/COMESA Task Force on harmonization;
c) preview status of countries that have not held preliminary workshops on Harmonization i.e. DRC, Mozambique and Angola;
d) the legal and institutional arrangements covering each of the insurance systems that are in use in the Target States, including those of the Yellow Card Scheme;
e) the financial implications of the different systems e.g. the different currencies used by each country, the pricing and purchase of cards and remittance of funds across the different countries through the COMESA clearing house;
f) financial aspects of the motor vehicle insurance industry including the settlement of claims, operation of reinsurance pools and the operation of international insurance systems in other parts of Africa and elsewhere in the world;
g) review of current systems, recent changes and technical notes regarding how the systems could be improved in each case studied.

We believe that the above-noted reviews and our technical analysis of the different systems shall define the general framework for harmonization.

2.3.2 Development of Harmonisation Proposals

It is part of our mandate as part of the Terms Of Reference (TOR) in this assignment;

a) to define and articulate the national and regional legal and institutional arrangements necessary for harmonisation

b) to assess and consider the preconditions for viable and sustainable collection of premiums,
including methods and points of collection and accountability thereof;

c) to review and assess the settlement of third party liability claims and how they are financed;

d) to assess the general financial performance of both existing and any new systems that may become part of the harmonised regional scheme, e.g. fuel levy system and cash systems

e) to consult with and consider the potential role of the private sector in the implementation and operation of the harmonised scheme;

f) to clearly separate commercial issues from regulatory matters and

g) to clarify, any institutional management arrangements for the harmonised regimes, especially at regional level;

h) make recommendations as to the best approaches to harmonisation in view of each country's infrastructural set up, language, legal, economic and historical background.

2.3.3 Development of Implementation Plan

Building on the results of the above steps, we have proposed an implementation plan for harmonisation, including the specific legal and institutional reforms that may be necessary for the existing systems to be harmonised. The draft Implementation Plan shall be presented for discussion at national as well as at regional stakeholders’ workshops following the initial meeting with stakeholders in each country.

3. METHODOLOGY

3.1. Fact-finding/data collection/surveys omitted in previous studies or requiring updating.
Under the guidance of the Team Leader, each of the subject matter experts in our consultancy (insurance, legal, finance, transport operations), shall be engaged in checking and compiling the information on current country information of the target and beneficiary countries that will be involved in the harmonization project as clearly indicated in the Time Table attached (Appendix I).

Our approach would therefore include:

a) research, compilation and perusal of the relevant legal statutes, insurance rates and guidelines pertaining to the three systems under review (cash, fuel levy and Yellow Card) and the fund rules in case of road accident funds;

b) background check on other systems operating in e.g. European Union, United States of America, Asia and EAC/COMESA so as to adapt the positive aspects to the local systems;

c) discussion and review of existing systems in terms of funding, financial performance and viability thereof with the relevant authorities charged with managing the funds;

d) discussion with the private sector operators to understand their current challenges and come up with alternative approaches to implementation and operation of the systems;

e) consideration of the implications of the proposed harmonization on different stakeholders and addressing concerns in each case so that we build a consensus on harmonization in each country;

f) visiting each of the target countries for harmonization to conduct national workshops as shown in the time table;

g) holding consultative meetings with decision makers/stakeholders to identify the preferred technical solutions, agree on timeframes and mobilize the political will to achieve smooth harmonization.

The above activity involves the following activities:
• selecting the correct and relevant contacts for information so that there is no delay in accessing data;
• ensuring that our consultants have the relevant tools to achieve their assignments – cellular phones with mobile roaming facilities, internet access, access to the COMESA/SADC/EAC Libraries and transport to access the target persons in time to compile our reports;
• visiting all the beneficiary and target countries in preparation of and facilitating the country workshops as planned.

Series of Potential Contacts
Secretariats & Administration Organs
SADC Secretariat – Ms. Mapolao Mokoena, Gaborone, Botswana
EAC Secretariat – Arusha, Tanzania
COMESA Secretariat – Lusaka, Zambia
The Yellow Card Reinsurance Pool Managers – ZEPRE Kenya
The COMESA Clearing House
Southern Africa Customs Union (SACU) – Gaborone & Pretoria

Resource Countries & Organizations
Zambia
The Insurance Council of Zambia – Lusaka, Zambia
Ministry of Transport – Zambia
FEDHAUL – Zambia

Zimbabwe
Ministry of Transport – Director, Harare, Zimbabwe
Chairman of the Roads SCOM Working Group on Regional Third Party Insurance (Zimbabwe)
The Insurance Council of Zimbabwe (ICZ) and the Motor Insurance Pool
Zimbabwe Carriers Association

Malawi
Current Chairperson of the Yellow Card Council of Bureaux – Malawi
The Insurance Association of Malawi
Malawi Carriers Association

Beneficiary Countries
Botswana
Ministry of Road Transport & Communications – Director, Gaborone, Botswana
MVA Fund – Chief Executive Officer, Gaborone, Botswana
Botswana Carriers Association
Short Term Insurance Companies
Non-Bank Financial Institutions Regulatory Authority (NBFIRA) – CEO or Director Insurance & Pensions

South Africa
Ministry of Transport – Pretoria, South Africa
Road Accident Fund (RFA)
Federation of South Africa Road Transport Association (FESARTA) – Pretoria, South Africa
Cross Border Road Transport Association (CBRTA) – Pretoria, South Africa
Short Term Insurance Companies and their industry association(s)
The South African Insurance Association (SAIA)

Namibia
Ministry of Transport – Windhoek, Namibia
Motor Vehicle Accident Fund (MVA)
Namibia Carriers Association
Trans-Kalahari Transport Association
Short Term Insurance Companies

Mozambique
Ministry of Roads & Transport
Mozambique Carriers Association
Short Term Insurance Companies and their Industry Association

Lesotho
Ministry of Transport
Ministry of Finance
Motor Vehicle Accident Fund (MVA)
Lesotho Carriers Association
Short Term Insurance Companies

Swaziland
Ministry of Transport
Ministry of Finance
Motor Vehicle Accident Fund (MVA)
Swaziland Carriers Association
The State Insurance Company of Swaziland (SICOS)

Angola
Ministry of Roads & Transport
Angola Carriers Association
Short Term Insurance Companies

Democratic Republic of Congo (DRC)
Ministry of Roads & Transport
DRC Carriers Association?
Short Term Insurance Companies

VISAS & TRAVEL ARRANGEMENTS
In the above regard, we expect that COMESA should provide us letters of introduction where necessary and ensure that passage to certain countries, e.g. where visas are required, is made easy for our consultants. This should be in line with Articles 7 & 8 of the SADC Protocols on Immunities & Privileges for Experts on Mission for SADC.
3.2 National Workshops
It has been observed that target beneficiary nations of the harmonization project have different approaches to the harmonization process. The levels of information the regulators, the operators and the insurance fraternity have are different from one country to another. In that regard, we are of the view that the national workshops should be conducted in every country in order to consider issues addressed in our initial research (see 2.3.1). We propose therefore that all stakeholders – government ministries, regulators, self-regulatory bodies (SRBs), insurance companies, insurance councils or associations and the transporters should be invited to the national workshop so that the workshops are all-embracing.

Recommendation:
We have noted that at the National Workshops some participants tend to assume that this project is theoretical and one of the issues of marketing the SADC Secretariat or the work of the consultants. In that regard, we recommend that at each workshop SADC should invite members of the following institutions so that they can give personal testimonies of the systems in place in their countries and organizations;

a) Chairman of the Yellow Card Council of Bureaux (The Insurance Association of Malawi);

b) Chairman of the Roads SCOM Working Group on Regional Third Party Insurance (Zimbabwe);

c) Insurance Council of Zimbabwe or Zambia

d) The Yellow Card Reinsurance Pool Managers – ZEPRE Kenya

e) The COMESA Clearing House

3.3 Identification and analysis of alternative solutions for the proposed initiative
Having researched, perused certain documents and held the national workshops, we believe that we will be able to propose alternative solutions for the harmonization of the third party liability insurance. Our objective
is that each country should come up with a home-grown approach with a bias towards the COMESA/SADC/EAC protocols, particularly in favour of the operators and victims of road accidents. The purpose of harmonization is to make the systems compatible with one another so that in the end it becomes easy for the operators to cross borders.

3.4 Analysis of alternative technical solutions
It is our observation that there has been concern among certain members of SADC, such as SACU, that the systems up north are not reliable and hence the participants in the transport sector are/were very reluctant to harmonize and merge into the Yellow Card system. In that regard, it would be relevant in our consultancy work to address fears and concerns both at technical and operational levels based on facts on the ground. It would therefore be relevant for us to tap into the COMESA/SADC/EAC databases and indicate as examples the processes involved in funds transfer, claims settlement and the financial viability of the reinsurance pools.

3.5 Reports by Our Consultancy
It is our understanding that we should produce reports as and when necessary and particularly the following:
3.5.1 Initial Report - This will address our operational work plan in view of this assignment and include time lines for achieving certain objectives;
3.5.2 Monthly Progress Report - this will be in summary form advising what we would have achieved and our plans for the ensuing month with a review of progress, delays and any issues to be addressed by the Principals or ourselves as Service Providers;
3.5.3 National Workshop Report(s) - We shall produce a report for each national workshop which would help us come up with a Draft Harmonization Report;
3.5.4 Draft Harmonization Report - This report will indicate the recommendations on each country, the
stakeholders desired harmonization model and the way forward in each case;

3.5.5 Revised Model Legislation – Our legal experts would have to dwell on this part of the assignment throughout the duration of the entire project in order to ensure that all views are captured in line with the other laws of each country involved in the harmonization; Therefore consultation with legal experts from each beneficiary country shall be necessary;

3.5.6 Draft Implementation Plan – This will be a result of the various consultations with the key stakeholders in each case and COMESA/SADC/EAC Secretariat;

3.5.7 Final Study Report, Model Legislation and Implementation Plan – these will be produced at the end of the assignment, us having finished the above issues and our consultative meetings.

4. RESOURCES & REQUIREMENTS
4.1 Personnel
Our Consultancy has expertise in the insurance industry, insurance and commercial law, financial aspects of motor vehicle insurance, and transport operations. Due to the late appointment by our Principals on this project and commitments of some of our consultants on other projects, we had to re-organize our team so the project would be served by the consultants mentioned below.

a) Insurance Specialist & Subject Matter Expert – Peter Magaya FCII. FIISA. EDP (UZ) BA (HONS) (SH) Banking, Insurance & Finance – Team Leader – Based in Gaborone, Botswana.

b) Financial Expert
Maggie Orcas Nyamupepema – BBA (Accounting) Degree and MBA (Accounting-part complete) (University of Botswana). She is majoring in Strategic Management in the MBA programme. Maggie
has worked as both accountant and transport administrator. She is responsible for importation of motor vehicles from South Africa and abroad. She is conversant in customs clearing and cross-border road transport operations having worked the Ministry of Transport, Finance and Botswana Unified Revenue Services in Gaborone. She is very computer literate and responsible for scheduling our meetings. She was involved in the Task Force Meeting held in Gaborone in March, 2010.

c) Legal Expert(s)
Bakang Tshipinare - holds a Bachelor of Laws Degree from the University of Botswana. He has vast experience in research and writing on law reform, human rights and advocacy in general. He will be mainly involved in research and technical analysis of the Road Traffic Acts, MVA acts of Botswana, Namibia, South Africa, Swaziland and Lesotho with a focus on reviewing them. Bakang is based in Gaborone, Botswana.

d) Transport Operations Specialist & Logistics
Prisca Mukwengi - holds Bachelor of Laws (Honours) Degree from the University of Zimbabwe. She has been a legal practitioner since 1996, has worked for a number of private sector organizations, law firms and for non-governmental organizations (NGOs) in a consultant role. Her main areas of concentration have been legal research, women and gender issues, advocacy and law reform. She has worked with both local and international organizations such as Human Resources Foundation, SADC and Human Rights Trust of Zambia. She would be useful in terms of logistical information regarding inter-face, research on transport and national statistics on the current members of the Yellow Scheme, understanding the legal, logistical and infrastructure issues related to this project.
Even though COMESA/SADC/EAC will provide interpreters for the non-English speaking participants during workshops, for Angola and Mozambique workshops, we will add a Portuguese speaking consultant, while for DRC, we will recruit a French-speaking consultant on a short term basis. Based on the foregoing personal profiles and the enthusiasm of the team, we believe that this assignment will be done efficiently and professionally.

4.2 Facilities, Transport & Travel
We will ensure that the experts are adequately supported and equipped. We will also ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities.

Unlike our initial proposal where two of our team members were based in Harare, Zimbabwe and the others in Gaborone, Botswana, we decided to relocate the one available consultant from Zimbabwe so that she could work almost full-time on the project given the pressure and time frame we have to complete it. We have therefore adjusted our initial budget in line with both travel costs and per diems. Therefore, we request TMSA PMU to consider the costs in line with contract budget proposal, noting that where possible and convenient we will minimize costs by sharing transport and travelling by road.

We believe that air travel is the most convenient for places like Angola, Mozambique and DRC so we have provided for such in our revised project budget. Where we travel by air, we have made provision for hiring a vehicle in the host country. Fuel costs vary from one country to another within SADC so where we will be driving we will use one vehicle for the travelling team. We have provided the fuel cost at One US Dollar per litre.

We understand that COMESA/SADC will be responsible for and assist us with the bookings for accommodation. We
have included the estimates in our budget. To minimize on costs, we have decided that in some national workshops only the Team Leader and two of the experts will attend. The experts will rotate in attendance except where we believe that the workload is going to be high e.g. Angola, DRC and Mozambique.

As part of the agreement, we believe that COMESA/SADC shall take care of all of the logistical arrangements i.e.

a) preparation, production and dissemination of all the material, before, during and after the meeting;
b) preparation for travel for the participants;
c) provision of conference facilities;
d) provision of interpretation and facilitation facilities etc.

5. TIME SCHEDULE (Appendix I)
An indicative timeframe for the implementation of the consultancy is a period of four (4) calendar months or at least 161 days as shown in our time table. We attach to this proposal our draft time table which should be revised in line with our revised timelines, availability of key COMESA/SADC/EAC personnel and costs as set in the project contract.

6. BUDGET (Appendix II)

For expediency and our national service to the different member states, we have indicated our remuneration based on fair market rates, commensurate with our expertise and the international nature of assignment. Our objective and the outcomes expected from this assignment are very demanding in terms of timelines, travelling and preparation thereof. The need for us to have reports produced in English, French and Portuguese means that we will take more time than
initially expected to prepare the non-English versions of the reports, but we will ensure they are delivered as promptly as possible. In that regard, we will ensure that we get the requisite personnel for translation purposes besides those provided by COMESA. The professional fees could be negotiated upwards where we believe we are falling short in terms of hiring or sub-contracting some work in order to meet deadlines set in the contract.

7. CONCLUSION

We believe that our expertise and participation in this assignment will assist the beneficiary countries to achieve the desired harmonization of the third party liability insurance for the COMESA/EAC/SADC region. In our efforts, we will offer the best, be transparent and honest with key stakeholders so that we leave no stone unturned in order to achieve the desired outcomes of this project. Our heartfelt appreciation goes to TMSA PMU for sponsoring this great regional initiative and COMESA/SADC/EAC for having faith in us being their project consultants. We look forward to working smoothly with the TMSA and our Principals during this project.

End of Report

Dated this 4th day of August, 2011